



# California Regulatory Notice Register

REGISTER 2019, NUMBER 36-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

SEPTEMBER 6, 2019

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

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. "Periodicals Postage Paid in Saint Paul, MN." **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. DEPARTMENT OF FAIR  
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the **Department of Fair Employment and Housing (DFEH)**, 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 on **September 6, 2019** and closing on **October 21, 2019**. All inquiries should be directed to the contact listed below.

The **DFEH** 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.

Changes to the conflict-of-interest code include: (1) identifying new positions with reporting obligations; (2) removing positions that no longer have reporting obligations, either because the position no longer exists, or because the position lacks authority to determine case intake or closure; (3) updating the organizational structure DFEH provides to the Fair Political Practices Commission to improve the accuracy of that disclosure; AND (4) other technical changes.

Information on the code amendment is available on the DFEH's intranet site and is attached to this email.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than **October 21, 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 **October 6, 2019**.

The **DFEH** 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: **Adam Chayes, Staff Counsel, (916) 585-7109, adam.chayes@dfeh.ca.gov.**

**TITLE 2. FAIR EMPLOYMENT AND  
HOUSING COUNCIL OF THE  
DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING**

**EMPLOYMENT REGULATIONS  
REGARDING CRIMINAL HISTORY, THE  
CALIFORNIA FAMILY RIGHTS ACT, AND  
THE NEW PARENT LEAVE ACT**

The Fair Employment and Housing Council (Council) of the Department of Fair Employment and Housing (DFEH) proposes to amend sections 11017.1, 11087-11094, and 11096 of Title 2 of the California Code of Regulations after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Council will hold a public hearing starting at **10:00 a.m. on October 23, 2019**, at the following location:

State Capitol  
Room 113  
Sacramento, CA 95814

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The meeting facilities are accessible to individuals with physical disabilities. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the meeting, should contact Brenda Valle, DFEH ADA Coordinator, at (844) 541-2877 (voice or via relay operator 711) or TTY (800) 700-2320 or via email:

[brenda.valle@dfeh.ca.gov](mailto:brenda.valle@dfeh.ca.gov) or [accommodations@dfeh.ca.gov](mailto:accommodations@dfeh.ca.gov) as soon as possible or at least 72 hours before the meeting.

#### WRITTEN COMMENT PERIOD

Any interested person, or any interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Council. The written comment period closes at **5:00 p.m. on October 23, 2019**. The Council will consider only comments received by that time. Written comments can be mailed to:

Fair Employment and Housing Council  
c/o Brian Sperber  
Legislative and Regulatory Counsel  
Department of Fair Employment and Housing  
320 West 4<sup>th</sup> Street, 10<sup>th</sup> Floor  
Los Angeles, CA 90013  
Telephone: (213) 337-4495

Comments may also be submitted by e-mail to [FEHCouncil@dfeh.ca.gov](mailto:FEHCouncil@dfeh.ca.gov).

#### AUTHORITY AND REFERENCE

Government Code section 12935(a) authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 12900 et seq. of the Government Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies, makes specific, and supplements existing state regulations interpreting the Fair Employment and Housing Act ("FEHA") set forth in Government Code section 12900 et seq. Two bills from 2017 — AB 1008 and SB 63 — add new sections to the FEHA that respectively "ban the box" by prohibiting employers from seeking criminal history information until a conditional offer of employment is made and enact the New Parent Leave Act (NPLA), thereby expanding parental leave rights at employers of 20-49 employees.

In compliance with the Administrative Procedure Act, the Council proposes to adopt these rules as duly noticed, vetted, and authorized regulations. The overall objective of the proposed regulations is to describe how the two new laws operate and fit into the broader context of the FEHA, primarily by centralizing, clarifying, and codifying the two statutes. This action has the specific benefit of clarifying new, potentially misunderstood areas of the law, in turn reducing litigation costs

and court overcrowding. Ultimately, the proposed action furthers the mission of the DFEH by protecting Californians from employment discrimination.

The proposed amendments specifically do the following: (1) articulate the parameters of AB 1008 in an orderly fashion in the context of existing regulations regarding the consideration of criminal history in employment decisions; (2) distinguish between ban-the-box and the adverse impact theory of liability; (3) clarify any ambiguities in AB 1008, particularly how to calculate "five business days"; (4) integrate SB 63 into existing regulations regarding the California Family Rights Act (CFRA); and (5) identify differences between CFRA and NPLA, such as jurisdictional differences.

The Council has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Council has concluded that these are the only regulations that concern the Fair Employment and Housing Act.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Council has made the following initial determinations:*

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

**Cost or savings to any state agency:** No additional costs or savings beyond those imposed by existing law.

**Cost to any local agency or school district, which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.

**Other nondiscretionary cost or savings imposed on local agencies:** No additional costs or savings beyond those imposed by existing law.

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

**Cost impacts on a representative private person or businesses:** No additional costs or savings beyond those imposed by existing law. Therefore, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Results of the economic impact assessment/analysis:** The Council anticipates that the adoption of the regulations will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state. To the contrary, adoption of the proposed amendments is anticipated to benefit the health and welfare of California residents and business-

es and improve worker safety by clarifying and streamlining the operation of the law, making it easier for employees and employers to understand their rights and obligations, and reducing litigation costs for businesses. These regulations would not affect the environment.

**Statewide adverse economic impact directly affecting businesses and individuals:** The Council has made an initial determination that the proposed action *will not* have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Significant effect on housing costs:** None.

**Small Business Determination:** The Council anticipates that the regulations will not create additional costs or savings beyond those imposed by existing regulations. Similarly, the Council has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

**Business Report:** The Council has determined that the proposed regulations do not require a report to be made.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Council must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the Council's attention would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Council has thus far not become aware of a better alternative and invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Brian Sperber, Legislative and Regulatory Counsel  
 Department of Fair Employment and Housing  
 320 West 4<sup>th</sup> Street, 10<sup>th</sup> Floor  
 Los Angeles, CA 90013  
 Telephone: (213) 337-4495  
 E-mail: [brian.sperber@dfeh.ca.gov](mailto:brian.sperber@dfeh.ca.gov)

The backup contact person for these inquiries is:

Linda Verde, Administrative Assistant II  
 Department of Fair Employment and Housing  
 2218 Kausen Drive, Suite 100  
 Elk Grove, CA 95758  
 Telephone: (916) 478-7248  
 E-mail: [linda.verde@dfeh.ca.gov](mailto:linda.verde@dfeh.ca.gov)

Please direct requests for copies of the proposed text (express terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, should other sources be used in the future, to Brian Sperber at the above address.

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

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Brian Sperber at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be available on the Council's Web page: <http://www.dfeh.ca.gov/fehcouncil/>.

Copies also may be obtained by contacting Brian Sperber at the above address.

AVAILABILITY OF  
DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations, and any modified texts and the Final Statement of Reasons can be accessed through the Council's Web page at <http://www.dfeh.ca.gov/fehCouncil/>.

**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

MULTI-COUNTY:

East Bay Regional Park District  
Metropolitan Transportation Commission  
ABAG Finance Authority for  
Nonprofit Corporations  
Association of Bay Area Governments  
ABAG Publicly Owned Energy Resources

STATE:

Mental Health Services Oversight and  
Accountability Commission  
State Council on Developmental Disabilities

A written comment period has been established commencing on September 6, 2019 and closing on October 21, 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 October 21, 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. MENTAL HEALTH  
SERVICES OVERSIGHT AND  
ACCOUNTABILITY COMMISSION**

NOTICE IS HEREBY GIVEN that the Mental Health Services Oversight and Accountability Commission, 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 on September 6, 2019 and closing on October 21, 2019. All inquiries should be directed to the contact listed below.

The Mental Health Services Oversight and Accountability Commission 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.

Changes to the conflict-of-interest code include: modifications or deletions of some position titles, additions of new position titles to the list of designated employees (Appendix A), and other technical changes.

The proposed amendment and explanation of the reasons can be obtained from the agency's contact.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than October 21, 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 October 6, 2019.

The Mental Health Services Oversight and Accountability Commission 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:

Lauren Quintero, MHSOAC  
1325 J Street, Suite 1700  
Sacramento, CA 95814  
(916) 445-8716  
[Lauren.quintero@mhsoc.ca.gov](mailto:Lauren.quintero@mhsoc.ca.gov)

**TITLE 10. CALIFORNIA HEALTH  
BENEFIT EXCHANGE**

The Board of Directors for the California Health Benefit Exchange (hereinafter referred to as the "Exchange") proposes to adopt the regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Exchange has not scheduled a public hearing on this proposed action. However, the Exchange will hold a hearing if it receives a written request for a public hearing for any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes on **October 21, 2019**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:



Faviola Adams  
Regulations Coordinator  
California Health Benefit Exchange  
(Covered California)  
1601 Exposition Boulevard  
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-228-8321 or by e-mail to [regulations@covered.ca.gov](mailto:regulations@covered.ca.gov).

#### AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the Board of Directors for the Exchange to adopt rules and regulations, as necessary. The proposed regulations implement, interpret, and make specific Government Code Sections 100502 and 100503; and Title 45 of the Code of Federal Regulations, Sections 155.205 and 156.260.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### Summary of Existing Laws

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as “Covered California.” For purposes of this Notice, Covered California will be referred to as the “Exchange.” The Exchange’s mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law also specifies the powers and duties of the executive board of the Exchange. Government Code Section 100504(a)(6) authorizes the Exchange’s Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret and make specific state and federal laws.

Currently, there are some emergency regulations that establish and regulate the Medi-Cal Managed Care Plan Enroller program. Those regulations outline the requirements for the application to apply to the program and the fingerprinting and background check process.

#### SUMMARY OF THE EFFECT OF THE PROPOSED REGULATION

These regulations pertain to the Exchange’s Medi-Cal Managed Care Plan Enrollment Assistance Program. The broad purpose of this proposed regulatory action is to: (1) complete Certificate of Compliance requirements for Sections 6902, 6903, and 6904; (2) adopt Sections 6900, 6901, 6905, 6906, 6807, and 6908; and (3) make minor edits that ensure clarity and accuracy.

#### ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The anticipated benefits of this proposed regulation include:

- Complete the Certificate of Compliance requirement for emergency regulations;
- Adopt previously expired regulations;
- Make minor clarifying edits to remove some ambiguity and accommodate stakeholder requests; and
- Ensure compliance with federal auditing requirements.

#### EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

After an evaluation of current regulations, the Exchange determined that these proposed regulations are not inconsistent or incompatible with any existing regulations. In Articles 8, 9, and 11, there are several regulations pertaining to the roles and responsibilities of Certified Enrollers, such as Certified Enrollment Counselors, Certified Application Counselors, and Plan-Based Enrollers. The proposed regulations governing Medi-Cal Managed Care Plan Enrollers do not conflict with any other regulations governing other Certified Enrollers.

##### Documents to be incorporated by reference:

- 26 CFR Section 1.36B-2(c)(3)(v) and (vi), (July 26, 2017)
- 42 CFR Section 435.603(f), (November 30, 2016)
- 45 CFR Section 155.205(d), (December 22, 2016)
- 45 CFR Section 155.220, (December 22, 2016)
- 45 CFR Section 155.260, (September 6, 2016)

##### Documents Relied Upon:

None.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Exchange has made the following initial determinations:

**Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations**

None.

**Mandate on Local Agencies and School Districts**

None. The Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

**Cost To Any Local Agency or School District Which Must Be Reimbursed In Accordance With Government Code Sections 17500 Through 17630**

None. This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**COSTS OR SAVINGS TO STATE AGENCIES**

The proposal results in additional costs to the Exchange but will have no impact on other agencies or the State General Fund. The Exchange is currently completely funded by assessments on premiums charged by Qualified Health Plans.

**Other Nondiscretionary or Savings Imposed on Local Agencies**

None. This proposal does not impose other nondiscretionary costs or savings on local agencies.

**Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

**Significant Effect on Housing Costs**

None.

**Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete With Businesses in Other States**

None.

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Exchange concludes regarding the proposed regulations that it is:

- (1) **unlikely** that the proposal will create or eliminate any jobs in the State;
- (2) **unlikely** that the proposal will create or eliminate businesses within the State;

- (3) **unlikely** that the proposal will impact the expansion of businesses currently doing business in California; and
- (4) **likely** that the health and welfare of consumers will benefit from the proposed regulation.

**EFFECT ON SMALL BUSINESS**

This proposed regulation is not expected to create or expand small business within the State of California. The current MMCPE/MMCP program has been operating since 2012. Considering that many regulations in this package currently exist as emergency regulations, there are no anticipated effects on small businesses.

**COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

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

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Exchange must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this 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 effectuating the purpose of the statute and applicable federal regulations. This proposed action is the most effective in effectuating the purpose of the statute and applicable federal regulations.

**CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Faviola Adams  
 Regulations Coordinator  
 California Health Benefit Exchange  
 (Covered California)  
 1601 Exposition Boulevard  
 Sacramento, CA 95815  
 Telephone: (916) 228-8668

The backup contact person for inquiries concerning the proposed administrative action may be directed to:

Brian Kearns  
Attorney  
California Health Benefit Exchange  
(Covered California)  
1601 Exposition Boulevard  
Sacramento, CA 95815  
Telephone: (916) 228-8843

Please direct copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Annalisa Franco at the above contact information.

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

The Exchange 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 of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Annalisa Franco at the address or phone number listed above.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

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

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

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

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline can be accessed through our website at <https://hbex.coveredca.com/regulations>.

**TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

**PUBLIC COMMENTS DUE BY OCTOBER 21, 2019**

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-4011 or by letter to:

Commission on POST  
Attn: David Cheng  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630

**AUTHORITY AND REFERENCE**

This proposal is made pursuant to the authority vested by Penal Code section 13503 (authority of Commission on POST) and Penal Code section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code section 13503(e) which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

In June of 2017, the Commission approved POST to conduct a 1-year Course Certification Pilot. During the pilot, a safety attestation was developed to clarify presenters' responsibilities regarding student and instructor safety. To eliminate or minimize this risk to the ex-

tent possible, course presenters must ensure the course is taught in accordance with all required safety policies and procedures, and in any event, is conducted in a manner designed to minimize the risk of injury. The proposed regulatory action for the use of a Safety Policy Attestation will help ensure training activities involving a risk for injury are in accordance with safety policies and procedures and course staff and instructors are aware of and follow these policies and procedures during every course administration. The proposed regulatory action will require the course presenter to agree to a Safety Policy Attestation when submitting a safety policy as part of the course certification process.

The specific benefits anticipated by the proposed amendments to the regulations will be to help ensure courses posing a risk of injury will be conducted in a manner that minimizes the risk of injury, thus preventing injury, minimizing lost work time, reducing medical expenses, and minimizing liability risks. Requiring the presenter to agree to a Safety Policy Attestation helps emphasize the importance of the requirement to the presenters, and more clearly puts the presenter on notice of the obligation to develop proper safety procedures, and ensure instructors, staff, and students are aware of their respective obligations during each initial and subsequent administration of the course.

The proposed amendments also clarify when a budget is required during the course certification process. The proposed amendments allow POST to hold course presenters more accountable on course expenditures when the State funds the course.

These benefits will contribute to the increased effectiveness of law enforcement standards for peace officers in preserving peace, protection of public health and safety, and welfare of California.

During the process of developing these regulations and amendments, POST 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.

#### ADOPTION OF PROPOSED REGULATIONS

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from

POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

#### ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-Discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to any Local Agency or School District Affecting Government Code sections 17500–17630 requires reimbursement: None.

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement which does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Affect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulations would have no affect on housing costs.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT per Government Code section 11346.3(b)

The adoption of the proposed amendments of regulations will neither create, nor eliminate, jobs in the State of California, nor result in the elimination of existing businesses or create, or expand, businesses in the State of California.

The proposed amendments of the regulations will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of

public health and safety, and welfare of California. Additionally, the proposed amendments make the regulations compliant with Penal Code section 13515.29 and section 13515.295. There would be no impact that would affect worker safety or the state's environment.

#### **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

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

#### **CONSIDERATION OF ALTERNATIVES**

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the Commission, would be more effective in carrying out the purpose for which the action is proposed; or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

#### **CONTACT PERSON**

Questions regarding this proposed regulatory action may be directed to David Cheng, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630, by phone at (916) 227-4855. General questions regarding the regulatory process may be directed to Katie Strickland at (916) 227-2802.

#### **TEXT OF PROPOSAL**

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630. These documents are also located on the POST Website at: <http://www.post.ca.gov/regulatory-actions.aspx>.

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for

public inspection by contacting the person(s) named above.

To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person(s) named above.

#### **TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

#### **PUBLIC COMMENTS DUE BY OCTOBER 21, 2019**

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-6932, by email to Steve Harding, or by letter to:

Commission on POST  
Attn: Steve Harding  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630  
[Steve.Harding@post.ca.gov](mailto:Steve.Harding@post.ca.gov)

#### **AUTHORITY AND REFERENCE**

This proposal is made pursuant to the authority vested by Penal Code section 13503 (authority of Commission on POST) and Penal Code section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code section 13503(e) which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

As part of an ongoing process, staff reviews regulations and procedures related to basic courses to determine if revisions are necessary.

Current regulation requires Basic Course presenters to provide training and testing to trainees as stated in Ti-

tle 11, Division 2, Section 1005 of the California Code of Regulations. Regulation requires that all peace officers complete the Regular Basic Course before being assigned duties which include the exercise of peace officer powers. Many of the trainees are attending a Basic Course administered by a presenter that is not their employing agency. Currently, the course presenters are not required to notify the employing agencies when a trainee fails a POST mandated test. A trainee's agency should have the opportunity to provide remedial training or counseling to a trainee prior to the presenter administering the retest. Thus, POST recommends regulation requiring presenters to notify a trainee's employing agency prior to the presenter administering a retest.

Additionally, the Basic Training Bureau has experienced situations when presenters have administered POST mandated tests and had numerous initial test failures. The presenter then conducted remedial training and administered a retest. At the conclusion of the retest an unusually high number of students have failed the retest, therefore being dismissed from a Basic Course. There have been incidents where it has later been determined the presenter has not administered the test appropriately. Had the presenter contacted the Basic Training Bureau after the initial test failure, POST could have potentially determined the test was not administered properly and invalidated the test.

The benefit anticipated by the proposed amendments to the regulations will be to update the testing process for Peace Officer Basic Courses, which will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of public health and safety, and welfare of California.

During the process of developing these regulations and amendments, POST 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.

The effect of this proposed regulation will be to require presenters to notify the POST Basic Training Bureau for abnormal pass or fail of any required POST scenario test or exercise test prior to retesting. The proposed regulations will ensure that the trainee's agency has been notified prior to the trainee's retest. The proposed effective date is January 1, 2020.

#### DOCUMENT INCORPORATED BY REFERENCE

Section D — Commission Procedure D-1 revised 01/01/2020.

#### ADOPTION OF PROPOSED REGULATIONS

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

#### ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-Discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to any Local Agency or School District Affecting Government Code sections 17500-17630 requires reimbursement: None.

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California business, including the ability of California businesses to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement which does not impact California businesses, including small businesses.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulations would have no effect on housing costs.

**RESULTS OF ECONOMIC  
IMPACT ASSESSMENT**

per Government Code section 11346.3(b)

The adoption of the proposed amendments of regulations will neither create, nor eliminate, jobs in the State of California, nor result in the elimination of existing businesses or create, or expand, businesses in the State of California.

The proposed amendments of regulations will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of public health and safety, and welfare of California. There would be no impact that would affect worker safety or the state's environment.

**COST IMPACT ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES**

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

**CONSIDERATION OF ALTERNATIVES**

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

**CONTACT PERSON**

Questions regarding this proposed regulatory action may be directed to Steve Harding, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-2816. General questions regarding the regulatory process may be directed to Heidi Hernandez at (916) 227-4261, or by FAX at (916) 227-5271.

**TEXT OF PROPOSAL**

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630. These documents are also located on the POST Website.

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named above.

To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person(s) named above.

**TITLE 11. DEPARTMENT OF JUSTICE**

Notice is hereby given that the Department of Justice ("Department") proposes to make permanent the emergency repeal of sections 999.12 and 999.13 of chapter 16, division 1, of title 11 of the California Code of Regulations, including the form escrow agreement incorporated therein, and the emergency adoption of section 999.12, including the Approved Tobacco Escrow Agreement, JUS-TOB6 (Rev. 5/2019), which is incorporated by reference therein, after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

No public hearing is scheduled. Any interested person or their duly authorized representative may request, in writing, a public hearing pursuant to section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person or their duly authorized representative may submit written comments relevant to the proposed regulatory action. Written comment must be received by the Department by October 21, 2019.

Only comments received by that time will be considered. Written comments must be submitted to:

Barry Alves  
Department of Justice  
Tobacco Litigation and Enforcement Section  
P.O. Box 944255  
Sacramento, California 94244-2550  
Email: [barry.alves@doj.ca.gov](mailto:barry.alves@doj.ca.gov)

#### AUTHORITY AND REFERENCE CITATIONS

Authority: Section 30165.1, Revenue and Taxation Code; Section 104557, Health and Safety Code.

Reference: Section 30165.1, Revenue and Taxation Code; Sections 104556 and 104557, Health and Safety Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### Section 999.12

The prior version of this regulation has been repealed, and a new version has been adopted by the emergency rulemaking. This regulation applies to Non-Participating Manufacturers (“NPMs”) which must establish and maintain tobacco escrow accounts for the benefit of California and other releasing parties under the MSA pursuant to Health and Safety Code sections 104555-104557, and the financial institutions that serve as escrow agents for NPMs with tobacco escrow accounts for the benefit of California.

Section 999.12 explains the requirements for establishing and maintaining a qualified tobacco escrow account and incorporates a new version of the escrow agreement. California’s Approved Tobacco Escrow Agreement JUS-TOB6 (Rev. 5/2019) (“Approved Tobacco Escrow Agreement”) ensures that NPMs and escrow banks properly hold, track, and monitor tobacco escrow funds on deposit for the benefit of California. Section 999.12 provides that other than filing blank spaces and checking boxes, no deviation, amendments, or other changes to California’s Approved Tobacco Escrow Agreement shall be permitted without the prior written approval of the Attorney General.

##### Section 999.13

The prior version of section 999.13 has been repealed by the emergency rulemaking and its operative terms have been consolidated into section 999.12.

#### ANTICIPATED BENEFITS

This rulemaking action protects the public health and welfare by providing clear guidance to NPMs and escrow banks to ensure successful compliance with the law. The revised definitions of principal and interest will prevent NPMs from prematurely accessing escrow funds. The agreement clarifies and improves provisions regarding the procedures for account ledgers, NPMs that fail to appoint successor agents after their escrow bank resigns, and reports to California. Furthermore, the terms and conditions in Approved Tobacco Escrow Agreement were reorganized, consolidated, and edited to make it much easier to interpret, understand, and reference.

#### FORMS AND STANDARDS INCORPORATED BY REFERENCE

California Approved Tobacco Escrow Agreement, JUS-TOB6 (Rev. 5/2019) is incorporated by reference into the new version of Section 999.12.

#### SUMMARY OF EXISTING LAWS AND REGULATIONS RELATED DIRECTLY TO THE PROPOSED RULEMAKING

NPMs must deposit funds into qualified escrow funds governed by state law based upon their sales of cigarettes and RYO in California. Unless specific conditions are satisfied, NPMs are statutorily prohibited from accessing or using the principal on deposit in the tobacco escrow accounts for twenty-five years. (Health and Saf. Code, section 104557, subd. (b).) NPMs and their escrow banks must execute a California Attorney General approved escrow agreement and ensure the funds are held and monitored in compliance with California law. (Rev. and Tax. Code, sections 30165.1, subd. (c)(2)(a).)

The Office of the Attorney General is responsible for establishing and updating California’s tobacco escrow agreement. (Rev. and Tax. Code, sections 30165.1, subdivisions (b)(3)(D) and (o).) Title 11 of the California Code of Regulations, Chapter 16, section 999.12 govern tobacco escrow accounts and the Approved Tobacco Escrow Agreement.

The permanent adoption of section 999.12, including the Approved Tobacco Escrow Agreement, address several issues that emerged after California’s last revision of the regulation and escrow agreement. The revised definitions of principal and interest will prevent NPMs from prematurely accessing escrow funds. The agreement clarifies and improves provisions regarding the procedures for account ledgers, NPMs that fail to appoint successor agents after their escrow bank re-



signs, and reports to California. Furthermore, the terms and conditions in Approved Tobacco Escrow Agreement were reorganized, consolidated, and edited to make it much easier to interpret, understand, and reference.

#### EVALUATION OF THE PROPOSED REGULATION FOR CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department has performed an evaluation of whether section 999.12 and the Approved Tobacco Escrow Agreement are inconsistent or incompatible with existing state regulations and determined that the regulation is not inconsistent or incompatible with existing state regulations. Section 999.12 and the Approved Tobacco Escrow Agreement are the only regulation and forms for California that establish whether a tobacco escrow account constitutes a qualified escrow fund.

#### MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

No mandates or other impacts are imposed on any local agencies or school districts.

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

The Department has determined that the proposed regulation will not have a significant, statewide, adverse impact affecting business. All of the tobacco companies and escrow banks addressed by these revisions currently have tobacco escrow accounts and tobacco escrow agreements.

#### COST ESTIMATES/IMPACT OF REGULATORY ACTION

The Department has assessed the potential for significant statewide adverse impact that might result from the proposed emergency action and has determined:

- There will be no costs or savings to local agencies or school districts;
- There will be no costs or savings in federal funding to the State;
- There will be no effect on housing costs.
- There will be no costs or savings to any state agency.

The Department anticipates that the regulations will require approximately fifty NPMs to each spend ap-

proximately \$1,500 reviewing the new regulation and executing the Approved Tobacco Escrow Agreement. Moreover, the Department anticipates that approximately eight to ten escrow banks will each spend approximately \$2,500 reviewing and executing several Approved Tobacco Escrow Agreements with NPMs.

At least quarterly, the escrow bank shall provide the Department with a bank statement that clearly reflects the deposits and withdrawals by the NPM, the manner in which all escrow principal is invested, including the face value, cost basis, and market value of each investment, a description of each investment including the CUSIP number, its date of purchase and maturity date. Annually, the escrow agent shall: (1) provide the Department with a ledger reflecting the minimum amount of escrow principal on deposit for California and all deposits, withdrawals, and other transactions since, at least, the NPM's first deposit with the escrow agent; or (2) confirm that it intends to reasonably rely upon the ledger prepared by the Department.

#### SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations affect small business.

#### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department concludes it is unlikely the proposed regulation will affect: (1) the creation or elimination of any jobs within California; (2) the creation of new businesses or the elimination of existing businesses within California; and (3) the expansion of businesses currently doing business within California. For additional benefit analysis, please see, Informative Digest/Policy Statement Overview under heading the titled, "Anticipated Benefits".

The regulation will benefit the public by ensuring that NPMs and escrow banks properly hold, track, and monitor tobacco escrow funds on deposit for the benefit of California.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department 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.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Barry Alves  
Department of Justice  
Tobacco Litigation and Enforcement Section  
1300 I Street, P.O. Box 944255  
Sacramento, California 94244-2550  
Email: [barry.alves@doj.ca.gov](mailto:barry.alves@doj.ca.gov)  
Telephone: (916) 210-7838

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Debra Berry  
Department of Justice  
Tobacco Litigation and Enforcement Section  
1300 I Street, P.O. Box 944255  
Sacramento, California 94244-2550  
Email: [Debra.Berry@doj.ca.gov](mailto:Debra.Berry@doj.ca.gov)  
Telephone: (916) 210-7799

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

The Department 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 of the regulations, the Initial Statement of Reasons, any information upon which the proposed rulemaking is based on, and an economic impact assessment contained in the Initial Statement of Reasons. Copies may be obtained by contacting the name, address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days and accept written comments before adopting the regulation. Copies of

any modified text will be available on the Department's website at <https://oag.ca.gov/tobacco/directory/regulations>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Barry Alves.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format, as well as the Final Statement of Reasons once completed, can be accessed through the Department's website at <https://oag.ca.gov/tobacco/directory/regulations>.

**TITLE 13. CALIFORNIA HIGHWAY PATROL**

**Inhalation Hazards Safe Stops (CHP-R-2019-06203)**

The California Highway Patrol (CHP) proposes to amend regulations in Title 13 of the California Code of Regulations (CCR), Division 2, Chapter 6, Article 2.5, Section 1157.21, Stops, to update the list of safe stops for commercial vehicles transporting inhalation hazards on highways in the state.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Division 14.3, Transportation of Inhalation Hazards, commencing with Section 32100 of the California Vehicle Code (CVC), the CHP shall adopt regulations specifying routes to be used in the transportation of inhalation hazards. The CVC requires the CHP to keep information current in regulations, with maps clearly indicating designated routes and a list of locations for inspection stops, required inspection stops, and safe stopping places. The proposed amendments will not change any inhalation hazards routes and will only update the information for inspection stops, required inspection stops, and stopping places to be used by carriers of inhalation hazards along the designated inhalation hazards routes.

The CHP's field commands conduct annual surveys on inhalation hazards routes and stops to determine if changes are necessary. After CHP field commands in-

spected the locations of listed business establishments serving as safe stopping places, business owners have expressed their willingness to provide their business location and service information in the CCR by signing the CHP 114, Designation as Safe Stopping Place. Proposed changes have received consultation and concurrence from the State Fire Marshal.

This proposed regulatory action will continue to provide a nonmonetary benefit to the protection of the health, safety, and welfare of California's residents, workers, and environment. The changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. The proposed changes update and clarify safe stopping places designated for carriers transporting inhalation hazards, and contribute to transportation safety and public health.

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

#### PUBLIC COMMENT

Any interested person may submit written comments on the proposed action via facsimile at (916) 322-3154, by electronic mail to [cvsregulations@chp.ca.gov](mailto:cvsregulations@chp.ca.gov), or by writing to:

California Highway Patrol  
Commercial Vehicle Section  
Attention: Dr. Tian-Ting Shih  
P.O. Box 942898  
Sacramento, CA 94298-0001

Written comments must be received by October 21, 2019.

#### PUBLIC HEARINGS

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

#### AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based, and the proposed regulation text in ~~strikeout~~ and underline format. Requests to review or receive copies of this information should be directed to the CHP either at the above

address, by facsimile at (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection. Interested parties are advised to call CHP, CVS, for an appointment.

All documents regarding the proposed action are available through the CHP's website at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>. Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on the CHP website.

#### CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or the substance of the proposed regulations should be directed to Dr. Tian-Ting Shih or Sergeant Adam Roha, at (916) 843-3400.

#### ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### FISCAL IMPACT AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code (GC) Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Benefits of the Proposed Action: The proposed regulation updating designated routes for carriers transporting inhalation hazards will continue to provide benefits, including the nonmonetary benefit of protecting public health and safety for residents, workers, and the environment by providing a regulatory basis for enforcement efforts as they relate to safety compliance ratings.

The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

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

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

#### EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action will not affect small businesses. The action is intended to clarify and update the designated safe stopping places for commercial vehicles transporting inhalation hazards on highways. As a result, no small business will be affected by the update.

#### ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the CHP, or otherwise identified and brought to the attention of the CHP, 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 CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### AUTHORITY

This regulatory action is being taken pursuant to Section 32102, CVC.

#### REFERENCE

This action implements, interprets, or makes specific Sections 32101, 32102, 32103, 32104, and 32105, CVC.

### TITLE 13. CALIFORNIA HIGHWAY PATROL

#### RADIOACTIVE MATERIALS SHIPMENT — SAFE HAVEN (CHP-R-2019-06208)

The California Highway Patrol (CHP) proposes to amend regulations in Title 13 of the California Code of Regulations, Division 2, Chapter 6, Article 2.7, Section 1158.2, regarding the through transportation of Highway Route Controlled Quantity (HRCQ) shipments of Radioactive Materials (RAM).

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Section 33000 of the California Vehicle Code (CVC), the CHP shall adopt regulations specifying the routes to be used in the transportation of HRCQ RAM and the time that shipments may occur. Section 37.75(a)(2)(ii), Title 10 of the Code of Federal Regulations administered by the United States Nuclear Regulatory Commission, requires carriers preplan and coordinate with each state through which the shipment will pass to identify safe havens. To be more consistent with state statutes and federal regulations, the proposed regulation amendments will provide more clarity on the times and routes selected, and potential safe havens available for the transportation of HRCQ RAM.

The proposed regulation amendments are developed to enhance public health and safety, and have received concurrences from the California Department of Public Health, State Fire Marshal, and California Department of Transportation.

This proposed regulatory action will continue to provide a nonmonetary benefit to the protection of the health, safety, and welfare of California's residents, workers, and environment. The changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. The proposed regulation updates for carriers transporting HRCQ RAM on highways contribute to transportation safety and public health.

During the process of developing these regulations and amendments, the CHP has conducted a search of any similar regulations on this topic and has concluded

that these regulations are neither inconsistent, nor incompatible, with existing federal and state regulations.

#### PUBLIC COMMENT

Any interested person may submit written comments on the proposed action via facsimile at (916) 322-3154, by electronic mail to [cvsregulations@chp.ca.gov](mailto:cvsregulations@chp.ca.gov), or by writing to:

California Highway Patrol  
Commercial Vehicle Section  
Attention: Dr. Tian-Ting Shih  
P.O. Box 942898  
Sacramento, CA 94298-0001

Written comments must be received by October 21, 2019.

#### PUBLIC HEARINGS

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

#### AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based, and the proposed regulation text in strikeout and underline format. Requests to review or receive copies of this information should be directed to the CHP either at the above address, by facsimile at (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection. Interested parties are advised to call CHP, CVS, for an appointment.

All documents regarding the proposed action are available through the CHP's website at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>. Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above noted address. Copies will also be posted on the CHP website.

#### CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or the substance of the proposed regulations should be directed to Dr. Tian-Ting Shih or Sergeant Adam Roha, at (916) 843-3400.

#### ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### FISCAL IMPACT AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code (GC) Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Benefits of the Proposed Action:** The proposed regulation providing more clarity on the time and routes selected, and potential safe havens available for the transportation of HRCQ RAM will continue to provide benefits, including the nonmonetary benefit of protecting public health and safety for residents, workers, and the environment by providing a regulatory basis for enforcement efforts as they relate to safety compliance ratings.

The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

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

The CHP is not aware of any cost impacts that a representative private person or business would necessarily

incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESSES**

The CHP has determined that the proposed regulatory action will not affect small businesses. The action is intended to provide more clarity on the times and routes selected, and potential safe havens available for the transportation of HRCQ RAM on highways. As a result, no small business will be affected by the update.

**ALTERNATIVES**

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the CHP, or otherwise identified and brought to the attention of the CHP, 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 CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

**AUTHORITY**

This regulatory action is being taken pursuant to Section 33000, CVC.

**REFERENCE**

This action implements, interprets, or makes specific Section 33000, CVC.

**TITLE 17. AIR RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO  
CONSIDER PROPOSED ADDITIONAL  
REQUIREMENT FOR ADVANCE PAYMENT  
OF CERTAIN FUNDS REGULATION**

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed Additional Requirement for Advance Payment of Certain funds Regulation.

DATE:

October 24, 2019

TIME:

9:00 a.m.

LOCATION:

California Environmental Protection Agency  
California Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., October 24, 2019, and may continue at 8:30 a.m., on October 25, 2019. This item is scheduled to be heard on the Board's Consent Calendar, unless removed upon the request of a Board member or if someone in the audience submits a request-to-speak card on this item. Please consult the agenda for the hearing, which will be available at least ten days before October 24, 2019, to determine the day on which this item will be considered.

**WRITTEN COMMENT PERIOD AND  
SUBMITTAL OF COMMENTS**

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on September 6, 2019. Written comments not physically submitted at the hearing must be submitted on or after September 6, 2019, and received **no later than October 21, 2019**. CARB requests that when possible, written and email statements be filed at least 10 days before the hearing to give CARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail:

Clerk of the Board, California Air Resources Board  
1001 I Street, Sacramento, California 95814

Electronic submittal:

<http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, section 6250 et seq.), your written and oral comments, attachments, and associated contact in-

formation (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

#### AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600, 39601, 39603.1. This action is proposed to implement, interpret, and make specific California Health and Safety Code, section 39603.1.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (Gov. Code, section 11346.5, subd. (a)(3))

**Sections Affected:** Proposed adoption of Subchapter 4.1, Advance Payments, sections 91040, 91041, 91042, 91043, 91044, title 17, California Code of Regulations.

#### BACKGROUND AND EFFECT OF THE PROPOSED REGULATORY ACTION

Existing law generally designates the CARB as the State agency with the primary responsibility for the control of vehicular and area sources air pollution, and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular and area sources.

Various CARB projects and programs provide funding to grantees to reduce greenhouse gas emissions, criteria pollutants, and toxic air contaminants to provide health benefits to the public.

The Legislature authorized CARB to provide advance payments to grantees of a grant program or project if CARB determines specified conditions are met in Senate Bill No. 854, Chapter 51, 2018, which established Health and Saf. Code section 39603.1. Health and Saf. Code section 39603.1 (b) further required CARB, in consultation with Department of Finance (DOF), to adopt a regulation implementing this section to ensure the moneys are used properly.

CARB proposes to adopt Subchapter 4.1, Advance Payments, sections 91040 through 91044, Title 17, California code of Regulations, to further define terms, set forth a review process, as well as add additional criteria to be met in order to qualify for an advance payment. This proposed regulation order would enable grantees to more easily understand how to request advance payments, streamline the review and approval process, and

provide procedural safeguards to ensure the advance payments are adequately regulated. Upon successfully meeting all criteria in statute and the proposed regulation, advance payments may be made available to grantees.

CARB may also consider other changes to the sections affected during the course of this rulemaking process.

#### OBJECTIVES AND BENEFITS OF THE PROPOSED REGULATORY ACTION

In 2018, Senate Bill No. 854, Chapter 51, Section 11, 2018 established Health and Saf. Code section 39603.1, which authorizes CARB to provide advance payments to grantees of a grant program or project if CARB determines specified conditions are met. HSC § 39603.1 required CARB to adopt a regulation to ensure the advance payments are used properly and to consult with DOF in the development of the regulation. The proposed regulatory action is intended to properly carry out the provisions of Health and Saf. Code section 39603.1, and as required, CARB consulted with DOF during development of the regulation.

The proposed regulation would specify in greater detail certain terms set forth in Health and Saf. Code section 39603.1, provide a review process, and criteria necessary for requesting an advance payment. The proposed regulation would bring greater efficiency and transparency to the advance payment process by creating a more consistent, uniform, and clear review process. For these reasons, the proposed regulation is needed to further specify the terms and requirements considered by CARB in approving an advance payment. There are no expected benefits to public health and safety, worker safety, or the environment as a result of this rulemaking.

#### COMPARABLE FEDERAL REGULATIONS

There are no federal regulations comparable to the proposed regulation. The proposed regulation does not conflict with federal regulations.

#### AN EVALUATION OF INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS (Gov. Code section 11346.5, subd. (a)(3)(D)):

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE  
PROPOSED REGULATION

FISCAL IMPACT/LOCAL  
MANDATE DETERMINATION  
REGARDING THE PROPOSED ACTION  
(Gov. Code section 11346.5, subs. (a)(5) and (6)):

The determinations of the Board’s Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would create minimal costs, but no local mandate to any local agency or school district as it is a voluntary process. It is estimated that the proposed regulation is expected to impose an annual cost of \$47,000 on all air districts in the current fiscal year (2019/2020) and each of two subsequent fiscal years and a total cost of \$235,000 over the 5 year life of the regulation assuming all affected air districts participate in the program every year. For additional information, see Chapter VII of the Initial Statement of Reasons (ISOR). There is no other nondiscretionary cost or savings to State or local agencies.

HOUSING COSTS  
(Gov. Code, section 11346.5, subd. (a)(12))

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY AFFECTING  
BUSINESS, INCLUDING ABILITY TO COMPETE  
(Gov. Code, section 11346.3, subd. (a), 11346.5,  
subd. (a)(7), 11346.5, subd. (a)(8))

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS/ASSESSMENT  
(Gov. Code, section 11346.5, subd. (a)(10))

**NON-MAJOR REGULATION: Statement of the  
Results of the Economic Impact Assessment (EIA):**

*Effect on Jobs/Businesses:*

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the Initial Statement of Reasons (ISOR).

*Benefits of the Proposed Regulation:*

The proposed regulation will specify in greater detail certain terms set forth in Health and Saf. Code section 39603.1, provide a review process, and criteria necessary for requesting an advance payment. The regulation will bring greater efficiency and transparency to the advance payment process by creating a more consistent, uniform, and clear review and approval process. For these reasons, the proposed regulation is needed to further specify the terms and requirements considered by CARB in approving an advance payment.

A summary of these benefits is provided, please refer to “Objectives and Benefits”, under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion on page three of this notice.

COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES  
(Gov. Code, section 11346.5, subd. (a)(9))

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is aware of the cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The proposed regulation allows a grantee to receive advance payment limited to Health and Saf. Code section 39603.1. CARB expects this regulation to have minimal statewide economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

The affected entities are various types of small, community-based, environmental organizations with 100 or fewer employees. All the affected entities are located and service their customers in California.



Participation in the advance payment program is voluntary and affected entities will incur no costs if they do not participate. Those entities that find their participation are economically advantageous may incur some costs. CARB has identified 26 affected entities as current grantees qualified for advance payment. The cost is estimated here based on the assumption that all affected entities will participate in the program; therefore, representing the high cost estimate. Based on a survey of affected entities such as an organization like the Community Housing Development Corporation (CHDC), CARB determined the average time spent by a typical affected entity to complete an advance payment request is 12 hours. Based on the classification reported to CARB by the grantees, the representative filling out the forms is comparable to an administrative service manager in California with an average wage of \$82 per hour. Therefore, the total cost for additional staff time needed to complete an advance payment request form is estimated to be approximately \$26,000 annually [i.e., 26 (applications) x 12 hours x \$82 (wage rate)] or \$130,000 over the 5-year life of the regulation assuming that all affected entities participate in the program every year. In accordance with Government Code section 11346.3, the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

#### EFFECT ON SMALL BUSINESS

(Cal. Code Regs., tit. 1, section 4, subds. (a) and (b))

The Executive Officer has also determined under California Code of Regulations, Title 1, section 4, that the proposed regulatory action would affect small businesses.

All affected grantees are considered small businesses with 100 or fewer employees. If a grantee chose to request an advance payment program in any year, the entity is expected to spend about 12 hours on average to complete an advance payment request. At an average wage and benefit rate of \$82 per hour, the application cost for additional staff time is estimated to be approximately \$1,000 [i.e., 12 hours x \$82 (wage and benefit rate)].

#### CONSIDERATION OF ALTERNATIVES

(Gov. Code, section 11346.5, subd. (a)(13))

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise

been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. For additional information, see Chapter IX of the ISOR.

#### ENVIRONMENTAL ANALYSIS

CARB has determined that the proposed action is exempt from California Environmental Act (CEQA) under the “general rule” or “common sense” exemption (14 CCR 15061(b)(3)). The common sense exemption states a project is exempt from CEQA if “the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The Advance Payment Regulation sets forth guidelines and provides CARB the legal authority to the proposed regulation order defines certain terms included in Health and Saf. Code section 39603.1, and sets forth the review process and criteria grantees must meet in order to request an advance payment. This regulation further clarifies and defines the administrative process required for advancing moneys for CARB’s grant programs and projects. Therefore, this regulation does not directly affect air quality or any other environmental resource area.

CARB, as the lead agency under CEQA, has reviewed the proposed action and concluded that it is exempt pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action may result in significant adverse impact on the environment.

#### SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days be-

fore the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alternativo u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

#### AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative, Brandy Hunt, Branch Manager, Contracts/Procurements/Grants Branch, at (916) 327-1799 or (designated back-up contact) Adam Yang, Manager, Budgets/Fees Branch, at (916) 327-8885.

#### AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Public Hearing to Consider the Proposed Advance Payment Regulation.

Copies of the ISOR and the full text of the proposed regulatory language, may be accessed on CARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on September 3, 2019.

Further, the agency representative to whom non-substantive inquiries concerning the proposed adminis-

trative action may be directed is Bradley Bechtold, Regulations Coordinator at (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

#### FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on CARB's website listed below.

#### INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww3.arb.ca.gov/rulemaking/2019/advancedpayment2019>.

**TITLE 20. CALIFORNIA  
ENERGY COMMISSION**

**Modification of Regulations Governing the  
Power Source Disclosure Program**

California Energy Commission  
Docket Number 16–OIR–05  
September 2019

INTRODUCTION

The California Energy Commission proposes to modify existing regulations for the Power Source Disclosure (PSD) program established under the Public Utilities Code section 398.1 et seq. The regulations are found at Title 20, California Code of Regulations, sections 1390–1394. The modifications would affect Sections 1391–1394 and create new Sections 1394.1–1394.2. The proposed action is taken under the authority of sections 25213 and 25218(e) of the Public Resources Code, and sections 398.4(k)(2)(F)(i) and 398.5(c) of the Public Utilities Code. The proposed modifications to the regulations will implement, interpret, and make specific requirements found in Public Utilities Code sections 398.1–398.5.

This rulemaking will update the Power Source Disclosure Program to incorporate the new statutory requirements that the Power Content Label show the greenhouse gas (GHG) emissions intensity of each electricity product offered for sale and the amount of unbundled renewable energy credits (RECs) that is part of such sale. The rulemaking also updates other aspects of the program to facilitate implementation, improve clarity, and ensure that the statutory directive to produce a label that is accurate, reliable, and simple to understand is attained.

**NOTICE THAT A PUBLIC  
HEARING IS SCHEDULED**

The Energy Commission will hold a public hearing for consideration and possible adoption of the proposed regulations on the following date and time unless the Energy Commission decides to consider changes to the express terms of the proposed regulations.

Commission Business Meeting  
**November 13, 2019**  
Beginning 10:00 a.m. (Pacific Time)  
California Energy Commission  
1516 9<sup>th</sup> Street  
Sacramento, CA 95814  
Rosenfeld Hearing Room  
(Wheelchair accessible)

Audio for the hearing will be broadcast over the internet. For details, go to <https://energy.webex.com/>.

If you have a disability and require assistance to participate in the hearing, please contact Yolanda Rushin at (916) 654–4310 at least 5 days in advance.

**Public Adviser:**

The Energy Commission’s Acting Public Adviser, Jennifer Martin–Gallardo, is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser’s Office, please call (916) 654–4489 or toll–free in California at (800) 822–6228 or contact [publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov).

**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](mailto:mediaoffice@energy.ca.gov).

**ORAL STATEMENTS AND  
WRITTEN COMMENT PERIOD**  
(Government Code section 11346.5(a)(15))

Interested persons may present oral and written statements, arguments, or contentions regarding the proposed regulations at the hearing, or may submit written comments to the Commission for consideration on or prior to **October 21, 2019**. The Energy Commission appreciates receiving written comments at the earliest possible date.

Please submit comments to the Energy Commission using the Energy Commission’s e–commenting feature by going to the Energy Commission’s Power Source Disclosure AB 1110 Rulemaking webpage at [https://www.energy.ca.gov/power\\_source\\_disclosure/](https://www.energy.ca.gov/power_source_disclosure/), selecting Docket Number 16–OIR–05, then selecting 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 and not a computer, click on the “Agree and Submit Your Comment” button to submit the comment to the 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, e–mail, 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 unit. If you are unable to submit electronically, a paper copy of your comments may be sent to:

Docket Unit  
 California Energy Commission  
 Docket Number 16–OIR–05  
 1516 9<sup>th</sup> Street, MS–4  
 Sacramento, CA 95814  
 Telephone: (916) 654–5076

Or by e–mail to: DOCKET@energy.ca.gov  
 Or faxing them to Dockets at (916) 654–4354

**STATUTORY AUTHORITY AND REFERENCE**  
 (Government Code Section 11346.5(a)(2) and  
 California Code of Regulations, title 1, section 14)

Public Resources Code sections 25213 and 25218(e) and Public Utilities Code sections 398.4(k)(2)(F)(i) and 398.5(c) authorize the Energy Commission to adopt the proposed Express Terms.

The proposed Express Terms would implement, interpret, and make specific provisions of Public Utilities Code sections 398.1, 398.2, 398.4, and 398.5.

**INFORMATIVE DIGEST**  
 (Government Code Section 11346.5(a)(3))

**Existing laws and regulations related directly to the proposed action and effect of the proposed action.**  
 (Government Code section 11346.5(a)(3)(A))

The Power Source Disclosure (PSD) program was established by Senate Bill 1305 (Sher, Chapter 796, Statutes of 1997) in an effort to provide information to California consumers about the mix of energy resources generated and purchased by retail suppliers to serve retail customers. The program’s intent, as described in statute, is to require the disclosure of “accurate, reliable, and simple to understand information on the sources of energy that are used to provide electric services.”<sup>1</sup> In 2016, the Energy Commission adopted modifications to the regulation to incorporate statutory changes required by Assembly Bill (AB) 162 (Ruskin, Chapter 313, Statutes of 2009) and AB 2227 (Bradford, Chapter 616, Statutes of 2012) that modified program rules and clarified reporting requirements.

Under the current program, retail suppliers of electricity are required to disclose information annually to

their end–use customers about fuel sources of their power mix, which is the mix of resource types comprising the electricity portfolio sold to them during the previous calendar year. To complete this requirement, retail suppliers report to the California Energy Commission (Energy Commission) their gross electricity procurements, resales of electricity, the net electricity procurements, and retail sales for the previous calendar year. The Energy Commission uses this information, in part, to generate California’s Total System Power Mix. The California Total System Power Mix is used to create a template Power Content Label which is provided to retail suppliers. Retail suppliers then disclose the power mix associated with their electricity portfolios, as well as California’s overall power mix on a product–specific Power Content Label which is sent to consumers. If a retail supplier offers more than one electricity product, also referred to as a portfolio, separate Power Content Labels must be provided for each product, allowing customers to compare the resources used for each available electricity product they can purchase.

Passed in 2016, Assembly Bill 1110 (Ting, Chapter 656, Statutes of 2016) modifies the PSD program by further requiring retail suppliers to disclose the greenhouse gas (GHG) emissions intensity associated with each electricity portfolio that serves retail load. GHG emissions intensity is a rate of emissions per unit of electricity. Retail suppliers are required to begin disclosing the GHG intensity associated with their electricity portfolios on the Power Content Label in 2020 for the 2019 reporting year. AB 1110 exempts new community choice aggregators (CCA) from the GHG emissions intensity disclosure requirement for at least the first 24 months and not more than the first 36 months of retail sales and contains a provision for adjusting the disclosed GHG emissions intensity for publicly owned utilities that procure excess zero–GHG resources in a prior year under certain circumstances. AB 1110 also requires that any additional marketing or retail product claims by a retail supplier related to GHG emissions intensity be consistent with the methodology established by the Energy Commission.

Prior law did not specify a treatment of unbundled renewable energy credits (RECs) under the PSD program. AB 1110 requires retail suppliers to disclose to customers its unbundled RECs in a format determined by the Energy Commission.

The proposed regulations would establish an accounting methodology that will calculate GHG emissions intensities according to the sources of electricity delivered to California and not allow unbundled RECs to adjust the GHG emissions of delivered electricity, which is consistent with the GHG accounting methodology established by the California Air Resource Board through previous regulatory proceedings. The pro-

<sup>1</sup> Public Utilities Code, section 398.1, subd. (b).

posed regulations would clarify the existing calculation of the fuel mix by clearly establishing that the fuel mix percentages are based on procurements of electricity and therefore exclude unbundled RECs. The proposed regulation establishes a method and format for disclosing retail suppliers' procurement of unbundled RECs as a percentage of retail sales in a separate section of the Power Content Label. The proposed regulation would also recognize retail suppliers' prior investments in firmed-and-shaped contracts that support the generation of renewable energy that is not delivered to California by requiring retail suppliers to disclose GHG emissions associated with the substitute electricity that is delivered to California under contracts entered into starting January 2019.

**DIFFERENCE FROM EXISTING  
COMPARABLE FEDERAL  
REGULATION OR STATUTE**

(Government Code section 11346.5(a)(3)(B))

There are no comparable federal regulations or statutes.

**POLICY STATEMENT OVERVIEW REGARDING  
BROAD OBJECTIVES OF THE REGULATIONS  
AND THE SPECIFIC BENEFITS ANTICIPATED  
BY THE PROPOSED AMENDMENTS**

(Government Code section 11346.5(a)(3)(C))

The broad objective of this rulemaking is to amend the regulations to implement new statutory requirements under AB 1110 to ensure customers receive accurate, reliable, and simple to understand information about the sources of energy, and the associated emissions of greenhouse gases, that are used to provide electric services. The Energy Commission also intends to clarify existing reporting requirements and amend regulatory provisions to improve the accuracy, reliability, and transparency of information retail electricity suppliers disclose about the sources of electricity serving customers. Finally, the Energy Commission proposes non-substantive grammatical and numbering changes for clarity and concision.

The proposed modifications will produce several benefits. The proposed modifications clarify existing requirements, which will reduce the potential for misunderstanding by reporting entities. The implementation of GHG emissions intensity disclosure requirements will establish accurate and reliable GHG accounting, subjecting all entities that provide retail electricity to customers in California with a standardized method for calculating GHG emissions intensities. Disclosure of the GHG emissions intensities will better in-

form California customers about the GHG emissions of the electricity sources serving them. And the separate disclosure of unbundled RECs will improve the transparency of the Power Content Label and help customers distinguish procurement of unbundled RECs.

**CONSISTENCY OR COMPATIBILITY WITH  
EXISTING STATE REGULATIONS**

(Government Code section 11346.5(a)(3)(D))

*Consistency with Renewable Portfolio Standard (RPS)*

In developing the proposed Express Terms, the Energy Commission reviewed regulations related to renewable energy and GHG emissions accounting.

The State performs renewable energy accounting in the Renewables Portfolio Standard (RPS), which the Energy Commission and the California Public Utilities Commission implement through regulations and guidelines. Generally speaking, for the RPS, RECs are issued for every megawatt hour (MWh) of electricity generated from renewable energy facilities. RECs from facilities certified to participate in California's RPS are eligible to be used by load serving entities to meet the procurement requirements of California's RPS provided they meet all eligibility requirements. RPS differentiates RECs into three general categories based on differing contractual arrangements and delivery characteristics. The RPS requires that a majority of procurement under contracts entered into after June 1, 2010, be from Portfolio Content Category 1, generally meaning RECs bundled with renewable electricity delivered to a California balancing authority. RPS also allows other REC categories, specifically firmed-and shaped RECs and unbundled RECs, in restricted quantities.

The Energy Commission has sought consistency with the RPS regulations where practicable. The proposed regulations rely on RPS certification to identify eligible renewable generators. The proposed regulations also use the REC categories established by RPS to differentiate various REC products.

To the extent that inconsistencies exist between RPS and the PSD regulation in their treatment of RECs, these inconsistencies exist because the programs serve different purposes and the RPS statutes are inconsistent with statutory mandates governing the PSD program. PSD was established to provide consumers information on the sources of electricity procured in the prior year. Compliance under the RPS is based on multi-year compliance periods allowing procurement to vary year to year as long as compliance period targets are met, banking of early procurement and excess procurement from prior compliance period is allowed to some degree, and RECs may be retired for up to 36 months after the actual generation of the renewable energy. Therefore, the procurement in any single calendar year will not translate

to the procurement applied within a multi-year compliance requirement. While the PSD statutes do not provide a specific treatment of RECs, the statutes call for a program that discloses the sources of generation serving customers over the previous calendar year. Adapting RPS' Portfolio Content Category restrictions that require procurement of a specified percentage of portfolio content category 1 resources and limiting portfolio content 3 resources over a compliance period to the single-year accounting requirement of the PSD statutes would impose constraints on retail suppliers' procurement activities that are more stringent than those allowed under the more flexible multi-year compliance periods of RPS. At the same time, unbundled RECs, although allowed in limited amounts for the RPS, are not a source of electricity, and other electricity must be purchased to actually serve the customer, so inclusion of unbundled RECs as a source of electricity or as a method to modify the disclosure of the fuel types of actual electricity procured by retail suppliers to serve customers undermines the transparency and accuracy of the PSD program. Consequently, the Energy Commission has proposed regulatory language that seeks to harmonize with RPS where practicable while adhering to the differing statutory requirements and intent of PSD.

*Consistency with the Mandatory Reporting Regulation (MRR)*

The State has also established goals for the reduction of GHG emissions and programs to accomplish these goals. Per AB 32 (Stats. 2006, ch. 488), the California Air Resources Board (CARB) maintains an economy-wide GHG inventory for the State that is consistent with Intergovernmental Panel on Climate Change practices to allow for comparison of statewide GHG emissions with those at the national level and with other international GHG inventories. Statewide GHG emissions calculations use many data sources, including data from other State and federal agencies. However, the primary source of data comes from reports submitted to CARB through the Regulation for the Mandatory Reporting of GHG Emissions (MRR). Through MRR, CARB has implemented GHG emissions reporting for major sources as required by AB 32. MRR establishes reporting requirements for several entity types, including generators and electricity importers. The MRR emissions data is the primary data used in the GHG inventory for the electricity sector (in-state generators and imported power).

The MRR establishes reporting requirements for several entity types, including electricity generators and importers. The GHG emissions data reported under MRR serves as the foundation of the Cap-and-Trade Program and supports the California GHG Emission Inventory, and CARB makes a summary of the reported

emissions data publicly available each year. CARB further applied MRR's GHG emissions accounting method to determine the sectoral emissions reduction target for retail suppliers as required by Senate Bill (SB) 350 (de León, Chapter 547, Statutes of 2015).

Through a longstanding history of regulations, MRR has established the State's standard reporting and verification processes for GHG emissions. MRR establishes verifiable and standardized measurement methods, uses reported and verified data to calculate GHG emissions intensities of specific generators, and establishes criteria to determine the GHG emissions of electricity imports attributable to California entities. MRR does not use RECs for GHG emissions accounting and does not allow RECs to adjust reported GHG emissions.

The Energy Commission has developed the proposed PSD regulations to be consistent with GHG emissions accounting under MRR.

DOCUMENTS INCORPORATED  
BY REFERENCE  
(California Code of Regulations,  
title 1, section 20(c)(3))

The Commission proposes to incorporate the documents listed below by reference because the inclusion of these lengthy documents in the California Code of Regulations would be cumbersome, unduly expensive, and impractical.

United States Government Accountability Office, *Government Auditing Standards, July 2018 (GAO-18-568G)*

This document is 232 pages long and sets forth the auditing standards that must be followed during the audits required pursuant to section 1394.2. Incorporating these requirements in these regulations would be cumbersome and interfere with the readability of the proposed regulations. In addition to being available at the Energy Commission and online in our dockets, this document is also available at: <https://www.gao.gov/assets/700/693136.pdf>.

California Public Utilities Commission (CPUC), *Energy Division's Portfolio Content Category Classification Review Process Handbook, pg. 3, October 2017.*

This document is one page long (the provided link is for the full 30-page document from which the page referenced was derived) and sets forth Portfolio Content Category 2 requirements for retail sellers under the California Public Utilities Commission's RPS Program. Incorporating these requirements in these regulations would be cumbersome and interfere with the readability of the proposed regulations. Because these regulations deal with numerous complicated concepts, it is impor-

tant that the definitions be as streamlined as possible and not unnecessarily duplicate work done by other agencies. The CPUC has already defined the concept of firmed-and-shaped resources (which it labels PCC 2) as it applies to the entities it regulates, and referencing that definition, instead of inserting lengthy duplicative language in our definitions, ensures that there is no room for confusion as to whether we are adopting that definition or creating a new one. In addition to being available at the Energy Commission and online in its dockets, this document is also available at: <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442454933>

Pursuant to California Code of Regulations, title 1, section 20, these documents will be available for review at the Commission at 1516 Ninth Street, Sacramento, California 95814 starting August 16, 2019, on business days from 9:00 a.m. to 5:00 p.m. These documents are also available online in the docket log associated with this rulemaking: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-OIR-05>

**MANDATED BY FEDERAL  
LAW OR REGULATIONS**

(Government Code section 11346.2(c))

The proposed regulation is not mandated by federal law or regulations.

**OTHER STATUTORY REQUIREMENTS**

(Government Code section 11346.5(a)(4))

Not applicable.

**LOCAL MANDATE DETERMINATION**

(Government Code section 11346.5(a)(5))

If adopted, the proposed regulations would impose a mandate on local agencies. Pursuant to Government Code section 17556(d), the costs would not be required to be reimbursed because the local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Public Utilities Code sections 10001, 11501, 15501, and 20500 et seq. provide revenue sources for the affected entities to recoup any costs incurred through compliance with these proposed regulations.

**FISCAL IMPACTS**

(Government Code section 11346.5(a)(6))

The fiscal analysis accompanying the proposed regulations estimates no costs to local agencies or school districts that will require State reimbursement. Local agencies, which include CCAs and POU, are estimated to have costs of \$8,767,738 in fiscal year 2020/21. None of these costs would be reimbursable as they are not mandated and, if incurred, might be recovered through electricity rate increases to customers, diverted from current expenditures, or mitigated with current procured resources.

The fiscal analysis accompanying the proposed regulations estimates no annual savings to the State for the proposed regulations. The existing PSD reporting processes will be modified to include the calculation of emission factors which will result in a small amount of additional Energy Commission staff work every year.

As mentioned above, cost impact to local agencies, including CCAs and POU, for the first fiscal year is estimated to be \$8,767,738 but these costs are completely discretionary. There are no non-discretionary costs or savings to local agencies as all the required reporting will be dealt with by the Energy Commission through modifications and automation to the reporting forms.

The proposed regulations will result in additional staff labor by the State approximating 400 work hours annually, with first year fiscal impacts estimated to be \$35,170. The Energy Commission anticipates absorbing these costs within its existing budget.

The proposed regulations will result in no costs or savings in federal funding to the state. The Power Source Disclosure Regulations are not associated with or influence any source of funding or contribute to any savings for any federally funded state activities.

**HOUSING COSTS**

(Government Code section 11346.5(a)(12))

The proposed regulations will not have an impact on housing costs.

**INITIAL DETERMINATION REGARDING  
SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY AFFECTING  
BUSINESS, INCLUDING ABILITY TO COMPETE**

(Government Code sections 11346.3(a),  
11346.5(a)(7), and 11346.5(a)(8))

The Energy Commission has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

California’s investor–owned utilities (IOUs) and Electric Service Providers are the only obligated business entities. Currently, IOUs have procured renewable and zero–carbon resources adequate to ensure their power source disclosure electricity reports will continue to include a high percentage of renewable and zero–carbon resources resulting in low GHG emissions intensities. For example, the power content label for IOU green pricing programs, marketed as 100 percent renewable, are anticipated to display current procurements from previously entered into contracts from portfolio content category 1 resources which will be classified as renewable and low GHG emission resources.<sup>2</sup> Electric Service Providers typically provide power to a relatively small specific customer base, and do not provide service to the general public. As such, their procurement decisions and customer decisions are not impacted by the data provided on the power content label.

Other obligated parties required to report include POU and CCAs, which are associated with local cities, counties, or joint local agencies and are not considered private businesses.

**STATEMENT OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT**  
(Government Code section 11346.5(a)(10))

The overall cost of implementing the proposed regulations is estimated at just over \$8.7 million in the first fiscal year and about the same amount the following fiscal years. Nearly all of the estimated costs are attributed to CCAs and POU, reflecting the potential for them to adjust their procurement to report lower emissions on the required power content label. The IOUs have procured significant quantities of renewables, which have little or no emissions characteristics and will not need to enter into new agreements to meet a desired GHG emissions intensity. ESPs procurement decisions are not influenced by general marketing materials or the information portrayed on the power content label. Since the CCAs are competing with IOUs for customers, they will be incentivized to adjust their resource procurements to remain competitive. Although POU do not typically compete for customers there are a few instances where, in order to maintain their environmental claims on certain products, they may choose to modify their resource procurements.

The POU and CCAs offering multiple electricity products may also save money by no longer being re-

quired to perform audits of any products beyond their first product offered. There are 11 POU who would benefit from this for an estimated benefit of \$47,300 in fiscal year 2020/21. There are 10 CCA who would benefit from this for an estimated benefit of \$43,000 in fiscal year 2020/21. The total savings for all public entities would be \$90,300 in fiscal year 2020/21. Similar benefits would likely continue while multiple products are offered.

None of the proposed regulations will result in the creation or elimination of any jobs within California as all obligated parties are performing state reporting already under current power source disclosure regulations. Energy Commission updated forms will provide the required new emission values while existing businesses and staff will continue to report the power source data required under this program. No new businesses will be created and neither will any existing business be eliminated by the new regulations. The proposed regulatory changes will not expand any existing businesses doing business in California and there will be no direct benefits of the electricity program emission information to the health and welfare of California residents, to worker safety, or to the state’s environment. However, the proposed regulations will help ensure consumers have reliable, accurate, timely, consistent, and simple to understand information about the greenhouse gas emissions and the amount of unbundled RECs associated with their electricity consumption, which will increase consumer awareness of the climate impacts of the electricity sources serving California and could better inform customers about their choices in electricity consumption.

**COST IMPACTS ON REPRESENTATIVE  
PERSON OR BUSINESS**  
(Government Code section 11346.5(a)(9))

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

Neither the Energy Commission, nor the city and local public agencies, were considered representative private persons or businesses and therefore were excluded from the summary of business costs.

**BUSINESS REPORT**  
(Government Code sections 11346.5(a)(11)  
and 11346.3(d))

No new reports are required from this update to the PSD program.

<sup>2</sup> [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Energy\\_Electricity\\_and\\_Natural\\_Gas/Renewables%20Portfolio%20Standard%20Annual%20Report%202018.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_Electricity_and_Natural_Gas/Renewables%20Portfolio%20Standard%20Annual%20Report%202018.pdf)



**EFFECT ON SMALL BUSINESS**  
(California Code of Regulations, title 1,  
section 4(a) and (b))

The proposed modifications impact businesses in the utility or power transmission industry as reporting entities under the regulation. Government Code section 11342.610 defines small businesses in the utility or power transmission industry as entities that transmit fewer than 4.5 million kilowatt-hours of electricity. No reporting entity fits this definition. Consequently, Energy Commission staff has concluded that the proposed modifications have no significant adverse economic impact affecting small businesses.

**ALTERNATIVES STATEMENT**  
(Government Code section 11346.5(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.

**CONTACT PERSON**  
(Government Code section 11346.5(a)(14))

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations or any other information upon which the rulemaking is based, should be directed to Jordan Scavo at [Jordan.scavo@energy.ca.gov](mailto:Jordan.scavo@energy.ca.gov) or (916) 654-5189. The designated backup contact person is Gina Barkalow, who can be reached at [gina.barkalow@energy.ca.gov](mailto:gina.barkalow@energy.ca.gov) or (916) 654-4765.

**COPIES OF THE INITIAL  
STATEMENT OF REASONS, THE EXPRESS  
TERMS, AND RULEMAKING FILE**  
(Government Code section 11346.5(a)(16))

The Energy Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons, the express terms of the proposed regulations, and all the informa-

tion upon which the proposed rulemaking is based, please visit the Energy Commission's PSD program website at: [https://www.energy.ca.gov/power\\_source\\_disclosure/](https://www.energy.ca.gov/power_source_disclosure/) or contact the contact person listed above.

**AVAILABILITY OF SUBSTANTIAL  
CHANGES TO ORIGINAL PROPOSAL FOR AT  
LEAST 15 DAYS PRIOR TO AGENCY  
ADOPTION/REPEAL/AMENDMENT OF  
RESULTING REGULATIONS**  
(Government Code Section 11346.5(a)(18))

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**  
(Government Code section 11346.5(a)(19))

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared by visiting the Commission's website at: [https://www.energy.ca.gov/power\\_source\\_disclosure/](https://www.energy.ca.gov/power_source_disclosure/) or contacting the contact person listed above.

**AVAILABILITY OF  
DOCUMENTS ON THE INTERNET**  
(Government Code sections 11346.4(a)(6)  
and 11346.5(a)(20))

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, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statements, as well as many other documents in the rulemaking file have been posted at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-OIR-05>.

<b>GENERAL PUBLIC INTEREST</b>
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**DEPARTMENT OF  
FISH AND WILDLIFE**

**CALIFORNIA ENDANGERED SPECIES ACT  
CONSISTENCY DETERMINATION  
NO. 2089-2019-002-01**

**Project:** Eden Safe Harbor Agreement

**Location:** South Fork Greenwood Creek, Mendocino County

**Applicant:** Jennifer and Jonathan Eden

**Notifier:** Roger Sternberg, Registered Professional Forester

**Background**

Jennifer and Jonathan Eden (Permittees) are voluntarily undertaking a federal Safe Harbor Agreement (SHA) for the northern spotted owl (*Strix occidentalis caurina*) for the purpose of managing timber on their 242-acre private property located in western Mendocino County. The United States Fish and Wildlife Service (USFWS) issued a federal SHA and a federal 10(a)(1)(A) enhancement of survival permit (Permit No. TE21179D-0) on June 17, 2019, in effect for 40 years. The permit authorizes take of northern spotted owl that is likely to occur incidental to managing timber on the property under periodic ten-year harvest intervals of uneven-aged, sustained yield timber management, including single-tree and group selection. The development and enhancement of functional nesting/roosting and foraging habitat is intended to provide a net conservation benefit to northern spotted owls.

The Eden property (Enrolled Lands) consists of two parcels totaling 242 acres located within Sections 21 and 28, Township 14 North, Range 15 West, M.D.B. and M., in Mendocino County, California. The property is in the South Fork Greenwood Creek watershed. South Fork Greenwood Creek, a Class I fish-bearing stream, runs along the eastern side of the property.

The Enrolled Lands currently contain a young, 60-year old stand of coast redwood (*Sequoia sempervirens*), Douglas-fir (*Pseudotsuga menziesii*), tanoak (*Notholithocarpus densiflorus*), and madrone (*Arbutus menziesii*). Most of the redwood and Douglas-fir are concentrated in 99.75 acres. Average conifer volume across the property is approximately 19,770 board feet per acre, with an average basal area of 125 square feet per acre in conifer, and an average basal area of 110 square feet per acre in hardwoods. Tanoak is

very dense throughout the property, with approximately 87 conifer and 174 hardwood trees per acre. Productivity of the forested stand ranges from a Site Class III to Site Class V.

Eden Nonindustrial Timber Management Plan (NTMP)

The SHA will be incorporated into the Eden NTMP that will be prepared subsequent to the issuance of this Consistency Determination. The Eden NTMP will be publicly reviewed in accordance with the California Forest Practice Rules (Cal. Code Regs., tit. 14, section 1090 et seq.).

The NTMP will include uneven-aged timber management and create multiple age classes of conifers within the timber stand. Individual tree and small group selection forest management will provide the opportunity for the development and maintenance of high quality and functional northern spotted owl nesting/roosting and foraging habitat. A sustained yield timber management strategy will limit the amount of timber available for harvest to the projected growth over a ten-year cycle.

Habitat Improvements

The property currently provides approximately 143 acres of northern spotted owl nesting/roosting habitat and approximately 28 acres of northern spotted owl foraging habitat. The Permittees intend to continually improve habitat conditions over 40 years, through three to five timber harvest entries spaced at least ten years apart, increasing the number of acres of nesting/roosting habitat by approximately 42 acres. The Permittees do not intend to return the property to baseline conditions at the end of the SHA period. All nesting/roosting habitat will be maintained at or above USFWS' no-take guidelines.

The NTMP will retain an older tree component and create a multi-storied, complex canopy forest that is associated with higher quality northern spotted owl habitat. Structural diversity provides multiple perch sites for northern spotted owls at varying canopy heights, facilitates the species' thermoregulation, and affords an additional measure of protection from predators. A larger, older tree component can provide cavities for nest sites, cover for broken tops of younger trees (also potential nest sites), and habitat for prey species. Through uneven-aged management and techniques that mimic natural disturbance events, creation of late successional forest characteristics (e.g., multi-layered canopy, mixed tree species composition, retention of snags, deformities, and downed woody debris) will be accelerated on the Enrolled Lands, improving the functionality of northern spotted owl nesting/roosting and foraging habitat.

Long-term timber management goals intended to improve habitat functionality for northern spotted owls include the following:

- 1) Increase the average quadratic mean diameter at breast height (DBH) of conifer trees after each harvest entry until the sustained yield targets identified in the NTMP are met.
- 2) Retain a greater average post-harvest basal area (square feet per acre) for trees greater than 12 inches DBH until the sustained yield targets identified in the NTMP are met.
- 3) Increase timber stand tree volumes by cutting less than growth until an average residual stocking level of 22,000 board feet per acre is attained throughout the 242 acres.
- 4) Retain downed cull logs and snags.
- 5) Invest in conifer planting and release to re-establish conifer and hardwood species at levels that simulate natural redwood forests.
- 6) Increase the number of legacy trees averaged across the property — including trees, regardless of size, with basal hollows, other defects, and mistletoe infections — by retaining an average of three legacy trees per acre outside the Watercourse Lake Protection Zone (WLPZ) and more legacy trees within the WLPZ. A legacy tree consists of one or more of the following characteristics:
  - a. Redwood tree with 48-inch diameter or greater
  - b. Other conifer species with 36-inch diameter or greater
  - c. Hardwood tree with 24-inch diameter or greater
  - d. Large lateral limbs in excess of six inches in diameter
  - e. High presence of lichens or moss
  - f. Deeply fissured or flattened bark
  - g. Broken or reiterated tops
  - h. Cut faces or fire-scarred basal cavities
  - i. Platforms
  - j. Crown debris accumulation

Northern Spotted Owl Activity Centers

There is one northern spotted owl territory with an Activity Center (MEN0622-AC#1) located approximately 750 feet west of the southern parcel of the Enrolled Lands on land owned by the Mendocino Redwood Company (MRC). In addition, northern spotted owls have been observed foraging within the boundaries of the southern and northern parcels of the Enrolled Lands and appear to be moving back and forth along property boundaries. The Permittees have proposed a second Activity Center (MEN0622-AC#2)

centered at a location on the eastern boundary of the northern parcel of the Enrolled Lands, approximately 0.5-mile north-northwest of MEN0622-AC#1. MEN0622-AC#2 is located at the following geographic location: 39.056712 latitude north, -123.538637 longitude (decimal degrees, NAD 83).

Access

The Safe Harbor Agreement will grant the USFWS and the California Department of Fish and Wildlife (CDFW), after reasonable prior notice to the Permittee of ten days or more, the right to enter the Enrolled Lands to ascertain compliance with the Safe Harbor Agreement, for purposes of carrying out monitoring and management activities, and to engage in research or other activities related to the recovery of northern spotted owls. In the event of an emergency, the USFWS and/or CDFW may enter the premises to care for and protect listed species at any time.

The Project is expected to result in a net conservation benefit to the northern spotted owl over the 40-year duration of the federal SHA by developing and maintaining high quality functional northern spotted owl nesting/roosting and foraging habitat, including 42 acres of nesting/roosting habitat. The SHA ensures that Permittees will not be subject to additional regulatory restrictions as a result of their conservation actions.

On July 24, 2019, the Director of CDFW received a letter from Roger Sternberg, Registered Professional Forester (RPF) with Roger Sternberg Forestry and Land Conservation Consulting Services (Cal. Reg. Notice Register 2019, 32-Z, page 1120), requesting a determination pursuant to California Fish and Game Code Section 2089.22 that the federal SHA and its related federal 10(a)(1)(A) enhancement of survival permit issued for the Project are consistent with the California Safe Harbor Program (Fish and G. Code, section 2089.2 et seq.).

**Determination**

CDFW has determined that the federal SHA, including Permit No. TE21179D-0 authorizing incidental take of the northern spotted owl, is consistent with the California State Safe Harbor Agreement Program Act because the conservation, avoidance, and minimization measures contained in the federal SHA and its related federal 10(a)(1)(A) enhancement of survival permit meet the conditions set forth in California Fish and Game Code section 2089.6 for authorizing incidental take of species listed pursuant to the California Endangered Species Act. Specifically, CDFW finds that: (1) take of the northern spotted owl will be incidental to an otherwise lawful activity; (2) implementation of the federal SHA is reasonably expected to provide a net conservation benefit to the northern spotted owl; (3) the Project will not jeopardize the continued existence of the northern spotted owl; (4) the Permittees have

agreed, to the maximum extent practicable, to avoid or minimize any incidental take authorized by the SHA, including returning to baseline conditions; (5) the SHA has established an approved monitoring program; (6) CDFW has determined that baseline conditions were determined by USFWS, and sufficient funding to carry out management actions and monitoring will be provided as a result of timber sales. The Permittees' monitoring and reporting obligations will be carried out by a qualified individual for the duration of the SHA as part of the duties related to timber operations conducted pursuant to the NTMP; and (7) implementation of the SHA is not in conflict with a CDFW-approved conservation or recovery program for the northern spotted owl.

Avoidance and Minimization Measures

The avoidance and minimization measures in the SHA include, but are not limited to, the following:

- 1) Northern spotted owl surveys will adhere to current USFWS Survey Protocol and all survey data will be submitted to the CDFW Biogeographic Information System (BIOS) Spotted Owl Database as well as the USFWS at the end of each survey season.
- 2) Activity Center information will be based upon the most biologically significant location as identified by recent protocol-level surveys and the CDFW BIOS database.
- 3) Occupied Activity Centers with a nesting reproductive status according to current USFWS survey protocol will receive 500-foot no timber harvest and no yarding core area protections (for a maximum of two Activity Centers on the 242-acre property). From 501 to 1000 feet, single tree selection is permitted so long as operations do not reduce the average canopy closure more than 10%, or below 60% with trees at least 12-inches DBH. Greater than 1,000 feet, single tree selection and/or group selection is permitted. Operations proposed within 0.25-mile of a known occupied nest site will be conducted between July 9 and February 1.
- 4) Occupied Activity Centers with a non-nesting reproductive status according to current USFWS survey protocol will receive 300-foot no timber harvest and no yarding core area protections (for a maximum of two Activity Centers on the 242-acre property). From 301 to 500 feet, single tree selection is permitted so long as operations do not reduce the average canopy closure more than 10%, or below 60% with trees at least 12-inches DBH. Greater than 500 feet, single tree selection and/or group selection is permitted.
- 5) Unoccupied prior nest locations will receive 100-foot no timber harvest and no yarding core

area protections. From 101 to 300 feet, single tree selection is permitted so long as operations do not reduce the average canopy closure more than 10%, or below 60% with trees at least 12-inches DBH. Greater than 300 feet, single tree selection and/or group selection is permitted.

- 6) Abandoned sites (USFWS Technical Assistance required) will receive no protections.
- 7) Any take that may occur as a result of the timber management activities can only occur after more than one Activity Center has become occupied by northern spotted owls on the Enrolled Lands. Only those Activity Centers in excess of the one established secondary Activity Center (MEN0622-AC#2) may be subject to potential take under the federal 10(a)(1)(A) enhancement of survival permit.
- 8) No timber harvest operations, other than the use of existing haul roads, will occur within 300 feet of an active nest site during the breeding season (February 1 — July 9) without Technical Assistance. While this measure may not avoid noise-related disturbance altogether, it does reduce the likelihood of disturbance to incubating owls (and subsequent harm to eggs, i.e., if abandoned) as much as practicable given the configuration of the property and location of haul roads on the property.
- 9) The Permittees will cooperate with the USFWS and CDFW in controlling Barred Owls on the Enrolled Lands, if deemed necessary, to the extent those control activities are consistent with the SHA, do not create a significant financial or operational burden on the Permittees, and adhere to State and Federal laws (e.g., Migratory Bird Treaty Act of 1918, and California Fish and Game Code).
- 10) The Permittees may coordinate with the RPF and the wildlife agencies to implement or enable research of northern spotted owls and/or Barred Owls on the Enrolled Lands.

Monitoring and Reporting Measures

The Permittees will be responsible for the following monitoring and reporting measures related to implementation of the Safe Harbor Agreement and fulfillment of its provisions:

- 1) Submittal of northern spotted owl survey information to the USFWS and CDFW BIOS database at the end of each survey season;
- 2) Implementation of agreed-upon conservation measures;
- 3) Verification of baseline maintenance; and

- 4) A summary of any Covered Species incidentally taken by the Permittees in carrying out the activities authorized by the SHA.
- 5) In addition, each planned harvest under the SHA will be preceded by the submission of the following:
  - a. An NTMP Notice of Timber Operations (NTO) to the USFWS and CDFW, no less than 30 days in advance of proposed harvest operations.
  - b. In addition to the NTO, the landowner or representative will include a summary of the status determinations of northern spotted owl Activity Centers based on protocol-level surveys.
  - c. The summary will explain how the proposed operations comply with the SHA.
  - d. The summary, in conjunction with the survey and monitoring field data forms, will allow the wildlife agencies the opportunity to monitor compliance with the Agreement (i.e., retention of baseline habitat conditions and the application of the no harvest buffers).
  - e. The landowner or representative will include any reasonable modifications to the NTO that the USFWS and CDFW determine are necessary to minimize potential adverse impacts to the northern spotted owl, including noise disturbance.
- 6) The Permittees or representative will conduct timber stand inventories in accordance with the NTMP. The 2016 timber stand inventory data will be provided to the USFWS and CDFW, and thereafter every 10 to 15 years, for the purpose of documenting the development and/or maintenance of the characteristics of high quality northern spotted owl habitat, including the anticipated accretion in average basal area per acre and the anticipated accretion in average tree diameter.

During the Permit term of the SHA, the Permittees, RPF, USFWS, and CDFW will coordinate and use survey and monitoring information, information on habitat conditions, and other information, to evaluate the seasonal nesting/reproductive status determinations and location(s) of northern spotted owl Activity Centers on the Enrolled Lands.

The Permittees will coordinate with the USFWS and CDFW at regular intervals, agreed upon by all Parties, to evaluate and implement potential adaptive management procedures if necessary.

#### Financial Assurances

Funding of this Agreement will be provided by the Landowner via proceeds from timber operations and reinvested profits as needed, supplemented if possible with any grant funding obtained to assist in defraying the cost of the development and implementation of this SHA.

#### Incidental Take Authorization

Pursuant to Fish and Game Code section 2089.22, if a federal SHA is approved pursuant to applicable provisions of federal law and that the SHA includes species that are both federal- and state-listed, no further approval under the state Safe Harbor Agreement Program Act (Fish and G. Code, section 2089.2 et seq.) is required for incidental take of those species, provided the Permittees implement the Project and future land use and management practices as described in the approved federal SHA; the Permittees and CDFW follow specified procedures; and CDFW determines the federal SHA is consistent with applicable criteria. Additionally, the Permittees must adhere to all measures contained in the approved federal SHA and comply with other conditions described in the federal 10(a)(1)(A) enhancement of survival permit.

If there are any substantive changes to the federal SHA or if USFWS amends or replaces the federal 10(a)(1)(A) enhancement of survival permit, the Permittees shall be required to obtain a new consistency determination from CDFW. (See generally Fish and G. Code, section 2081.1, 2081, subs. (b) and (c), and 2089.22, subd. (b)).

## **DEPARTMENT OF FISH AND WILDLIFE**

### **FISH AND GAME CODE SECTION 1653 CONSISTENCY DETERMINATION REQUEST FOR Geib Ranch Sediment Reduction Project (Tracking Number: 1653-2019-047-001-R3) Sonoma County**

California Department of Fish and Wildlife (CDFW) received a Request to Approve on August 20, 2019, that Jim Geib proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves removing undersized culverts, grading banks, stabilizing head cuts, installing an armored vehicle crossing, and armoring a culvert outlet. The proposed project will be carried out on the informally named Kenilworth and Pond Creeks, tributaries to Sonoma Creek, located at 660 Ke-

nilworth Avenue and the northern side of Kenilworth Avenue immediately west of the bridge crossing Sonoma Creek, in Kenwood, Sonoma County, California.

On June 24, 2019, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Geib Ranch Sediment Reduction Project. Additional materials were submitted July 22, 2019, to complete the NOI. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (CIWQS Place ID 859294) for coverage under the General 401 Order on August 9, 2019.

Jim Geib is requesting a determination that the project and associated documents are complete pursuant to Fish and Game Code section 1653 subdivision (d). If CDFW determines the project is complete, the District will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) or a Lake or Streambed Alteration Agreement under Fish and Game Code section 1605 for the proposed project.

In accordance with Fish and Game Code section 1653 subdivision (e), if CDFW determines during the review, based on substantial evidence, that the request is not complete, Jim Geib will have the opportunity to submit under Fish and Game Code section 1652.

**DEPARTMENT OF  
FISH AND WILDLIFE**

FISH AND GAME CODE  
SECTION 1653 CONSISTENCY  
DETERMINATION REQUEST FOR  
Old Hill Ranch Sediment Reduction Project  
(Tracking Number: 1653–2019–046–001–R3)  
Sonoma County

California Department of Fish and Wildlife (CDFW) received a Request to Approve on August 20, 2019, that Will Bucklin proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project removing an undersized culvert crossing and re-aligning the unnamed tributary to re-direct flow away from an eroding bank. Specific activities include excavation of fill at the

culvert crossing and realignment path, armoring the channel bottom, grading of channel banks to a stable angle of repose, and installing a woven willow wall. The proposed project will be carried out on an unnamed tributary to Sonoma Creek, located at Old Hill Ranch, 14900 Hwy 12, Glen Ellen, Sonoma County, California.

On May 29, 2019, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Old Hill Ranch Sediment Reduction Project. Additional materials were submitted August 2, 2019, to complete the NOI. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (CIWQS Place ID 858632) for coverage under the General 401 Order on August 9, 2019.

Will Bucklin is requesting a determination that the project and associated documents are complete pursuant to Fish and Game Code section 1653 subdivision (d). If CDFW determines the project is complete, the District will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) or a Lake or Streambed Alteration Agreement under Fish and Game Code section 1605 for the proposed project.

In accordance with Fish and Game Code section 1653 subdivision (e), if CDFW determines during the review, based on substantial evidence, that the request is not complete, Will Bucklin will have the opportunity to submit under Fish and Game Code section 1652.

**DEPARTMENT OF  
FISH AND WILDLIFE**

**HABITAT RESTORATION AND  
ENHANCEMENT ACT  
CONSISTENCY DETERMINATION  
NUMBER 1653–2019–042–001–R1**

**Project:** Horse Creek Lawrence/Morgan Wood Loading Project

**Location:** Siskiyou

**Applicant:** Mitzi Wickman, Mid Klamath Watershed Council (MKWC)

**Background**

Project Location: The Horse Creek Lawrence/Morgan Wood Loading Project (Project) is located

within Horse Creek and near 2541 West Horse Creek Road, in the town of Horse Creek, in the County of Siskiyou. The project will include Assessor Parcel Numbers (APN) 007-130-190 owned by Carol and Dennis Lawrence and APN 007-130-010 owned by Herman Morgan. The project will affect Horse Creek, a tributary to Klamath River which supports populations of Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*).

**Project Description:** Mid Klamath Watershed Council (Applicant) proposes to enhance habitat within Horse Creek to provide a conservation benefit for Chinook salmon, coho salmon, and steelhead. The Project includes the installation of 15 large woody debris (LWD) structures to create approximately 330 linear feet and 6,750 square feet of complex large wood and associated instream rearing habitat. The LWD structures will be either an embedded wood jam or a woven wood jam design using excavators and hand tools to reposition the LWD. To minimize disturbance, the excavator will use Bar Road and not traverse the streamside corridor within the riparian vegetation. This project should create complex refugia for salmonids at higher flows, and is not expected to result in stranding fish during lower flows.

**Project Size:** The total area of ground disturbance associated with the Project is approximately 0.26 acres and 430 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15333).

**Project Associated Discharge:** Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) Approximately 30, 45-foot long, 24-inch diameter logs with root wads and (2) 30 one- to two-ton boulders.

**Project Timeframes:**

- Start date: July 2019
- Completion date: October 2019
- Work window: September 1–October 15

**Water Quality Certification Background:** Because the Project’s primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish habitat and function to approximately 0.41 miles of Horse Creek, 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) Number

1A190083WNSI, Electronic Content Management Identification (ECM PIN) Number CW-859546) 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 fish (Chinook salmon, coho salmon, and steelhead), herps (foothill yellow-legged frog, Cascades frog, Scott Bar salamander, and Siskiyou Mountains salamander), mammals (grey wolf and fisher), and birds (northern spotted owl and northern goshawk).

**Receiving Water:** Horse Creek, a tributary of Klamath River

**Filled or Excavated Area:**

- Permanent area impacted: none
- Temporary area impacted: 0.30 acres
- Length temporarily impacted: 430 linear feet
- Length permanently impacted: unknown

**Dredge Volume:** None

**Discharge Volume:** Up to 30 pieces of logs with root wads to waters of the State.

**Project Location:** The project is located within the Middle Klamath River Hydrologic Unit 105.33. The upstream coordinates being Latitude 41.846225 degrees N, Longitude 123.046403 degrees W, and downstream coordinates being Latitude 41.843633 degrees N, Longitude 123.039342 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 Notice of Intent (NOI) complies with the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.).

On July 15, 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 15, 2019, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2019-0715-01) on July 26, 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) General Protection Measures, (2) Measures to Minimize Degradation of Water Quality, (3) Guidelines for Temporary Stockpiling, (4) Post-Construction Erosion Control, (5) Measures to Minimize Loss or Disturbance of Riparian Vegetation, (6) Revegetation and Success Criteria, (7) Measures to Minimize Disturbance from Instream Construction, and (8) Measures to Minimize Impacts to Roads. An additional attachment titled Invasive Plant Species Prevention Plan was also included. The Applicant provided an addendum to their application specific to fish and wildlife resource avoidance and minimization measures. The specific sections include flora, fauna, sensitive species habitats and life histories (foothill yellow-legged frog, northern spotted owl, northern goshawk, grey wolf, fisher), and avoidance and minimization measures specific to erosion control, instream construction, water quality, environmental resources, and protected species.

**Monitoring and Reporting**

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

A report will be submitted following the completion of each seasonal work period and upon completion. The report will include pre- and post-project monitoring findings and indicate whether performance standards have been achieved. Each report will contain: Summary of findings; Identification and discussion of problems with achieving performance standards; Proposed corrective measures as needed (and with approval by Regional Water Board); and appropriate Monitoring data.

**Notice of Completion**

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

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

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number 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 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 Janae R. Scruggs, [janae.scruggs@wildlife.ca.gov](mailto:janae.scruggs@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).)

**ENVIRONMENTAL PROTECTION AGENCY**

**30-Day Public Notice and Comment Period Unified Program Fee Schedule Supplemental Revision for Trinity County CUPA**

**Notice is hereby given** that the Secretary for the California Environmental Protection Agency (CalEPA) proposes a supplemental revision to the Unified Program fee schedule for the Trinity County Certified Unified Program Agency (CUPA) to include non-recurring fees for activities related to Underground Storage Tank (UST) permits. CalEPA published the original notice approving the California Department of Toxic Sub-



stances Control (DTSC) proposal to increase annual fees for the Trinity County CUPA, pursuant to the California Code of Regulations, Title 27, Section 15241(i), in the California Notice Register, Register 2019, Number 32-Z on August 9, 2019. DTSC, the state agency designated as the CUPA for Trinity County, provided CalEPA with a proposal to revise the fee schedule, which covered the necessary and reasonable costs needed to implement the Unified Program according to Title 27, Section 15241(b). The proposal included non-recurring fees, but these fees were not included in the August 9, 2019 public notice.

CalEPA approves the requested rates for non-recurring fees for the following permit related activities for the Underground Storage Tank Program:

- Tank installations at a flat rate time of 30 hours for an initial fee of \$3,210.00
- Repairs and updates at a flat rate time of 6 hours for \$642.00
- Tank removals for a flat rate time of 20 hours for \$2,140.00
- Additional hours beyond the initial fee are charged at a rate of \$107.00 per hour

The public comment period for this notice will be from September 13, 2019, through October 14, 2019. CalEPA requests the public to submit written comments by the closing date to the following:

Mr. Jason Boetzer  
Acting Assistant Secretary for  
Local Program Coordination  
California Environmental Protection Agency  
P.O. Box 2815, MS-2D  
Sacramento, California 95812-2815  
E-mail address: [cupa@calepa.ca.gov](mailto:cupa@calepa.ca.gov)

Following the 30-day comment period, the Secretary will consider comments and prepare a response that identifies the comments, the Secretary's findings, and the Secretary's final fee decisions. The Secretary will make responses available upon request and will publish the final fee schedule in the California Regulatory Notice Register pursuant to Title 27, Section 15241(i).

DTSC noticed impending Fiscal Year 2019 fee adjustments in recent invoices to all regulated entities. CalEPA expects the new fees to go into effect immediately upon approval.

## RULEMAKING PETITION DECISION

### DEPARTMENT OF MANAGED HEALTH CARE

August 21, 2019

Denise Feldman, President  
CHCI Insurance Services  
4924 Balboa Boulevard #415  
Encino, CA 91316

**ACTION:** Notice of Decision on Request for Reconsideration of Petition for Rulemaking Action

**SUBJECT:** Petition by CHCI Insurance Services, Requesting Amendment of Title 28, California Code of Regulations (CCR), Section 1300.67.005, Essential Health Benefits (EHB), Subdivision (d)(12), Rehabilitative/Habilitative Health Care Services and Devices

#### PETITIONER

The request for reconsideration of the petition for rulemaking action (Request) from Ms. Denise Feldman, President of CHCI Insurance Services (Petitioner) was received by the Department of Managed Health Care (Department) on July 21, 2019. Pursuant to the requirements of Government Code section 11340.7, the Department provides this decision to the Request for Reconsideration.

#### DEPARTMENT CONTACT PERSON

Inquiries concerning this decision may be directed to Emilie Alvarez, Regulations Coordinator, Department of Managed Health Care, Office of Legal Services, by mail at: 980 9<sup>th</sup> Street, Suite 500, Sacramento, CA 95814, by telephone at: (916) 322-6727, or by e-mail at: [emilie.alvarez@dmhc.ca.gov](mailto:emilie.alvarez@dmhc.ca.gov) or [regulations@dmhc.ca.gov](mailto:regulations@dmhc.ca.gov).

#### AVAILABILITY OF PETITION

The Request for reconsideration of the petition for the amendment of regulations is available upon request directed to the Department's Contact Person.

AUTHORITY

The Department’s regulation is located at section 1300.67.005, subdivision (d)(12), of title 28 of the CCR. The Petitioner cites as authority to amend the regulation the Patient Protection and Affordable Care Act (ACA) and related federal regulations (Public Law 111–148, as amended), the Knox–Keene Health Care Service Plan Act of 1975 (the Knox–Keene Act),<sup>1</sup> including but not limited to Health and Safety Code sections 1341, 1344, and 1367.005, as well as Government Code section 11346.

DETERMINATION ON THE PETITION

For the reasons discussed below, the Department affirms its decision to deny in whole the Petition to amend title 28, CCR section 1300.67.005 (the EHB regulation).

REASONS SUPPORTING THE DEPARTMENT DETERMINATION

The ACA requires the Secretary of the Department of Health and Human Services (DHHS) to define EHB, including at least ten specified general categories (e.g., ambulatory patient services, hospitalization, etc.). The EHB are a minimum standard for health benefit coverage required under the ACA and the Public Health Service Act. In December of 2011, the DHHS issued guidance for state implementation of EHB. The guidance authorized each state to select a base–benchmark plan from a list of options to establish EHB particular to that state.

Pursuant to those federal guidelines, in 2012, the California legislature enacted Assembly Bill (AB) 1453,<sup>2</sup> adding Health and Safety Code section 1367.005. Health and Safety Code section 1367.005 defined California’s EHB, including the California benchmark plan, and further specified parameters for the benchmark plan, including but not limited to, coverage of medically necessary basic health care services, all statutorily mandated health benefits enacted before December 31, 2011, and any other health benefits covered by the benchmark plan that were not otherwise required to be

covered under the Knox–Keene Act.<sup>3</sup> Assembly Bill 1453 also defined “habilitative services.”

Pursuant to AB 1453, the Kaiser Small Group HMO 30 plan, as this plan was offered during the first quarter of 2012, was California’s first benchmark plan.

In 2015, the DHHS directed states to select a new base–benchmark plan from specified options. The California Legislature enacted Senate Bill (SB) 43<sup>4</sup> to update the definition of EHB in California. As amended by SB 43, Health and Safety Code section 1367.005 defines the new base–benchmark plan as the Kaiser Small Group HMO 30 plan, “as this plan was offered during the first quarter of 2014,” and updates EHB standards in accordance with federal law and guidance, including an updated definition of habilitative services.

To implement SB 43, in 2016, the Department promulgated emergency regulations pursuant to its authority under Health and Safety Code section 1367.005(o) (DMHC Control No. 2016–5191; OAL Matter No. 2016–1117–01). The Department finalized and made permanent those regulations with a certificate of compliance in 2017 (DMHC Control No. 2016–5191; OAL Matter No. 2017–0516–01). To promulgate the EHB regulations, the Department considered relevant documents, including the benchmark plan’s Evidence of Coverage (EOC). An EOC is the health plan document that provides a general description of a health plan’s benefits, limits and terms of coverage. This response to the Request references the EOC for the AB 1453 benchmark plan as the “2012 EOC,” and references the EOC for the current, SB 43 benchmark plan, as the “2014 EOC.”

On May 20, 2019, the Department received the Petitioner’s request for rulemaking action (Petition) to amend the EHB regulation by adding to subdivision (d)(12)(A)(iii), coverage for physical therapy, occupational therapy, and speech therapy (PT/OT/ST) provided in “. . . an organized, multidisciplinary residential treatment program.” (Petition, p. 5). On June 11, 2019, the Department formally responded, describing the Department’s reasons for denying in whole the Petition. On July 21, 2019, the Petitioner submitted to the Department a request for reconsideration of the petition to amend the EHB regulation (the Request).

<sup>3</sup> The list of EHBs combines state–mandated benefits required by Health and Safety Code section 1367.005, as well as “other health benefits” described in the Kaiser EOC, the benefits mandated under the federal Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), pediatric dental and vision care benefits requirements, Kaiser formularies for Durable Medical Equipment and Soft Goods, and the Center for Consumer Information and Insurance Oversight (CCIO) cross–walk between the Kaiser prescription drug formulary and the U.S. Pharmacopeia (USP) drug classification system.

<sup>4</sup> SB 43 (Hernandez, Chapter 648, Statutes of 2015).

<sup>1</sup> Health and Safety Code (HSC) section 1340, *et seq.* Unless otherwise specified, references to “section” are to the HSC.

<sup>2</sup> AB 1453 (Monning, Chapter 854, Statutes of 2012).

The Department has determined the EHB regulation, as written, is consistent with relevant law, including Health and Safety Code section 1367.005, and accurately describes the benchmark plan's health care service coverage. Therefore, the Petitioner's Request for Reconsideration is denied in whole. The Department addresses each of the Petitioner's specific arguments from the Request, below.

1. The 2012 EOC did not include coverage of residential treatment as described by the Petitioner.

The Petitioner asserts that residential rehabilitative treatment for medical/surgical conditions<sup>5</sup> is an EHB because this type of coverage existed in California's 2012 benchmark plan. (See, e.g., Request, pp. 2, 14). The Petitioner states that the 2012 EOC for California's first benchmark plan was the required "standard" for coverage, and so the subsequent benchmark plan must have included the coverage described in the 2012 EOC. (Request, p. 2). Thus, the Petitioner indicates that the 2012 EOC ultimately determines the current EHB standard. More specifically, the Petitioner asserts that the current 2014 benchmark plan includes "limited" coverage of medical/surgical residential rehabilitative services, ". . . as expressed in the [Skilled Nursing Facility, or] SNF benefit." (Request, pp. 2, 11). The Petitioner clarifies that she bases this assertion on the coverage under the previous California benchmark plan, which "set the standard" for the subsequent, 2014 benchmark plan. (Request, pp. 2, 14).<sup>6</sup> The Petitioner determines the 2012 EOC included coverage of medical/surgical residential rehabilitation, including physical therapy/occupational therapy/speech therapy (PT/OT/ST), under the skilled nursing facility (SNF) benefit, "when provided in the context of a 'residential stay' (i.e., overnight)" and regardless of facility type (Request, pp. 2-3).

The Department acknowledges the Petitioner's clarification of the bases for her assertions that the benchmark plan covers all residential, however the Petitioner misconstrues the meaning of the 2012 EOC's exceptions to the exclusion for residential care. The 2012 EOC clarifies its general exclusion of residential care does not narrow *otherwise covered inpatient services*, such as care in a hospital, SNF, inpatient respite care covered under hospice services, etc. (2012 EOC, p. 43). These exceptions to the "residential care" exclusion do

<sup>5</sup> For the purpose of this response to the Request, the Department references "medical/surgical" conditions as compared to "mental health/substance use disorder" conditions.

<sup>6</sup> The Petitioner further indicates that a certain Mental Health Parity and Addiction Equity Act (MHPAEA) compliance filing from Kaiser also substantiates the Petitioner's assertion that the benchmark plan includes medical/surgical residential rehabilitative treatment. The Department addresses the Petitioner's assertion in section 3 of this response.

not, however, create a new covered benefit for treatment in residential treatment facilities. Contrary to the Petitioner's assertion, the 2012 EOC does not state that the benchmark plan's SNF coverage encompasses all medical/surgical rehabilitation in any health facility, such as a residential facility.

The Department notes that the EHB regulation expressly includes coverage of PT/OT/ST provided in various settings, including a SNF. (EHB regulation, subdivision (d)(12)(A)(iii)). The EHB regulation's requirement for coverage of PT/OT/ST under SNF benefits is consistent with the benchmark plan. For these reasons, and the reasons described in the Department's June 11, 2019, response to the Petition, the Department determined the EHB regulation is consistent with relevant law. The Department declines to amend subdivision (d)(12) of the EHB regulation as requested by the Petitioner, because such an amendment is inconsistent with Health and Safety Code section 1367.005.

2. The 2014 EOC did not create a new exclusion for residential treatment.

The Petitioner asserts that the 2014 EOC created a category for rehabilitative and habilitative services in accordance with the requirements for EHB under the ACA, and itemized PT/OT/ST services in that category. (Request, p. 3). The Petitioner notes that the 2014 EOC's section regarding rehabilitative and habilitative services specifically excludes residential treatment, which the Petitioner asserts is incorrect and incongruent with the 2012 EOC.<sup>7</sup> (Request, pp. 3, 9). The Petitioner provided appendices with excerpts from the 2012 and 2014 EOCs. The Petitioner asserts that, "[i]t is in this 2014 EOC, that the addition of residential treatment as an excluded benefit arises" and the Petitioner asserts the exclusion is incorrect. (Request, pp. 3, 9).

For the reasons described in section 1, the Petitioner is mistaken about the scope of coverage for medical/surgical residential rehabilitative treatment. The 2012 benchmark plan did not include coverage of medical/surgical residential rehabilitation in the manner the Petitioner suggests. Therefore, the lack of that coverage under the 2014 benchmark plan is consistent with the 2012 benchmark plan. The Petitioner is therefore mistaken that the 2014 and 2012 benchmark plans are incongruent.

The 2014 EOC does contain a new section for "Rehabilitative and Habilitative Services" in which PT/OT/ST services are itemized. The language regarding "Rehabilitative and Habilitative Service exclusions," to

<sup>7</sup> The Petitioner also asserts that the 2014 EOC's exclusion of residential treatment contradicts the analysis and rationale in the MHPAEA compliance filing for the expansion of residential rehabilitation to MH/SUD. (Request, p. 3). The Department addresses this assertion in section 3 of this response.

which the Petitioner objects, is largely based on the statutory definition of habilitative services effective in 2014. Specifically, section 1367.005, as enacted in AB 1453 and effective in 2014, defined “habilitative services,” in pertinent part, as follows:

(p) [ . . . ] (1) ‘Habilitative services’ means [ . . . ] Examples of health care services that are not habilitative services include, but are not limited to, respite care, day care, recreational care, residential treatment, social services, custodial care, or education services of any kind, including, but not limited to, vocational training. [ . . . ]

As shown in the statute quoted above, the exclusion to which the Petitioner objects derived from the statutory definition of habilitative services in effect in 2014. The Department acknowledges the Petitioner’s objection to the exclusion, as applied to rehabilitative services. However, the EHB regulation includes neither the quoted exclusion language from the 2014 EOC, nor the exclusion language from the pre-SB 43 statutory definition quoted above. Instead, the current EHB regulation references the updated statutory definition of habilitative services, as amended by SB 43. Therefore, the exclusion language to which the Petitioner objects did not add a new exclusion for residential treatment and is moot for the purpose of the EHB regulation.

### 3. The MHPAEA filing does not support the Petitioner’s assertions regarding coverage of rehabilitative residential treatment for medical/surgical conditions.

The Petitioner asserts that a certain MHPAEA compliance filing, dated November 17, 2014,<sup>8</sup> unambiguously states that medical/surgical residential rehabilitative services are a covered benefit. (Request, p. 2). The Petitioner states the MHPAEA filing serves as the “additional lens” necessary to clarify the benchmark EOC’s description of coverage of medical/surgical residential benefits. (Request, p. 6). The Petitioner asserts the MHPAEA parity determinations, which were the subject of the MHPAEA filing, inherently involve establishing a health plan’s medical/surgical benefits, and so the MHPAEA filing shows what medical/surgical benefits existed in the benchmark plan. (Request, p. 5). The Petitioner notes that Kaiser expanded coverage for mental health and substance use disorder (MH/SUD) residential treatment, “. . . in the same manner as it applies to medical/surgical.” (Request, pp. 6, 11; see also the MHPAEA filing, p. 6). The Petitioner also recites relevant MHPAEA requirements for parity in relation to quantitative and non-quantitative treatment limits, and notes that non-quantitative treatment limitations

must be “comparable to” and applied no more stringently than standards for medical/surgical benefits. (Request, p. 11). The Petitioner concludes that, in reference to the MHPAEA filing, “Kaiser was expanding MH/SUD benefits to include residential rehabilitative services *because those services existed as a medical/surgical benefit.*” (Request, pp. 5, 6; emphasis added). The Petitioner states that the EHB regulation’s omission of medical/surgical residential rehabilitative services constitutes an inaccurate description of the EHB. (Request, p. 6).

The Department acknowledges the Petitioner’s clarification of her interpretation of the MHPAEA filing. However, the Petitioner is mistaken that the MHPAEA filing shows that the benchmark plan covers residential rehabilitation treatment for medical/surgical conditions.

Pursuant to federal regulations implementing the MHPAEA, health plans must provide parity within federally-defined classifications of health benefits. (45 C.F.R. section 146.136). The benefit classification relevant to the MHPAEA filing is “inpatient” benefits (e.g., SNF, residential treatment facilities, etc.). Kaiser’s statements in the MHPAEA filing pertained to parity between medical/surgical inpatient benefits and MH/SUD inpatient benefits; the MHPAEA does not require, and Kaiser did not attest, that the plan covers the identical type of inpatient care for both MH/SUD and medical/surgical conditions. In other words, the Petitioner is mistaken that Kaiser’s statement about coverage of MH/SUD *residential* treatment means the plan covered medical/surgical *residential* treatment. Rather, Kaiser’s statements pertained to parity with the medical/surgical inpatient benefits, such as SNF care. This discussion of parity is consistent with both the 2012 and 2014 EOCs, which describe the benchmark plan’s SNF coverage. The Petitioner is mistaken that the MHPAEA filing shows the benchmark plan included coverage for all medical/surgical residential rehabilitation treatment.

For these reasons, the reasons described in sections 1 and 2, and the reasons articulated in the Department’s June 11, 2019, response to the Petition, the Department declines to amend subdivision (d)(12) of the EHB regulation as requested by the Petitioner. The Department declines to do so because the current EHB regulation is accurate and the requested amendment is inconsistent with Health and Safety Code section 1367.005.

### 4. The EHB regulation is consistent with the definition of “habilitative services” as amended by SB 43 and does not eliminate coverage of residential rehabilitative services.

The Petitioner states the EHB regulation incorrectly describes habilitative services because it references

<sup>8</sup> Filing number 20142158; Kaiser Foundation Health Plan, Inc., Exhibit E-1, November 17, 2014, p. 6 of 8; hereinafter called “the MHPAEA filing.”

both the provisions in section 1367.005 pertaining to habilitative services, and also contains language consistent with the 2014 EOC's section regarding rehabilitative and habilitative services. (Request, pp. 6, 7). The Petitioner states the language in subdivision (d)(12) of the EHB regulation was unnecessary. (Request, pp. 6–7). The Petitioner asserts relocating the PT/OT/ST services from the SNF section of the EHB regulation, to the EHB regulation's section for habilitative/rehabilitative services, eliminated coverage of residential rehabilitation. (Request, pp. 7, 9). The Petitioner describes the different versions of the statutory definition of habilitative services in section 1367.005 as enacted by AB 1453 and as amended by SB 43, relative to the federal definition, which is consistent with SB 43's definition of habilitative services. (Request, pp. 8–9). The Petitioner also asserts that the 2012 and 2014 EOCs define "rehabilitative services," as shown in an appendix to the Request (Request, p. 9).

The Petitioner's assertions are based on a mistaken understanding of the 2012 and 2014 EOCs and the MHPAEA filing, as described in sections 1–3 of this response. The EHB regulation did not eliminate benefits from the 2012 or 2014 benchmark plans, nor does the EHB regulation improperly omit residential rehabilitation.

Further, as described in detail in the Department's Initial Statement of Reasons (ISOR) for the EHB regulation, the Department determined it was necessary to add subdivision (d)(12) to the EHB regulation in order to properly implement SB 43.<sup>9</sup> As described on page 2 of this response, SB 43 updated California's benchmark plan to the Kaiser Foundation Health Plan Small Group HMO 30 plan (federal health product identification number 40513CA035) *as this plan was offered during the first quarter of 2014*. (Health and Safety Code section 1367.005). Thus, the Department amended the EHB regulation to reflect the updated benchmark plan, and in light of SB 43's new parameters for habilitative and rehabilitative services. Accordingly, the Department updated the EHB regulation to place PT/OT/ST services in the section regarding habilitative and rehabilitative services as necessary to implement SB 43. As the Department noted in section 1 of this response, the EHB regulation retains language stating that PT/OT/ST is covered in a SNF (EHB regulation, subdivision (d)(12)(A)(iii)). The EHB regulation's description of coverage beyond what the Knox–Keene Act otherwise requires is consistent with the benchmark plan.

5. The EHB Regulation satisfies the Administrative Procedures Act (APA) clarity and consistency standards.

The Petitioner reiterates that the benchmark plan includes medical/surgical residential rehabilitative services. (Request, p. 10). The Petitioner further asserts that subdivision (d)(12) of the EHB regulation violates the clarity standard of the APA by redefining rehabilitative and habilitative services in a manner that omits residential rehabilitation. (Request, p. 7). The Petitioner states that, "[i]t is the emergency regulation's deletion of PT/OT/ST under the SNF category and moving it to the newly created (d)(12) along with the omission of residential rehabilitative services that creates the violation of the clarity standard." (Request, p. 10). The Petitioner also asserts that the EHB regulation's omission of residential rehabilitative services violates the consistency standard in the APA. (Request, pp. 7, 10, 12).

The Petitioner's assertions are based on a mistaken understanding of the 2012 and 2014 EOCs and the MHPAEA filing, as described in the previous sections of the Department's response to the Request. The EHB regulation did not eliminate benefits from the 2012 or 2014 benchmark plans, nor does it improperly omit residential rehabilitation. Therefore, the EHB regulation satisfies the APA clarity and consistency standards.

6. The EHB Rule is not inconsistent with anti-discrimination laws.

The Petitioner emphasizes the importance of medical/surgical residential rehabilitation, and notes that the ACA prohibits plan designs that discriminate based on an individual's expected length of life, disability, degree of medical dependency, quality of life or other health condition. (Request, pp. 1–2, 15). The Petitioner asserts that it is discriminatory to provide coverage for only some types of rehabilitation. (Request, p. 15). The Petitioner acknowledges that, "nothing prevents a plan from offering richer benefits in MH/SUD when compared to medical/surgical [ . . . ]" but indicates that the MHPAEA filing shows that is "not the situation here." (Request, p. 11). The Petitioner states that "[b]y excluding residential rehabilitative services as a medical/surgical benefit, an issuer creates a discriminatory plan design" in violation of ACA section 1557 (regarding nondiscrimination) and 42 C.F.R. section 440.347 (regarding EHB), and the Petitioner asserts the EHB regulation codifies this design. (Request, p. 12).

The Petitioner is mistaken for the reasons described in the Department's June 11, 2019, response to the Petition and the previous sections of this response to the Request. The benchmark plan does not include medical/surgical residential rehabilitation coverage in the manner suggested by the Petitioner. As detailed in section 3 of this response and the Department's June 11, 2019, re-

<sup>9</sup> See EHB Regulation (DMHC Control No. 2016–5191) ISOR, pp. 4–5.

sponse to the Petition, the benchmark plan covers some residential treatment for MH/SUD, but the MHPAEA filing does not indicate that the benchmark plan covered medical/surgical residential treatment. Rather, the MHPAEA filing indicated comparable coverage of in-patient treatment for medical/surgical benefits (e.g., care in a SNF).

Further, while the benchmark plan does not include coverage of medical/surgical rehabilitation in a residential treatment facility as the Petitioner suggests, the Department notes that the benchmark plan and EHB regulation do describe coverage for medical/surgical rehabilitation in other settings. The Department vigorously enforces the Knox–Keene Act to protect consumers’ health care rights, including access to necessary health care services that are covered, and preventing unlawful discrimination.

7. The EHB regulation’s Economic and Fiscal Impact Statements were appropriate and the EHB regulation is not a major regulation.

The Petitioner asserts that the Economic and Fiscal Impact statements for the EHB regulation are false. (Request, p. 12). The Petitioner reiterates her argument that the benchmark plan included medical/surgical residential rehabilitative services, and the EHB regulation eliminated this benefit. (Request, p. 12). The Petitioner concludes that because the EHB regulation allegedly eliminated covered benefits, individuals must now bear the cost of accessing those health care services, meaning the EHB regulation had a large economic impact. (Request, p. 12). The Petitioner cites a California Health Benefits Review Program (CHBRP) report to the Legislature regarding SB 190<sup>10</sup> as evidence of the economic impact of residential rehabilitative services, which the Petitioner estimates to exceed \$50 million. (Request, pp. 13, 14). The Petitioner notes that state or academic publications may substantiate an economic and fiscal impact estimate, and that the CHBRP report is one such publication. (Request, p. 13). The Petitioner’s assertions are based on a mistaken understanding of the 2012 and 2014 EOCs and the MHPAEA filing, as described in sections 1–6 of this response. The Petitioner asserts the EHB regulation eliminated covered benefits, and thus the cost borne by individuals for accessing those health care services should be included as an economic impact of the EHB regulation. However, as described in the previous sections of this response to the Request, the EHB regulation did not eliminate any covered health care benefits. Accordingly, for this reason and the reasons described in the Department’s June 11,

<sup>10</sup> SB 190 (Beall, 2015, *Health care coverage: acquired brain injury*); this bill failed passage.

2019, response to the Petition, the CHBRP report’s estimate of the cost of mandating coverage of certain health care services for acquired brain injury, as proposed by SB 190, is not relevant to the cost impact of the EHB regulation. The Department’s economic and fiscal impact analysis, which concluded that the EHB regulation is not a major regulation, was correct.

8. The EHB regulation is consistent with relevant law regarding EHB.

The Petitioner reiterates her assertion that medical/surgical residential rehabilitative services must be covered as an EHB, for three reasons: because the ACA states rehabilitative services are an EHB, because those services were a covered benefit in the benchmark plan, and because it is discriminatory to exclude those services. (Request, pp. 14–15).

The Petitioner is correct that rehabilitative and habilitative services are one of the broad benefit categories of EHB pursuant to state and federal law. However, a state’s benchmark plan defines coverage within those EHB benefit categories. As described in the Department’s June 11, 2019, response to the Petition, and in this response to the Petitioner’s Request, the EHB regulation accurately describes the benchmark plan coverage beyond what the Knox–Keene Act otherwise requires and the EHB regulation’s silence regarding medical/surgical residential rehabilitative services is not inconsistent with anti-discrimination laws.

CONCLUSION

For the reasons set forth above, the Department affirms its decision to decline in whole the Petition to amend the EHB regulation.

**DISAPPROVAL DECISION**

**DEPARTMENT OF  
FOOD AND AGRICULTURE**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

Printed below is the summary of an Office of Administrative Law disapproval decision. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814–4339, (916) 323–6225 — FAX (916) 323–6826. Please request by OAL file number.

State of California  
Office of Administrative Law

CONCLUSION

In re:  
Department of Food and Agriculture

Regulatory Action:  
Title 03, California Code of Regulations

Amend sections: 2300.1, 2303, 2304, 2308, 2315,  
2318, 2320.2, 2322, 2322.1, 2322.2, 2322.3, 2323

DECISION OF DISAPPROVAL OF  
REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2019-0708-01

OAL Matter Type: Regular Resubmittal (SR)

SUMMARY OF REGULATORY ACTION

The Department of Food and Agriculture (Department) proposed to amend regulations that address fertilizer material labeling, including labeling of agricultural minerals, auxiliary soil and plant substances, commercial fertilizers, soil amendments, specialty fertilizers, and organic input materials. The proposed rulemaking also addresses labeling registration and record keeping and administrative penalties for violations of statutes in the Food and Agricultural Code and regulations in title 3 of the California Code of Regulations (CCR).

DECISION

On July 8, 2019, the Department submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On August 19, 2019, OAL notified the Department of the disapproval of this regulatory action. The reason for the disapproval was that the Department failed to follow California Administrative Procedure Act (APA) procedures by making substantial<sup>1</sup> changes to the proposed regulation text without allowing the public to comment on those changes. The discussion below explains the reasons for OAL’s disapproval decision.

<sup>1</sup> Throughout this decision, references to “substantial” and “substantive” have the same meaning. Similarly, references to “non-substantial,” “not substantive,” and “nonsubstantive” have the same meaning.

OAL disapproved the above-referenced rulemaking action for the foregoing reasons. Any substantive changes that were made to the proposed regulation text subsequent to the first 15-day modified text that were excluded from public comment in the second 15-day notice must be made available for public comment for at least 15 days pursuant to Government Code section 11346.8(c) and CCR, title 1, section 44.

Pursuant to Government Code section 11349.4(a), the Department may resubmit revised regulations and rulemaking documents within 120 days of their receipt of this Decision of Disapproval. A copy of this Decision was emailed to the Department on the date indicated below.

If you have any questions, please contact me at (916) 323-6809.

Date: August 26, 2019

Richard L. Smith  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Karen Ross, Secretary  
Copy: Nick Young

**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# 2019-0710-01  
AIR RESOURCES BOARD  
Amendments to CARB’s Certified Regulatory Program

The California Air Resources Board (CARB) is updating its certified regulatory program to more fully set forth its CEQA review procedures by further specifying notice and comment requirements, exemptions, definitions, and the different procedures that will apply to different types of CARB environmental review.

Title 17  
 ADOPT: 60004.1, 60004.2, 60004.3, 60004.4  
 AMEND: 6000, 60002, 60003, 60004, 60005,  
 60006, 60007  
 Filed 08/21/2019  
 Effective 10/01/2019  
 Agency Contact: Bradley Bechtold (916) 322-6533

File# 2019-0716-03  
**BOARD OF STATE AND COMMUNITY  
 CORRECTIONS**  
 Minimum Standards for Local Detention Facilities —  
 Feminine Hygiene Items

This rulemaking action by the Board of State and Community Corrections updates feminine hygiene product requirements for female inmates held in local detention facilities.

Title 15  
 AMEND: 1265  
 Filed 08/27/2019  
 Effective 10/01/2019  
 Agency Contact: Eloisa Tuitama (916) 445-5073

File# 2019-0710-02  
**DEPARTMENT OF BUSINESS OVERSIGHT**  
 Department of Business Oversight Clean-up  
 Regulations Part A

This change without regulatory effect amends and repeals regulations to revise references to former agencies and statutes, update “authority” and “reference” citations, and delete provisions for which all statutory authority has been repealed.

Title 10  
 AMEND: 1.1, 1.2, 1.1005, 1.1009.5, 1.1010,  
 1.1013, 1.1018, 1.1027, 5.3, 5.3009, 5.3109, 5.5000,  
 10.3, 10.101, 10.111, 10.117, 10.124, 10.126,  
 10.134, 10.136, 10.140.5, 10.143, 10.147, 10.153,  
 10.155.5, 10.157, 10.161.5, 10.162.5, 10.165,  
 10.177, 10.178, 10.182, 10.3000, 10.3100, 10.3101,  
 10.3162, 10.3376, 10.3378, 10.3400, 10.3475,  
 10.3483, 10.3518, 10.3520, 10.3525, 10.3700,  
 10.3752, 10.4351, 10.4360, 10.6000, 10.6001,  
 10.6602, 10.6701, 10.6954, 10.7301, 10.13001,  
 10.13003, 10.13200, 10.13226, 10.13278,  
 10.14100, 10.14126, 10.14180, 10.14183,  
 10.14185, 10.14730, 10.14775, 10.14779,  
 10.14800, 10.15225, 10.15226, 10.15227,  
 10.15626, 10.15627, 10.16000, 10.16001,  
 10.16051, 10.16102, 10.16128, 10.16131,  
 10.16177, 10.16202, 10.19050, 10.19051,  
 10.19052, 10.19100, 10.19102, 10.19103,  
 10.19104, 10.19107, 10.19401, 10.19402,

10.19901, 40.503, 40.600, 40.1300, 40.1703,  
 50.3306, 50.9002, 95.10, 95.25, 95.1010, 95.1020,  
 95.1025  
 REPEAL: 1.1021, 1.1028, 10.6050, 10.6051,  
 10.6052, 10.6053, 10.6054, 10.6055, 10.9101,  
 10.9602, 10.11800, 10.11825, 10.11826, 10.11850,  
 10.11851, 10.11875, 10.11876, 10.14802,  
 10.19053, 10.19054, 10.19056, 10.19060,  
 10.19061, 10.19070, 10.19071, 10.19072,  
 10.19073, 10.19080, 10.19081, 10.19082,  
 10.19083, 10.19084, 10.19085, 10.19090,  
 10.19091, 10.19092, 10.19120, 10.19130,  
 10.19131, 10.19132, 10.19133, 10.19134,  
 10.19135, 10.19140, 10.19141, 10.19142,  
 10.19143, 95.4010, 95.4020, 95.4030  
 Filed 08/21/2019  
 Agency Contact: Mark Dyer (916) 322-1977

File# 2019-0718-04  
**DEPARTMENT OF TRANSPORTATION**  
 Removal of Title 26 Toxics Regulations

This action by the California Department of Transportation removes regulations contained in title 26 of the California Code of Regulations that are duplicative to regulations contained in title 21.

Title 26  
 REPEAL: 21-1401.2, 21-1401.4  
 Filed 08/28/2019  
 Agency Contact: Jeanne Scherer (916) 654-2630

File# 2019-0719-05  
**DIVISION OF WORKERS’ COMPENSATION**  
 Medical Treatment Utilization Schedule (MTUS)

This file-and-print action makes evidence-based updates to the medical treatment utilization schedule (MTUS). This action is exempt from the rulemaking provisions of the Administrative Procedure Act and OAL review pursuant to Labor Code section 5307.27(a).

Title 8  
 AMEND: 9792.23.5, 9792.23.8  
 Filed 08/28/2019  
 Effective 08/11/2019  
 Agency Contact: John Cortes (510) 286-0519

File# 2019-0806-02  
**FAIR POLITICAL PRACTICES COMMISSION**  
 Materiality Standard

This action by the Fair Political Practices Commission amends the process for determining whether or not a governmental decision has a reasonably foreseeable financial effect on an official’s financial interest in a business entity.



Title 2  
ADOPT: 18702.1  
REPEAL: 18702.1  
Filed 08/26/2019  
Effective 09/25/2019  
Agency Contact: Amanda Apostol (916) 324-3854

File# 2019-0718-01  
FISH AND GAME COMMISSION  
Hagfish Traps

In this regulatory action, the Commission amends the regulation to specify that the twenty-five hagfish barrel trap limit is linked to the vessel, as opposed to the permittee. The amendment also establishes the requirement that the hagfish traps be marked with a buoy that identifies the operator's commercial fishing license identification number and the California commercial boat registration number.

Title 14  
AMEND: 180.6  
Filed 08/27/2019  
Effective 10/01/2019  
Agency Contact: Craig Castleton (916) 651-1329

File# 2019-0718-05  
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD  
Ventilation and Personal Protective Equipment  
Requirements for Open-Surface Tank Operations

This change without regulatory effect filing by the Occupational Safety and Health Standards Board corrects a typographical symbol to align with federal requirements for dipping and coating operations.

Title 8  
AMEND: 5154  
Filed 08/26/2019  
Agency Contact: Christina Shupe (916) 274-5721

File# 2019-0716-02  
OFFICE OF STATEWIDE HEALTH PLANNING  
AND DEVELOPMENT  
Health Facility Financial Reporting Method

This action changes the report filing process to require online report submission using the System for Integrated Electronic Reporting and Auditing (SIERA).

Title 22  
ADOPT: 97040.1, 97041.1  
AMEND: 97005, 97018, 97019, 97040, 97041, 97043, 97051  
Filed 08/27/2019  
Effective 10/01/2019  
Agency Contact: Starla Ledbetter (916) 326-3984

File# 2019-0719-02  
PODIATRIC MEDICAL BOARD OF CALIFORNIA  
Title Change for Board of Podiatric Medicine

The Podiatric Medical Board of California (Board) submitted this action without regulatory effect, pursuant to California Code of Regulations, title 1, section 100, to change the Board's name from Board of Podiatric Medicine to Podiatric Medical Board of California in the Board's regulations. The Board's name was changed by the Legislature in A.B. 2457 (Stats.2018, c. 102), effective July 1, 2019.

Title 16  
AMEND: 1399.651, 1399.653, 1399.663, 1399.667, 1399.679, 1399.681, 1399.700, 1399.703, 1399.720  
Filed 08/28/2019  
Agency Contact: Kathleen Cooper (916) 263-0315

File# 2019-0711-02  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
Personal Trading

This action, with respect to misuse of material non-public information by CalPERS employees in connection with personal trading, adopts and amends definitions and makes clarifications of existing provisions to more closely align the existing regulatory scheme with Security Exchange Commission guidelines.

Title 2  
AMEND: 558.1  
Filed 08/22/2019  
Effective 10/01/2019  
Agency Contact: Hoang Tran (888) 225-7377

File# 2019-0717-02  
STATE WATER RESOURCES CONTROL BOARD  
State Wetland Definition, Procedures for Discharges of Dredge or Fill

This action by the State Water Resources Control Board adopts the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State for inclusion in the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

Title 23  
ADOPT: 3013  
Filed 08/28/2019  
Effective 05/28/2020  
Agency Contact: Elizabeth Payne (916) 341-5579

File# 2019-0816-02  
STRUCTURAL PEST CONTROL BOARD  
WDO Emergency Fee Increase

In this emergency rulemaking, the Structural Pest Control Board is increasing the filing fee for each property inspected or upon which work was completed pursuant to Business and Professions Code section 8518 from \$3.00 to \$4.00.

Title 16  
AMEND: 1997  
Filed 08/22/2019  
Effective 08/22/2019  
Agency Contact: David Skelton (916) 561-8722

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

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