



California Regulatory Notice Register

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PROPOSED ACTION ON REGULATIONS

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Conflict-of-Interest Code — Notice File Number Z2019-1008-02 1383

Amendment

State Agency:

- Franchise Tax Board
- Department of Insurance

Multi-County:

- Loma Prieta Joint Union Elementary School District

Adoption

Multi-County:

- Options for Youth San Juan
- Options for Youth Victor Valley

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

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**PROPOSED ACTION ON
REGULATIONS**

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES
AMENDMENT

STATE AGENCY:
Franchise Tax Board
Department of Insurance

MULTI-COUNTY:
Loma Prieta Joint Union Elementary School District

ADOPTION

MULTI-COUNTY:
Options for Youth San Juan
Options for Youth Victor Valley

A written comment period has been established commencing on October 18, 2019 and closing on December 2, 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 her 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 her 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 December 2, 2019. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 324-5854.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **November 21, 2019** at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **November 19, 2019**.

BACKGROUND/OVERVIEW

The Disclose Act (Assembly Bill 249 of 2017, c. 546), repealed and recast numerous advertisement and mass mailing provisions within the Act. Through the advice process, Commission staff has identified Disclose Act interpretation issues that may be addressed on the regulatory level. See discussion and proposed actions below.

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

REGULATORY ACTION

The Commission may consider regulatory proposals to assist in the implementation of, and compliance with, the Disclose Act. At a minimum, Commission staff anticipates proposing the following regulations for amendment or adoption to address the identified issues.

Amend 2 Cal. Code Regs. Section 18435: Definition of Mass Mailing.

Section 84305(e) defines a mass mailing “sender” as the candidate, candidate controlled committee established for an elective office for the controlling candidate, or political party committee who pays for the largest portion of expenditures attributable to the mass mailing which are reportable under the Act.

Next, some confusion has occurred as to the disclosure requirements for a mass mailing that is also an advertisement under the language in Section 84305(a)(2) and (c)(2) applicable to a committee, other than a candidate controlled committee established for an elective office for the controlling candidate or a political party committee.

Lastly, we have received requests from persons qualifying as a Section 82013(c) “major donor committee” as to whether invitations or announcements of a personal and not political nature require the Section 84305 mass mailing disclosures.

To address these issues, Commission staff anticipates amendments to Regulation 18435, including, but not limited to:

- Non-substantive change to correct the “Section 84217” citation to “Section 84216.5” in (b) and designate the existing language as (b)(i).
- Add (b)(ii) to clarify the definition of “sender” under Section 84305(e) to include a candidate or committee who coordinates the expenditure with a person who pays for the communication and does not qualify as a candidate or a committee.
- Add subdivision (d) to clearly state that mass mailing disclosure requirements under Section 84305 do not apply to mailings that are advertisements under Section 84501 and are sent by a committee, other than a candidate controlled committee established for an elective office for the controlling candidate or a political party committee.
- Add paragraph (e), to clarify that a mass mailing does not include mailings sent by a Section 82013(c) “major donor committee” where the mailing is of a personal and not political nature.

Amend 2 Cal. Code Regs. Section 18450.1: Definitions. Advertisement Disclosure.

Staff proposes a non-substantive update in the citation reference, “Section 84501(a)(2)(E),” to “Section

84501(a)(2)(G)” to reflect the amendments to Section 84501(a) by Assembly Bill 2155 of 2018, c. 777.

Adopt 2 Cal. Code Regs. Section 18450.2: Advertisement Authorized and Paid for by a Committee.

Staff proposes language to clarify several separate circumstances whereby a communication is “authorized and paid for by” a committee for purposes of Section 84501. These include where:

- more than one committee pays for the communication;
- the committee coordinates the expenditure for the communication with a person who pays for the communication and does not qualify as a committee.
- where a committee disseminates an electronic media communication with nominal costs (except in the instance where the social media advertisement does not require disclosures under Section 84504.3).
- the committee or its agent makes a payment, promises to make a payment, or incurs an obligation for costs associated with the communication.

Adopt 2 Cal. Code Regs. Section 18450.3: Top Contributor Disclosure for Affiliated Entities.

Staff proposes language to establish that if a top contributor is a committee pursuant to Section 82013 and it qualifies as a top contributor as a result of aggregated contributions from other entities pursuant to Regulation 18215.1, the committee disclosing the top contributor must identify the contributor using the “name of filer” required by Regulation 18428 listed on the contributor’s most recent campaign statement.

Adopt 2 Cal. Code Regs. Section 18450.4: Video and Television Advertisement Disclosure.

Staff proposes language to establish that a disclosure must display for the length of the advertisement where the video or television advertisement is shorter than the required disclosure time applicable to the advertisement as set forth in Sections 84504.1, 84504.4, and 84504.5.

SCOPE

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

FISCAL IMPACT STATEMENT

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

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

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

AUTHORITY

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

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 82041.5, 84305, 84501, 84502, 84503, 84504.1, 84504.4, 84504.5.

CONTACT

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture (Department) adopted Sections 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 in the regulations in Title 3 of the California Code of Regulations pertaining to establishment of sampling procedures for laboratory testing of Industrial Hemp as an emergency action, which was effective on June 10, 2019. The Department proposes to continue the regulation, as amended, to complete the amendment process by submission of a Certificate of Compliance no later than December 9, 2019.

This notice is being provided to in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to 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 regulation to the Department. Comments may be submitted by USPS, FAX, or email. The written comments must be received by the board at its office by December 2, 2019. The Department will consider only comments received at the Department office by that time or postmarked no later than December 2, 2019. Submit comments to:

Dean Kelch Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law requires the Secretary to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction as required (Section 81006, Food and Agricultural Code (FAC)).

The proposed adoption of Sections 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 will establish timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction as required in FAC, Section 81006.

The Department has considered other possible related regulations in this area, and that these are the only regulations dealing in this subject area, and the Department is the only State agency that can implement this proposed regulation. As required by Government Code Section 11346.5(a)(3)(D), the Department has conduct-

ed an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION

Establishment of timeframes, procedures, methods, and confirmation for industrial hemp sampling laboratory testing, harvest, and destruction will allow commercial cultivation of industrial hemp to be harvested in California and allow the growth of the industrial hemp industry in California. According to Vote Hemp, the United States has seen significant growth in acreage of industrial hemp cultivation: 9,770 acres of industrial hemp were grown in 2016; 25,713 acres were grown in 2017 and 78,176 acres were grown in 2018.

Currently, most hemp products processed and manufactured in the United States heavily rely on imported material, according to the Congressional Research Service. Without this regulation, California citizens are unable to participate in this emerging industry.

ADOPTED TEXT

This amended regulation action establishes timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, harvest, and destruction. For the purpose of promoting and protecting the agricultural industry in California, existing law provides that before the harvest of each crop, except when industrial hemp is grown by an established agricultural research institution, a registrant that grows industrial hemp shall obtain a laboratory test report indicating the THC levels of a random sampling of the industrial hemp grown.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The hourly rate of the state at an average of \$84.36. These costs will more than likely be offset by the revenue collected by the registrant over one year.

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

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

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

Cost impacts on a representative private person or business: The proposed regulation will require the payment of testing for THC by industrial hemp growers, as required in statute. The cost to test as a grower, approximately \$63 a sample, is reasonable and should be exceeded by revenue collected by the grower or seed breeder over the registration period of one year. The agency is not aware of any additional cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Small Business Determination: The proposed regulation may affect small business.

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

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has made an assessment that the proposed regulation would not likely eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation will allow the growth of the industrial hemp industry in California, with an increase in the number of businesses dedicated to producing hemp and the concomitant increase in jobs.

The proposed regulation will establish sampling procedures, testing laboratories, and testing methods for registered growers and seed breeders. Without sampling procedures, registered growers and seed breeders will not be able to obtain test results. This would limit the amount of domestic hemp available to producers and manufactures and result in higher prices to California consumers due to California not contributing to the domestic hemp supply. The proposed regulation will also allow the growth of the industrial hemp industry in California. This will create jobs and lead to the expansion of California businesses.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered to the proposed regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the 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 proposal described in this notice.

The Department considered taking no action. If no action is taken then sampling procedures, testing laboratories, and testing methods for registered growers and seed breeders of industrial hemp would not be available; this would encourage illegal cultivation of this in demand crop. The Department and counties will not have the resources for regulatory enforcement activities to address illegal cultivation.

AUTHORITY

The Department proposes to adopt Section 4935, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4950, and 4950.1 pursuant to the authority vested by Sections 407, and 81006 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Section 81006 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is:

Dean Kelch Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In his absence, you may contact Rachel Avila at (916) 403-6813. Questions regarding the substance of the proposed regulation should be directed to Rachel Avila.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its

proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 4. CALIFORNIA HORSE RACING BOARD

The California Horse Racing Board (Board/CHRB) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1867.1, Use of Bisphosphonates Prohibited. The proposed regulation will prohibit the administration of bisphosphonates to any horse within a CHRB inclosure and prohibit any licensee from bringing into the inclosure a horse that has been administered a bisphosphonate within the previous six months. The proposed regulation will allow the administration of methylene diphosphonate in combination with radionuclide technetium 99m for nuclear imaging purposes.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, December 12, 2019**, or as soon after that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Cypress, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **December 2, 2019**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, suite 300
Sacramento, CA 95825
Telephone (916) 263-6026
Fax: (916) 263-6022
E-mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19562, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19580 and 19581, Business and Professions Code.

Business and Professions Code sections 19440, 19562, 19580 and 19581 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19440, 19580 and 19581, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this state. Business and Professions Code section 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the state. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof.

Bisphosphonates are a class of bone modifying drugs that have been used to treat specific bone disorders in people. In horses, bisphosphonates are used to treat similar problems, like navicular disease¹. Bisphosphonates, however, inhibit the normal bone repair process so their use has been restricted to horses that are four years or older. In younger horses, bisphosphonate use could lead to disturbed growth and joint development as well as the accumulation of microdamage in the bone tissue. Since 2015 the British Horse Racing Authority has restricted the use of bisphosphonates in horses younger than three-and-a-half years old. The New York State Gaming commission has included bisphosphonates in its list of blood doping agents and has provided that the administration of bisphosphonates to a horse under four years of age is an unacceptable practice due to the high risk of serious injury or death from its effects on bone growth and strength. The proposed addition of Rule 1867.1 would prohibit the use of bisphosphonates in race horses within a CHRB inclosure and prohibit a horse that has been administered a bisphosphonate within the previous six months from being shipped onto a CHRB inclosure. The proposed regulation will allow the administration of methylene diphosphonate in combination with radionuclide technetium 99m for nuclear imaging purposes.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

Subsection 1867.1(a) provides that bisphosphonates may not be administered to any horse within a CHRB inclosure. The Board has specifically prohibited the use of bisphosphonates within the inclosure based on its concerns regarding the potential for use of the drug substances to harm the health and safety of horse and rider. In addition to bisphosphonates' effect on bone growth, the drug substances may mitigate pain. The potential for pain relief with the use of bisphosphonates on young horses could result in race horses with mild injuries continuing to train and race with the increased probability for mild injuries to become catastrophic.

Subsection 1867.1(b) provides that no licensee shall bring into a CHRB inclosure a horse that has been administered a bisphosphonate within the previous six months. This provision is necessary to protect the health and welfare of the horse and rider. Bisphosphonates are a class of bone-modifying drugs that have been used as a supplemental treatment for specific bone disorders in

human medicine. The drugs work specifically at the cellular level and act to block a certain type of bone cell called an osteoclast². Osteoclasts are important in the remodeling of bone because they act to clean up any diseased, weakened or damaged bone before any new bone can be laid down by the osteoblasts³. Bisphosphonates act on damaged bone by shutting down the osteoclast process. The body can lay down bone, just not in a "normal" way. Bisphosphonates inhibit part of the normal remodeling osteogenesis process. It is believed that bisphosphonate use in immature animals could lead to disturbed growth and joint development and the accumulation of microdamage in the bone tissues. Most horses start racing at two years of age and are not fully mature, so the use of bisphosphonates presents the potential for adverse effects in race horses that are still growing. In the extreme, accumulated microdamage could combine and promote bone fracture. Fracture healing may be delayed in horses that sustain a fracture. Disallowing the use of bisphosphonates within the inclosure will have the benefit of allowing any microdamage to heal naturally without the potential effect of the drug on joint development. The clinical duration of bisphosphonates to inhibit normal bone repair is unknown, especially in horses. It is estimated to be six to eight months; however, six months is the best-informed estimate of inhibition of bone repair. Preventing horses that have been treated with bisphosphonates within the previous six months from entering the inclosure will have the benefit of ensuring the animals are not put through the rigors of training and racing before they are fully healed. Additionally, there is evidence that bisphosphonates relieve pain. A horse that does not feel pain will run as if it would without its underlying problems, which may exacerbate any pre-existing conditions, and make the horse prone to further injury when worked to the same extent as a healthy horse. The veterinarian's ability to properly evaluate a horse on race day may also be compromised. The provisions of subsection 1867.1(b) will have the benefit of ensuring the potential pain-relieving effects of bisphosphonates are not masking a horse's true condition. This will help reduce the possibility of further injury to the horse and rider.

Subsection 1867.1(c) allows for the administration of methylene diphosphonate when used in combination with radionuclide technetium 99m for nuclear imaging purposes. Methylene diphosphonate is a chemical compound (methylene bound to two phosphonate groups) used together with the radionuclide technetium 99 (Tc

¹ Navicular disease in the horse is a group of related conditions affecting the navicular bone and associated structures in the foot. It most commonly describes an inflammation or degeneration of the navicular bone and its surrounding tissues, usually on the front feet. It can lead to significant lameness.

² Osteoclast: large cells that dissolve the bone. Osteoclasts come from the bone marrow and are related to white blood cells. They are formed from two or more cells that fuse together. Osteoclasts absorb bone tissue during growth and healing.

³ Osteoblast: cells that form new bone.

99m) to locate areas of bone abnormalities. The substance is administered intravenously, and skeletal uptake occurs. The substance has a short half-life of approximately six hours and does not remain in the body long. Nuclear imaging produces images by detecting radiation from different parts of the body after a radioactive tracer material is administered. Subsection 1867.1(c) will allow the horse the benefit of a commonly used medical diagnostic procedure. The Board has determined it is necessary to allow the administration of methylene diphosphonate for the health and safety of the horse.

CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendment, the Board has conducted an evaluation for any related regulations and has determined that Rule 1867.1 is the only regulation dealing with the use of bisphosphonates in race horses. Therefore, the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the State: none.

The Board has made an initial determination that the proposed addition of Rule 1867.1 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The results of the Board’s Economic Impact Assessment as required by Government Code section 11346.3(b) are as follows: The adoption of the proposed

addition of Rule 1867.1 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; (4) increase or decrease investment in California; or (5) benefit the state’s environment. The proposed addition of Rule 1867.1 impacts individuals who violate the Board’s medication regulations. In making the determination that the proposed addition of Rule 1867.1 will not have an adverse economic impact, the Board looked at the number of licensed trainers who might be affected and compared it to the total number of persons who hold CHRB occupational licenses. The individuals impacted are licensed horse trainers. The CHRB has 18,874 licensees; of that number, 626 persons hold CHRB trainer licenses. Penalties for medication violations act as deterrents. This is demonstrated by the number of trainers who have had 1843 violations in fiscal 2018/2019. A total of 59 out of the 626 licensed trainers have received a fine for an 1843 violation⁴. The proposed addition of Rule 1867.1 promotes the health and safety of race horses, which is jeopardized if they workout or race when they are not sound due to the administration of unauthorized medications or drug substances. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory. Ensuring that horses entered to race are sound also promotes jockey/driver safety. Accordingly, the proposed regulation benefits the health and welfare of California residents and improves worker safety. Sound, healthy horses result in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact for the industry.

Effect on small businesses: none. The proposal to add Rule 1867.1 does not affect small businesses because horse racing is not a small business under Government Code section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), 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, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and

⁴ Rule 1843, Medication, Drugs and Other Substances, provides that no drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided by these rules.

equally as effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, suite 300
Sacramento, CA 95825
Telephone (916) 263-6026
Fax: (916) 263-6022
E-mail: haroldc@chrh.ca.gov

If the person named above is not available, interested parties may contact:

Amanda Drummond, Manager
Policy and Regulations
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices 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 regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based, may be obtained by contacting Harold Coburn, or the alternative contact persons at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the

date on which the Board adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

NOTICE IS HEREBY GIVEN that the Bureau for Private Postsecondary Education (hereinafter "Bureau"), Department of Consumer Affairs, is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 1625 N. Market Blvd. Ste. N-102, Sacramento, CA 95834, at 10:00 a.m., or as soon as practicable thereafter, on Tuesday, December 3, 2019. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office by December 2, 2019, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested in Section 94877 of the Education Code, and to

implement, interpret or make specific Sections 94874 and 94818 of said Code, the Bureau is considering changes to Division 7.5 of Title 5 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Section 94874 of the Education Code (Code) provides categories of institutions exempt from the California Private Postsecondary Education Act of 2009 (Code section 94800 et seq.). Specifically, subsection (a) exempts, “[a]n institution that offers solely avocational or recreational educational programs.” Section 94818 of the Code provides that “[a]vocational education’ means education offered for the purpose of personal entertainment, pleasure, or enjoyment.” Section 70000(k) of Title 5 of the California Code of Regulations provides a definition for “[e]ducation offered for purpose of personal entertainment, pleasure or enjoyment” and thus clarifies and makes specific the statutory definition of “avocational education.” The definition in section 70000(k) specifies that avocational education does *not* include education that assists a student to learn English as a second language, unless that education is for an “intensive English program that is touristic in nature, and provides for transportation, housing, and cultural and recreational activities.” The definition also specifies that avocational education does *not* include education that assists students to “enhance language skills for any business or occupational purpose.”

At the time the current regulations were promulgated, there was minimal federal oversight of Intensive English Language Programs (IELP). Therefore, to provide needed oversight of these programs, the regulations included IELPs within the Bureau’s jurisdiction. IELPs, however, are unlike traditional private postsecondary educational programs the Bureau regulates. They do not offer diplomas or degrees, and they are more akin to exempt programs offered for personal entertainment, pleasure or enjoyment. Moreover, over the past several years, the federal government has provided substantial oversight of IELPs. Given the differences in these programs and the current level of federal oversight, the Bureau is proposing to amend the definition in 70000(k) so that if institutions solely offering IELP programs meet a specific set of requirements, they would be exempt from the Bureau’s oversight.

Specifically, the regulatory proposal is as follows:

1. Re–number section 70000(k) to section 70000(k)(1) of Title 5 of the California Code of Regulations

This renumbers this subsection and places the existing paragraph introducing the meaning of “[e]ducation offered for purpose of personal entertainment, pleasure or enjoyment” under the number (1). It adds “the” between “for” and “purpose” to match the phrase in statute. It also adds “or is” for grammatical clarity. The introduction ends with the sentence, “It does not include education that in any manner does any of the following:”

2. Adopt section 70000(k)(1)(A) of Title 5 of the California Code of Regulations

This takes the language from the current section 70000(k)(3) (“Assists a student to prepare for a test administered in conjunction with any undergraduate or graduate educational program”) and moves it to this new subsection (A) and adds new language to make clear that education that assists students to prepare for any admission tests, including the TOEFL® (which is the brand name of a test of English as a foreign language), are not avocational. This subsection also exempts education that prepares students for tests for measuring English proficiency for the purposes of placing a student within an IELP.

3. Adopt section 70000(k)(1)(B) of Title 5 of the California Code of Regulations

With minor modifications, this takes the language from the current section 70000(k)(4) (“Is an educational service offered to lead to any employment in any occupation or job title”) and moves it to this new subsection (B).

4. Adopt section 70000(k)(1)(C) of Title 5 of the California Code of Regulations

This takes the language from the current section 70000(k)(5) (“Is represented to enable a student to use already existing knowledge, training, or skills in the pursuit of an occupation or to develop new or enhance existing knowledge, training, or skills in connection with any occupation or job title”) and moves it to this new subsection (C) with minor modifications.

5. Repeal section 70000(k)(1) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(1).

6. Repeal section 70000(k)(2) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(2).

7. Repeal section 70000(k)(2)(A) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(2)(A).

8. Repeal section 70000(k)(2)(B) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(2)(B).

9. Adopt section 70000(k)(2) of Title 5 of the California Code of Regulations

This subsection provides that institutions providing education to facilitate developing learning skills or language proficiency to assist in learning English as a second language will be considered “Education offered for the purpose of personal entertainment, pleasure or enjoyment” if it meets specific requirements.

10. Adopt section 70000(k)(2)(A) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to be accredited by an accrediting agency recognized by the United States Department of Education.

11. Adopt section 70000(k)(2)(B) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to maintain a minimum refund policy.

12. Adopt section 70000(k)(2)(C) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to be certified by the Student and Exchange Visitor Program.

13. Adopt section 70000(k)(2)(D) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to provide only specific types of exempt instruction.

14. Adopt section 70000(k)(2)(E) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not receive financial aid.

15. Adopt section 70000(k)(2)(F) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not provide financial aid.

16. Adopt section 70000(k)(2)(G) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not provide loans to students.

17. Adopt section 70000(k)(2)(H) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not facilitate or broker any loans for students.

18. Adopt section 70000(k)(2)(I) of Title 5 of the California Code of Regulations

This provides that no degree-granting programs are offered at the institutions identified in section 70000(k)(2).

19. Adopt section 70000(k)(2)(J) of Title 5 of the California Code of Regulations

This provides the institutions identified in section 70000(k)(2) do not promise or represent that courses lead to employment.

20. Adopt section 70000(k)(2)(K) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) cannot represent that they are approved by the Bureau.

21. Repeal section 70000(k)(3) of Title 5 of the California Code of Regulations

This deletes this subsection.

22. Repeal section 70000(k)(4) of Title 5 of the California Code of Regulations

This deletes this subsection.

23. Repeal section 70000(k)(5) of Title 5 of the California Code of Regulations

This deletes this subsection.

ANTICIPATED BENEFITS OF THE PROPOSAL

IELPs are not generally considered traditional post-secondary educational programs. They generally do not offer degrees or diplomas, just certificates showing how much time has been completed in the immersive study. Their beginning and ending enrollment is generally based on how long a student wants to spend learning the language, not the program itself. In these ways, IELPs are more akin to educational programs offered for personal entertainment, pleasure or enjoyment. Moreover, when the regulations were originally created, federal oversight of IELPs was minimal. Today, the federal government has enacted numerous new regulations and oversight of these programs, and the Bureau’s oversight is redundant. The Bureau has limited resources and it benefits everyone for the Bureau to use its resources where they can best serve the people of the State of California by no longer overseeing certain IELPs that meet the specific requirements set forth in the proposed regulations.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

INCORPORATION BY REFERENCE

There are no documents proposed to be incorporated by reference.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding: The Bureau has determined that the costs of lost annual fees and other fees, such as renewal fees, will be offset by the savings from no longer having to review reports and fact sheets from these institutions, conduct required compliance inspections, as well as other administrative requirements involved in the Bureau's oversight.

Specifically, the Bureau estimates that the proposed regulations would impact 11 known institutions by making them exempt. Based on the Bureau's most recent revenue data, these institutions paid approximately \$56,800 in annual institution fees and \$5,500 in renewal fees every five years. If these institutions opt to be recognized under the Bureau's exempt status, these institutions would be required to pay the Bureau \$250 every two years, which results in revenue of \$2,750 every two years. As a result, the Bureau anticipates a loss between \$54,000 to \$60,000 in annual institution and registration fee revenue per year.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 175000–17630 Require Reimbursement: None.

Business Impact: This regulation will not have a significant adverse economic impact on businesses. The proposal would make a specific subset of institutions exempt from Bureau oversight. Thus, these institutions would no longer be required to submit annual reports, renewals, or produce student performance fact sheets thereby saving the particular institutions money.

Impacts on Jobs/New Businesses: None.

Cost Impact on Representative Private Person or Business: The institutions that qualify for this exemp-

tion will save money which would have otherwise been required to pay fees and meet Bureau requirements.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses to the extent that an institution qualifies as both a small business and for the exemption. Such institutions will save money which it would otherwise have been required to pay for regulatory fees to the Bureau.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

IELPs will no longer be subject to oversight from the Bureau as long as they maintain the regulatory requirements for the exemption. This will save these institutions resources, including time and money, that have been required to be used to meet the various requirements set forth by the Act and division which comprise the laws overseeing private postsecondary education in California. Additionally, the Bureau will be able to use its resources to oversee other institutions, which is a benefit to the health and welfare of California residents by allowing the Bureau to focus its resources on traditional postsecondary institutions that grant diplomas and/or degrees and enroll tens of thousands of students annually, rather than programs designed for hundreds of international tourist/students, and programs that are bought by the hour and not by completing a course of study.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

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

INITIAL STATEMENT OF
REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau for Private Postsecondary Education, P.O. Box 980818, West Sacramento, CA 95798-0818.

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

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

You can obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name:

Yvette Johnson

Address:

P.O. Box 980818
West Sacramento, CA 95798-0818

Telephone Number:

(916) 431-6915

Fax Number:

(916) 263-1897

E-Mail Address:

Yvette.Johnson@dca.ca.gov

The backup contact person is:

Name:

Leeza Rifredi

Address:

P.O. Box 980818
West Sacramento, CA 95798-0818

Telephone Number:

(916) 431-6908

Fax Number:

(916) 263-1897

E-Mail Address:

Leeza.Rifredi@dca.ca.gov

Website Access: Materials regarding this proposal can be found at <http://bppe.ca.gov/>.

**TITLE 8. DIVISION
OF OCCUPATIONAL
SAFETY AND HEALTH**

Subject: Pressure Vessel Fees

Division 1. Department of Industrial Relations

Chapter 3.2. California Occupational Safety and Health Regulations

Subchapter 2. Regulations of the Division of Occupational Safety and Health

Article 5. Boiler and Tank Permit and Inspection Fee Schedule

Section 344. Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks

Section 344.1. Air Tank, Liquefied Petroleum Gas (L.P.G.), and Boiler Inspection Fees.

Section 344.2. Boiler, Tank and Resale Inspection Reports and Permits to Operate.

The Department of Industrial Relations, Division of Occupational Safety and Health (“the Division”) is proposing to permanently amend sections 344, 344.1 and 344.2 of title 8 of the California Code of Regulations¹ to take the action described in the Informative Digest/Policy Statement Overview (hereinafter “the Proposed Rulemaking”), which includes increasing most pressure vessel-related inspection and permitting fees from their pre-emergency regulation amount. The Proposed Rulemaking was adopted by the Division as emergency regulations, pursuant to Labor Code, section 7721, subdivision (e), effective November 15, 2018. The purpose of the Proposed Rulemaking is to codify the emergency regulations as regular, non-emergency regulations after considering all public comments and recommendations.

¹ Unless otherwise specified, all references are to sections of the California Code of Regulations, title 8.

PUBLIC HEARING

The Division will hold a hearing to receive public comments on the Proposed Rulemaking on:

December 2, 2019

10:00 a.m. to 3:00 p.m., with a noon recess

Elihu Harris State Building, 2nd Floor, Room 2

1515 Clay Street, Oakland, California, 94612

At the hearing, any person interested may present statements or arguments, orally or in writing, relevant to the Proposed Rulemaking. The Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written comments.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or at 3:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for persons with disabilities are available upon request. Please contact the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance. Accommodation requests should be made as soon as possible. Requests for an assistive-listening system or communication access real-time translation should be made no later than five (5) days before the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Proposed Rulemaking by mail or personal delivery to:

Division of Occupational Safety and Health

Legal Unit

Pressure Vessel Fees Comments

Attn: Denise M. Cardoso, Staff Counsel

1515 Clay Street, Suite 1901

Oakland, CA 94612

Written comments also may be sent to Denise M. Cardoso via e-mail to dcardoso@dir.ca.gov. Please put the words "Pressure Vessel Fees Comment" in the subject line of your e-mail for ease of reference.

To be considered, written comments must be received by the Division at its office no later than 11:59 p.m. on December 2, 2019, or must be received by the Division at the hearing. **The official record of the rulemaking proceeding will be closed at 11:59 p.m. on December 2, 2019.** The Division will consider only comments received by that time.

The Division may thereafter adopt the Proposed Rulemaking substantially as described below or may modify it if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to the Proposed Rulemaking or who have requested notification of any proposed changes.

AUTHORITY AND REFERENCE

Labor Code sections 59, 60.5, subdivision (c), and 7721 authorize the Division to adopt regulations governing the assessment of fees for inspections performed by Division safety engineers for shop, field, and resale inspection of tanks and boilers and for the issuance of permits for the operation of such pressurized tanks, vessels and boilers. The Proposed Rulemaking implements, interprets and makes specific section 7721 of the Labor Code governing the assessment of such fees.

Section 344, of Title 8, California Code of Regulations

Authority cited: Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code. Reference: Sections 7650, 7721, 7725 and 7728, Labor Code.

Section 344.1, of Title 8, California Code of Regulations

Authority cited: Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code. Reference: Sections 7650, 7680, 7681, 7682, 7683, 7721 and 7728, Labor Code.

Section 344.2, of Title 8, California Code of Regulations

Authority cited: Sections 60.5, 6308, 7721 and 7728, Labor Code.

Reference: Sections 7650, 7654, 7680, 7683, 7721 and 7728, Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The Proposed Rulemaking permanently amends sections 344, 344.1 and 344.2 as described below, thereby codifying the emergency regulation that became effective November 15, 2018.

A. EXISTING LAWS RELATED TO PROPOSED RULEMAKING

Labor Code sections 60.5 and 6308 provide that the Division is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law affecting the health and safety of employees in the State of California. The Division is responsible for enforcing the provisions of Labor Code sections 7620 through 7771, which comprise Part 6 of Division 5 of the Labor Code and govern the use of tanks and boilers in California that are not specifically exempted by Labor Code sections 7624 and 7625.² Tank is defined as “any unfired pressure vessel used for storage of air pressure or liquefied petroleum gases and any unfired pressure vessel built according to the rules of any nationally recognized pressure vessel code.” (Lab. Code, section 7622.) Boiler is defined as “any fired or unfired pressure vessel used to generate steam pressure by the application of heat.” (Lab. Code, section 7621.)

The Division’s Pressure Vessel Unit enforces the pressure vessel, tank and boiler safety standards through shop, field, and resale inspections, tank and boiler inspections, and the issuance of permits to operate. (Cal. Code Regs., tit. 8, sections 344, 344.1, and 344.2.) Shop inspection is defined as “the inspection and testing of tanks or boilers, manufactured, or in the process of manufacture, repair, or alteration, in the manufacturer’s shops, or at the jobsite, in accordance with the applicable rules of the respective codes under which they are manufactured.” (Lab. Code, section 7725, subd. (c).) Field inspection is defined as “the inspection and testing of installed tanks or boilers or both tanks and boilers, regardless of location.” (Lab. Code, section 7725, subd. (d).) Resale inspection is defined as “the inspection of boilers or tanks in the possession of a dealer or vendor at the request of a user who contem-

plates the purchase thereof.” (Lab. Code, section 7725, subd. (e).)

No tank or boiler shall be operated unless a permit for its operation has been issued by, or on behalf of, the Division. (Lab. Code, section 7680.) The Division’s Pressure Vessel Unit conducts regular inspections of such equipment prior to issuing a permit to operate air tanks, liquefied petroleum gas (L.P.G.) tanks and boilers. (Lab. Code, sections 7681–7683.) Certified inspectors who are certified by the Division and employed by a county, city, insurer or employer to inspect the employer’s tanks and boilers also may perform such inspections. (Lab. Code, section 7650.) The Division is responsible for issuing permits to operate tanks and boilers based on inspection reports received from qualified safety engineers and certified inspectors showing compliance with all applicable statutes and regulations. (Lab. Code, sections 7680–7683.)

Generally, permits for unfired L.P.G. tanks are valid for 3 years and other unfired air tanks are valid for 5 years. (Cal. Code Regs., tit. 8, section 462, subd. (a), and 470.) Permits for fired boilers are valid generally for 12 months, except for specified petroleum, chemical and power generating facilities that may obtain permits for longer periods after meeting specified conditions. (Cal. Code Regs., tit. 8, sections 770–771.)

The owner/operator of a tank or boiler may request the Division to inspect and issue a permit to operate the equipment, or may have the inspection performed by one of the certified inspectors listed in Labor Code section 7650. The Division is authorized to charge fees for conducting inspections, providing consultations, conducting surveys, audits and other activities required or related to meeting national standards for safe design and construction of tanks and boilers, and for processing permit applications, and for field consultations. (Lab. Code, section 7721.) Whenever the inspection to operate a pressurized air tank, L.P.G. or boiler is performed by a certified inspector at a private, non-governmental businesses, the Division may charge a fee to review the inspection report and issue a permit to operate (Lab. Code, section 7721, subd. (b)).

Labor Code section 7721 authorizes the Division to fix collect fees for shop, field, and resale inspections, the permitting of tanks and boilers, and other services rendered. All fees promulgated under sections 7720 through 7728 must cover the Division’s costs in performing its statutory duties, including administrative costs.

Effective November 15, 2018, sections 344, 344.1, and 344.2 were amended via emergency rulemaking as described below under the section titled “Proposed Amendments to Existing Regulations.” The emergency

² Exempted tanks are (a) those under the jurisdiction or inspection of the federal government, (b) air pressure tanks used in household domestic services, (c) tanks of 1 1/2 cubic feet or less not subject to a pressure of more than 150 pounds per square inch, (d) air pressure tanks supplied with air by the same air compressor which supplies air for the brakes of any motor vehicle or street car under the jurisdiction of the federal Department of Transportation or the California Highway Patrol, and (e) tanks not subject to an internal or external pressure or [of] more than 15 pounds per square inch, irrespective of size. (Lab. Code, section 7624.) Exempted steam boilers are (a) those under the jurisdiction or inspection of the federal government, boilers operated by employers not subject to Division 4 of the Labor Code (sections 3201 et seq.), (b) boilers on which pressure does not exceed 15 pounds per square inch, and (c) boilers on automobiles and road motor vehicles. (Lab. Code, section 7625.)

regulations currently in effect made the following amendments:

1. Section 344: increased the hourly inspection rate from \$135.00 to \$150.00, and deleted subsections (a)(1), (b)(1), (b)(2) and (b)(3);
2. Section 344.1: decreased the hourly fee amount charged for field permit inspections from \$160.00 to \$150.00, deleted subsection (a)(1), separated subsection (a) into subsections (a), (b) and (c), and changed subsection (b) to subsection (d); and
3. Section 344.2: increased the permit to operate fee from \$15.00 to \$45.00, and deleted superfluous language under subsections (a), (b) and (c).

The Proposed Rulemaking would codify the emergency regulations as regular, non-emergency regulations. The Proposed Rulemaking seeks to adopt these amendments on a permanent basis.

PROPOSED AMENDMENTS TO EXISTING
REGULATIONS PRIOR TO NOVEMBER 15, 2018
EMERGENCY REGULATIONS

Section 344. Shop and Resale Inspection Fees, Consultation and Audit Fees, Boilers and Tanks.

Purpose. The purpose for the Proposed Rulemaking is to permanently increase the hourly fee under subsection (a) from \$135.00 to \$150.00. Section 344 applies to all shop inspections, field erection and resale inspections, consultations, surveys, audits, and other reviews and activities required or related to American Society of Mechanical Engineers (ASME) Code or other national standards concerning the design of boilers or pressure vessels or for evaluating a fabricator’s plant facilities when requested by entities desiring these services. Section 344 sets out the hourly inspection fee amounts, rules governing how inspection and travel time is charged, conditions under which a penalty for late payment of fees may be assessed and the penalty amount, and the basis and amount for expenses to be charged by the Division when Division inspectors are requested to inspect pressure vessels, tanks, boilers, parts of tanks and boilers and nuclear components.

The Proposed Rulemaking makes the following changes to section 344:

Title. The Proposed Rulemaking would permanently amend the title of section 344 from “Shop and Resale Inspection Fee Consultation and Audit Fees, Boilers and Tanks” to “Shop, Field and Resale Inspection Program Fees” to more accurately describe the regulation’s subject matter.

Subsection (a). The Proposed Rulemaking would permanently increase the hourly rate for services rendered by the Division under subsection (a) from \$135.00 to \$150.00 per hour. In addition, the Proposed

Rulemaking would permanently delete the heightened fee for inspections requested to be conducted after 5 p.m. on Monday through Friday, and at any hour on Saturday, Sunday or on any State holiday because the Division anticipates that the combined proposed fee modifications to sections 344, 344.1 and 344.2 will achieve full cost recovery of the pressure vessel program. The Division included all expenditures when calculating the proposed fee modifications.

The Proposed Rulemaking also would permanently (1) delete the terms “or any part thereof” after the hourly fee amount, and insert at the end of the subsection the sentence, “Time shall be billed in quarter-hour increments, rounded up to the nearest quarter hour” for clarity; (2) insert the terms “all work performed in connection with” before the terms “all shop, field erection and resale inspections . . .” to clarify that the fee applies to all work related to the services specified therein, including, for example, travel and research; and (3) insert the term “and” between the terms “boilers, and nuclear” for clarity.

Subsection (a)(1). The Proposed Rulemaking would permanently delete subsection (a)(1) because the combined proposed fee modifications to sections 344, 344.1 and 344.2 stand to achieve full cost recovery to the pressure vessel program. The proposed modified fees incorporate travel time as an expenditure.

Subsection (b). The Proposed Rulemaking would permanently (1) change “qualified engineers” to “a qualified safety engineer employed by the division” to ensure consistency with Labor Code, section 7650; and (2) delete the last sentence, and combine the content therein into the first sentence for brevity and clarity.

Subsections (c), (c)(1), (c)(2), and (c)(3). The Proposed Rulemaking would permanently delete subsections (c), (c)(1), (c)(2), and (c)(3) because the proposed fee modifications incorporate the expenses addressed therein and render these subsections unnecessary.

Note: Authority cited. Permanently include a reference to Labor Code section 7728 under “Note: Authority cited” because that statute vests the Division with the authority to charge a penalty for late payment of fees.

Reference. Permanently insert under “Reference” Labor Code sections: (1) 7650 because it defines the term “qualified safety engineer” referenced in section 344; and (2) 7725 because it defines the terms “shop inspection,” “field inspection,” and “resale inspection” referenced in section 344.

Necessity. The Division determined that the hourly inspection amount needs to be increased from \$135.00 to \$150.00 to enable the Division to meet the costs it incurs in performing the services described in Part 6, Division 5, of the Labor Code as part of the safety inspections it provides to private sector owners and operators of such equipment. (See Appendix A.) The Division’s

inspection and permit system protects the public and local workers and employers from possible death and serious injury or illness, and protects local businesses and local government from economic disruption and the use of emergency rescue and police services that would result from an explosion or uncontrolled leak of hot, toxic or otherwise harmful contents in pressure vessels, tanks and boilers. By having sufficient fee revenue to meet the Division's costs of conducting these inspection and permit services, the Division will be able to continue protecting the safety and health of the public, the safety and health of employees working in the vicinity of pressure vessels, tanks and boilers and the uninterrupted commerce of businesses and government operating near such equipment.

Authority and Reference.

Authority cited: Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code.

Labor Code section 60.5, subdivision (b) provides that the Division of Occupational Safety and Health succeeds to and is vested with all of the powers, duties, purposes, responsibility, and jurisdiction of the Division of Industrial Safety.

Labor Code section 6308, subdivision (a) provides that in enforcing occupational safety and health standards and orders and special orders, the Division may:

[d]eclare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

Labor Code section 7721, subdivision (a) expressly provides:

The division shall fix and collect fees for the shop, field, and resale inspection of tanks and boilers and for consultations, surveys, audits, and other activities required or related to national standards concerning the design or construction of boilers or pressure vessels or for evaluating fabricator's plant facilities when these services are requested of the division by entities desiring these services. The division shall fix and collect the fees for the inspection of pressure vessels by a division safety engineer. The division may charge an additional fee for necessary subsequent inspections to determine if applicable safety orders have been complied with.

Labor Code section 7721, subdivision (b) provides that "[t]he division shall charge a fee for processing a permit."

Labor Code section 7721, subdivision (c) provides that "[t]he division shall fix and collect fees for field consultations regarding pressure vessels."

Labor Code section 7721, subdivision (d) provides that "[w]henever a person owning or having the custody, management, or operation of a pressure vessel fails to pay the fees required under this chapter within 60 days after notification, he or she shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of the fee."

Labor Code section 7721, subdivision (e) provides that the fees authorized under Labor Code section 7721 "shall be in amounts sufficient to cover the direct and indirect costs of the division for administering" the Division's pressure vessel program, and be embodied in regulations.

Labor Code section 7722 requires the division to "establish criteria upon which fee charges are based . . .", and to deposit such fees collected in the Pressure Vessel Account, which shall be created and used for the administration of the division pressure vessel safety program.

Labor Code 7728 provides:

Whenever an owner or user of any apparatus or equipment fails to pay the fees required under this chapter within 60 days after notification, said owner or user shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of such fee. For the purposes of this section, the date of the invoice shall be considered the date of notification.

Reference: Sections 7650, 7721, 7725 and 7728, Labor Code.

Labor Code section 7650 states that required inspections "shall be made either by qualified safety engineers employed by the division or by certified inspectors; provided, however, that shop inspections shall be made by the division, acting through its qualified safety engineers when request therefor is made by any manufacturer of tanks or boilers." Subdivision (b) of section 7650 defines a "qualified safety engineer" as "one who is qualified to make inspections or examinations of boilers or tanks according to the rules under which the vessel is constructed" and provides that "[s]uch qualification is to be determined by a written examination prescribed by the division."

Labor Code section 7725, subdivision (a) defines "small tank" to mean "any tank 1,200 gallons water capacity or less"; subdivision (b) defines "large tank" to mean "any tank of more than 1,200 gallons water capacity"; subdivision (c) defines "shop inspection" to mean "the inspection and testing of tanks or boilers, manufactured, or in the process of manufacture, repair, or alteration, in the manufacturer's shops, or at the jobsite, in accordance with the applicable rules of the respective codes under which they are manufactured"; subdivision (d) defines "field inspection" to mean "the inspection and testing of installed tanks or boilers or both tanks and

boilers, regardless of location;” subdivision (e) defines “resale inspection” to mean “the inspection of boilers or tanks in the possession of a dealer or vendor at the request of a user who contemplates the purchase thereof.”

As explained above, Labor Code sections 7721 and 7728 enumerate the various fees the division may fix and collect related to its inspection of pressure vessels, tanks and boilers. Sections 344, 344.1 and 344.2 of title 8 of the California Code of Regulations are regulations that interpret, make specific and implement the provisions of these statutes.

Section 344.1. Air Tank, Liquefied Petroleum Gas (L.P.G.) Tank, and Boiler Inspection Fees.

Purpose. The purpose of the Proposed Rulemaking is to permanently decrease the hourly fee under subsection (a) from \$160.00 to \$150.00. Section 344.1 applies to the hourly fee charged by the Division, including specified travel time, and penalties for late payment, for field permit inspections of air tanks, liquefied petroleum gas (L.P.G.) tanks and boilers performed by its qualified safety engineers when requested by the owner or operator of such equipment.

The Proposed Rulemaking makes the following changes to section 344.1:

Title. The Proposed Rulemaking would permanently amend the title of section 344.1 from “Air Tank, Liquefied Petroleum Gas (L.P.G.), and Boiler Inspection Fees” to “Air Tank, Liquefied Petroleum Gas (L.P.G.) Tank, and Boiler Permit Inspection Program Fees” to more accurately describe the regulation’s subject matter.

Subsection (a). The Proposed Rulemaking would permanently decrease the hourly rate for services rendered by the Division under subsection (a) from \$160.00 to \$150.00 per hour. The proposed decrease would make the hourly fee under section 344.1 consistent with the proposed hourly fee under section 344.

In addition, the Proposed Rulemaking would permanently (1) break subsection (a) into three subsections titled (a), (b), and (c); (2) delete the reference to travel time because anticipated travel expenditures were calculated into the proposed fee modifications; (3) replace the text reading, “for field permit inspection of air tanks, L.P.G. tanks, and boilers by qualified safety engineers employed by the division” with the following text, “for all field, resale and alteration permit inspections of air tanks, liquefied petroleum gas (L.P.G.) tanks, and boilers performed by a qualified safety engineers employed by the division” for clarity; (4) insert the terms “all work performed in connection with all” before the terms “field, resale and alteration permit inspection . . .” to clarify that the fee applies to all work related to the services specified therein, including, for example, travel and research; and (5) delete the terms

“or any part thereof” after the hourly fee amount, and insert at the end of the subsection the sentence, “Time shall be billed in quarter-hour increments, rounded up to the nearest quarter hour” for clarity.

New subsection (b). The Proposed Rulemaking would permanently (1) insert the \$150 proposed fee amount and rephrase the sentence structure for clarity; (2) replace the term “subsequent” with “all follow-up” for clarity and consistency with new subsection (c); (3) delete the term “consultation” and specify the stated fee only applies to follow-up inspections where safety requirements have not been complied with within 15 days of the date shown on the preliminary order; (4) insert the terms “all work performed in connection with” before “all follow-up inspections” to clarify that the fee applies to all work related to the services specified therein, including, for example, travel and research; and (5) insert at the end of the subsection the sentence, “Time shall be billed in quarter-hour increments, rounded up to the nearest quarter hour” for clarity.

New subsection (c). The Proposed Rulemaking would permanently remove the capitalization from words for consistency with the balance of the regulations, and insert the terms “is” and “of such compliance” for clarity.

Subsection (a)(1). The Proposed Rulemaking would permanently delete subsection (a)(1) because the combined proposed fee modifications to sections 344 to 344.2 stand to achieve full cost recovery to the program. The proposed modified fees incorporate travel time as an expenditure.

Subsection (b). The Proposed Rulemaking would permanently renumber subsection (b) to new subsection (d) and rephrase the sentence structure for clarity and consistency with the balance of the regulation.

Note: Authority cited. Permanently insert under “Note: Authority cited” section 7728 because it vests the Division with the authority to charge a penalty for late payment.

Reference. Permanently insert under “Reference” Labor Code sections: (1) 7650 because it defines the term “qualified safety engineer” referenced in section 344.1; (2) 7680 because it sets forth the permit mandate referenced in section 344.1; (3) 7681 because it sets forth the permit inspection of tanks mandate referenced in section 344.1; (4) 7682 because it sets forth the permit inspection of boilers mandate referenced in section 344.1; and (5) 7683 because it sets forth the permit requirements and specifications referenced in section 344.1.

Necessity. The Division anticipates that the combined proposed fee modifications to sections 344, 344.1 and 344.2 stand to achieve full cost recovery to the pressure vessel program as set forth in [Appendix A](#). Further,

the proposed decrease is necessary to make the hourly fee under section 344.1 consistent with the proposed hourly fee under section 344 for ease of administration.

Authority and Reference.

Authority cited: Sections 60.5, 6308, 7721, 7722 and 7728, Labor Code.

Reference: Sections 7650, 7680, 7681, 7682, 7683, 7721 and 7728, Labor Code.

The reasons explained above under the Authority and Reference for section 344 with respect to Labor Code, sections 60.5, 6308, 7650, 7721, 7722, and 7728 apply equally to section 344.1.

Labor Code section 7680 states “[n]o tank or boiler shall be operated unless a permit for its operation has been issued by or in behalf of the division.”

Labor Code section 7681, subdivision (a) requires the Division to “inspect or cause to be inspected each installed tank at least every five years” except for those tanks expressly exempted under subdivision (b). Subdivision (b) exempts from inspection:

Any air pressure tank which contains 25 cubic feet or less and is not subject to pressure of more than 150 pounds per square inch and any liquefied petroleum gas tank used for storage, except a tank used for dispensing purposes as part of a dispensing unit, which contains 575 gallons or less shall be inspected or caused to be inspected by the division when the tank is initially placed into service if the tank is constructed, inspected and stamped in compliance with the American Society of Mechanical Engineers (ASME) Code, or the design, material, and construction of the tank is approved by the division as equivalent to the ASME Code.

Labor Code section 7682 requires the Division to “inspect or cause to be inspected each installed fired boiler internally and externally at least every year” but allows the Division to “grant extensions to permit the interval between internal inspections to be increased to a maximum interval of 36 months where operating experience and design of the boiler has demonstrated to the satisfaction of the division that equivalent safety will be maintained.” For other classes of boilers, section 7682 requires the Division to “establish internal inspection intervals which will ensure the safety of people working in the vicinity of the boiler,” while considering factors such as the design and construction of the boilers and the conditions under which they operate. Section 7682 also requires external inspections of all boilers at the time of the internal inspection and at any other intervals deemed necessary by the Division.

Labor Code section 7683, subdivision (a) provides that if a tank or boiler is found to be in a safe condition of

operation, the Division shall issue a permit for its operation.

Permits for tanks not specified in subdivision (b) of section 7681 expire after five years unless otherwise exempted. (Lab. Code, section 7683, subd. (b).)

Permits for tanks specified in subdivision (b) of Section 7681 remain in effect as long as the tank is in compliance with the law; however, a “new inspection and permit for operation shall be required whenever there is a change in ownership and permanent location of the tank or there is an alteration or change in the tank which affects the tank’s safety.” (Lab. Code, section 7683, subd. (c).)

Permits for boilers shall remain in effect for a period not longer than one year. (Lab. Code, section 7683, subd. (d).)

Section 344.2. Boiler, Tank and Resale Inspection Reports and Permits to Operate.

Purpose. The purpose for the Proposed Rulemaking is to permanently increase the permit fee under subsection (b) from \$15.00 to \$45.00. Section 344.2 applies to the permitting fee charged by the Division to cover the cost of processing each permit to operate, and penalties for late payment.

The Proposed Rulemaking makes the following changes to section 344.2:

Title. The Proposed Rulemaking would permanently amend the title from “Boiler, Tank and Resale Inspection Reports, and Permits to Operate” to “Air Tank, Liquefied Petroleum Gas (L.P.G.) Tank, and Boiler Permit to Operate Program Fees” to more accurately describe the regulation’s subject matter.

Subsection (a). The Proposed Rulemaking would permanently delete the text appearing after the term “division” under subsection (a) to clarify that permits to operate must be issued by or in behalf of the Division pursuant to Labor Code section 7680.

Subsection (b). The Proposed Rulemaking would permanently increase the permit fee under subsection (b) from \$15.00 to \$45.00. In addition, the Proposed Rulemaking would rephrase the sentence structure for brevity and clarity.

Subsection (c). The Proposed Rulemaking would permanently rephrase the sentence structure for clarity, and replace the term “L.P.G.” with “liquefied petroleum gas (L.P.G.).”

Note: Authority cited. Permanently insert under “Note: Authority cited” Labor Code sections: (1) 60.5 because it vests the Division with the authority to implement, interpret and makes specific sections 7680 et seq. relating to the permitting of tanks and boilers; and (2) 7728 because it vests the Division with the authority to charge a penalty for late payment.

Reference. Permanently insert under “Reference” Labor Code sections (1) 7683 because it sets forth the permit requirements and specifications referenced in section 344.2; and (2) 7728 because it sets forth the late payment penalty mandate referenced in section 344.2.

Necessity. The Division determined that it must permanently increase its permit fee under subsection (b) from \$15.00 to \$45.00 to enable the Division to meet its expenses and costs for conducting the inspection and permit services described in Part 6, Division 5, of the Labor Code for the pressure vessel, boiler and tank safety inspections performed for private sector owners and operators of such equipment. (See [Appendix A](#).) As discussed above, the proposed amendment is necessary to allow the Division to adequately fund its Pressure Vessel Unit’s operations and meet its objective of ensuring occupational and public safety.

Authority and Reference.

Authority cited: Sections 60.5, 6308, 7721 and 7728, Labor Code.

Reference: Sections 7650, 7654, 7680, 7683, 7721 and 7728, Labor Code.

The reasons explained above under the Authority and Reference for section 344 and 344.1 with respect to Labor Code, section 60.5, 6308, 7650, 7680, 7683, 7721, and 7728 apply equally to section 344.2.

Labor Code section 7654 requires certified inspector to (1) forward a report of his or her inspection, on prescribed forms, to the Division within twenty-one (21) days after each routine inspection; and (2) report to the Division within twenty-four (24) hours, by telegraph or telephone, serious conditions that would jeopardize the life, limb, or safety of employees discovered during his or her inspection.

B. SUBSTANTIAL DIFFERENCE FROM EXISTING, COMPARABLE FEDERAL REGULATION OR STATUTE

None. The Division has determined that there are no applicable governing federal regulations or statutes.

C. POLICY STATEMENT OVERVIEW

The inspection of pressure vessels, tanks and boilers is necessary to (1) protect the lives, health and safety of the public and of employees working in the vicinity of such equipment; (2) avoid business disruption from any equipment-related explosions; and (3) protect the environment from contamination that could result from uncontrolled emissions or spills of the materials, gases and substances stored in such pressure vessel, tanks and boilers.

The broad objective of the Proposed Rulemaking is to correct the Pressure Vessel Account’s deficit by increasing most pressure vessel-related inspection and permitting fees. At the direction of the Department of Industrial Relations, the Division has evaluated the costs associated with administering its Pressure Vessel Unit, and determined that the Unit is expending significantly more money issuing permits, performing inspections, and providing related services at private, non-governmental businesses than it recoups through the current fees it charges those businesses for permits, inspections, and consultation.³ The Proposed Rulemaking would allow the Division to cover the actual costs in having its qualified safety engineers provide on-site inspection services for the private sector owners/operators using pressure vessels, tanks and boilers in California which must be inspected prior to the issuance of a permit to operate. Without the Proposed Rulemaking, the Division cannot adequately fund its Pressure Vessel Unit’s operations and cannot meet its objective of ensuring occupational and public safety.

D. DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

After conducting an evaluation for any regulations in this area, the Division has concluded that these are the only regulations concerning pressure vessel fees. The Proposed Rulemaking is neither inconsistent nor incompatible with existing state regulations.

OTHER APPLICABLE MATTERS PRESCRIBED BY STATUTE

None. The Division has determined that there are no other matters prescribed by statute applicable to the Division or to the regulations subject to the Proposed Rulemaking.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

None. The Proposed Rulemaking does not impose a mandate on local agencies or school districts. The Division has determined that the Proposed Rulemaking does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with section

³ Government Code section 6103 prohibits the Division from charging fees for inspections or permits for pressure vessels and boilers owned or operated by public entities including the state or any city, county, district or other political subdivision. The costs associated with such inspections by the Division and permits issued to public entities have been funded through revenues received pursuant to Labor Code section 62.5, subdivision (d).

17500) of Division 4 of the Government Code because the Proposed Rulemaking will not require local agencies or school districts to incur additional costs in complying with the proposal. The Division cannot charge local agencies and school districts fees for inspections and permits of tanks and boilers because there is no express statutory authority allowing the Division to do so. (Gov. Code, section 6103.)

Further, the Proposed Rulemaking does not constitute a “new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution.” The California Supreme Court has established that a “program” within the meaning of section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46.) The Proposed Rulemaking does not require any local agency to carry out the governmental function of providing services to the public.

FISCAL IMPACT STATEMENT: STATE AND LOCAL AGENCIES, SCHOOL DISTRICTS AND FEDERAL FUNDING

Cost or savings to any state agency: The Proposed Rulemaking will result in the estimated added revenues to the Division of approximately \$964,000.00 annually through fees collected from private businesses for the inspection of tanks and boilers. (See attached, Appendix A.) The Proposed Rulemaking will not result in costs to state agencies that require inspections and permits for pressurized tanks and boilers under the Labor Code, because there is no express statutory authority to charge state agencies such permit fees and therefore state agencies are statutorily exempt from such fees. (Gov. Code, section 6103.)

Cost to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq: None. The Proposed Rulemaking will not result in costs to local agencies and school districts that require inspections and permits for pressurized tanks and boilers under the Labor Code, because there is no express statutory authority to charge public agencies such permit fees, and therefore local agencies and school districts are statutorily exempt from such fees. (Gov. Code, section 6103.)

Other nondiscretionary costs or savings imposed on local agencies: None. The Proposed Rulemaking does not impose non-discretionary costs on local agencies.

Cost or savings in federal funding to the state: The Proposed Rulemaking will create neither costs nor savings in federal funding to the State.

FISCAL IMPACT STATEMENT: BUSINESS

Although the Proposed Rulemaking will affect businesses statewide, including small businesses, the Division concludes that the adverse economic impact including the ability of California business to compete with business in other states, will not be significant.

DECLARATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT

The Division has made an initial determination that the Proposed Rulemaking will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states. The Division relied on the figures in Appendix A in reaching its initial determination.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

Private Person Impact: The Division is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the Proposed Rulemaking. Indeed, a private person who does not own or operate a boiler, tank or pressure vessel subject to the Pressure Vessel Safety Orders would not experience a direct cost impact as a result of the Proposed Rulemaking.

Business Impact: The Division has determined that the Proposed Rulemaking will not have a significant statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

The Proposed Rulemaking will affect the 26,674 owners and operators of pressure vessels, tanks and boilers in California; 86% which are small businesses. Specifically, the Proposed Rulemaking will only affect owners and operators of non-exempt pressure vessels, tanks and boilers by (1) increasing the hourly rate for all services under section 344 by about 11% (\$135/\$150); (2) decreasing the hourly rate for all services under section 344.1 by about 6% (\$160/\$150); and (3) tripling the permit fee under 344.2 from \$15.00 to \$45.00. The Division anticipates that the Proposed Rulemaking will result in an estimated cost increase of \$829,000 for small businesses, and \$135,000 for other businesses. (See Appendix A.)

The Proposed Rulemaking applies to all non-exempt businesses operating pressure vessels, tanks and boilers

in this state, and thus, is neutral in its treatment of California businesses compared to businesses from other states. The Proposed Rulemaking does not require the purchase of new equipment or training or technology, so it will not involve “initial costs” as that term is commonly understood.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Division does not anticipate the Proposed Rulemaking will result in the creation or elimination of any jobs in the State of California. The Proposed Rulemaking will not affect the creation of new businesses or the elimination of existing business within the State of California, and will not affect the expansion of businesses currently doing business within the state.

The Proposed Rulemaking, by funding the regulation of pressure vessels, tanks and boilers to ensure their safe operation, will (1) protect the lives, health and safety of the public and of employees working in the vicinity of pressure vessels, tanks, and boilers; (2) protect businesses and local governments from economic disruption and expense incurred for emergency rescue and police services that would occur from an explosion or uncontrolled leak of hot, toxic or otherwise harmful contents in pressure vessels, tanks and boilers; and (3) protect the environment from contamination that could result from uncontrolled emissions or spills of the materials, gases and substances stored in pressure vessels, tanks and boilers.

BUSINESS REPORT FINDING

None. The Proposed Rulemaking does not require any person or business to submit a report.

HOUSING COSTS

The Division has made an initial determination that the Proposed Rulemaking will not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

The Division must determine that no reasonable alternative considered by it, or that has been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons

and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Non-substantive inquiries concerning this action, such as requests for copies of the text of the proposed amendments, and the location of public records, may be directed to Pamela Claros at (510) 286-7348 or pclaros@dir.ca.gov. Inquiries regarding the substance of the proposed amendments may be directed to Denise M. Cardoso (primary contact) or Chris Grossgart (back-up contact) at (510) 286-7348 or at cgrossgart@dir.ca.gov.

DEADLINE TO SUBMIT WRITTEN COMMENT

11:59 p.m. on December 2, 2019, or must be received by the Division at the hearing. The official record of the rulemaking proceeding will be closed at 11:59 p.m. on December 2, 2019. The Division will consider only comments received by that time.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons, the text of the Proposed Rulemaking, and other information upon which the Proposed Rulemaking is based, have been prepared and are available from the contact persons named in this Notice. The Division will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at 1515 Clay Street, Suite 1901, Oakland, CA 94612. The Initial Statement of Reasons, this Notice of Proposed Rulemaking, and text of the Proposed Regulation also may be accessed through the agency’s Internet website at <https://www.dir.ca.gov/dosh/doshreg/Pressure-Vessel-Fees/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Division may adopt the proposals substantially as described in this Notice. If the Division makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before adopting the amendments as revised. Any such modifications also will be posted on the Division’s website.

Please send requests for copies of any modified amendments to the attention of Pamela Claros at the

above telephone number or e-mail address. The Division 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 Pamela Claros at the above-referenced telephone number or e-mail address.

**TITLE 9. DEPARTMENT OF
STATE HOSPITALS**

NOTICE IS HEREBY GIVEN that the **Department of State Hospitals (DSH)**, pursuant to the authority vested in it by section 87306 of the Government Code, proposes this amendment to its conflict-of-interest code. A comment period has been established commencing on October 18, 2019 and closing on December 2, 2019. All inquiries should be directed to the agency contact person listed below.

DSH proposes to amend its conflict-of-interest code in title 9, section 400, California Code of Regulations (CCR), 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 contain technical amendments to title 9, section 400, CCR, including the Appendices as follows:

1. **Appendix A** — The current code for the Department of State Hospitals was approved on November 14, 2017, by the Fair Political Practices Commission (FPPC). There are classifications/positions filled by individuals who are not currently identified in the current conflict-of-interest code who make or participate in making governmental decisions that could affect their personal economic interest. DSH has updated the list of designated positions to include newly identified classifications that make or participate in making governmental decisions. In addition, classifications/positions which are no longer utilized by DSH were eliminated from the current conflict-of-interest code.
2. **Appendix B** — The Disclosure Categories were updated and tailored to ensure the new list of

designated positions are disclosing the appropriate financial conflict-of-interests.

Printed copies of the proposed amendments and explanation of reasons may be obtained by submitting a request to the agency contact person listed below. These documents are also available online at: <https://www.dsh.ca.gov/Publications/Regulations.html>.

The **Department of State Hospitals** 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.

Written Comment Period and Submittal of Comments

The public comment period for this regulatory action will begin on October 18, 2019 and ends on December 2, 2019. Any interested person may submit written comments relating to the proposed amendment by submitting them electronically or by postal mail to the address below during the public comment period. If a hearing is requested, public comments may also be submitted at the hearing. At this time, no public hearing is scheduled. A person may request a hearing no later than November 18, 2019, by submitting the request to the address listed below.

Submit comments electronically at:

DSH.Regulations@dsh.ca.gov

Submit comments by Postal mail:

Conflict-of-Interest Code Regulation

Department of State Hospitals
1600 9th Street Room 410
Sacramento, CA 95814

Agency Contact Person

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Ms. Mable Basquez, Human Resources Manager, at (916) 651-5662.

**TITLES 13 AND 17. AIR
RESOURCES BOARD**

This notice announces the availability of the proposed Control Measure for Ocean-Going Vessels at

Berth and a Draft Environmental Analysis (Draft EA) for public comment. The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider the proposed Control Measure for Ocean-Going Vessels At Berth.

DATE:

December 5, 2019

TIME:

10:00 a.m.

LOCATION:

DeFremery Park Recreation Center
1651 Adeline Street
Oakland, California 94607

This item will be considered at a meeting of the Board, which will commence at 10:00 a.m., December 5, 2019. Please consult the agenda for the hearing, which will be available at least ten days before December 5, 2019, to determine the time at which this item will be considered.

WRITTEN COMMENT PERIOD AND
SUBMITTAL OF COMMENTS

In accordance with the Administrative Procedure Act, 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 October 18, 2019. Written comments not physically submitted at the hearing must be submitted on or after October 18, 2019, and received **no later than** December 2, 2019. Any written comments on the Draft EA must be submitted on or after October 18, 2019, and received **no later than** December 2, 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:

Clerks' Office, 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 information (e.g., your address, phone, email, etc.) be-

come 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 38560, 38562, 39600, 39601, 39650, 39658, 39659, 39666, 43013, and 41511. This action is proposed to implement, interpret, and make specific sections 38510, 38530, 38562, 38566, 38580, 39600, 39650, 39658, 39659, 39666, 39674, 41510, 41511, 41701, and 43016.

CARB has authority under California law to adopt the proposed regulations. Health and Safety Code section 43013 provides broad authority for CARB to adopt emission standards and other regulations to reduce emissions from new and in-use vehicular, nonvehicular and other mobile sources. CARB is expressly authorized to adopt emission standards and other regulations for marine vessels, to the extent permitted by federal law. (Health and Safety Code section 43013(b).) The Legislature has also directed CARB to "act as expeditiously as is feasible to reduce nitrogen oxide emissions from diesel vehicles, marine vessels, and other categories of vehicular and mobile sources which significantly contribute to air pollution problems." (Health and Safety Code section 43013(h).)

CARB is further mandated to reduce air toxics emissions under California's air toxics laws. Health and Safety Code section 39666 directs CARB to adopt ATCMs to "reduce emissions of toxic air contaminants from non-vehicular sources" for identified TACs such as diesel PM, formaldehyde, benzene, and 1,3 butadiene.

CARB is also mandated under Health and Safety Code sections 38500 et seq. to reduce greenhouse gas emissions, which are emitted at substantial levels by ships hotelling at California ports. For example, section 38560 mandates CARB to adopt rules and regulations "to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions from sources or categories of sources, subject to the criteria and schedules set forth in this part."

Additionally, other statutes mandate CARB to do all things necessary and proper to achieve its statutory mandates. Section 39600 requires CARB to "do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law." Section 39601 requires CARB to adopt "stan-

dards, rules, and regulations” which are “necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law.”

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

Sections Affected:

Proposed amendment to California Code of Regulations, title 13, division 3, chapter 5.1, section 2299.3; and title 17, division 3, chapter 1, subchapter 7.5, section 93118.3.

Proposed adoption of California Code of Regulations, title 13, sections 93130 through 93130.20.

Documents Incorporated by Reference (Cal. Code Regs., tit. 1, section 20, subd. (c)(3)):

The following documents, test methods, and model would be incorporated in the regulation by reference as specified by section:

- ISO 8217 Petroleum products — Fuels (class F) Specifications of marine fuels, Fourth edition June 15, 2010, section 93130.2(b)(38)
- ISO 8217 Petroleum products — Fuels (class F) Specifications of marine fuels, Third edition November 1, 2005, section 93130.2(b)(38)
- ISO 8178, Reciprocating internal combustion engines — Exhaust emission measurement — Part 1: Test-bed measurement of gaseous and particulate exhaust emissions, August 15, 1996, section 93130.5(g)(1);
- ISO 8178, Reciprocating internal combustion engines — Exhaust emission measurement — Part 2: Measurement of gaseous and particulate exhaust emissions at site, August 15, 1996, section 93130.5(g)(1);
- ISO 8178, Reciprocating internal combustion engines — Exhaust emission measurement — Part 4: Test cycles for different engine applications, August 15, 1996, section 93130.5(g)(1);
- CARB — FRAC (Excel) — Fraction data for source categories, February 21, 2019, section 93130.5(g)(3)
- CARB — PMPROF REF (Excel) — Reference number for PM profiles, July 8, 2019, section 93130.5(g)(2)
- Source Test Procedure ST-1B Ammonia Integrated Sampling, January 20, 1982, section 93130.5(g)(6);
- ISO 8754, Petroleum products — Determination of sulfur content — Energy-dispersive X-ray

fluorescence spectrometry, July 15, 2003, section 93130.5(g)(7);

- CARB — Method 100, Procedures for Continuous Gaseous Emission Stack Sampling, July 28, 1997, section 93130.5(g)(8);
- California Environmental Protection Agency Air Resource Board Recommended Emissions Testing Guidelines for Ocean-going Vessels, June 20, 2012, section 93130.5(h)(4);
- Bureau of Mines Information Circular 8333 Ringelmann Smoke Chart (Revision of IC 7719), May 1967, 93130.6(a)(1); and
- 40 CFR Pt. 60, App. A-7, Method 25A — Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer, December 23, 1971, section 93130.5(g)(3)
- 40 CFR Pt. 60, App. A-4, Method 9 — Visual Determination of the Opacity of Emissions from Stationary Sources, December 23, 1971, section 93130.6(b)
- United Nations, International Law Commission, Responsibility of States for Internationally Wrongful Acts, 2001, section 93130.4(a)(1)(B)

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

Existing Regulation

In December 2007, CARB approved the *Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port* Regulation (Existing Regulation).¹ The purpose of the Existing Regulation is to reduce emissions from diesel auxiliary engines on container vessels, reefer vessels, and passenger cruise vessels, while berthing at a California port. At berth, auxiliary engines are used by vessels to run power for lighting, ventilation, pumps, communication, heating, and other on-board equipment while a vessel is docked. Under the Existing Regulation, container, reefer, and cruise vessel fleets that visit specified California ports, as described below, are the regulated parties.

Container or reefer vessels that make 25 visits or more per calendar year to a regulated port and cruise vessels that make 5 or more visits per year to a regulated port are subject to the requirements of the Existing Regulation. Smaller vessel fleets (i.e., fleets that are comprised of container and reefer vessels that make fewer than 25 visits or cruise with fewer than 5 visits) and vessels that do not often frequent California ports are ex-

¹ 17 CCR section 93118.3. Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port, <https://ww3.arb.ca.gov/regact/2007/shorepwr07/93118-t17.pdf>.

empt from the Existing Regulation. The California ports included in the Existing Regulation are Ports of Los Angeles (POLA), Long Beach (POLB), Oakland, Richmond, San Diego, San Francisco, and Hueneme.

- The Existing Regulation provides fleet operators two different pathway options to comply: the Reduced On-board Power Generation (ROPG or Shore Power) option, or the Equivalent Emissions Reduction (EER or Equivalent) option.

Compliance requirements for the ROPG pathway began in 2014 with a 50 percent visit and 50 percent power reduction requirement. This means a fleet must reduce its auxiliary engine power by 50 percent from the fleet’s baseline power generation (baseline power generation equals a fleet’s berthing time multiplied by the auxiliary engine[s] power requirement) during the vessel’s stay on 50 percent of the fleet’s annual vessel visits. These percentage requirements increased to 70 percent in 2017, and will increase to 80 percent in 2020, which will represent full implementation of the Existing Regulation.²

The EER pathway requires a percentage of emissions reduction below a fleet’s baseline emissions. The baseline emissions for a vessel fleet is calculated by multiplying each individual vessel’s berthing time with the vessel’s electrical power requirements. Fleets following this pathway can comply using shore power or a CARB approved alternative control technology, such as a barge-based capture and control system. Compliance under this option began in 2010 with a 10 percent reduction and phased in to 50 percent in 2014 to match the ROPG pathway. Since 2014, the reduction requirements for both pathways have aligned at 70 percent in 2017 and 80 percent in 2020.³

The majority of vessels subject to the Existing Regulation comply using shore power. A small percentage of vessels that have not installed shore power use a CARB approved barge-based capture and control system for

compliance. Barge-based capture and control systems can also be used in the event of shore power equipment failure or when a shore power berth is unavailable. Currently there are two barge-based CARB approved alternative technologies available for vessels to use for compliance in lieu of shore power. One system is located at POLA and the other at POLB.

Proposed Regulation

CARB staff are proposing adoption of the *Control Measure for Ocean-Going Vessels At Berth*, hereafter referred to as the “*Proposed Regulation*.” The Proposed Regulation would supersede the Existing Regulation effective January 1, 2021, as specified in the proposed regulatory text.

The Proposed Regulation is designed to achieve added public health and air quality benefits. These benefits result from additional emissions reductions of oxides of nitrogen (NOx), diesel particulate matter (DPM), particulate matter 2.5 (PM2.5), reactive organic gas (ROG), greenhouse gas (GHG) emissions, and black carbon beyond those realized by the Existing Regulation. The Proposed Regulation accomplishes this by introducing emission control requirements to: additional ports and terminals, including marine terminals that operate independently from a port or port authority, and vessels not covered by the Existing Regulation.

The Proposed Regulation intends to simplify and streamline enforcement of the current regulatory requirements by using a regulatory structure different than the Existing Regulation. The Existing Regulation is a vessel fleet-based regulation with annual reporting requirements, whereas the Proposed Regulation contains emission control and reporting requirements based on individual vessel visits.

CARB may also consider other changes to the sections affected, as listed under “Objectives and Benefits of the Proposed Regulatory Action” of this notice, during the course of this rulemaking process. In developing the Proposed Regulation, staff continues to consider various provisions, including provisions that may incorporate elements of the Existing Regulation into the Proposed Regulation.

State policy and Plans Direct CARB to Secure Further Reductions from Vessels at Berth

In April 2015, CARB released the “*Sustainable Freight Pathways to Zero and Near-Zero Discussion*

² 17 CCR section 93118.3. (d)(1), Reduced Onboard Power Generation Option, Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port, page 8, <https://ww3.arb.ca.gov/regact/2007/shorepwr07/93118-t17.pdf>.

³ 17 CCR section 93118.3. (d)(2), Equivalent Emissions Reduction Option, Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At-Berth in a California Port, page 12, <https://ww3.arb.ca.gov/regact/2007/shorepwr07/93118-t17.pdf>.

Document (Discussion Document)⁴ in response to Board Resolution 14–2,⁵ which directed CARB to engage with stakeholders to identify and prioritize actions to move California toward a sustainable freight transport system. The Discussion Document set out CARB’s vision of a clean freight system, and listed immediate and potential near–term CARB actions that staff would develop for future Board consideration. The near–term CARB measures identified in the Discussion Document included amending the Existing Regulation to include other vessel types to achieve additional emissions reductions.

In July 2015, Governor Brown signed Executive Order B–32–15⁶ directing the secretaries of the California State Transportation Agency, CalEPA, and Natural Resources Agency to lead other relevant State departments in developing an integrated action plan by July 2016 that “establishes clear targets to improve freight efficiency, transition to zero–emission technologies, and increase competitiveness of California’s freight system.” The 2016 California Sustainable Freight Action Plan includes strengthening the Existing Regulation as a State agency action to advance the objectives of the Executive Order and the Sustainable Freight Action Plan.⁷ In September 2016, the Board approved the 2016 State SIP Strategy, which describes CARB’s proposed commitment to achieve the emissions reductions from mobile sources and consumer products needed to meet federal air quality standards over the next 15 years.⁸ The State SIP Strategy includes an enforceable commitment for specific emissions reductions, along with commitments to develop and propose a list of specific measures. CARB’s list includes actions to strengthen the emission controls from vessels at berth by including additional vessel fleets, types, and operations.

In July 2017, Governor Brown took action to continue California’s work to reduce air pollution by signing a legislative package establishing a new program to im-

prove air quality in local communities (AB 617; Garcia, Stats. 2017, ch. 136).^{9,10} The legislation helps ensure California continues to meet its air quality standards while addressing air pollution in communities with the dirtiest air. More work is needed to reduce the public health impacts in these communities that experience a significant burden from air pollution. With respect to AB 617, CARB has begun work to implement a new community–focused air quality program, including monitoring and emissions reduction plans. The Proposed Regulation would address community air quality objectives.

In 2006, California enacted AB 32 to address climate–changing greenhouse gas emissions (GHGs) by requiring cost–effective reductions in GHGs and by codifying a target of reducing California GHGs to 1990 levels by 2020. AB 32 directed CARB to continue its leadership role on climate change and to develop a scoping plan identifying integrated and cost–effective regional, national, and international GHG reduction programs.¹¹ In 2015, Governor Brown issued Executive Order B–30–15 (EO B–30–15),¹² which set a goal of reducing statewide GHG emissions to 40 percent below 1990 levels by 2030. In 2016, the Legislature passed, and Governor Brown signed, SB 32, which codified the 40 percent GHG reduction goal from 1990 levels by 2030.¹³

OBJECTIVES AND BENEFITS OF THE PROPOSED REGULATORY ACTION

The Proposed Regulation is designed to accomplish two main goals: achieve public health and air quality benefits, and address implementation challenges with the Existing Regulation. To achieve further emissions reductions from vessels at berth, reduce adverse health impacts to communities surrounding ports and terminals, and streamline enforcement of regulatory requirements for vessels, the Proposed Regulation includes the following requirements and associated goals and benefits:

- Require vessels to control at berth emissions at additional ports and terminals beyond those covered under the Existing Regulation in order to

⁴ California Air Resources Board, Sustainable Freight Pathways to Zero and Near–Zero Emissions Discussion Document (April 2015), California Sustainable Freight Initiative, <https://www.arb.ca.gov/gmp/sfti/sustainable-freight-pathways-to-zero-and-near-zero-emissions-discussion-document.pdf>.

⁵ CARB Board Resolution 14–2, Sustainable Freight Strategy Update, January 23, 2014, <https://arb.ca.gov/board/res/2014/res14-2.pdf>.

⁶ Executive Order B–32–15, July 17, 2015, <https://www.ca.gov/archive/gov39/2015/07/17/news19046/index.html>.

⁷ California Department of Transportation et al., California Sustainable Freight Action Plan, Appendix C. (July 2016), http://dot.ca.gov/hq/tpp/offices/ogm/cs_freight_action_plan/Documents/CSFAP_AppendixC_FINAL_07272016.pdf.

⁸ California Air Resources Board, Revised Proposed 2016 State Strategy for the State Implementation Plan March 7, 2017, <http://www.arb.ca.gov/planning/sip/2016sip/2016sip.htm>.

⁹ AB 398, 25.5 California H.S.C. section 38501, 38562, 38594, 8505.5, 38590.1, 38591.1–38591.3, 38592.5, 38592.6, 4213.05 (2017).

¹⁰ 25.5 California H.S.C. section 40920.6, 42400, 42402, 39607.1, 40920.8, 42411, 42705.5, 44391.2 (2017).

¹¹ AB 32, 25.5 California H.S.C. section 38500 — 38599, California Global Warming Solutions Act Of 2006.

¹² Executive Order B–30–15, April 29, 2015, <https://www.gov.ca.gov/2015/04/29/news18938/>.

¹³ SB 32, Pavley, 25.5 California H.S.C. section 38566, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32.

increase the emissions reductions and reduce associated health impacts in additional communities.

- Require terminals that exceed the threshold of annual visits made by regulated vessels to control emissions from regulated vessels at berth. This allows ports growing in activity, and consequently their emissions burden to surrounding port communities, to be easily included in the regulation.
- Expand covered vessels to include ro-ro (roll-on/roll-off)¹⁴ and tankers. Tanker vessel emissions make up the highest source of unregulated emissions from all vessels at berth statewide,¹⁵ and the majority of ro-ro and tanker terminals exist in communities identified by CARB's Community Air Protection Program (CAPP) as priority for the deployment of community air monitoring systems and/or community emissions reduction programs. Adding control requirements for ro-ro and tanker vessels plays a vital role in reducing vessel at berth emissions in these impacted port communities.
- Require small fleets to have compliance requirements in order to achieve the emissions reductions goals of the Proposed Regulation and provides a level playing field for all vessels of the same category.
- Include previously exempted auxiliary engines that operate on liquefied natural gas (LNG) or other alternative fuels to ensure that vessels are obtaining the require emissions reductions.
- Require tankers operating boiler steam powered pumps (for off-loading cargoes like crude oil) to control their boiler emissions in order to capture the majority of emissions from this category of tanker vessel. Tanker boilers make up nearly 40 percent of NOx emissions, 75 percent of PM2.5 emissions, and over 80 percent of GHG emissions from tanker vessels.¹⁶
- Require all regulated vessel visits to use a CARB approved emissions control strategy to reduce auxiliary engine emissions and boiler emissions (for a subset of tanker vessels) on every visit to a

regulated terminal, unless the visit qualifies for certain exceptions (to be discussed later in this list). Requiring every vessel to reduce emissions while at berth is necessary to achieve more emissions reductions from vessels at berth, particularly for the already regulated container, reefer, and cruise vessel categories.

- Implement a regulatory structure that is based on individual vessel visits. Placing control requirements on every visit simplifies compliance compared to the regulatory structure based on annual fleet visits in the Existing Regulation.
- Require ports and terminals to submit a plan to CARB describing what CARB approved emissions reduction strategy will be available to vessels visiting the terminal, and describing the necessary terminal and berth infrastructure modifications needed to reduce emissions from vessels at berth and the implementation timeline. Port and terminal plans are essential to help CARB staff understand and track how ports and terminals are planning to reduce emissions from vessels visiting their berths.
- Require both terminals and vessel operators to report corroborating information on vessel visits, including what technology was used to control emissions. Requiring both entities to report improves the accuracy of the data reported to CARB, allowing CARB enforcement staff the ability to corroborate visit information in the event of non-compliance during a visit.
- Require terminals and vessel operators to follow a compliance checklist that outlines all the steps necessary for a compliant visit. Compliance checklists allow regulated parties to determine compliance in a much shorter time frame than the Existing Regulation, where compliance may not be known for several months due to the annual fleet compliance structure of the regulation.
- Provide compliance options to address challenges with meeting requirements while a vessel is at berth. To address this, the Proposed Regulation provides mechanisms to account for both foreseeable and unforeseeable challenges that may prevent emissions reductions while not sacrificing significant emissions reductions. These provisions include safety exceptions and compliance options for shore power commissioning, research, terminal and incident events, and a remediation fund option.
- Require control technology developers to obtain CARB approval for their systems to be utilized as an emission control option and conduct periodic source testing. This ensures these technologies are

¹⁴ Ro-ro vessels carry cargo that can be rolled on and rolled off, such as cars and trucks.

¹⁵ California Air Resources Board, DRAFT: 2018/2019 Update to Inventory for Ocean-Going Vessels: Methodology and Results, (January, 2019), <https://www.arb.ca.gov/msei/ordiesel/draft2019ogvinv.pdf>.

¹⁶ California Air Resources Board, DRAFT: 2018/2019 Update to Inventory for Ocean-Going Vessels: Methodology and Results, (January, 2019), <https://www.arb.ca.gov/msei/ordiesel/draft2019ogvinv.pdf>.

achieving the emissions reductions required by the Proposed Regulation.

- Require all vessels visiting California regardless of port and terminal applicability, to maintain opacity standards at berth and at anchor.¹⁷ This provision enforces existing state opacity standards, and provides clear authority for CARB enforcement staff to cite vessels at berth and at anchor if an opacity violation occurs.

CARB anticipates that the proposed regulation would have the following general benefits to California businesses and individuals:

Reduced Adverse Health Outcomes

CARB staff estimated the potential statewide PM mortality and illness impacts associated with exposure to PM2.5 from the Proposed Regulation. These health outcomes include cardiopulmonary mortality, hospital admissions, and emergency room visits. Based on the analysis, staff estimates that the total number of cases that would be reduced from implementation of the Proposed Regulation are as follows:

- 230 premature deaths (180 to 281, 95 percent confidence interval (CI))
- 72 hospital admissions (9 to 135, 95 percent CI)
- 116 emergency room visits (73 to 158, 95 percent CI)

Worker safety

Emission reductions also reduce occupational exposure for workers at ports and terminals and on vessels. This specific benefit was not quantified, as it was beyond the scope of staff’s analysis for the rulemaking.

Reduced Ambient Ozone Levels

Although CARB staff did not quantify reduced adverse health outcomes associated with lower ozone levels, the Proposed Regulation would further reduce emissions of NOx and ROG that are precursors to the formation of ozone in the lower atmosphere. Exhaust from diesel engines including auxiliary engines on vessels at berth, contributes to the basin-wide inventory of ozone-formation precursors. Consequently, the Proposed Regulation would provide reductions to support attainment of the NAAQS for ozone, which are health-based standards set to minimize prevalence of respiratory problems, particularly asthma and lung damage.

GHG and Black Carbon

The Proposed Regulation will achieve GHG and black carbon emission reductions, both of which have the potential to help combat global climate change. Climate scientists agree that global warming and other shifts in the climate system observed over the past century are caused by human activities. These recorded changes are occurring at an unprecedented rate. According to new research, unabated GHG emissions could cause sea levels to rise up to 10 feet by the end of this century—an outcome that could devastate coastal communities in California and around the world. California is already feeling the effects of climate change, and projections show that these effects will continue and worsen over the coming centuries. The impacts of climate change on California have been documented by Office of Environmental Health Hazard Assessment (OEHHA) in the Indicators of Climate Change Report.

Technology Providers

Compliance with the Existing Regulation is currently limited to shore power and alternative barge-based emissions capture and control systems. With the Proposed Regulation, CARB anticipates economic benefits associated with vessel owners or operators utilizing these alternative compliance options.

Vessels complying with shore power would provide additional opportunities for electrical infrastructure original equipment manufacturers (OEMs) as well as equipment installers to enter the market to install shore power equipment at the ports.

Vessels complying with capture and control systems would provide substantial economic benefit to technology companies operating and developing these systems. Based on CARB’s estimates, more than 30 capture and control (either land- or barge-based) systems needed to control emissions from approximately 2,600 vessel visits annually. At the time of drafting this Staff Report, there are currently two companies who each own and operate a single barge-based emission capture system: Advanced Environmental Group at POLB, and Clean Air Engineering Maritime at POLA. CARB foresees both the opportunity for growth of these two existing companies to build, deploy, and operate additional systems, and a new market for additional entrants to develop technologies to meet demand to comply with the Proposed Regulation. Anticipated growth of the development and deployment of capture and control systems would also provide benefits to OEMs of ancillary equipment such as flatbed trailers, barges, tugs, gantry cranes, boom lifts, and any other equipment required to build and operate the systems.

Construction

The Proposed Regulation would provide opportunities for both larger and smaller engineering, construction, and design firms to redesign and expand existing

¹⁷ Opacity in relation to vessels at berth or anchor refers to the visual appearance of smoke emitting from the vessel’s exhaust stack. There are standards set for non-vehicular air pollution sources of how dark the exhaust smoke can be, including for ocean-going vessels. These standards are defined in Health and Safety Code section 41701. https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=26.&title=&part=4.&chapter=3.&article=1.

port infrastructure to accommodate CARB approved compliance strategies to be developed. The Proposed Regulation would also benefit alternative fuel suppliers or utilities to construct additional pipeline networks to feed directly to the ports, providing additional benefits for other freight equipment.

Technology Research and Development

Although the current compliance strategies for the Existing Regulation is limited to shore power and emission capture and control technologies, CARB anticipates the timing of the Proposed Regulation to further accelerate the development of novel technologies and strategies for newly regulated vessel categories to meet the requirements. This would provide an incentive for both university research centers and OEMs to expand into the market. In addition, the Proposed Regulation may accelerate the development of alternative fuels such as renewable diesel, renewable natural gas, and renewable hydrogen to power the CARB approved compliance strategies. This would have an additional benefit of meeting CARB’s Low carbon Fuel Standards (LCFS) requirements.

Out-of-State and International Benefits

California has been a world leader in establishing clean air policies and programs. Unlike source categories that operate more locally, ocean-going vessels operate around the globe. Consequently, California programs for ocean-going vessels directly benefit other regions of the world where vessels travel. The Existing Regulation has required use of shore power on many vessels visiting California, and regions around the world have begun to also use shore power. For example, several ports in China have taken action to install shore power infrastructure. Successful adoption of the Proposed Regulation would incentivize more countries to adopt shore power, which provides enormous potential for additional health benefits in port communities worldwide.

Furthermore, for select ports outside the United States to adopt CARB approved compliance strategies for use may incentivize international standards governing organizations such as the International Maritime Organization (IMO) and the Institute of Electrical and Electronic Engineers (IEEE) to harmonize design and performance standards. This would streamline the approval process for maritime industry stakeholders to develop novel compliance strategies.

Staff conducted public outreach prior to the formal rulemaking, including multiple public workshops, see Chapter XII in the Initial Statement of Reasons (ISOR) for a detailed discussion.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations which address the same issues as CARB’s Proposed Regulation. The federal government has not adopted regulations that restrict emissions from ocean-going vessels while at berth. Furthermore, CARB has developed the Proposed Regulation to include a “sunset” clause that would cause the Proposed Regulation to cease to apply if the federal government does adopt and enforce requirements that will achieve emissions reductions within the Regulated California Waters equivalent to those achieved by the Proposed Regulation. Therefore, the Proposed Regulation does not conflict with nor duplicate any 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. As noted above and throughout the Staff Report, the currently effective Existing Regulation contains requirements for some similar categories of vessels. CARB has carefully drafted the Proposed Regulation to supersede the Existing Regulation, as appropriate.

DISCLOSURE REGARDING THE PROPOSED REGULATION

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, section 11346.5, subds. (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 create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would create costs but not a mandate to any local agency or school district, whether or not reimbursable by the State under Government Code title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et seq.:

The Proposed Regulation has direct impacts on eight regulated ports (Los Angeles, Long Beach, San Diego, Hueneme, San Francisco, Oakland, Stockton, and Richmond), which are all semi-autonomous public agencies. The ports are each run by a Board of Commissioners, which are generally appointed by local city and/or county governments, or elected locally. While each port has unique operating characteristics, the ports are generally self-funded and raise their own revenue through terminal leases or berthing fees. These funds are then used for infrastructure development and operational costs. The costs and cost-savings to ports varies annually. Specific costs to each port are expected to vary based on its business model, and the vessel types that visit. Ports would face fiscal impacts to finance, design and build, and maintain shore power infrastructure, and/or infrastructure associated with land-based capture and control projects. Staff understands that infrastructure costs for projects occurring at port-based terminals would initially be incurred by the ports, but could be passed on to port tenants through their lease agreements, to vessel operators through berthing fees, or would be absorbed by the ports. Ports may need to conduct feasibility assessments, engineering analysis and design, and secure required permits to construct terminal infrastructure projects needed to support the land-based capture and control systems for their terminals. The ports would also incur administrative costs to cover the preparation of Port Plans that would be required by the Proposed Regulation. Further, operating ports that act as terminal operators, would incur costs for updating terminal plans, reporting vessel visits and cost of labor the land-based capture and control systems at terminals.

Land-based capture and control systems would also require local air district permits, or inclusion in the facility's federal Title V operating permit for systems located at major sources of air pollution. District permits would require review by local air district staff. For purposes of the cost analysis, staff assumed that the equivalent of one person year (PY) across multiple agencies would be needed starting in 2021 and throughout the implementation timeframe of the Proposed Regulation to account for local permitting activities.

Cost or Savings for State Agencies:

The Proposed Regulation will impose costs on CARB, which estimates seven additional positions are necessary:

- For the technical duties on review of plans and technologies, as well as infrastructure development;
- To draft guidance documents, evaluate required at berth reports submitted in the Freight Regulations Reporting System (FRRS) and flag/resolve any issues, and work with environmental justice communities near ports;
- To staff the hotline for industry questions, and respond to industry/port requests for compliance assistance;
- To perform enforcement activities for an expanded number of ports, terminals, vessel types, vessel fleets, and vessel visits.

Other State Agencies

- Staff assumes that infrastructure improvements would be needed at locations on State-owned lands and that are under the jurisdiction of the California State Lands Commission (CSLC). Discussion with CSLC indicated that one PY would be needed.
- CSLC is not a permitting agency, however, permitting agencies typically will not issue permits for infrastructure projects until CSLC has reviewed and approved the project. State agencies directly involved in permitting may include the San Francisco Bay Conservation and Development Commission (BCDC), applicable to projects in the San Francisco Bay, the applicable Regional Water Quality Control Board, and the California Department of Fish and Wildlife (CDFW). Based on the number of project to be reviewed, staff estimates one PY will be needed to account for project review and permitting activities.

Other Non-Discretionary Costs or Savings on Local Agencies:

The Proposed Regulation affects ports, which are local agencies. The non-discretionary costs have been described above in the section titled "Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et. seq." There are no other costs or savings than those described.

Cost or Savings in Federal Funding to the State:

The Proposed Regulation is not expected to impose any costs or saving in Federal Funding to the State.

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, sections 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))

MAJOR REGULATION: Statement of the Results of the Standardized Regulatory Impact Analysis (SRIA) (Gov. Code, section 11346.3, subd. (c)):

In August 2019, CARB submitted a Standardized Regulatory Impact Analysis (SRIA) to the Department of Finance (DOF) for its review. CARB has updated the Proposed Regulation since the original SRIA submittal and to address DOF comments. The revisions are discussed in the ISOR, Chapter IX.

(A) The creation or elimination of jobs within the state.

The Proposed Regulation is anticipated to result in a relatively small decrease in total employment growth in most years of the Proposed Regulation. Directly impacted terminal operators, vessel operators, and ports may see negative impacts to employment due to increased costs of the regulation. In some years, there may be small positive job impacts associated with feasibility studies, and construction activity related to vessel, berth, and land-based retrofits. Overall, the change in total employment is anticipated to be small, relative to the baseline employment for the California economy. Analysis performed in the SRIA estimates less than a 0.02 percent decrease in employment growth in any given year. Changes to the Proposed Regulation since the SRIA are not anticipated to significantly impact the estimated impacts on employment growth.

(B) The creation of new businesses or the elimination of existing businesses within the state.

Overall, the Proposed Regulation is expected to have a small impact on business creation or elimination. Ves-

sel operators and terminals face compliance costs, but are large entities that would be unlikely to be eliminated.

Staff expects the Proposed Regulation to provide substantial incentives for barge-based capture and control providers. There are currently two companies providing capture and control services to container vessels at POLA and POLB. However, to meet demand for capture and control services at California ports, staff have estimated seven barges would need to be deployed, likely resulting in the expansion of businesses in the transportation support industries.

(C) The competitive advantages or disadvantages for businesses currently doing business within the state.

The Proposed Regulation increases costs to California ports and terminals, and the vessels that visit them. To date, the available data and research has been insufficient to quantify the impact on the competitive advantage or disadvantage of the Proposed Regulation as it relates to cargo diversion. Cargo owners and international cargo transport delivery companies rely on sophisticated proprietary models and factors to guide decisions on where to ship goods. The factors include access to consumer markets and intermodal transportation networks; reliability and velocity of transport modes; port and trans-loading infrastructure; the overall efficiency of the supply chain as it is impacted by the availability of labor; congestion delays and other impediments; and costs, including compliance costs for all regulations.

Quantifying the potential for the Proposed Regulation to cause cargo diversion requires either a detailed understanding of how increased regulatory costs would impact each beneficial cargo owner's use of a specific port; or would require causal estimates from historical data to understand the contributing factors, and to estimate the impact of regulatory costs on cargo diversion. CARB staff directly engaged industry stakeholders for their experience or data, and found that a company's decision to divert cargo from one port to another is complex and unique to individual businesses. CARB staff was unable to obtain information on business level responses to regulatory costs due to the highly competitive nature of the freight industry.

In addition, CARB staff did not find empirical research that focused on the impact of regulatory costs on cargo diversion. A number of studies have explored the relationship between general cost increases and the likelihood of cargo diversion. These studies found that there is a very wide range of estimates for how increased costs may impact cargo volumes, that the estimates are highly uncertain, and that these responses may change markedly in the span of only several years due to the dynamics of industry and global economics.

One case study on the potential impact of a container fee suggested that cargo diversion is unlikely for modest per twenty foot equivalent unit (TEU) cost increases, up to \$30 per TEU. To put this into context, the Proposed Regulation would add additional costs of \$1.11 per TEU in 2030 for container and reefer vessels. Although the per unit cost of the Proposed Regulation for other vessels types are not directly comparable to the TEU statistic, for illustrative purposes they are: approximately \$4.60 per passenger for cruise vessels, approximately \$7.50 per automobile for ro-ros, and less than \$0.01 per gallon of refinery product¹⁸ for tankers.

(D) The increase or decrease of investment in the state.

The SRIA analysis analyzed the impact of the Proposed Regulation on the California economy, including private domestic investment. Private domestic investment consists of purchases of residential and nonresidential structures and of equipment and software by private businesses and nonprofit institutions. It is used as a proxy for impacts on investments in California because it provides an indicator of the future productive capacity of the economy.

The SRIA analysis estimated a decrease of private domestic investment of about \$90 million in 2032, or about 0.02 percent of baseline private domestic investment. Since the SRIA analysis, the Proposed Regulation has changed as described in the Changes since the SRIA section. The updated proposal is not anticipated to significantly change the overall impacts on investments in California as presented in the SRIA.

(E) The incentives for innovation in products, materials, or processes.

The Proposed Regulation can require and provide impetus for vessel and terminal operators and ports to pursue the cleanest available technologies to reduce emissions at berth. Currently there are two CARB approved emission control strategies (shore power and barge-based capture and control system) to assist with compliance.

Compared to the Existing Regulation, approximately 2,600 additional vessel visits annually would be required to reduce emissions under the Proposed Regulation. This need is expected to create a market for additional strategies to assist in compliance and to accelerate development of emission reduction technologies in marine applications that could compete with the available barge-based emissions control systems and shore power. Technologies are available that can be adapted

¹⁸ Including compliant gasoline, conventional gasoline, reformulated blendstock for oxygenate blending gasoline, CARB diesel, EPA diesel, "other" diesel, commercial jet fuel, military jet fuel, and other products derived from crude oil from all major import sources.

to reduce ocean-going vessel auxiliary engine emissions, and potentially auxiliary boiler exhaust, that would move vessels toward CARB's long-term goal of zero and near-zero emissions to ensure compliance with the Proposed Regulation. This includes, but is not limited to advanced boiler and engine technologies, marine exhaust gas scrubbing systems, diesel emission control devices with selective catalytic reduction (SCR) after-treatment, distributed generation equipment, non-grid based shore power, alternative fuels and capture and control technologies adapted to land-based systems.

(F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

The Proposed Regulation reduces NOx, DPM, PM2.5, ROG, GHG, and black carbon emissions from vessels at berth in California ports Californians will directly benefit in the form of health benefits from the lower levels of these emissions.

The Proposed Regulation will result in a reduction in the risk for premature deaths, hospital visits, emergency room visits, and a variety of other health effects, especially in sensitive receptors including children, elderly, and people with chronic heart or lung disease. Emission reductions also reduce occupational exposure for workers at ports and terminals and on vessels, as well as passengers on cruise vessels.

(G) Department of Finance Comments and Responses.

DOF Comment:

The SRIA must include non-annualized capital costs. Capital costs are almost half of the direct costs of the package. However because new facilities are required for compliance, these capital costs may not be spread evenly across the effective period of the regulation as ARB assumes, but will depend on the availability of parties to finance up-front costs. The SRIA should disclose the cost of capital construction to the year the money will actually be spent, as well as the assumed amortization.

Response:

In the SRIA, staff assumed that capital costs for infrastructure and equipment for shore power and capture and control systems would be financed with interest. If the regulated entities are not able to obtain loans then the upfront costs in a given year would be higher than the annualized cost.

Table 1 (Appendix C-2) shows the annualized and the upfront cost in the year incurred for infrastructure and equipment for vessel and terminal operators, and

ports. The costs in each year account for the aggregated and compounded annual growth factors.

BUSINESS REPORT

(Gov. Code, sections 11346.5, subd. (a)(11);
11346.3, subd. (d)):

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California

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. The Proposed Regulation impacts vessel operators, terminal operators, and ports. There are no direct regulatory costs incurred by individuals as a result of the Proposed Regulation. However, staff anticipates the Proposed Regulation may result in indirect costs to individuals to the extent that compliance costs are passed through to the ultimate consumers of cargo and cruise vessel passengers.

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 not affect small businesses because the Proposed Regulation directly impacts vessel and terminal operators, which do not fall under the small business definition, and ports, which are a part of local governments. As noted in the Staff Report, the Proposed Regulation would not result in any direct costs to small businesses and individuals. However, staff anticipates the Proposed Regulation would result in indirect costs to individuals and small businesses to the extent that compliance costs are passed through to the ultimate consumers of cargo and cruise vessel passengers.

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.

The analysis of such alternatives can be found in Chapter X of the ISOR. There are three regulatory alternatives that are discussed in the ISOR including, Implementation Fixes Through an Amendment to Existing Regulation Only, Shore Power Only Compliance Pathway for Container/Reefer, Cruise, Auto/Ro-Ro and Tanker Vessels, and "Alternative Proposal for Amendments to At-Berth Regulations" provided by California Association of Port Authorities (CAPA), Cruise Lines International Association (CLIA), Pacific Merchant Shipping Association (PMSA), Western States Petroleum Association (WSPA), and World Shipping Council (WSC) on February 15, 2019.

Alternative 1 would involve amending the Existing Regulation. For this Alternative, implementation of the amended Regulation would begin in 2021. Alternative 1 would address implementation challenges associated with the Existing Regulation, without adding any additional requirements. Alternative 1 would provide less NO_x, ROG, PM_{2.5}, DPM, GHG, and black carbon emissions reductions compared to the Proposed Regulation. As a result, Alternative 1 would fail to provide significant additional public health and air quality benefits for California's residents, especially communities adjacent to ports and terminals. Additionally, by not including tanker vessels Alternative 1 fails to capture boiler emissions from tanker vessels that utilize boilers to operate steam-driven pumps for off-loading crude products.

Alternative 2 would include container, reefer, and cruise vessels and the addition of ro-ro and tanker vessels visiting regulated California ports and terminals. For Alternative 2, shore power is the only allowable strategy to reduce emissions at berth. Alternative 2 would cost more, would be less cost-effective to implement than the Proposed Regulation, and provides less flexibility than allowing site-specific selection of most the feasible and cost effective strategies.

Alternative 3 would involve amending the Existing Regulation, consisting of addressing implementation challenges for the regulated (container, reefer and cruise vessels) vessel fleets and calls for feasibility and cost-effectiveness studies prior to future expansion of the regulation. Alternative 3 may result in reduced costs relative to the Proposed Regulation but would achieve substantially less emissions reductions for NO_x, ROG, PM_{2.5}, DPM, GHG, and black carbon. As a result, it

would fail to provide significant additional public health benefits including communities adjacent to ports and terminals throughout the state.

No alternative proposed was found to be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing law.

STATE IMPLEMENTATION PLAN REVISION

If adopted by CARB, CARB plans to submit the proposed regulatory action to the United States Environmental Protection Agency (U.S. EPA) for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it adopts regulations intended to reduce emissions of air pollutants in order to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA pursuant to the CAA.

ENVIRONMENTAL ANALYSIS

CARB, as the lead agency for the Proposed Regulation, has prepared a draft environmental analysis (EA) under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). The draft EA assesses the potential for significant adverse and beneficial environmental impacts associated with the proposed actions and provides a programmatic environmental analysis of the reasonably foreseeable compliance responses that could result from implementation of the proposed regulations.

The draft EA concluded implementation of the Proposed Regulation could result in: less than significant impacts, or no impacts, to energy demand, land use, air quality, greenhouse gases, population, employment and housing, public services, and recreation; and potentially significant adverse impacts to aesthetics, agriculture and forest resources, biological resources, cultural resources and tribal resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise and vibration, transportation and traffic, and utilities and service systems.

The potentially significant and unavoidable adverse impacts are primarily related to short-term, construction-related activities. This explains why some resource areas are identified above as having both less-than-significant impacts and potentially signifi-

cant impacts. Please refer to the draft EA for further details.

The draft EA, included as Appendix D to the ISOR, is entitled Draft Environmental Analysis Prepared for the Proposed Control Measure for Ocean-Going Vessels At Berth in California. Written comments on the draft EA will be accepted during a 45-day public review period starting on October 18, 2019 and ending at 5pm on December 5, 2019.

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 before 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, Angela Csondes, Manager, Marine Strategies Section at (916) 323-4882 or (designated back-up contact) Nicole Light Densberger, Air Pollution Specialist at (916) 445-6012.

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: Staff Report: Initial Statement of Reasons — Public Hearing to Consider the Proposed Control Measure for Ocean-Going Vessels At Berth.

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, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on October 15, 2019.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Chris Hopkins, Regulations Coordinator, (916) 445-9564. 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).

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

Following the public hearing, the Board may vote on a resolution directing the Executive Officer to: make any proposed modified regulatory language that 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, and any additional supporting documents and information, available to the public for a period of at least 15 days; consider written comments submitted during this period; and make any further modifications as may be appropriate in light of the comments received available for further public comment.

The Board may also direct the Executive Officer to: evaluate all comments received during the public comment periods, including comments regarding the Draft Environmental Analysis, and prepare written responses to those comments; and present to the Board, at a subse-

quently scheduled public hearing, the final proposed regulatory language, staff's written responses to comments on the Draft Environmental Analysis, along with the Final Environmental Analysis for action.

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://ww2.arb.ca.gov/rulemaking/2019/ogvatberth2019>.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

“LICENSING FEE AMENDMENTS, 2020” DRAFT DOCUMENT Division 1.5, Chapter 10: Article 2 Amend: section 1605 (a), 1605 (b) Adopt: section 1605 (e)

NATURE OF PROCEEDING

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

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. All written comments must be received by the Board office via mail, facsimile, e-mail, or hand delivery no later than the conclusion of **December 2, 2019**.

Written comments shall be submitted to the following address:

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

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

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

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

(916) 653-0989

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

PublicComments@BOF.ca.gov

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Any request should be made to the contact information provided above.

AUTHORITY AND REFERENCE

(pursuant to GOV section 11346.5(a)(2); 1 CCR section 14 and 14 CCR section 1122)

Authority cited: Section 759, Public Resources Code. Reference: Sections 767 and 782, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(pursuant to GOV 11346.5(a)(3)(A)-(D))

The Professional Foresters Law (PFL) (Public Resources Code (PRC) section 750, *et seq.*), declares the existence of a public interest in the management and treatment of the forest resources and timberlands of this state and to provide for the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment, and through that regulation to enhance the control of air and water pollution, the preservation of scenic beauty, the protection of watersheds by flood and soil erosion control, the production and increased yield of natural resources, including timber, forage, wildlife, and water, and outdoor recreation, to meet the needs of the people.

Pursuant to PRC section 759, the Board is authorized to adopt rules and regulations to affect the provisions of the article (the Professional Foresters Law), including the regulation of persons who practice the profession of

forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment (PRC section 751).

Additionally, within the PPFL, PRC section 782 requires the Board to “. . . establish by regulation the amount of fees within the following ranges, and based on a determination by the board of the amount of revenues reasonably necessary to carry out the article.” The section then outlines maximum fees for certain specified applications, registrations, and other actions.

The proposed action was developed, in part, in response to budgetary investigations by the Office of Foresters Registration with the assistance from Cal Fire. After several years of review by the Professional Foresters Examination Committee (PFEC), it has been determined that the Registered Professional Foresters (RPF) Fund which is established within PRC section 780 and which is used for the administration of the PFL (PRC section 781), will have insufficient funds to conduct the normal processes and functions for the examination and licensing of Professional Foresters and the Certified Specialty program by fiscal 2019-20. Much of this problem stems from a reduced number of registrants and a fee structure that has not changed for 28 years since last revised in 1991.

The PFEC has made recommendations to institute cost-cutting measures such as reducing the number of locations for examinations, utilizing State facilities where there is no facility cost for conducting exams, and having the Executive Officer proctor the exam to eliminate expenditures. These actions took effect in 2019. Additionally, the PFEC requested a 10-year forecast of projected fund expenditures with the following assumptions; operation expenses (OE) increased by a nominal rate of inflation (2.6 percent) annually, personnel expenses (PE) increased by expected pay increases for merit and position salary step, and an assumption that 10 percent of the registry would either retire their license or put their license in withdrawal status as a result of the projected biennial fee increase for registration renewal. The projection was conducted to provide an analysis of varying combinations of biennial fee levels, potential cost reduction actions and the resulting annual revenue growth or reduction throughout the 10-year projection period.

The problem is that, even with various cost-cutting measures which have already been implemented, the Registered Professional Foresters Fund will not be solvent enough for continued effective administration of the Professional Foresters law in the near future. Additionally, outreach and surveys from the PFEC indicates that approximately 10 percent of RPFs will relinquish their license upon increased costs of renewals, both adding to the fund insolvency and eliminating valuable professional foresters from the workforce at a time

where the implementation of forest health or fuel reduction projects, many of which require RPF involvement, are most necessary in order to address fire hazards and ecological issues facing forests throughout the state. Additionally, it can be assumed that many of those individuals who will abandon their license are those closer to the end of their career who, though they may not engage in specific activities which require a license, have the most professional experience and are able to pass on that experience and knowledge to emergent professionals and trainees. Finally, the funds which are available for the administration of the PFL are generated through fees collected pursuant to the PFL and, though good governance would establish requirements for the evaluation of these funds to ensure continued administration of the PFL for the public good, no such mechanism exists.

Data was utilized from Cal Fire accounting reports. Utilizing the PFEC projection assumptions and the historic and forecasted accounting and revenue projections from Cal Fire, it was determined that a minimum biennial fee to maintain fund integrity and build fund surplus for long term solvency under the assumptions listed above, will require at a minimum 84 percent increase in the current renewal fee for Registered Professional Foresters (RPF). Additionally, the PFEC in deliberation requested a similar fee increase for Specialty Certificates of 85.7 percent, and requested increases in all non-renewal related fees itemized in PRC 1605 to the maximum detailed in statute (PRC section 782) under the Professional Foresters Law.

Additional administrative changes were requested by the PFEC to include amending 14 CCR section 1605 as follows:

- Amend 14 CCR section 1605 (a) to allow for fee payments by credit card to expedite and reduce expenses associated with fee payment processing.
- Adopt 14 CCR section 1605 (b)(10) to provide a renewal fee discount of \$100 biennially for any Registered Professional Forester (RPF) with 30 or more years of registration as a Professional Forester to offset likely voluntary relinquishment and license withdrawal resulting from fee increases and to maintain qualified supervising RPFs to meet the intent of 14 CCR section 1622, that RPF license applicants work three years under a registrant as part of the condition to qualify for the RPF examination.
- Adopt 14 CCR section 1605 (e) to require the PFEC to periodically evaluate renewal fees at least every five years for any necessary fee changes condition of available funds.

The purpose of the proposed action is to raise renewal and other fees to ensure the continued functions of the Office of Foresters Registration including; the review of applicants for examination, examination development and implementation, proctoring, and grading. Other functions supported by the RPF fund include complaint review, investigations, complaint processing, litigation, record keeping, renewal processing, distribution of licensing information to the registry, and general administration of the Professional Foresters Law. The purpose is to also provide for efficient payment processing for registrants, clarify the process and procedures for appeals of examinations and qualifications for license applicants, and to support the fund through implementation of fund reviews every five years at a minimum, and fee discounts to retain the most experienced professional forester registrants to help offset revenue losses and retain experienced RPFs.

The effect of the proposed action is to increase the available revenue to the RPF fund at operable levels by increasing certain fees associated with the Office of Professional Foresters Registration. Retaining the roughly ten percent of Register Professional Foresters with over 30 years in the registry who may otherwise abandon their license through a one hundred dollar discount in their biennial renewal fee. Reducing the processing cost and expediting fee payment for registrants through the allowance of online credit card payments. Ensuring the RPF fund solvency by requiring the PFEC to review the fund condition periodically.

The benefit of the proposed action is fund solvency so the processes and benefits of licensing for Registered Professional Foresters and Certified Specialists are maintained and the continual support and administration of the Professional Foresters Law is achieved, preserving the associated environmental benefits from having trained, licensed professionals to remain engaged in the professional practice of forestry as well as to oversee the work product of license applicants, consistent with 14 CCR section 1622.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV section 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to licensing fees for Professional Foresters and Certified Specialists and found no existing State regulations that met the

same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: PRC sections 750 *et seq.*

**MANDATED BY FEDERAL
LAW OR REGULATIONS**

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

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

There are no comparable Federal regulations related to licensing fees for Professional Foresters of Certified Specialists. No existing Federal regulations meeting the same purpose as the proposed action were identified.

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

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

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

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

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

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

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

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

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

The proposed action will not result in costs to any State agency. The proposed action represents an expansion of existing regulations related to licensing fees which will improve the ability of the State agency to operate.

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

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

The proposed action will not significantly affect housing costs.

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

The Board has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The types of businesses that will be affected are Registered Professional Foresters, Certified Specialists, and the employers of those individuals which may compensate those licensed professionals for the costs of licensing.

There are no reporting, recordkeeping, or other compliance requirements which would result from the proposed action, as those mechanisms are already extant within Board regulation.

The Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

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

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating the implementation of the Professional Foresters Law that the Board brings to bear on regulatory development. Additionally, data was utilized from CAL FIRE accounting reports for necessary operating costs associated with the implementation of the Professional Foresters Law.

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

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

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

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

A representative person (an RPF or CS) would be subjected to a bi-annual licensing renewal fee increase of between \$50 to \$160, depending upon license type and years of experience.

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

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

Small businesses, within the meaning of GOV section 11342.610, may be affected by the proposed action. It is estimated that roughly 10 percent of those businesses affected by the proposed action (i.e. those businesses which are, or cover the fees for, Registered Professional Foresters or Certified Specialists), are small businesses, as described within GOV section 11342.610, though the total number of those businesses are unknown. These small businesses are legally required to comply with the proposed amendments.

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

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

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

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSON

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

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

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

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

All of the following are available from the contact person:

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

FINAL STATEMENT OF REASONS

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

INTERNET ACCESS

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

TITLE 16. OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Osteopathic Medical Board of California (Board) is proposing to adopt the proposed regulation described below in the Informative Digest after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**The Osteopathic Medical Board of California
1300 National Drive, Suite 150,
Conference Room
Sacramento, CA 95834**

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on December 4, 2019, located at the Osteopathic Medical Board of California Conference Room, 1300 National Drive, Suite 150, Sacramento, CA 95834. The conference room is wheelchair accessible. 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 Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Written comments, including those sent by mail, facsimile, or email should be sent to the addresses listed under Contact Person in this Notice, must be received by the Board at its

office not later than 5:00 p.m. on December 3, 2019. Comments submitted by facsimile can be sent to (FAX) at (916)928-8392 or by email to Terri.Thorfinnson@dca.ca.gov. The written comment period closes at 5:00 p.m. on December 3, 2019 or must be received at the hearing. The Board will consider only comments received at the Board office by that time.

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

Submit comments to:

Terri Thorfinnson, Assistant Executive Director
Osteopathic Medical Board of California
1300 National Drive, Suite 150
Sacramento, CA 95834

AUTHORITY AND REFERENCE

The Osteopathic Act (Initiative Measure, Stats. 1923, p. xciii), section 1, and sections 2018 and 3600-1 of the Business and Professions Code, authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 138 and 2026 of the Business and Professions Code (BPC).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action seeks to adopt section 1606 into the California Code of Regulations, Division 16 of Title 16, to require licensed osteopathic physicians and surgeons to notify consumers of their licensure by the Osteopathic Medical Board of California, that consumers can check the status of a license, and file a complaint against a licensee.

Existing law, BPC section 138, requires every board within the Department of Consumer Affairs to initiate on or before June 30, 1999, the process of adopting regulations requiring licensees to provide notification to their clients or customers that the practitioner is licensed by the state.

Existing law, BPC section 2026, requires the Board to initiate on or before January 1, 2019, the process of

adopting regulations requiring physicians and surgeons to provide patients with notice that they are licensed by the Osteopathic Medical Board of California, that the practitioner's license can be checked, and that complaints against the practitioner can be made through the Board's website or by contacting the Board.

This proposal implements BPC sections 138 and 2026 that require osteopathic physician and surgeon licensees to notify patients that they are licensed by the Osteopathic Medical Board of California, that the patients can check the status of the osteopathic physician and surgeon license on a specified website, and that they can file a complaint against the osteopathic physician and surgeon online or by contacting the Board. The notice provides the Board's email, phone number, and website address.

The proposal also provides licensees specific requirements for how to comply with these notice requirements. It specifies three options for providing notice. The first option is that the notice is required to be prominently posted in an area visible to patients on the premises where services are provided in at least 48-point Arial type font. The second option is to provide notice to patients or their representatives in writing and have them sign and date the notice confirming their understanding. The third option is to have the notice in a written statement on letterhead, discharge instructions or other document given to the patient or the patient's representative.

Goals and Objectives of Proposed Regulations

The goal and objective of this proposed regulation is to increase consumer protection through increased consumer awareness of the existence of the Board's various consumer protection tools. Consumer awareness is increased by providing consumers with the contact information for the licensing board and informing them that they can check the status of their osteopathic physician and surgeon on the website provided on the notice. The proposed regulations require osteopathic physicians and surgeons provide notice to each patient of the fact that he or she is licensed and regulated by the Board. It also provides licensees specific requirements for how to comply with these notice requirements.

This proposal requires the notice to include specific wording approved by the Board that must be in every notice. There are three options for licensees to provide this notice: signage, a written and signed disclosure document, or discharge documents from each visit.

Benefit of the Regulation

This regulatory proposal benefits the health and welfare of California residents who seek medical care from an osteopathic physician and surgeon. This regulation will benefit consumers/patients by providing them with a way to check whether the physician and surgeon is li-

censed, check the status of their license and make the patient aware that the patient can file a complaint with the Board. It will protect against being treated by unlicensed providers and provide consumers with a way to check doctors and file complaints if needed. This consumer awareness will empower and protect consumers and may result in identifying osteopathic physicians and surgeons who are violating the Medical Practice Act or the Osteopathic Act.

EVALUATION OF
INCONSISTENCY/INCOMPATIBILITY WITH
EXISTING STATE REGULATIONS

The Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that require osteopathic physicians and surgeons in California to provide notice to consumers.

DISCLOSURES REGARDING THE
PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal impact on Public Agencies Including Costs or Savings to State Agencies or Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State.

Any implementation costs to the Board are negligible and absorbable within existing resources. As a result of providing consumer notice, the Board expects to incur additional costs related to providing notice to physicians and surgeons through the mail. Some members of the public will contact the Board with questions about a physician and surgeon's license status, how to use the online license look-up and file a complaint and obtain forms. Increased consumer awareness may increase the number enforcement complaints the Board receives, which may increase enforcement expenditures for the Board.

Nondiscretionary Costs/Savings to Local Agencies.

None.

Local Mandate.

None.

Cost to Any Local Agency or School District or Which Government Code Sections 17500–17630 Required Reimbursement.

None.

Business Impact.

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business.

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

Effect on Housing Costs.

None.

Effect on Small Business

The Board has determined that the proposed regulations would affect small businesses, as some licensees may work in small business practice settings.

This proposed regulation would require licensees to determine which of the three notification methods available would be the most appropriate for their practice setting. The three methods include: posting a sign where their patients or patient's representatives may see it; include a written statement signed and dated by the patient or patient's representative and placed in their medical record; or include the notification language on another document just above the patient signature line.

The Board believes that the impact would be minimal, since it is anticipated that most offices will post one sign in an area where their patients may see it.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

- **Analysis of creation/elimination of businesses:**
This proposal will not create new businesses or eliminate existing businesses within California. This regulatory proposal simply requires offices in which osteopathic physicians and surgeons practice to provide specified notice to patients or their representatives. Since there are only 9,843 licensed D.O.s in the State of California, this notice requirement will only impact a fraction of the business community in California.
- **Analysis of creation/elimination of jobs:**
This proposal will not create or eliminate any jobs within California. This regulatory proposal simply requires offices in which osteopathic physicians and surgeons practice to provide specified notice to patients or their representatives. Additionally, only osteopathic physicians and surgeons are impacted by this change. There are 9,843 osteopathic physicians and surgeons licensed in California by the Board.
- **Analysis of expansion of business:**
This regulatory proposal will not expand any business in California for the reason described above.

Benefits of the Regulation to the Health and Welfare of California Residents, Workers Safety, and the State's Environment:

This regulatory proposal is intended to benefit the health and welfare of California residents because it provides consumers with information about their physicians and surgeons including where to file a complaint. The more complaints the Board receives the better it can protect consumers.

The proposal will have no effect on worker safety or the State's environment. As part of its Economic Impact Analysis, the Board has determined that the regulatory proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

CONSIDERATION OF ALTERNATIVES

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

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the contact person named below or by accessing the Board's website: <http://www.ombc.ca.gov>.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may

be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under "Contact Person" or by accessing the Board's website: <http://www.ombc.ca.gov>.

CONTACT PERSON

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

Name:
Terri Thorfinnson, Assistant Executive Director
1300 National Drive, Suite #150
Sacramento, CA 95834-1991
(916) 928-8390 Office
(916) 928-8392 FAX
Email: Terri.Thorfinnson@dca.ca.gov

The backup contact person is:

Name:
Machiko Chong, Executive Analyst
1300 National Drive, Suite #150
Sacramento, CA 95834-1991
(916) 928-8390 Office
(916) 928-8392 FAX
Email: Machiko.Chong@dca.ca.gov

Website Access: Materials regarding this proposal can be found at <http://www.ombc.ca.gov>.

TITLE 22. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Title 22, Division 7, Chapter 10: Health Facility Data

Sections 97019 and 97041

The Office of Statewide Health Planning and Development (OSHPD) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Pursuant to the Health Data and Advisory Council Consolidation Act (the Data Act), Health and Safety Code (HSC) section 128765-128810, OSHPD has established uniform systems of accounting for all California health facilities pursuant to Chapter 2 of Division 2 of the Health and Safety Code. Pursuant to HSC section 128735, long-term care (LTC) facilities are required to file an annual financial disclosure report with OSHPD. The report is known as the Long-Term Care Facility Integrated Disclosure and Medi-Cal Cost Report (LTC Report). As the title indicates, the LTC Report also serves as the Medi-Cal Cost Report for those

facilities, pursuant to HSC section 128730. OSHPD's Accounting and Reporting Manual for California Long-term Care Facilities, Second Edition (LTC Manual) is being amended to reflect the new filing requirements and to make other updates, and the specifications for software used to prepare the annual reports are also being updated.

Assembly Bill (AB) 1953 (Chapter 383, Statutes of 2018) added HSC section 128734 to expand the disclosure of interests in businesses providing services to Skilled Nursing Facilities (SNFs). Further, the California State Auditor's (CSA) May 2018 report titled "Skilled Nursing Facilities — Absent Effective State Oversight, Substandard Quality of Care has Continued" recommended that OSHPD require additional disclosure regarding related party transactions in the LTC Report.

OSHPD's *Accounting and Reporting Manual for California Long-Term Care Facilities*, Second Edition (LTC Manual), as well as the specifications for software used to prepare the required report, are incorporated by reference in current regulation. The LTC Manual establishes the accounting system health facilities must use and details methods for completing and filing the required report.

OSHPD is proposing to adopt regulations to implement the requirements of new HSC section 128734 into the LTC Manual to become effective for reporting periods ending on or after January 1, 2020.

I. PUBLIC HEARING

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

II. WRITTEN PUBLIC COMMENT PERIOD AND CONTACT PERSON

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. All comments must be received by OSHPD by 5:00 p.m. on December 4, 2019.

Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by email are suggested. Comments may also be faxed, hand delivered, or mailed.

Lexie Bloyd, Auditor
 Information Services Division
 Office of Statewide Health
 Planning and Development
 Fax: (916) 322-1442
 Telephone: (916) 326-3833
 Email: lexie.bloyd@oshpd.ca.gov
 Mailing address:

2020 West El Camino Avenue, Suite 1100
 Sacramento, CA 95833-1880

Inquiries and comments may also be directed to the backup contact person at the same mailing address:

Starla Ledbetter, Chief Data Officer
 Information Services Division
 Fax: (916) 322-1442
 Telephone: (916) 326-3984
 Email: starla.ledbetter@oshpd.ca.gov

Comments should include the author's name, U.S. Postal Service address, and email address, if applicable, for OSHPD to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

III. AUTHORITY AND REFERENCE

Authority: California Health and Safety Code, Section 128810.

Reference: California Health and Safety Code, Sections 128680, 128730, 128734, 128735, and 128760.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Summary of Existing Law

Pursuant to the Health Data and Advisory Council Consolidation Act (the Data Act), Health and Safety Code (HSC) section 128675-128810, OSHPD has established uniform systems of accounting for all California health facilities licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

Pursuant to Health and Safety Code section 128735, LTC facilities are required to file annual financial disclosure reports with OSHPD. The report is known as the Long-Term Care Facility Integrated Disclosure and Medi-Cal Cost Report. These reports also serve as their Medi-Cal Cost Reports, pursuant to HSC section 128730.

OSHPD's *Accounting and Reporting Manual for California Long-Term Care Facilities*, Second Edition (LTC Manual) is incorporated by reference in current regulation. The Manual establishes the accounting systems health facilities must use and details methods for preparing and filing required reports. Section 4001 of

the Manual states that every skilled nursing and intermediate care facility required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, Health and Safety Code, must complete and file this report. If Medi-Cal providers, the report must also be completed and filed to satisfy the requirements of Section 51511.2, Title 22, California Code of Regulations (CCR).

The current reporting requirements limit the disclosure of related party transactions in the Long-Term Care Integrated Disclosure and Medi-Cal Cost Report.

B. Policy Statement Overview/Specific Benefits of the Proposed Regulations

The proposed regulations update the *Accounting and Reporting Manual for California Long-Term Care Facilities*, Second Edition to reflect new reporting requirements required to implement HSC section 128734.

HSC section 128734 requires that all licensed Skilled Nursing Facilities (SNF) disclose to OSHPD whether the licensee, general partner, director, or officer of the licensee has an ownership or control interest of five percent (5 percent) or more in a related party that provides any service to the SNF.

If that ownership or control interest exists, HSC section 128734 requires that the following items are disclosed to OSHPD in the LTC Integrated Disclosure and Medi-Cal Cost Report: 1) all services provided to the SNF, 2) the number of individuals providing that service, and 3) if goods and/or services are greater than ten thousand dollars (\$10,000), the related party's profit and loss statement and the Payroll-Based Journal Public Use Data of the previous quarter.

The CSA audit recommends that the LTC Integrated Disclosure and Medi-Cal Cost Report: 1) enables SNFs to fully disclose related party transactions and 2) provides a single location on the report for SNFs to enter related party transactions next to the amount they are claiming for Medi-Cal reimbursement.

C. Determination of Inconsistency/Incompatibility with Existing Law

As required by Government Code Section 11346.5(a)(3)(D), OSHPD evaluated the language contained in the proposed regulation and determined these proposed regulations are not inconsistent with or incompatible with existing state regulations. OSHPD also determined there are no comparable federal regulations or statutes.

D. Documents Incorporated by Reference

The proposed rulemaking incorporates by reference the *Accounting and Reporting Manual for California Long-term Care Facilities*, Second Edition, as

amended * _____, to be utilized for report periods ended on or after January 1, 2020.

In addition, proposed amendments to Title 22, CCR, Section 97041 incorporate by reference the following updated software specifications for preparing annual disclosure reports:

- "Instructions and Specifications for Developing Approved Software to Prepare the California Long-Term Care Facility Integrated Disclosure and Medi-Cal Cost Report", published by OSHPD October 2019.

V. DISCLOSURES REGARDING THE PROPOSED ACTION

OSHPD has made the following initial determinations:

- A. Mandate on local agencies and school districts: None.
- B. Cost or savings to any state agency: OSHPD has identified costs of \$369,000 in fiscal year 2019-20, and \$119,000 in fiscal year 2020-21 and ongoing to implement the requirements of HSC section 128734.
- C. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.
- D. Other nondiscretionary cost or savings imposed on local agencies: None.
- E. Cost or savings in federal funding to the state: None.
- F. Cost impact on a representative person or business: Skilled Nursing Facilities may incur up to \$250 per year to gather and upload the statutorily required information of HSC section 128734.
- G. Statewide adverse economic impact directly affecting business and Individuals: OSHPD has made an initial determination that the regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.
- H. Significant effect on housing costs: None.
- I. Effect on small business: OSHPD determined that 3 health facilities match the small business definition stated in Government Code Section

*Date to be completed by OAL as the applicable effective date pursuant to Government Code Section 11343.4 (a).

11342.610. These health facilities could potentially be affected by OSHPD’s proposed regulations if they have interests in businesses that provide services to the facility.

- J. Business Reporting Requirement: OSHPD determined it is necessary for the welfare of the people of the state that this regulation, which requires a report, apply to business.

VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)

OSHPD prepared an Economic Impact Analysis in the Initial Statement of Reasons and concludes that:

- A. this regulatory action will not create jobs within the state;
- B. this regulatory action will not eliminate jobs within the state;
- C. this regulatory action will not create new businesses;
- D. this regulatory action will not eliminate existing businesses;
- E. this regulatory action will not affect the expansion of businesses currently doing business in the state; and
- F. the benefits to the public are that greater transparency for related party transactions at California’s skilled nursing facilities will allow OSHPD to make important healthcare data available to the public.

VII. REASONABLE ALTERNATIVES

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

VIII. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED

OSHPD will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address given for the contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed changes to the regulations including the proposed changes to the LTC Manual incorporated by reference, the initial statement of reasons, an economic impact analysis contained in the initial statement of reasons, and information upon which the proposed rulemaking is based, including the May 2018 California State Auditor’s Report: “Skilled Nursing Facilities — Absent Effective State Oversight, Substandard Quality of Care Has Continued.”

IX. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

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

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on the website at <https://oshpd.ca.gov/about/laws-regulations/>. OSHPD will accept written comments on the modified regulations for 15 days after the date on which they are made available.

X. AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons, including all the comments and responses, will be available, after its completion, through the OSHPD website at <https://oshpd.ca.gov/about/laws-regulations/>. The Final Statement of Reasons will also be available for review from the designated contact person.

XI. AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Notice of Proposed Action, Initial Statement of Reasons, the text of the proposed regulations in italics and strikeout, and documents incorporated by reference can be accessed through OSHPD's website at <https://oshpd.ca.gov/about/laws-regulations/>.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 PROPOSITION 65

AMENDMENT TO SECTION 25705 SPECIFIC REGULATORY LEVELS POSING NO SIGNIFICANT RISK:

P-CHLORO-a,a,a-TRIFLUOROTOLUENE (PCBTF)

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to adopt a Proposition 65¹ No Significant Risk Level (NSRL) of 23 micrograms per day for p-chloro-a,a,a-trifluorotoluene (PCBTF), by amending Title 27, California Code of Regulations, section 25705(b)².

PUBLIC PROCEEDINGS

Any written comments concerning this proposed action must be received by OEHHA by **December 2, 2019** the designated close of the written comment period. All comments received will be posted on the OEHHA website at the close of the public comment period.

The public is encouraged to submit written information via e-mail or at <https://oehha.ca.gov/comments> rather than in paper form. Hard-copy comments may be mailed, emailed, faxed, or delivered in person to the address below.

Mailing Address:

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS-23-11F
Sacramento, California 95812-4010
Fax: (916) 323-2610
Street Address: 1001 I Street
Sacramento, California 95814
P65Public.Comments@oehha.ca.gov

Please be aware that OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. Comments on all regulatory and other actions are routinely posted on our website. By sending us your comments, you are waiving any right to privacy you may have in the information you provide. Individual commenters should advise OEHHA when submitting documents to request redaction of home address or personal telephone numbers. Names of commenters will not be redacted.

A public hearing on this proposed regulatory amendment will be scheduled on request. To request a hearing send an e-mail to Monet Vela at monet.vela@oehha.ca.gov or to the address listed above by no later than **November 18, 2019**, which is 15 days before the close of the comment period. OEHHA will mail a notice of the hearing to the requester and interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA website at least ten days before the public hearing date. The notice will provide the date, time, and location of the hearing.

If a hearing is scheduled and you have special accommodation needs, please contact Monet Vela at (916) 323-2517 or monet.vela@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela at monet.vela@oehha.ca.gov or by telephone at (916) 323-2517. Mario Fernandez is a back-up contact person for inquiries concerning processing of this action and is available at mario.fernandez@oehha.ca.gov or (916) 323-2635.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 65 prohibits a person in the course of doing business from knowingly and intentionally expos-

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq., referred to herein as "Proposition 65" or "The Act."

² All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated.

ing any individual to a chemical that has been listed as known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual³. The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water⁴.

For carcinogens, an exemption from the warning requirement is provided by the Act when the exposure for which the person is responsible can be demonstrated to produce no significant risk or when a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water⁵. A determination that a level of exposure poses no significant risk may be made utilizing regulations adopted by OEHHA (Sections 25701–25721). Section 25701 describes alternative methods for making such a determination. Section 25703 sets forth the process for determining “no significant risk” levels for purposes of Proposition 65 and Section 25705 establishes those levels for certain listed chemicals.

Details on the basis for the proposed NSRL for PCBTF are provided in the Initial Statement of Reasons for this regulatory amendment, which is available on request from Monet Vela and is posted on the OEHHA website at www.oehha.ca.gov.

This proposed amendment to Section 25705 would add an NSRL for PCBTF by amending Section 25705(b) as follows (addition in underline):

Chemical: p-chloro-a,a,a-trifluorotoluene —
NSRL, in micrograms per day: 23

To develop the proposed NSRL for PCBTF, OEHHA relied on the National Toxicology Program (NTP) report entitled “Toxicology and Carcinogenesis Studies of p-Chloro-a,a,a-trifluorotoluene in Sprague Dawley Rats (Hsd:Sprague Dawley SD) and B6C3F1/N Mice (Inhalation Studies)”⁶. The NTP report summarized the available data from rodent carcinogenicity studies, as well as other information relevant to the carcinogenic activity of PCBTF. The NSRL for PCBTF is based upon the results of the most sensitive scientific study deemed to be of sufficient quality⁷.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

Some businesses may not be able to afford the expense of establishing an NSRL and therefore may be

³ Health and Safety Code section 25249.6.

⁴ Health and Safety Code section 25249.5.

⁵ Health and Safety Code sections 25249.9 and 25249.10.

⁶ *Ibid.*

⁷ Section 25703(a)(4).

vulnerable to litigation for a failure to warn or for a prohibited discharge of the listed chemical. By providing an NSRL, this regulatory proposal spares businesses the expense of calculating their own NSRL and may enable them to reduce or avoid litigation costs. In addition, the NSRL does not require, but may encourage, businesses to lower the amount of the listed chemical in their product to a level that does not cause a significant exposure, thereby providing a public health benefit to Californians. This in turn may reduce exposure to PCBTF and reduce resident, worker and environmental exposures to chemicals that cause cancer.

No Inconsistency or Incompatibility with Existing Regulations

After conducting an evaluation on any related regulations in this area, OEHHA has found that these are the only regulations dealing with Proposition 65 No Significant Risk Levels for this specific chemical. Therefore, OEHHA has determined that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. The proposed regulation does not impose any mandatory requirements on businesses, state or local agencies and does not address compliance with any other law or regulation.

RESULTS OF ECONOMIC IMPACT ANALYSIS (Gov. Code section 11346.3(b))

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses in California

This regulatory proposal will not affect the creation or elimination of jobs within the State of California. Proposition 65 requires businesses with ten or more employees to provide warnings when they expose people to chemicals that are known to cause cancer. The law also prohibits the discharge of listed chemicals into sources of drinking water. PCBTF is listed under Proposition 65; therefore, businesses that manufacture, distribute or sell products with PCBTF in the state must provide a warning if their product or activity exposes the public or employees to significant amount of this chemical. Businesses are also prohibited from discharging significant amounts of this chemical into sources of drinking water. The regulatory proposal does not create additional compliance requirements, but instead provides a “safe harbor” value that aids businesses in determining whether a warning is required for a given exposure or a discharge is prohibited.

Because the proposed NSRL provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses, OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion

of businesses currently doing business within the State of California.

Benefits of this regulation include sparing businesses the expense of calculating their own NSRL and possibly enabling them to reduce or avoid litigation costs. By providing an NSRL, it may encourage businesses to lower the amount of the listed chemical in their product to a level that does not cause a significant exposure, thereby providing a public health benefit to Californians. This in turn may reduce exposure to PCBTF and reduce resident, worker and environmental exposures to chemicals that cause cancer.

PEER REVIEW

This notice and the Initial Statement of Reasons are being provided to the OEHHA Science Advisory Board's Carcinogen Identification Committee for review and comment.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Because Proposition 65 expressly⁸ does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

Because Proposition 65 expressly⁹ does not apply to any State agency, OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

Because Proposition 65 expressly¹⁰ does not apply to any federal agency, OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs because it provides compliance assistance to businesses subject to Proposition 65, but does not impose any mandatory requirements on those businesses.

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

Because the proposed regulatory level provides compliance assistance to businesses subject to Proposition 65, but do not impose any mandatory requirements on those businesses, OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed NSRL was developed to provide compliance assistance for these businesses in determining whether a warning is required or a discharge is prohibited. The NSRL provides a level of exposure at or below which a warning is not required and a discharge is not prohibited. Use of the NSRL is not mandatory. The implementing regulations allow a business to calculate its own level and provide guidance in order to assist businesses in doing so¹¹. However, conducting such a process can be expensive and time consuming, and the resulting levels may not be defensible in an enforcement action. OEHHA 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

OEHHA has determined that the proposed regulation will not impose any mandatory requirements on small

⁸ See Health and Safety Code section 25249.11(b).

⁹ See Health and Safety Code section 25249.11(b).

¹⁰ See Health and Safety Code section 25249.11(b).

¹¹ Title 27, Cal. Code of Regs., section 25701 et seq.

business. Rather, the proposed NSRL will provide compliance assistance for small businesses subject to Proposition 65 because it will help them determine whether an exposure for which they are responsible is subject to the warning requirement or discharge prohibition of Proposition 65.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346(a)(13) requires that OEHHA must determine that no reasonable alternative considered by the OEHHA or that has otherwise been identified and brought to the attention of the OEHHA would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the information upon which the regulation is based and the text of the regulation. A copy of the Initial Statement of Reasons, the text of the regulation and the documents relied on to develop the proposed regulation are available upon request from OEHHA at the address and telephone number indicated above. These documents are also posted on OEHHA's website at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation, which is changed or modified from the express terms of this proposed action, will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, if held, or whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such changes. Copies of the notice and the changed regulation will also be available on the OEHHA website at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons for this regulatory action may be obtained, when it becomes available, from OEHHA at the address and telephone number indicated above, and on the OEHHA website at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

**HABITAT RESTORATION AND ENHANCEMENT ACT
CONSISTENCY DETERMINATION NO.
1653-2019-048-001-R1**

Project: Scott River Watershed Coho Salmon Habitat Enhancement Project

Location: Siskiyou

Applicant: Betsy Stapleton, Scott River Watershed Council

Background

Project Location: The Scott River Watershed Coho Salmon Habitat Enhancement Project, (Project) is located approximately 2.1 miles upstream of the confluence with the Scott River, near 5104 French Creek Road, in the town of Etna, in the County of Siskiyou. The project will include Assessor Parcel Number (APN) 023-171-070 owned by Miners Creek Ranch LLC and APN 023-171-020 owned by Michael and Betsy Stapleton, French Creek is a tributary to Scott River and supports populations of Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*).

Project Description: The Scott River Watershed Council (Applicant) proposes to enhance or restore habitat within French Creek to provide a net conservation benefit for Chinook salmon, coho salmon, and steelhead. The conservation benefits from the proposed project will improve salmonid spawning and rearing habitat by the placement of large woody debris to create scour pools, and improve floodplain and off-channel access through the creation of complex refugia. In addition, the proposed project will introduce spawning gravel as spawning habitat is currently poor due to lack of sorting. The supplemental 50 cubic yards of half-inch to three-inch diameter spawning gravel will poten-

tially positively improve embryo and smolt survival until the instream features improve long-term fluvial function. The Project will include six log structures from a combination of streamside alder trees and intertwined pieces of imported wood. Heavy equipment and a hand-held hydraulic post pounder and/or excavator-mounted vibratory plate will be used to pound posts to assist with wedging material and/or keying in the large wood. The spawning gravels will be placed in association with the large wood structures with an excavator. The removal of nearby vegetation should not significantly diminish riparian shade.

Project Size: Phase 1 is approximately 4 acres and 132 linear feet. The Applicant will not exceed 5 acres and 500 linear feet over the multi-year project. Future phases have not been presented or assessed for impacts. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, section 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from Phase 1 of the Project include those associated with the following: (1) up to 15 logs (some with root wads attached), (2) 50 cubic yards of native river run spawning gravels, and (3) 50 cubic yards of native vegetation.

Project Timeframes:

- Start date: September 2019
- Completion date: October 2024
- 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 spawning and rearing conditions to fish habitat and function to 0.12 miles of stream, 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 1A190123WNSI), Electronic Content Management Identification (ECM PIN) Number CW–860531 for the Project. The NOA describes the impacts and project associated discharge for phase 1 of 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 Chinook salmon, coho salmon, and steelhead for phase 1 of the Project.

Receiving Water: French Creek, a tributary to Scott River

Filled or Excavated Area:

- Permanent area impacted: none
- Temporary area impacted: 0.18 acres
- Length temporarily impacted: 132 linear feet
- Length permanently impacted: unknown

Dredge Volume: None.

Discharge Volume: Up to 15 logs (some with root wads attached), 50 cubic yards of native river run spawning gravels, and 50 cubic yards of native vegetation.

Project Location: The project reach is approximately 0.12 miles with the upstream coordinates being Latitude 41.398181 degrees N, Longitude –122.86975 degrees W and downstream coordinates being Latitude 41.399235 degrees N, Longitude –122.867861 degrees W. The APNs are 023–171–070 and APN 023–171–020.

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 September 5, 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 September 10, 2019, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2019–0910–04) on September 20, 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 Phase 1 of the Project and meets the conditions set forth in Fish and Game Code section 1653 for authorizing the Project.

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

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4) include, but are not limited to, the following: (1) Erosion Control; (2) Minimize Disturbance from Instream Construction, including work period and pollutants; (3) Minimize Degradation of Water Quality; (4) Environmental Resources, including pre-construction surveys and invasive species measures; (5) Protected Species, including Salmonids, Avian, and Special Status Species; and (6) Archaeological and Cultural Resources. The specific avoidance and minimization requirements are found under Section 8 of the attachment to the NOI and titled “Avoidance and Minimization Measures.”

Monitoring and Reporting

The primary goal of the Project is to create complex refugia for salmonids in the French Creek watershed. Performance measures will be salmonid utilization and project photographs evaluating the complexity.

Monitoring Plan: Prior to construction, an assessment will occur to document conditions of the French Creek watershed including a geomorphic features like stream width, depth and substrate. Specific monitoring will be as followed for all implemented large woody structures including both photographic and material monitoring prior to implementation and again after each winter until 2024. All assessments will include the following monitoring:

1. Photographic monitoring will be at established benchmark locations. In addition and where appropriate, additional photographic monitoring may occur of specific structures.
2. Painted gravel mobilization and remains in the treatment each after winter runoff events using established stream transects and Wolman Pebble Counts.
3. Coho salmon monitoring of treated reach by adult and juvenile coho salmon including spawning ground surveys, documentation of coho redds, juvenile direct observations at base flow near introduced wood structures.

The post-project assessment will occur in the Spring of 2024 and be dependent upon weather conditions and stream flow.

Reporting Plan: Following completion of the seasonal work period, an annual report will be submitted to all appropriate agencies (i.e., U.S. Fish and Wildlife Service, Army Corps of Engineers, North Coast Regional Water Quality Control Board, and CDFW) by May 1 of each year. This report will include the findings that result from pre- and post-project monitoring. These find-

ings will indicate the achievement of performance standards that are relative to the project goals. Each report will include the following information:

1. Summary of findings;
2. Identification and discussion of problems with achieving performance standards;
3. Proposed corrective measures; and
4. 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 that a Notice of Completion (NOC) to be submitted by the applicant no later than 30 days after the project has been completed. A complete NOC includes as a minimum:

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

The NOC shall demonstrate that the Project has been carried out in accordance with the Project description as provided in the applicants NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Document submittals shall be made electronically to: 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).)

**DEPARTMENT OF
FISH AND WILDLIFE**

**HABITAT RESTORATION AND
ENHANCEMENT ACT
CONSISTENCY DETERMINATION NO.
1653-2019-049-001-R1**

Project:

Flynn Creek Large Wood Augmentation Project — Phase II

Location:

Mendocino County

Applicant:

Patty Madigan, Mendocino County Resource Conservation District

Background

The Flynn Creek Large Wood Augmentation Project — Phase II (Project) is proposing to use the accelerated wood recruitment technique to increase pool depth, pool frequency, pool shelter value, and overall channel complexity by placing 40 logs at 25 locations within a 0.8 mile reach. The Project reach was treated in 2016 with a similar large wood recruitment technique and this Project has been designed to provide additional wood to further enhance instream structure.

Project Location: The Project is located between latitude 39.26263, longitude -123.59107 and 39.16113, at a property owned by Mendocino Redwood Company, Assessor Parcel Numbers (APN) 129-290-01, 129-290-07, 128-300-01, 128-300-05, and 128-250-02, and affects Flynn Creek. Flynn Creek supports populations of coho salmon, steelhead, and foothill yellow-legged frogs.

Project Description: Patty Madigan (Applicant) representing the Mendocino County Resource Conservation District (MCRCD) proposes to enhance or restore habitat within Flynn Creek to provide a net conservation benefit for Central California Coast coho salmon (*Oncorhynchus kisutch*) and Northern California Coast steelhead (*O. mykiss*). The Project includes the placement of 40 key pieces (length greater than 1.5 times bankful width) of large wood at 25 locations. These wood pieces will either be anchored to the existing wood structures or placed into the stream and will move downstream during high runoff events.

The California Department of Fish and Wildlife (CDFW) Fisheries Restoration Grant Program funded the design of phase one of this project that CDFW engineering and Fisheries staff reviewed. Phase one was completed in 2016. Project plans, discussion of proposed work, species protection measures, site photos

and maps are on file with CDFW's Habitat Conservation Planning Branch (HCPB).

Project Size: The total area of ground disturbance associated with the Project is approximately 3.8 acres and 309 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, section 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) 40 pieces of large wood pieces and (2) approximately 2 cubic yards of soil incidental to tree felling and winching.

Project Timeframes:

Start date: October 2019

Completion date: October 2019

Work window: October 1 (or the date of signature on this document, whichever is later) — October 31

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve channel complexity in 0.8 miles spawning and rearing habitat, 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 1B190109WMNE), Electronic Content Management Identification (ECM PIN) No. CW-860261 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 species.

Receiving Water: Flynn Creek, tributary to the Navarro River

Filled or Excavated Area:

Permanent area impacted: none

Temporary area impacted: 1.2 acres maximum

Length temporarily impacted: 116 linear feet

Length permanently impacted: 0 linear feet

Dredge Volume: None.

Discharge Volume: 40 pieces of large wood, anchoring bolts to hold the large wood as needed, and approximately 2 cy of native soil.

Project Location: Latitude 39.135711 N. and Longitude -123.183827 W., (NAD 83); APN: 18104101.

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 September 16, 2019, the Director of the California Department of Fish and Wildlife (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 September 17, 2019, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2019-0917-01) on September 27, 2019. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Construction-period Water Quality Protection and Erosion and Sedimentation Control Measures; (2) Post-construction and Sediment Control and Water Quality Protection Requirements; (3) General Program Conditions for Vegetation Management; and (4) General Measures to Avoid Impacts on Biological Resources. The specific avoidance and minimization requirements are found in an attachment to the NOI, V. Part F — Avoidance and Minimization Methods.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI, Monitoring and Reporting Plan Flynn Creek Coho Habitat Enhancement project (section VIII)

Notice of Completion

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Applicant to submit a Notice of Completion (NOC) no later than 30 days after the project has been completed. A complete NOC includes at a minimum:

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

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

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

AIR TOXICS HOT SPOTS PROGRAM

**NOTICE OF PUBLIC COMMENT PERIOD
AND WORKSHOPS ON DRAFT INHALATION
CANCER UNIT RISK FACTOR FOR
P-CHLORO-a,a,a-TRIFLUOROTOLUENE**

The Office of Environmental Health Hazard Assessment (OEHHA) is releasing a document for public review, summarizing the carcinogenicity and derivation of a cancer inhalation unit risk factor (IUR) for *p*-chloro-*a,a,a*-trifluorotoluene (*para*-chlorobenzotrifluoride, PCBTF). Cancer inhalation unit risk factors are used to estimate lifetime cancer risks associated with inhalation exposure to a carcinogen.

OEHHA is required to develop guidelines for conducting health risk assessments under the Air Toxics Hot Spots Program (Health and Safety Code Section 44360(b)(2)). In implementing this requirement, OEHHA develops IURs for many air pollutants. The draft PCBTF inhalation cancer unit risk factor was developed using the most recent “Air Toxics Hot Spots Program Technical Support Document for Cancer Potency Factors,” finalized by OEHHA in 2009.

The draft PCBTF inhalation cancer unit risk factor document is being made available today on the OEHHA website at <http://www.oehha.ca.gov>. **The posting of the document will commence a 45-day public review period that will end on December 2, 2019.** Public workshops will be held in Southern and Northern California at the following locations and times:

Southern California

November 13, 2019
10:00 a.m.–12:00 p.m.
South Coast Air Quality
Management District
Room CC-2
21865 E. Copley Drive
Diamond Bar, CA 91765

Northern California

November 15, 2019
1:30 p.m.–3:30 p.m.
OEHHA
George Alexeeff Memorial
Environmental Health Library
1515 Clay Street, 16th Floor
Oakland, CA 94612

After the close of the public comment period, the document will be revised as appropriate by OEHHA and peer reviewed by the state’s Scientific Review Panel on Toxic Air Contaminants.

The public is encouraged to submit written information via OEHHA’s website rather than in paper form. Comments may be submitted electronically through the following link: <https://oehha.ca.gov/comments>.

Hard-copy comments may be mailed, faxed, or hand-delivered to the address below:

Dr. John Budroe
Chief, Air Toxicology and Risk Assessment Section
Air and Site Assessment and
Climate Indicators Branch
Office of Environmental Health Hazard Assessment
1515 Clay Street, 16th Floor
Oakland, CA, 94612
E-mail: John.Budroe@oehha.ca.gov
Telephone: (510) 622-3145

Information about the dates and agenda for meetings of the Scientific Review Panel can be obtained from the California Air Resources Board website at <http://www.arb.ca.gov/srp/srp.htm>.

**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# 2019-0821-03
AIR RESOURCES BOARD
HD On-Board Diagnostics System Requirements

This rulemaking action amends regulations concerning heavy-duty vehicle On-Board Diagnostic (OBD) systems. The amendments relate to OBD monitors, which monitor emissions-related engine components for malfunction, and OBD system testing and certification requirements. The amendments introduce REAL (Real Emissions Assessment Logging) which enhances emissions data collection processes during real-world engine performance. The amendments also affect compliance and enforcement provisions. Corresponding provisions concerning medium- and light-duty vehicles are also amended to harmonize them with those related to heavy-duty vehicles.

Title 13
 AMEND: 1968.2, 1971.1, 1971.5
 Filed 10/03/2019
 Effective 10/03/2019
 Agency Contact: Chris Hopkins (916) 445-9564

File# 2019-0828-01
 CALIFORNIA ENERGY COMMISSION
 Appliance Efficiency Regulations

The California Energy Commission (Commission) proposed this action to amend eight regulations in the Commission's Appliance Efficiency Regulations by adopting definitions, test procedures, reporting requirements, and efficiency standards for spray sprinkler bodies sold or offered for sale in California on or after October 1, 2020.

Title 20
 AMEND: 1601, 1602, 1604, 1605.1, 1605.2, 1605.3, 1606, 1607
 Filed 10/07/2019
 Effective 10/01/2020
 Agency Contact: Corrine Fishman (916) 654-4976

File# 2019-0827-02
 CALIFORNIA HEALTH BENEFIT EXCHANGE
 Identity Verification Requirement

This certificate of compliance filing by the California Health Benefit Exchange proposes to make permanent the regulations adopted in OAL File Nos. 2014-0908-02E and 2016-1116-02EE regarding identity verification requirements.

Title 10
 ADOPT: 6464
 Filed 10/09/2019
 Effective 10/09/2019
 Agency Contact: Faviola Adams (916) 228-8668

File# 2019-0927-04
 CALIFORNIA HEALTH BENEFIT EXCHANGE
 Eligibility, Enrollment and Appeal Process for the Individual Exchange

In these emergency regulations, the California Health Benefit Exchange amends its regulations pursuant to Government Code section 100504(a)(6). In compliance with state and federal laws, these regulations provide definitions, abbreviations, standards for notice, standards for eligibility determination and redetermination for qualified health plans, requirements for coverage eligibility, procedures for termination of coverage, and an appeals process.

Title 10
 AMEND: 6408, 6410, 6452, 6454, 6470, 6474, 6496, 6498, 6502, 6504, 6506, 6602
 Filed 10/07/2019
 Effective 10/07/2019
 Agency Contact:
 Faviola Ramirez-Adams (916) 228-8668

File# 2019-0927-05
 CALIFORNIA HEALTH BENEFIT EXCHANGE
 Hardship and Religious Conscience Exemptions Process

This emergency rulemaking action by the California Health Benefit Exchange adopts seven sections to establish the application process, eligibility and redetermination standards, and verification process for hardship and religious conscience exemptions.

Title 10
 ADOPT: 6910, 6912, 6914, 6916, 6918, 6920, 6922
 Filed 10/07/2019
 Effective 01/01/2020
 Agency Contact:
 Faviola Ramirez-Adams (916) 228-8668

File# 2019-0821-02
 CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY
 Community Services Infrastructure Grant Program

The California Health Facilities Financing Authority submitted this Certificate of Compliance action makes permanent the emergency regulations adopted to implement the Community Services Infrastructure Grant Program (OAL File Nos. 2018-1115-02 and 2019-0517-04). The regulations establish eligibility and evaluation criteria, eligible costs, and application and reporting procedures for the award of grants to fund the operation of jail diversion programs providing mental health treatment, substance use disorder treatment, and trauma-centered services.

Title 4
 ADOPT: 7413, 7414, 7415, 7416, 7417, 7418, 7419, 7420, 7421, 7422, 7423, 7424, 7425, 7426, 7427, 7428, 7429
 Filed 10/03/2019
 Effective 10/03/2019
 Agency Contact:
 Carolyn Aboubechara (916) 653-3213

File# 2019-0925-01
 CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY
 Children's Hospital Program of 2018

On November 6, 2018, California voters passed Proposition 4, which enabled the State of California to

issue \$1.5 billion in general obligation bonds to fund the Children’s Hospital Program of 2018 (the “Program”). Pursuant to Health and Safety Code section 1179.84, “The purpose of the . . . Program is to improve the health and welfare of California’s critically ill children by providing a stable and ready source of funds for capital improvement projects for children’s hospitals.” In this readopt of OAL Matter No. 2019–0402–01E, the California Health Facilities Financing Authority (“CHFFA”) is creating the mechanism whereby these funds may be disbursed to eligible entities.

Title 4

ADOPT: 7000, 7001, 7002, 7003, 7003.1, 7004, 7004.1, 7005, 7006, 7006.1, 7007, 7007.1, 7008, 7008.1, 7009, 7010, 7011, 7012, 7013, 7013.1, 7013.2, 7014, 7015, 7016, 7017

Filed 10/07/2019

Effective 10/10/2019

Agency Contact: Yuanyuan Wei (916) 653–3839

File# 2019–0823–02

**CALIFORNIA HIGHWAY PATROL
CVSA NAS Out-of-Service Criteria**

This action, without regulatory effect, incorporates by reference the current version of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria.

Title 13

AMEND: 1239

Filed 10/07/2019

Agency Contact: David Kelly (916) 843–3400

File# 2019–0823–01

DEPARTMENT OF JUSTICE

Electronic Recording Delivery System (ERDS)

A county recorder may accept for recording a digitized or digital image of certain recordable instruments in lieu of a written paper. The Electronic Recording Delivery Act of 2004 permits electronic delivery, recording and return of certain types of instruments through an electronic recording delivery system (ERDS) upon approval by the county board of supervisors and certification by the Attorney General. The California Department of Justice (DOJ) is tasked with developing regulations for the review, approval, and oversight of ERDS. In this action, DOJ is specifying the amount of general liability coverage required of an authorized submitter and/or agent along with establishing the requirements for a county recorder to enter into a contract with an authorized submitted. DOJ is also updating the ERDS technology requirements.

Title 11

AMEND: 999.108, 999.122, 999.128, 999.129, 999.131, 999.132, 999.133, 999.134, 999.136, 999.137, 999.138, 999.139, 999.140, 999.141, 999.142, 999.143, 999.144, 999.145, 999.146, 999.147, 999.148, 999.149, 999.150, 999.154, 999.165, 999.166, 999.167, 999.168, 999.176, 999.178, 999.190, 999.195, 999.196, 999.197, 999.217, 999.218, 999.219, 999.220, 999.221, 999.223

REPEAL: 999.130, 999.135, 999.153

Filed 10/07/2019

Effective 01/01/2020

Agency Contact: Melan Noble (916) 210–7011

File# 2019–1001–03

**DEPARTMENT OF RESOURCES RECYCLING
AND RECOVERY**

Covered Electronic Waste Recycling Fees

This emergency action is a biennial adjustment of consumer electronic waste recycling fees applicable to covered electronic devices pursuant to Public Resources Code section 42464. The emergency is deemed pursuant to Public Resources Code section 42475.2(b).

Title 14

AMEND: 18660.40

Filed 10/08/2019

Effective 01/01/2020

Agency Contact: Irina Kaminer (916) 341–6396

File# 2019–0829–01

DEPARTMENT OF SOCIAL SERVICES

CalWORKS Statewide Finger Print Imaging System and New ID Process

This timely Certificate of Compliance makes permanent the emergency regulations in OAL File Nos. 2018–1212–01 and 2019–0618–01 to amend the MPP to reflect the repeal of the Statewide Fingerprint Imaging System (SFIS), and to implement the new identity verification process in the California Work Opportunity and Responsibility to Kids (CalWORKS).

Title MPP

AMEND: 40–105, 40–171, 80–301

REPEAL: 40–026

Filed 10/07/2019

Effective 10/07/2019

Agency Contact: Oliver Chu (916) 657–3588

File# 2019–0905–02

FRANCHISE TAX BOARD

Withholding Regulations

This rulemaking action amends regulations governing the withholding requirement structure for nonresidents and real estate transactions in response to feed-

back received from industry, taxpayers, and taxpayer representatives regarding the regulations.

Title 18

AMEND: 18662-0, 18662-1, 18662-2, 18662-3, 18662-4, 18662-5, 18662-6, 18662-8

Filed 10/08/2019

Effective 10/08/2019

Agency Contact: Christy Keith (916) 845-6080

File# 2019-0917-01

OFFICE OF THE STATE PUBLIC DEFENDER

Conflict-of-Interest Code

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

Title 2

AMEND: 38000.5

Filed 10/08/2019

Effective 10/08/2019

Agency Contact: Charlene Bennett (916) 322-2130

**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.