



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. CALIFORNIA BEHAVIORAL HEALTH PLANNING COUNCIL**

NOTICE IS HEREBY GIVEN that the **California Behavioral Health Planning Council** pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on March 1, 2019 and closing on April 15, 2019. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include the following: Change the Council’s name from the California Mental Health Planning Council to the California Behavioral Health Planning Council, add the option for FPPC e-filing, add three (3) positions (Staff Services Manager I, Staff Mental Health Specialist, and Research Analyst II), as directed by the FPPC, and also makes other technical changes.

Information on the code amendment is available on the Council’s internet site and attached to this email.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than April 11, 2019, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than March 31, 2019.

The **California Behavioral Health Planning Council** has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under

Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Naomi Ramirez, Legislative Coordinator, (916) 322-3071, [naomi.ramirez@cbhpc.dhcs.ca.gov](mailto:naomi.ramirez@cbhpc.dhcs.ca.gov).

**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

STATE AGENCY: California Health Benefit Exchange

A written comment period has been established commencing on November 29, 2019 and closing on January 13, 2020. Written comments should be directed to the Fair Political Practices Commission, Attention Brianne Kilbane, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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

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

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than January 13, 2020. 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 Brianne Kilbane, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

#### **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 Brianne Kilbane, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

#### **Division 7. Fairs and Expositions Chapter 3. Revenue Generated from Sales and Use Tax at State-Designated Fairs Article 1. Allocation Procedures**

Notice is hereby given that the California Department of Food and Agriculture (Department) proposes to adopt regulations in the California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

#### **PUBLIC HEARING**

A public hearing about this proposal will be held January 15, 2020 at 9:30 a.m. in the Auditorium of the California Department of Food and Agriculture, located at 1220 N Street, Sacramento, CA 95814. The hearing will allow any interested person, or his or her duly authorized representative, to submit verbal or written statements or arguments relevant to the action proposed.

Following the public hearing, the Department may adopt the proposed regulations substantially as described below or may modify them 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 calendar days, prior to its adoption, from this notice’s designated contact person. The modified proposal will also 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.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed action to this notice’s designated contact persons indicated below, by mail or e-mail, with “Fair Allocation Rulemaking” in the subject line, beginning

November 29, 2019 and ending at 11:59 p.m. on January 15, 2020. The written comment period closes at 11:59 p.m. on January 15, 2020. The Department will only consider comments received by 11:59 p.m. on January 15, 2020. Comments may be submitted by mail or e-mail to:

John Quiroz, Fairs and Expositions Branch Chief  
 California Department of Food and Agriculture  
 1220 N Street, Sacramento, CA 95814  
[john.quiroz@cdfa.ca.gov](mailto:john.quiroz@cdfa.ca.gov)  
 Phone: (916) 900-5025

Alternative contact person to submit comments by mail or e-mail:

Kathy Diaz-Cretu  
 Special Assistant — Marketing Services Division  
 California Department of Food and Agriculture  
[Kathy.diaz@cdfa.ca.gov](mailto:Kathy.diaz@cdfa.ca.gov)  
 Phone: (916)-900-5175

#### AUTHORITY AND REFERENCE

The Department is charged with the fiscal and administrative oversight of the Network of California Fairs and allocations from the Fair and Exposition fund, including establishing the criteria for state allocations, pursuant to section 19620 of the Business and Professions Code<sup>1</sup>. The Department is granted authority to set administrative and fiscal standards for the Network of California Fairs by sections 19622-19622.3. Section 19620.15, which the proposed regulations would implement, requires that a certain portion of the sales tax revenue generated on the real property of fairs be continuously appropriated to the Fair and Exposition Fund to be allocated to fairs, subject to certain conditions, for capital outlay projects and general operational support in accordance with section 19620.2.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Network of California Fairs (Network) consists of 52 District Agricultural Associations, which are state entities; 22 county fairs which are county government or not-for-profit organizations; two Citrus Fruit Fairs which are not-for-profit organizations; and the California Exposition and State Fair (Cal Expo), which is a state agency. These entities make up the 77 active fairs in the Network and are referred to as “state-designated” fairs. Each fair plays a vital cultural and economic role

<sup>1</sup> All section references are to the Business and Professions Code unless otherwise indicated.

in its community. Fairs generate millions of dollars in state and local revenues by providing agricultural education through their annual fair and other events and operating cultural and recreational venues for use by the public. They also serve as emergency response facilities.

The Department is charged with the fiscal and administrative oversight of the Network and the Fair and Exposition fund, pursuant to section 19620. Responsibilities include ensuring the integrity and solvency of the Network and the fund, and administering allocations from the fund to the Network. Activities to carry out this oversight include: Establishing criteria for state allocations, including fiscal and administrative standards; providing an administrative framework for fairs while allowing for maximum autonomy and local decision-making authority; and conducting fiscal and compliance audits.

Section 19620.15, effective July 1, 2018, establishes that, beginning 2018-2019 FY, the gross receipts for sales and use tax purposes would be segregated when the sale occurs on the real property of a state-designated fair. Every year and upon enactment of the annual Budget Act, three-quarters of 1 percent of the total amount of those gross receipts (“Funding”) will be transferred by the Controller to the Department’s Fair and Exposition Fund for allocations to the Network.

Section 19620.2 provides that funds may be allocated from the Fair and Exposition fund to the Network for:

- projects involving any of the following: public health and safety, major and deferred maintenance, fair needs due to any emergency, fair needs required by physical changes to the fair site, the need for a fair to protect the fair property or installation (such as fencing and flood protection);
- the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair; and
- a portion of the funds may be allocated for general operational support.

To be eligible to receive Funding, Section 19620.15, requires that fairs and their lessees shall provide the following work conditions to their non-management staff:

- The employee receives a meal period of not less than 30 minutes for a work period of more than five hours per day, unless the work period per day of the employee is less than six hours and the meal period is waived by mutual consent of both the employer and the employee.
- The employee receives a second meal period of not less than 30 minutes for a work period of more than 10 hours per day, unless the work period per day of the employee is less than 12 hours, the second meal period is waived by mutual consent of

both the employer and the employee, and the first meal period was not waived.

- Any work in excess of eight hours in one workday, any work in excess of 40 hours in any one workweek, and the first eight hours worked on the seventh day of work in any one workweek is compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.
- Any work in excess of 12 hours in one day is compensated at the rate of no less than twice the regular rate of pay for an employee.
- Any work in excess of eight hours on any seventh day of a workweek is compensated at the rate of no less than twice the regular rate of pay for an employee.

Fairs are generally exempt under federal and state labor law from providing to certain temporary non-management employees the work conditions required to receive Funding.

Section 19620.15 exempts from these required work conditions full-time carnival ride operators employed by a traveling carnival. In addition, fairs and their lessees are exempt from providing these required work conditions if non-management employees are covered by a valid collective bargaining agreement if it expressly provides for the following:

- Wages, hours of work, and working conditions of the employees.
- Meal periods for the employees, including final and binding arbitration of disputes concerning application of its meal period provisions.
- Premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage.

The Department has determined that the adoption of the proposed regulations is necessary because:

1. Providing the work conditions required to receive Funding is voluntary. For those fairs that do elect to qualify for Funding, Section 19620.15 is silent on how fairs may apply.
2. Section 19620.15 is silent on how fairs are to require their lessees to provide the work conditions required to receive Funding.
3. Section 19620.15 is silent on how the Department is to ensure the fairs and their lessees are compliant with the required work conditions.
4. Section 19620.15 is silent on remedial procedures upon a fair's or its lessee's failure to provide the required work conditions.

5. Section 19622 mandates that the Department shall establish an appeal process for fairs regarding funds that are withheld or restricted.

The proposed regulations would allow the Department to implement Section 19620.15 in a uniform and efficient manner, because they make specific the procedures by which fairs may apply to become eligible for Funding and how the Department is to ensure compliance with work conditions by the fairs and their lessees.

#### ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The objective of the proposed regulations is to specify the procedures for fairs to qualify, apply, and ensure eligibility for Funding. They will also specify the procedures for the Department to ensure compliance with the Funding requirements. The priorities of the Department are to distribute allocations to qualified fairs for deferred maintenance and public health and safety projects as well as for operational support, as authorized by Sections 19620.15 and 19620.2.

As of July 2011, the Network lost significant funding for operations due to the state's fiscal problems and fairs were required to become financially self-sustaining. Fairgrounds have continued to deteriorate and create public safety issues. Most fairgrounds' facilities were built in the 1930s and 1940s utilizing materials that make maintaining and updating the infrastructure expensive and technically challenging. This limits the fairs' ability to derive the greatest use and benefit from its property. Further, the much-needed maintenance is especially troubling as fairgrounds are not only open to the public as recreational and cultural venues, but frequently utilized by Cal OES, CAL FIRE, and others as an evacuation center and public safety command center during emergencies.

The proposed regulations establish clear and uniform procedures by which the Department and fairs meet the requirements of Section 19620.15, creating administrative efficiency. When receiving Funding, a fair will need to demonstrate it is providing its non-management employees with the required work conditions and requiring its lessees to do the same. The Department, charged with administering the Funding and the oversight of the Fair and Exposition fund, may also ensure the requirements are met. The proposed regulations will facilitate the appropriation of Funding from the Department to the Network, so that fairgrounds may receive much needed deferred maintenance and continue to serve their communities as safe and accessible recreational and cultural venues and emergency response centers.

California fairs, especially in remote regions with limited resources, also provide benefits to their local communities in the form of economic activity, agricultural education to the public and an affordable annual community event that highlights agriculture. All these benefits are discussed below in the “Results of Economic Impact Assessment/Analysis” section of this document and further discussed in detail in the Initial Statement of Reasons document.

The proposed regulations provide a mechanism for the Department to address contemporary and future needs through projects involving major and deferred maintenance; fair projects necessary due to an emergency; projects that are required by physical changes to the fair site; projects that are required to protect the fair property or installation, as well as for the acquisition or improvement of any property or facility that will serve to enhance the operation of the fair.

EVALUATION OF  
INCONSISTENCY/INCOMPATIBILITY WITH  
EXISTING STATE REGULATIONS

The Department has determined that the proposed regulations are consistent and compatible with existing State regulations. The Department is the only state agency charged with the oversight of the Network and Fair and Exposition fund. There are no regulations governing the distribution of allocations from the Fair and Exposition fund to the Network or regulations pertaining to Section 19620.15.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

The Department makes the following initial determinations:

- 1) Mandate on local agencies and school districts: None.
- 2) Fiscal impact on public agencies, including costs/savings to state agencies or costs/savings in federal funding to the state:

The proposed regulations will increase administrative cost to the Department and to those fairs that chose to qualify for Funding. Department staff time and resources will be needed to process applications for Funding, administer grants for those projects authorized to receive Funding, conduct compliance audits, and to implement remedial action when a fair or its lessee fails to comply with the work conditions required by Section 19620.15. In addition, fairs may also see additional administrative cost in applying for Funding, managing grants for projects, and

responding to the Department during an audit or remedial action. However, administrative costs are unavoidable as they are necessary to ensure the Department and the Network are meeting the requirements established by Section 19620.15. The Department estimates its annual costs will increase by \$1,098,000 during the first three fiscal years (2020–21, 2021–22, and 2022–23) and that the ongoing cost will be \$776,000 thereafter.

For fairs that elect to become eligible to receive Funding, the work conditions required by Section 19620.15 for Funding will result in additional costs of doing business. Since it is within a fair’s discretion whether it elects to become eligible for Funding, a fair would need to balance the cost of providing the required work conditions and the benefits of receiving allocations for much needed deferred maintenance and improvements as well as general operational support.

- 3) Cost to any local agency or school district which must be reimbursed in accordance Government Code sections 17500 through 17630: None.
- 4) Other nondiscretionary costs or savings imposed on local agencies: None.
- 5) Cost or savings in federal funding to the state: None.
- 6) Cost impacts on a representative private person or business:

As established in Section 19620.15, to qualify for Funding, a fair must require their lessees provide their non–management employees with certain work conditions, unless their non–management employees meet the express exemptions. Some lessees may already be required by federal and state law to provide the work conditions in Section 19620.15, such as meal breaks and premium pay for overtime, and their employees would not be affected by a fair’s election to receive Funding.

Providing the work conditions required by Section 19620.15 may increase the cost of doing business for those private individuals or businesses that fall within the regulations’ definition of “lessee” and which do not already provide the required work conditions to non–management employees. In addition, if a fair receives Funding, their lessees may see additional administrative cost in responding to the Department during an audit or during remedial action.

The cost will vary on a case–by–case basis and therefore, it is infeasible to quantify at this time. The Department anticipates that the impact of the regulations will be localized and minor and will, therefore, not have a significant adverse economic impact on California businesses, including the

ability of California businesses to compete with businesses in other states.

- 7) Significant effect on housing costs: None.

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

The Department initially concludes that the proposed regulations, by facilitating Funding to the Network in accordance with statutory requirements:

- (1) is unlikely to eliminate jobs in California
- (2) is unlikely to create a measurable number of new jobs in California
- (3) is unlikely to eliminate existing businesses in California
- (4) is unlikely to create a measurable number of new businesses in California
- (5) is unlikely to positively affect the expansion of businesses in California in a measurable way
- (6) is likely to boost local economies through: increased local demand for construction services; enhanced fairgrounds facilities to host exhibitions, expositions, and cultural and recreational events; and increased local spending power due to enhanced salary and work conditions for non-management employees.
- (7) is likely to support and improve the delivery of public services statewide, particularly during emergencies, through safety and accessibility improvements to fairground facilities; and
- (8) is likely to benefit the public good and disadvantaged populations at the local and state-level through increased improvements to the fairgrounds' cultural and recreational venues.

**ECONOMIC IMPACT OF ADDED COSTS TO FAIRS AND THEIR LESSEES**

Section 19620.15 requires certain work conditions be provided to non-management employees of a fair and its lessees for a fair to be eligible for Funding. The Department anticipates that as a result of this rulemaking to implement the requirements of Section 19620.15, there may be added costs to fairs that choose to apply for Funding, as well as the fairs' lessees. However, given that the decision to become eligible is voluntary, it can be expected that fairs will perform cost-benefit analyses to determine whether the additional cost of providing the work conditions is outweighed by the benefits of receiving allocations.

**ECONOMIC IMPACT OF THE REGULATIONS ON THE DEPARTMENT'S ABILITY TO ALLOCATE FUNDING FOR THE DELIVERY OF PUBLIC HEALTH AND SAFETY SERVICES**

The proposed regulations themselves are not anticipated to have an economic impact, as the Funding and requirements for eligibility are established by legislation codified at Section 19620.15. The proposed regulations establish procedures which will facilitate the allocations from the Fair and Exposition fund to the Network in accordance with Section 19620.15 requirements.

The California Department of Tax and Fee Administration (CDTFA) is charged with the responsibility of estimating the gross receipts for sales generated at state-designated fairs. According to the CDTFA's initial estimate, gross receipts for state-designated fairs for FY 2019-20 will be \$2,484,961,513. Depending on the State of California's budget process, this means that in November 2019 a total of \$18,637,211.35 may be available for distribution to eligible state-designated fairs<sup>2</sup>.

Amount of Funding appropriated to the Fair and Exposition fund for allocation to the Network will depend on the aggregated sales and use tax generated statewide from sales on the real property of state-designated fairs, and the actual amount made available on the state's budget to the Department for this purpose.

Amount and availability of Funding for allocation to individual fairs will depend on the number of fairs eligible to receive Funding, and the cost, project, and level of urgency of eligible fairs' needs.

The urgent needs of the Network are deferred maintenance projects as most fairgrounds' facilities were built in the 1930s and 1940s utilizing materials that currently make maintaining and updating the existing infrastructure technically challenging and onerous. The highest deferred maintenance priority of the Department and Network is to provide safe and accessible facilities for use by the general public during annual fairs, events, and in response to emergencies.

In 2019, CDFA contracted with the California Fairs Services Authority, a joint powers authority, to perform a deferred maintenance survey of all active fairs. The survey requested general information on priority needs. Sixty-five fairs participated in the survey and their cursory input quantified the more immediate deferred maintenance needs at the fairgrounds at an estimated cost of \$138 million. Beyond the maintenance chal-

<sup>2</sup> This figure is an annualized calculation based on the CDTFA's statewide revenue estimate for the third quarter of 2018; it assumes a 3.2 percent increase based on the CIP index for the LA area.



lenges that antiquated facilities pose, in some instances, deterioration levels are such that they have been deemed fire, life and safety hazards by the State Fire Marshall or local fire protection agencies. In order to guarantee the physical safety of the public and fair staff, the more seriously affected fairs have had to limit use of certain buildings/areas of the fairground, which in turn has limited their ability to generate revenue through facility rentals and serve the community.

Funding will be distributed statewide among the fairs for a multitude of projects. The Department anticipates that the regulations will facilitate allocations to fairs regardless of their size or geographical location and will allow the Department to ensure compliance with the requirements of Sections 19620.15 and 19620.2.

#### SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will not affect or have a material economic impact on small business that typically operate on fairgrounds because they exclude business with less than 50 employees and require that tenancy be exclusive and continuous for a period of one year or longer. The majority of businesses that operate on fairgrounds consist of mobile vendors, such as food and beverage concessions and novelty retailers, as well as traveling carnivals that rent space for the duration of the annual fair or other short-term events. These small businesses will not be impacted by the work conditions required by Section 19620.15.

#### CONSIDERATION OF ALTERNATIVES

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

While drafting the proposed regulations, the Department conducted three workshops for the Network to provide comment. The workshops were conducted on June 12, July 11 and August 28 in Sacramento. Participants attended in person or interacted live via webinar. Participation was robust with an average of 47 participants per workshop.

Additionally, the Department will accept statements or arguments with respect to alternatives to the pro-

posed regulations during both the written comment period and at a hearing that will be held January 15, 2020 at 9:30 a.m. in the Auditorium of the California Department of Food and Agriculture.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

John Quiroz, Fairs and Expositions Branch Chief  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
[john.quiroz@cdfa.ca.gov](mailto:john.quiroz@cdfa.ca.gov)  
Phone: (916) 900-5025

Alternative contact person for these inquiries:

Kathy Diaz-Cretu  
Special Assistant — Marketing Services Division  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
[Kathy.diaz@cdfa.ca.gov](mailto:Kathy.diaz@cdfa.ca.gov)  
916-900-5175

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above office 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, the Initial Statement of Reasons, and all the information upon which this proposal is based.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which differ, but are sufficiently related to the originally proposed text, it will make the full text of the modified regulations, with the changes clearly indicated, available to the public for at least 15 days prior to the date on which the agency adopts the resulting regulations. Please send requests for copies of any modified regulations to the attention of John Quiroz or Kathy Diaz-Cretu at the address, email, or phone number provided in the "Contact Persons" section above. The Department 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 those listed in the "Contact Persons" section above.

**AVAILABILITY OF  
DOCUMENTS ON THE INTERNET**

Electronic copies of the Notice of Proposed Rule-making, the Initial Statement of Reasons, and the proposed text of the regulation, with modifications in underline and strikeout, will be posted at <https://www.cdfa.ca.gov/mkt/regulations.html> by the Division of Marketing Services.

**TITLE 4. CALIFORNIA HORSE  
RACING BOARD**

**NOTICE OF PROPOSAL TO AMEND RULE 2049,  
DESIGNATION AND APPROVAL OF  
HORSEMEN'S WELFARE FUND**

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

**PROPOSED REGULATORY ACTION**

The Board proposes to amend Rule 2049, Designation and Approval of Horsemen's Welfare Fund, of the California Code of Regulations, Title 4, Division 4. The proposed changes to Rule 2049 will increase the maximum allowable number of directors or trustees of the Horsemen's Welfare Fund from nine to eleven and increase the length of the term for a director or trustee from two years to three. The proposed changes will also eliminate the requirement that at least forty percent of the directors or trustees have no financial interest in horse racing as a licensed horse owner, trainer, or assistant trainer and not be current members of the horsemen's organization responsible for establishing the Horsemen's Welfare Fund.

**PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, January 23, 2020**, or as soon after that as business before the Board will permit, at the **Santa Anita Park Race Track, Baldwin Terrace Room, 285 West Huntington Drive, Arcadia, 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 at the hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **January 13, 2020**. All comments must be received by that time at the Board. However, written comments may still be submitted at the public hearing. Submit comments to:

Rick Pimentel  
Associate Governmental Program Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
(916) 274-6043  
Fax: (916) 263-6042  
[repimentel@chr.ca.gov](mailto:repimentel@chr.ca.gov)

**AUTHORITY AND REFERENCE**

Authority: Section 19440, Business and Professions Code.

Reference: Sections 19641 and 19641.2, Business and Professions Code.

Business and Professions Code section 19440 authorizes the Board to adopt the proposed regulatory amendment, which would implement, interpret, or make specific sections 19641 and 19641.2 of the Business and Professions Code.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

Business and Professions Code section 19641 provides for the distribution of redistributable money resulting from specified horse racing meetings to a welfare fund established for the benefit of horsemen and horsewomen and backstretch personnel. Business and Professions Code section 19641.2 provides that the nonprofit foundation authorized to receive funds pursuant to section 19641 shall use those funds to administer a health and welfare trust fund.

Rule 2049, Designation and Approval of Horsemen's Welfare Fund, provides that the charitable corporation organized by the horsemen's organization shall have a minimum of five and maximum of nine directors who are subject to Board approval. The recognized charita-

ble corporation of the horsemen’s organization is the California Thoroughbred Horsemen’s Foundation, Inc. (CTHF). Rule 2049 provides that directors of CTHF may also be directors of the horsemen’s organization if at least forty percent of the directors have no financial interest in horse racing as a licensed horse owner, trainer, or assistant trainer and are not a current member of the horsemen’s organization. CTHF has asked the Board to amend Rule 2049 to provide for additional directors, eliminate the requirement that a percentage of directors have no financial interest in horse racing as a Board licensee and not be a director of the horsemen’s organization, and extend the term for a director from two years to three years.

The proposed amendment to Rule 2049 will allow CTHF to expand its board of directors. Currently, the maximum number of directors is nine. The proposed amendment will authorize the CTHF to have a minimum of five and a maximum of eleven directors. An expanded CTHF board of directors will provide it with the opportunity to appoint directors who would bring both financial means and a network of contacts to potentially assist the CTHF. Additional directors will also provide the opportunity for existing directors to educate and cultivate new directors without the need to replace the existing directors. This will allow for continuity in CTHF activities and decision-making.

The current CTHF board of directors is composed of nine persons. Rule 2049 requires that forty percent of the directors have no financial interest in horse racing as CHRB licensees and not be members of the horsemen’s organization. The proposed amendment to Rule 2049 will eliminate this requirement but keep intact the requirement that at least one director have no financial interest in horse racing pursuant to Business and Professions Code section 19641.2(c). This will allow CTHF to recruit the most qualified and knowledgeable individuals who have a strong interest in CTHF’s activities.

All other changes to the text of Rule 2049 are for the purposes of clarity and consistency.

**POLICY STATEMENT  
OVERVIEW/ANTICIPATED  
BENEFITS OF PROPOSAL**

The proposed amendment to subsection 2049(a) will increase the maximum allowable number of directors or trustees of the charitable corporation from nine to eleven. The recognized charitable corporation of the horsemen’s organization is the California Thoroughbred Horsemen’s Foundation, Inc. (CTHF), which is an operating foundation that does not exist by an endowment. Fund raising activities are an important part of CTHF’s success. Allowing CTHF to expand its board

of directors will provide it with the opportunity to appoint directors or trustees who would bring both financial means and a network of contacts to potentially assist CTHF. Additional directors will also provide the opportunity for existing directors to educate and cultivate new directors without the need to replace the existing directors. This will allow for continuity in CTHF activities and decision-making.

The proposed amendment to subsection 2049(a) will also increase the length of the term for a director or trustee of the charitable corporation from two years to three. The change from a two-year term for a director or trustee to a three-year term will provide greater stability, be less disruptive to the nomination process, and allow for a better determination of a director or trustee’s merit.

Finally, the proposed amendment to subsection 2049(a) will eliminate the requirement that forty percent of the current directors or trustees of the charitable corporation have no financial interest in horse racing as licensees and not be members of the horsemen’s organization that established the charitable corporation. This will allow CTHF to recruit qualified individuals who have a keen interest in CTHF’S activities and responsibilities. CTHF has found that the present rule is too restrictive, as such qualified individuals are already licensed owners, trainers, or assistant trainers or serve as directors for the horsemen’s organizations.

**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 2049 is the only regulation dealing with the establishment of a charitable corporation by a horsemen’s organization to administer a welfare fund for the benefit the horsemen. Therefore, the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

**DISCLOSURES 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 cost 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 amendment to Rule 2049 will not have a sig-

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

Significant effect on housing costs: none.

### RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendment to Rule 2049 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) protect worker safety; or (5) benefit the state's environment. The rule mandates the number of directors the charitable corporation may have, and mandates how many of those directors must not have a financial interest in horse racing as a licensed horse owner, trainer, or assistant trainer and not be current members of the horsemen's organization. The proposed regulation will strengthen and help maintain the integrity of the California Thoroughbred Horsemen's Foundation (CTHF), the charitable corporation that administers the welfare fund for the benefit of horsemen, which will benefit the health and welfare of California residents by contributing to the well-being of backstretch workers.

Effect on small businesses: none. The proposal to amend Rule 2049 does not have an effect on 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, 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 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 PERSONS

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:

Rick Pimentel  
Associate Governmental Program Analyst  
California Horse Racing Board  
Policy and Regulations Unit  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
(916) 274-6043  
[repimentel@chr.ca.gov](mailto:repimentel@chr.ca.gov)

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

Amanda Drummond, Manager  
Policy and Regulations  
(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 office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents may be obtained by contacting Rick Pimentel, or the alternate contact person, at the address, phone numbers, or e-mail addresses 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 that 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 Rick Pimentel 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 available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Rick Pimentel 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 website address is [www.chrb.ca.gov](http://www.chrb.ca.gov).

**TITLE 4. CALIFORNIA HORSE  
RACING BOARD**

DIVISION 4, NOTICE OF PROPOSAL TO  
ADD RULE 1846.6, POSTMORTEM  
EXAMINATION REVIEW

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

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1846.6, Postmortem Examination Review, to require that a postmortem examination review panel, consisting of a steward, a safety steward, and the Equine Medical Director or designated official veterinarian, be convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance before the panel of the trainer of the expired horse, as well as the production of the horse's training and medical records that cover a minimum of 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director and the owner and trainer of the expired horse.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, January 23, 2020**, or as soon after that as business before the Board will permit, at the **Santa Anita Park Race Track, 285 West Huntington**

**Drive, Arcadia, 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 January 13, 2020**. The Board must receive all comments at that time. However, written comments may still be submitted at the public hearing. Submit comments to:

Nicole Lopes–Gravelly, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
(916) 263–6397  
Fax: (916) 263–6022  
nlgravelly@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Section 19440, Business and Professions Code. Reference: Sections 19435 and 19444(c), Business and Professions Code. Section 2032.3, California Code of Regulations.

Business and Professions Code section 19440 authorizes the Board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19435, 19440 and 19444(c), Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Business and Professions Code section 19435 provides that the Board, its executive director, or the stewards, may issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things, as is necessary to enable any of them to effectually discharge their duties, and may administer oaths or affirmations as necessary in connection therewith. 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 19444(c) states

that the Board may, in performing its responsibilities under this chapter, conduct research to determine more fully the cause and prevention of horse racing accidents.

The proposed addition of Rule 1846.6, Postmortem Examination Review, will require that a postmortem examination review panel be convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance of the trainer of the expired horse before the panel, as well as the production of the horse's training and medical records for the 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director as well as the owner and trainer of the expired horse. The rule is intended to be a mechanism for the continuing education of trainers and veterinarians and will also serve as an important research opportunity "to determine more fully the cause and prevention of horse racing accidents" as permitted by Business and Professions Code section 19444(c).

Specifically, the proposed addition of Rule 1846.6 will require in subsection (a) that the Board conduct a postmortem examination review to determine the circumstances behind all equine fatalities occurring within a CHRB inclosure. This creates a blanket requirement that the Board will investigate the circumstances behind every equine death that occurs within a CHRB-licensed inclosure using the postmortem examination review process. Such consistent review will ensure that all equine fatalities occurring at a racetrack are thoroughly and equally investigated so that future accidents may be prevented. Furthermore, the requirement affords the trainers and veterinarians who cared for the deceased horse an opportunity to receive case-specific recommendations from panel members on how to better train and treat their horses in the future.

Subsection 1846.6(b) requires that the postmortem examination review panel be conducted by a member of the board of stewards, a safety steward, and the Equine Medical Director or designated official veterinarian. Subsection 1846.6(b) clearly defines the composition of the panel so that a complete and thorough review may be conducted for each fatality. Each of the designated panel members represents an area of expertise, including equine medicine and health, track safety, and horsemanship. By virtue of the positions they hold, the steward, safety steward, and Equine Medical Director all possess substantial knowledge of racehorse care that is essential to the analysis and educational aspects of the review.

Subsection 1846.6(c) requires that the trainer, as well as any other licensee the panel deems necessary, appear at the postmortem examination review. This is necessary because it is the trainer who, under Rule 1887, Trainer or Owner to Insure Condition of Horse, ensures

the condition of the horse. The trainer is responsible for how the horse is trained, medicated, and cared for while racing in California. Accordingly, it is the trainer who will have the most knowledge of the horse if the panel has specific questions about its training and health. Depending on the nature of the fatality, other licensees—such as the horse's veterinarian or jockey—may also need to appear to answer questions about the circumstances surrounding the horse's death.

Subsection 1846.6(d) requires that the trainer make available at the postmortem examination review the training records for the expired horse, which shall include exercise, medication, and shoeing histories for a minimum of 60 days prior to the date of death of the horse. This is necessary because in order for the review panel to fully assess all circumstances surrounding the horse's death, the panel must be able to review details of the horse's recent training regime, including medications it received and when and how it was shod.<sup>1</sup> A minimum 60-day overview provides the panel with two complete months of insight into the daily care of the horse, which the Board has determined is an adequate period to identify any unique or recurring events that may have led to the horse's death. Because many trainers tend to oversee multiple horses, review of their actual records is the best way to ensure the most accurate and specific training histories are analyzed. By reviewing these records, the panel will have the opportunity to identify specific training sessions, medication administrations, and/or shoeing decisions that may have contributed to the horse's fatality. Any one of these aspects of a horse's care, if mistakenly or negligently carried out, can substantially increase the chance that an accident will occur while the horse is racing. Training records may reveal that the horse was run too hard in the days leading up to its accident. Medication records may show that the horse accidentally received too much of a certain drug. Shoeing histories may reveal that the horse was shod to correct a misdiagnosed problem. Any of these issues will assist the panel in determining what led to the horse's death. Moreover, by looking at the training histories of deceased horses over time, the panel may be able to determine that there are specific training practices, medications, and shoeing choices that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing and will increase safety on the race track.

Subsections 1846.6(e)(1) through (7) will require that all CHRB-licensed veterinarians attending a horse

<sup>1</sup> Race horses require a wide range of shoes because of the different types of race surfaces and conditions in which they perform. The condition of the horse's feet may also influence the type of shoe used. Bruising, abscesses and quarter cracks are some of the issues farriers and trainers may address with shoeing.

having died within a CHRB inclosure make available at the postmortem examination review a summary medical record covering a minimum of 60 days prior to the date of death of the horse, or longer if requested by the postmortem review panel. The summary record shall include history of the horse's medical status, data from physical examination, treatment plans, medications prescribed and dispensed, daily progress and disposition of the case, laboratory data, and diagnostic images. This information is necessary because a horse's veterinary medical condition, including physical examination findings, certain veterinary treatments and procedures, and medications and medication levels, have all been linked to racing injuries, both catastrophic and lesser injuries. Some veterinary treatments and medications may adversely affect a horse's health and increase its risk of accident or fatality. By reviewing the horse's complete medical history, the postmortem review panel will have the opportunity to identify specific veterinary treatments that may have contributed to the horse's fatality.

Subsection 1846.6(f) provides that any copies of laboratory data or diagnostic images, pursuant to subsection (e)(6) and (7), respectively, are the property of the veterinary facility that originally ordered their preparation and require client authorization before the records may be released. This is in keeping with Business and Professions Code section 4857, which addresses the protection of the veterinarian/client/patient relationship. This also prevents the public dissemination of certain private information that is conveyed during the review. By restricting the panel from retaining the documents it inspects, the documents will not be subject to a Public Records Act request. This is important to trainers and veterinarians because the training and treatment regimens they use are often unique and contribute largely to their professional value in their occupations.

Subsection 1846.6(g) requires that the postmortem examination review panel file a written report with the Executive Director and the owner and trainer of the expired horse. This is necessary because one of the major purposes of this regulation is to study and understand the cause of horse racing accidents so that they may be prevented in the future. By recording the determined cause of each horse fatality with the Executive Director, such reports can be reviewed in bulk to identify certain training and veterinary practices that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing and will increase safety on the race track. Furthermore, requiring the panel to provide copies of its report to the trainer and owner of the horse completes the intended education element by informing the parties what the determined cause of death was. Such information will help

trainers, veterinarians, and other involved licensees improve their own horsemanship.

#### POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed addition of Rule 1846.6 promotes the safety and welfare of horses racing in California by facilitating in-depth research and review into the training and medical histories of expired horses. Presently, CHRB Rule 1846.5, Postmortem Examination, requires that every horse that dies within an area under the jurisdiction of the Board undergo a postmortem examination in a diagnostic laboratory to determine the injury or sickness that resulted in euthanasia or natural death. While such examinations are useful in determining the cause of death, they rarely provide any information about what triggered the fatality. For instance, while a horse may suffer a fatal accident due to a broken leg, no further information is obtained to determine why the leg broke. The purpose of the postmortem examination review is to investigate the circumstances surrounding an equine fatality to gain an understanding of all events that may have contributed to the incident. By exploring the training and medical histories of expired horses, the postmortem examination review panel will be obtaining new and unique information that can better assist the CHRB in identifying correlations between common training and medical practices and fatal accidents on and off the racetrack. This allows the Board to educate the industry regarding which specific practices carry such an increased risk of fatality. Such information will benefit trainers and veterinarians who will be able to adjust their practices to protect the health and welfare of horses in their care.

The proposed rule benefits trainers and veterinarians by creating an opportunity for their continued and personalized education. By exploring training and medical records with the deceased horse's trainer and veterinarian, the panel will be able to provide case-specific recommendations to prevent future injuries. This will improve the quality of training and veterinary services being provided by CHRB-licensed trainers and veterinarians and will ultimately increase the safety of the sport for both human and equine athletes.

Finally, the proposed rule will benefit the horseracing industry in general by improving public perception of the sport. Implementing an in-depth review process that considers the specific circumstances behind each horse fatality within the inclosure signals to the public that the CHRB takes animal welfare very seriously. Furthermore, by engaging trainers and veterinarians with case-specific reviews that aim to educate the parties involved, safety on and off of the racetrack is bound to im-

prove, which will also heighten public perception by reducing those instances when the public is audience to a racing accident.

### CONSISTENCY EVALUATION

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

### DISCLOSURE REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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 1846.6 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.

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

Cost impact on representative private persons or businesses: none.

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 adoption of the proposed addition of Rule 1846.6 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The proposed addition of Rule 1846.6 is a benefit to the health and welfare of both human and equine athletes, as well as the public. The proposed addition will allow the CHRB to review and analyze training and veterinary records of deceased race horses so that it can better understand and prevent equine racing accidents and fatalities through education and regulation. Such efforts will increase safety in horse racing and decrease the rate

of accidents occurring both on and off of the racetrack. This will not only improve the health and welfare of equine athletes, but also the human athletes that ride the horses. Furthermore, an increase in safety and decrease in accidents will likely improve public perception of horse racing, which may result in increased wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn increases purses and commissions. The proposed addition of Rule 1846.6 will not impact worker safety or the state's environment.

Effect on small businesses: none. The proposal to add Rule 1846.6 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 equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed 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:

Nicole Lopes-Gravely  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
(916) 263-6397  
nlgravely@chr.ca.gov

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

Robert Brodnik  
Staff Counsel  
(916) 263-6025



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 may be obtained by contacting Nicole Lopes-Gravely, or the alternative contact person 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 regulations. Requests for copies of any modified regulation should be sent to the attention of Nicole Lopes-Gravely 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 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 Nicole Lopes-Gravely 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 web site. 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](http://www.chrb.ca.gov).

**TITLE 10. CALIFORNIA HEALTH  
BENEFIT EXCHANGE**

The Board of Directors for the California Health Benefit Exchange (hereinafter referred to as the "Exchange") proposes to amend its conflict-of-interest

code after considering all comments, objections, and recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

**Overview**

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

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

Government Code Section 87300 requires every state agency to adopt and promulgate a conflict-of-interest code. Agencies are required to review their code every two years and update the code when positions and divisions change or are created. The Exchange's existing code was created in 2011 and approved by the FPPC in 2012. The Exchange as a state agency as grown considerably since that date, added many new positions and re-organized as it pursued its mission.

AUTHORITY AND REFERENCE

Authority: Sections 87300 and 100504, Government Code.

Reference: Sections 81004, 81008, 87202, 87203, 87204, 87206, 87207, 87208, 87209, 87210, 87300, 87301, 87302, 87302.6, 87303, 87306, 100500, and 100504, Government Code.

POLICY STATEMENT

The objective of the proposed regulation is to update the Exchange's existing conflict-of-interest code.

EXISTING LAW

Current statutes provide that no Exchange staff or board member may be employed by, a consultant to, a

member of the board of directors of, affiliated with, or otherwise a representative of, a carrier or other insurer, an agent or broker, a health care provider, or a health care facility or health clinic, or a trade association of any of those individuals or entities, while serving on the Exchange board or staff. (See Government Code 100500.) Additionally, an Exchange staff or board member may not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice. *Id.* An existing statute also requires the Exchange to adopt and promulgate a conflict-of-interest code containing provisions including:

- Designation of the positions within the agency which involve the making or participation in making of decisions which may foreseeably have a material effect on any financial interest, and for each such designated position, the specific types of investments, business positions, and sources of income which are reportable;
- Requirement that individuals holding a designated position file a disclosure of economic interests upon assuming office, annually thereafter, and upon leaving office; and
- Specific provisions setting forth any circumstances under which designated employees must disqualify themselves from making, participating in making, or using their official position to influence the making of any decision. (Government Code Section 87302.)

A current regulation adopted by the Fair Political Practices Commission contains the terms of a standard conflict-of-interest code that can be incorporated by reference in an agency's code. (Cal. Code Regs., tit. 2, Section 18730).

A summary of the proposed regulations' effect on existing law and regulations follows:

Title 10, Section 6400

Conflict-of-Interest Code

The Conflict-of-Interest Code restates the requirement under the Political Reform Act that all state agencies adopt and promulgate a conflict-of-interest code. The Fair Political Practices Commission has adopted a regulation (Cal. Code Regs., tit. 2, Section 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference into an agency's code. The Conflict-of-Interest Code incorporates that regulation by reference. Also, it specifies that the regulation and the attached Appendices designating positions and establishing disclosure categories constitute the Exchange's conflict-of-interest code.

The main document also specifies that individuals holding designated positions shall file their statements of economic interest with the Exchange, which will make the statements available for public inspection and reproduction, as required under Government Code Section 81008. Further, after receiving the statements for Board members and the Executive Director, the Exchange will make and retain copies and forward the originals to the Fair Political Practices Commission. The Exchange will retain all other statements.

Appendix A List of Designated Positions

The List of Designated Positions includes all positions with the Exchange that must file a disclosure of economic interests and assigns their disclosure category. It also establishes a process for designating disclosure requirements for Consultants/New Positions.

Positions in Disclosure Category 1 include but are not limited to Board Members, the Executive Director, the Chief Deputy Director, Deputy Directors, the Chief Financial Officer, the Chief Operations Officer, the SHOP Exchange Director, the Health Plan Contracting Director, the Chief Information Technology and Information Officer, the Chief Medical Officer, the General Counsel, the Communications and Marketing Director, the Legislation Director, and Staff Counsel.

Positions in Disclosure Category 2 include Procurement Personnel.

Consultants and individuals serving in new positions are included in the list of designated positions and shall disclose pursuant to the broadest disclosure category. However, the List of Designated Positions clarifies that the Executive Director may determine in writing that a particular consultant, although in a designated position, is hired to perform limited duties and may not be required to comply with the disclosure requirements described in the Code. The written determination must include a description of the consultant's duties and a statement of the extent of required disclosure. This determination is a public record and must be retained for public inspection.

Appendix B Disclosure Categories

The Disclosure Categories provide the extent of required disclosure for designated positions in each of the categories.

Designated positions in Disclosure Category 1 must disclose all investments and positions in business entities, and income, including gifts, loans, and travel payments, from the following:

- Health insurance carriers.
- Health insurance agents or brokers.
- Health care providers.
- Health care facilities or health clinics.
- Pharmaceutical companies.

- Medical device or equipment manufacturers or distributors.
- Pharmacy benefit management companies
- Third-party administrators (health claims only)
- Non-profit foundations formed or funded by health insurance carriers
- Trade associations of health insurance carriers, health insurance agents or brokers, health care providers, health care facilities or health clinics, pharmaceutical companies, and medical device or equipment manufacturers or distributors.
- Organizations representing individuals with specific medical conditions.
- Information technology consulting firms.
- Sources of the type to provide goods, equipment, materials, supplies, and information technology or telecommunication products to the Exchange.
- Sources of the type to provide personal services to the Exchange, including, but not limited to, health care and insurance research consulting firms.
- Sources of the type to receive funding from or through the Exchange.

Designated positions in Disclosure Category 2 must disclose all investments and business positions in business entities, and sources of income, which provide goods, materials, supplies, and information technology or telecommunication products of the type used by the Exchange.

#### PUBLIC HEARING

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

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes on **January 13, 2020**. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

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

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

#### AUTHORITY AND REFERENCE

Authority: Sections 87300 and 100504, Government Code.

Reference: Sections 81004, 81008, 87202, 87203, 87204, 87206, 87207, 87208, 87209, 87210, 87300, 87301, 87302, 87302.6, 87303, 87306, 100500, and 100504, Government Code.

#### DOCUMENTS RELIED UPON

None.

#### DETERMINATIONS

The Exchange 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.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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

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

Andrea Rosen  
Senior Attorney  
California Health Benefit Exchange  
(Covered California)  
1601 Exposition Blvd.  
Sacramento, CA 95815  
Telephone: (916) 228-8343

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the proposed amendment to the conflict-of-interest code can be accessed through our website at <https://hbex.coveredca.com/regulations>.

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

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

#### PUBLIC COMMENTS DUE BY JANUARY 13, 2020

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-4547, by email to [Julie Gorwood](mailto:Julie.Gorwood), or by letter to:

Commission on POST  
Attention: Julie Gorwood  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630

#### AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code Section 13503 (authority of the Commission on POST) and Penal Code section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code section 13503(e), which authorizes POST to

develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed revision to Commission Regulation 1005 would allow individuals who have completed the Regular Basic Course (RBC) or Specialized Investigator Basic Course (SIBC) in California, with qualifying out of state or federal law enforcement experience, and more than six years has elapsed since completion of the RBC or SIBC, to participate in the Basic Course Waiver process.

The proposed revisions would also require all Basic Course Waiver applicants to participate in the Requalification Course unless entering California Law Enforcement at middle management or executive rank. This would align the waiver requirements with the current regulation requirement for individuals with California training and experience.

The requalification course consists of an overview of basic course content along with updated instruction on California laws. It is necessary to ensure that individuals are competent and proficient prior to appointment. This would increase the applicants' chance for success in the field training program and successful completion of a probationary period.

The specific benefits anticipated by the proposed regulatory changes to the health and welfare of California residents will be to have consistency for all individuals applying for the Basic Course Waiver testing/assessment process. The proposed amendment of regulation will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of public health and safety, and welfare of California. During the process of developing these regulations and amendments, the Commission on Peace Officer Standards and Training has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing State regulations.

#### ADOPTION OF PROPOSED REGULATIONS

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

were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

**Estimate of Economic Impact**

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

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

Local Mandate: None.

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

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

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

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

RESULTS OF  
ECONOMIC IMPACT ASSESSMENT  
PER GOV. CODE SECTION 11346.3(b)

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

The benefits of the proposed amendments of regulations to the regulations will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the State’s environment.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to Julie Gorwood, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605–1630 at (916) 227–3915. General questions regarding the regulatory process may be directed to Katie Strickland at (916) 227–2802.

TEXT OF PROPOSAL

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

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

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

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

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

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

### PUBLIC COMMENTS DUE BY JANUARY 13, 2020

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-4823, by email to [Melanie.Dunn](mailto:Melanie.Dunn@post.ca.gov), or by letter to:

Commission on POST  
Attention: Rulemaking  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630

### AUTHORITY AND REFERENCE

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

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Regulation 1052 — Requirements for Course Certification, lists the requirements to obtain course certification. There are multiple proposed changes in this regulation.

In a course involving manipulative skills, the course shall include a formal written safety policy. The amended regulation language will ensure training at all times will be conducted in a manner designed to minimize the risk of injury and to promote safety; and ensure a POST Regional Consultant is properly notified in writing

within five (5) business days when an injury requiring more than basic first aid has occurred. This information will also provide POST staff with all information for evaluating injury reports and identifying possible related trends.

The Expanded Course Outline (ECO) document requires specific information such as presenter name and number, course title, and page number(s). Staff recommends that presenters add a revision date as best practice, but there is often hesitation or resistance because there is no requirement to do so. This can present a problem when there are questions about the correctness of contemporary nature of the content in the ECO. Also, the lack of revision date information can be problematic in court and when responding to California Public Records Act (CPRA) requests. The amended language will add a requirement to include a revision date in each ECO in the footer, near the page number.

Both in-service and academy course(s) safety policies must include the name, location, and phone number of the nearest emergency medical facility; however, there is no requirement for the inclusion of the address, phone number, and contact person for each of the training sites listed in the safety policy. By requiring this information, it would reinforce the importance of student safety, proper documentation, and timely injury reporting. It also allows POST staff to identify possible discrepancies between locations listed in the course certification materials and in the course safety policy.

Currently, the Academy Director, Academy Coordinator, and Recruit Training Officers are not required to have full-time sworn law enforcement experience; the Academy Director and Academy Coordinator are also not currently required to not have management or supervisory experience. In addition, a single individual may currently be assigned to the responsibilities of all three roles. The proposed regulation amendment will add qualifications to the positions of Academy Director and Academy Coordinator to require first-level supervisory experience; require the Academy Director, Academy Coordinator, and Recruit Training Officers to have full-time law enforcement experience, and require the three positions be assigned to separate individuals with clearly defined roles.

The specific benefits anticipated by the proposed regulatory changes will contribute to the health and welfare of California residents by providing clarity to our law enforcement presenters.

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

ADOPTION OF PROPOSED REGULATIONS

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

ESTIMATE OF ECONOMIC IMPACT

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

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

Local Mandate: None.

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

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

Cost Impacts on Representative Private Persons or Businesses: The Commission on POST 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: The Commission on POST has made an initial determination that the proposed regulation would have no effect on housing costs.

RESULTS OF  
ECONOMIC IMPACT ASSESSMENT  
PER GOV. CODE SECTION 11346.3(b)

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

The benefits of the proposed amendments of regulations to the regulations will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to Melanie Dunn, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-4866. General questions regarding the regulatory process may be directed to Katie Strickland at (916) 227-2802.

TEXT OF PROPOSAL

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

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

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

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

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

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

PUBLIC COMMENTS DUE BY  
JANUARY 13, 2020

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-4823, by email to [Melanie Dunn](mailto:Melanie.Dunn), or by letter to:

Commission on POST  
Attention: Rulemaking  
860 Stillwater Road, Suite 100  
West Sacramento, CA 95605-1630

AUTHORITY AND REFERENCE

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

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Regulation 1055(h) refers to a requirement to retain a copy of documents that must be kept on file at a presenters' facility for inspection by POST. The current Regulation 1055(h) incorrectly references Regulation 1053(a) and (b). This approved Commission change provides clean-up language to properly reference the correction Regulation of 1052(a) and (b).

The specific benefits anticipated by the proposed regulatory changes to the health and welfare of California residents will be to provide clarity to our law enforcement presenters.

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

ADOPTION OF PROPOSED REGULATIONS

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

ESTIMATE OF ECONOMIC IMPACT

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

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

Local Mandate: None.

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

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on POST has made an ini-



tial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The Commission on POST has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement which does not impact California businesses, including small businesses.

**Cost Impacts on Representative Private Persons or Businesses:** The Commission on POST 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:** The Commission on POST has made an initial determination that the proposed regulation would have no effect on housing costs.

**RESULTS OF  
ECONOMIC IMPACT ASSESSMENT  
PER GOV. CODE SECTION 11346.3(b)**

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

The benefits of the proposed amendments of regulations to the regulations will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the State's environment.

**CONSIDERATION OF ALTERNATIVES**

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

**CONTACT PERSONS**

Questions regarding this proposed regulatory action may be directed to Melanie Dunn, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-4866. General questions regarding the regulatory process may be directed to Katie Strickland at (916) 227-2802.

**TEXT OF PROPOSAL**

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

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

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

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

**TITLE 16. BOARD FOR  
PROFESSIONAL ENGINEERS, LAND  
SURVEYORS, AND GEOLOGISTS**

**NOTICE IS HEREBY GIVEN** that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Hearing location:**

2020 West El Camino Avenue, Suite 800  
Sacramento, CA 95833

**Hearing Date:** January 14, 2020

**Hearing Time:** 10:00 a.m. to 12:00 p.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under contact person in this Notice, must be received by the Board at its office no later than 12:00 p.m. on **January 14, 2020**, or must be received by the Board at the hearing.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the 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 the Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

**Authority and Reference Citations:** Pursuant to the authority vested by Sections 6716, 6765, 6799, 7818, 7854, 7887, 8710, 8749, and 8805 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 119, 122, 158, 6706.3, 6765, 6795, 6798, 6799, 7851, 7880, 7881, 7887, 8749, 8775.3, 8801, 8802, 8804, 8804.5, and 8805 of said code, the Board is considering changes to Title 16, Divisions 5 and 29, Sections 407, 410, 3005, and 3010 of the California Code of Regulations (CCR) as follows:

### INFORMATIVE DIGEST

In accordance with the provisions of the Administrative Procedure Act, BPC sections 6716, 7818, and 8710 authorize the Board to adopt, amend, or repeal rules and regulations which are reasonably necessary to carry out the provisions of the Professional Engineers Act (BPC sections 6700, et seq.), the Geologist and Geophysicist Act (BPC sections 7800, et seq.), and the Professional Land Surveyors' Act (BPC sections 8700, et seq.), respectively. BPC sections 6799, 7887, and 8805 prescribe and establish the statutory limits for the fees that the Board may charge and collect for each of the professions under the regulatory jurisdiction of the Board. BPC sections 6765, 7854, and 8749 authorize the Board to issue duplicate certificates and to adopt rules and regulations governing the issuance of such certificates.

The Board proposes to amend Sections 407, 410, and 3005 and to adopt Section 3010 of Divisions 5 and 29 of Title 16 of the CCR. The purpose for amending Sections 407 and 3005 is to standardize fees for services for all regulated professions, address structural imbalances in the Board's budget and ensure future fiscal solvency. The purpose for amending Section 410 and adopting Section 3010 is to clarify under what circumstances certificates, including duplicate certificates, will be issued.

The application, examination, renewal, retired, delinquent, and duplicate certificate fees have remained the same since 2012 and are disparate across the regulated professions. In this proposed rulemaking, the Board seeks to amend Sections 407 and 3005 to standardize said fees as detailed in **Attachment I**. Section 410 is proposed to be amended and Section 3010 is proposed

to be added to address when and how the Board will issue certificates, including duplicate certificates.

The Board anticipates the proposed standardized fee structure will foster an affordable path to licensure, align fees with the full cost of operational services, and set fees to facilitate the effective administration of the Board while meeting the needs of the public, applicants, and licensees. The proposed fees will apply to the renewal of licenses that expire after the effective date of the amendments to the regulations and to all other specified fees to be charged as of the effective date of the amendments to the regulations.

#### **Amend Title 16 CCR Sections 407 and 3005 Relating to Fees.**

The existing regulations set forth the fees that may be charged and collected by the Board for an application, examination, renewal of a license, delinquency of a license, and retired license. The proposed fee changes will standardize fees amongst all professions regulated by the Board. See **Attachment I** for description of fee changes. The Board last adjusted fees in 2012 and that fee structure has provided operational program support until Fiscal Year (FY) 2017–18.

Proposed changes to all regulatory fees across all professions are detailed below.

#### **Impact to Application, Renewal, Retired, and Delinquent Fees:**

The proposed fee changes will standardize fees amongst all professions regulated by the Board. Standardization by regulated profession is provided in **Attachment I**.

#### **Impact to Examination Fees:**

For all California specific state examinations, the proposed fee changes will support the actual cost to develop, maintain, and administer examinations and standardize fees amongst all regulated professions. For professional geologists also required to take the National Association of State Boards of Geology (ASBOG<sup>®</sup>) examinations those fees are set by the national organization and are identified in **Attachment I**.

#### **Transfer of Duplicate Certificate Fee from Section 410 to Section 407:**

Currently, the fee to be charged for the issuance of a duplicate certificate to a professional engineer or a professional land surveyor is specified in Section 410, while other fees are listed in Section 407. The fee charged to professional geologists and professional geophysicists for duplicate certificates is specified in Section 3005, which also identifies other fees applicable to those professions. It is more appropriate to specify all fees to be charged in one regulatory section; therefore, the Board is proposing to specify the duplicate certificate fee in Section 407 and remove it from Section 410.

Change in Duplicate Certificate Fee in Section 3005:

The Board’s internal process to issue a duplicate certificate is the same whether it is issued under the laws pertaining to professional engineers and land surveyors or those pertaining to professional geologists and geophysicists. As such, it is appropriate to charge the same fee of \$10 for this service across all of the Board’s regulated professions.

**Amend Title 16, CCR Section 410 and Adopt Title 16, CCR Section 3010 Relating to Certificates.**

The Board proposes to amend Section 410 and adopt Section 3010 of Divisions 5 and 29, respectively, of Title 16 of the CCR relating to certificates. Currently, Section 410 addresses when and how the Board will issue certificates, including duplicate certificates, to professional engineers and professional land surveyors and specifies the fee to be charged for duplicate certificates. There is no section in the regulations promulgated under the Geologist and Geophysicist Act that addresses when and how the Board will issue certificates, including duplicate certificates, to professional geologists and professional geophysicists; however, the fee to be charged for duplicate certificates is specified in Section 3005. This proposal would also add Section 3010 to address when and how the Board will issue certificates, including duplicate certificates, to professional geologists and geophysicists. This will provide consistency regarding the procedures for all of the Board’s regulated professions.

Furthermore, this proposal would amend Section 410 to remove the specific dollar amount of the fee and indicate that the fee to be charged for duplicate certificates is specified in Section 407, which is the section that lists all of the specific fees to be charged by the Board. Additionally, language is proposed to be added to Section 410 to clarify that the affidavit is to be submitted in instances where a certificate was destroyed or mutilated, as well as in instances where the certificate was lost, since the preceding sentence requires an affidavit in all three of those circumstances.

POLICY STATEMENT  
OVERVIEW/ANTICIPATED  
BENEFITS OF PROPOSAL

The necessity for this proposed regulatory action is to standardize fees for services for all regulated professions and ensure future fiscal solvency for the Board. Analysis of the Fund Condition statement confirms the Board must implement budgetary adjustments to address dissimilar fees amongst all professions it regulates and protect the Fund from becoming insolvent as projected in Fiscal Year (FY) 2020–21. Analysis of the Board’s fund balance measured by Months in Reserve

(MIR) projects that at the end of FY 2019–20, a 0.5–month reserve will exist. The Board’s budget will become insolvent in FY 2020–21 with a deficit of –\$3.3 million and –3.1 MIR. In FY 2021–22, this deficit will be approximately –\$7.5 million or –6.8 MIR. The current fee structure is not comparable to the services provided. Attachment II details the Board’s fund condition updated with the 2019–20 Governor’s Budget Act. Standardizing the Board’s various fee amounts across the professions and resolving the structural fund imbalance are unattainable without a fee change.

There are several factors that have created the need to standardize fees. On July 1, 2016, Assembly Bill 177 — Bonilla (Chapter 428, Statutes of 2015) merged the Geologist and Geophysicist Account under the Professional Engineer’s and Land Surveyor’s Fund into one Fund. Prior to the Funds merging, the Geologist and Geophysicist Account was expending more than generated revenue, thus creating a structural fund imbalance in the Fund. This impact has been absorbed while the Board has studied equitable and service–based fee levels amongst all regulated professions.

Additionally, expenditures have increased over the past four years by an average of 8 percent, or \$872,000, and are tied to increases in employee salaries and benefits, operating expenses related to examination development costs, and pro rata charges, which in themselves have been impacted by the increases in employee salaries and benefits, as follows:

**Actual Positions:** Fiscal Year 2014–2015: 48.0; Fiscal Year 2015–2016: 51.0; Fiscal Year 2016–2017: 50.0; Fiscal Year 2017–2018: 47.0

**Personal Services:** Fiscal Year 2014–2015: \$ 3,675; Fiscal Year 2015–2016: \$4,184; Fiscal Year 2016–2017: \$4,535; Fiscal Year 2017–2018: \$4,621

**Operating Expenses:** Fiscal Year 2014–2015: \$3,580; Fiscal Year 2015–2016: \$3,621; Fiscal Year 2016–2017: \$3,706; Fiscal Year 2017–2018: \$4,829

**Departmental Prorata:** Fiscal Year 2014–2015: \$1,315; Fiscal Year 2015–2016: \$1,300; Fiscal Year 2016–2017: \$1,748; Fiscal Year 2017–2018: \$1,736

Note: Dollars represented in thousands

- Since FY 2014/15 salaries and wages, temporary help, and benefits increased by \$946,000 related to filling program vacancies, merit salary adjustments, retirement and healthcare increases, and bargaining unit salary adjustments. Operating expenses have increased by \$1,249,000 related to examination development contracts, examination expert consultant contracts, and enforcement. Departmental Prorata rose by \$421,000 and Statewide Prorata rose by \$690,000.

On January 1, 2017, the Board stopped collecting an application fee for refile applicants. Prior to January 1,

2017, applicants were required to pay an application fee each time they applied and refiled to take an exam. A separate refile application fee is no longer required. If one needs to retake a California state-specific exam, one needs to submit the appropriate re-examination form and only the required exam fee(s) prior to being authorized by the Board to schedule to retake the exam(s). Additionally, professional engineer and professional land surveyor applicants who need to re-take a national exam now register directly with the national exam vendor and pay the exam fees directly to that vendor. The Board is not involved in that stage of the process and, therefore, does not need to collect a refile application fee.

These changes in the application process, while helping to expedite the process so that qualified individuals may be licensed sooner, have contributed to the decrease in the number of applications submitted to date and the historical revenue collected. Over two FYs (2016–17 and 2017–18), average revenue has decreased by \$657,000, and the direct impact in regulatory licenses has been a \$780,000 reduction from FY 2016–17 to FY 2017–18. Cyclical renewal fees have helped absorb the direct reduction in regulatory licenses but have not eliminated the structural imbalance in the Fund.

Additionally, the Board's current and varied fee structure, last adjusted in 2012, does not support the actual costs of services provided today. The cost incurred to fulfill a current service is not equal to the current fee associated with that service. There are also disparities among the fees charged for different license types. The processes for approving and enforcing licensure are generally the same for all professions regulated by the Board, and the costs incurred to fulfill those services is mostly the same for all regulated professions. One example of a fee disparity between the regulated professions is the application fee charged to individuals applying under the Geology and Geophysicist Act (\$250 application fee) versus those applying under the Professional Engineers Act and the Professional Land Surveyors' Act (\$125 application fee). This means applicants for licensure as professional geologists, professional geophysicists, certified engineering geologists, and certified hydrogeologists are charged double the fee that applicants for licensure as professional engineers and professional land surveyors are charged for generally the same service.

Additionally, the proposed amendments to Section 410 will clarify that the fee to be charged for duplicate certificates for professional engineers and professional land surveyors is specified in Section 407, where all the fees charged by the Board are listed. They will also clarify wording. The proposed addition of Section 3010

will indicate when and how the Board will issue certificates, including duplicate certificates, to professional geologists and geophysicists, thereby standardizing the procedures addressed in regulations across all of the Board's regulated licenses.

#### CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

#### FISCAL IMPACT ESTIMATES

##### Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The fiscal effect on state government includes numerous agencies (Department of Transportation, Forestry and Fire Protection, Conservation, Fish and Wildlife, Toxic Substances, Water Resources, Air Resources Board, etc.) that have licensed engineers, land surveyors, geologists, and geophysicists in their employment. Quite often agencies reimburse for application, exam, and license fees if the individual is successful in meeting all requirements for licensure. **Attachment III** identifies the current cost impact to California state agencies and proposed impact. The Board cannot determine how many applicants or examinees there are in state agencies as they would be ordinary applicants and may not be working for a state agency at this moment.

The Board does not receive any federal funding.

##### Nondiscretionary Costs/Savings to Local Agencies:

Local agencies may be required to reimburse their employees' license fees. Typically, a Memorandum of Understanding (MOU) negotiated between the State, as the employer, and the collective bargaining unit (union) dictates reimbursement procedures. The Board cannot determine how many licensees there are in local agencies. It is impractical to determine the number of licensees in local agencies based on available data because the fees are paid separately by or on behalf of individual licensees. The Board considered the impact, and concludes that there is a very small impact that won't affect hiring or budgets in a significant way.

##### Local Mandate:

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

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Requires Reimbursement:

None.

Business Impact:

The Board has made an initial determination that this 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.

Impact on Jobs/New Businesses:

The Board has determined that this proposed regulatory action is unlikely to have an impact on the creation of new businesses or jobs or the elimination of existing businesses or jobs or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board has determined that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses. The proposed regulations will affect currently licensed professional engineers, professional land surveyors, professional geologists, professional geophysicists, certified engineering geologists, and certified hydrogeologists as it applies to the proposed change in license renewal fees. The proposed regulations will affect individuals who apply for a license as a professional engineer, professional land surveyor, professional geologist, professional geophysicist, certified engineering geologist, and certified hydrogeologist and for a certification as an Engineer-in-Training, Land Surveyor-in-Training, or Geologist-in-Training, as the required application and examination fees will be changing to a more standardized structure across all regulated professions.

Effect on Housing Costs:

None.

**EFFECT ON SMALL BUSINESS**

The Board has determined that the proposed regulations would not affect small businesses in the state of California as the proposed amendments affect only individual practitioners renewing, replacing, or retiring their Board-issued certificate or license, individual applicants for licensure, and individual exam candidates.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

Impact on Jobs/Businesses:

The Board 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:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and the State’s government:

Specifically, this proposal is designed to enable the Board to continue its licensing, disciplinary, and oversight operations in the interest of the health, safety, and welfare of California consumers by ensuring only actively licensed practitioners are providing engineering, land surveying, geology, and geophysics services. Additionally, it will improve consistency between the regulations for the various professions regulated by the Board. This proposal does not affect the state’s environment.

**CONSIDERATION OF ALTERNATIVES**

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

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

**INITIAL STATEMENT OF REASONS AND INFORMATION**

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

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of

the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, California 95833. Materials regarding this proposal can also be found at: [http://www.bpelsg.ca.gov/about\\_us/rulemaking.shtml](http://www.bpelsg.ca.gov/about_us/rulemaking.shtml).

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

**CONTACT PERSON**

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

Name:

Jeff Alameida

Address:

2535 Capitol Oaks Drive, Suite 300  
Sacramento, CA 95833

Telephone Number:

(916) 263-2269

Fax Number:

(916) 263-2246

E-Mail Address:

[Jeff.Alameida@dca.ca.gov](mailto:Jeff.Alameida@dca.ca.gov)

The back-up contact person is:

Name:

Nancy Eissler

Address:

2535 Capitol Oaks Drive, Suite 300  
Sacramento, CA 95833

Telephone Number:

(916) 263-2241

Fax Number:

(916) 263-2246

E-Mail Address:

[Nancy.Eissler@dca.ca.gov](mailto:Nancy.Eissler@dca.ca.gov)

**WEBSITE ACCESS**

The Board's website is: <http://www.bpelsg.ca.gov>. Materials regarding this proposal can be found at: [http://www.bpelsg.ca.gov/about\\_us/rulemaking.shtml](http://www.bpelsg.ca.gov/about_us/rulemaking.shtml).

**GENERAL PUBLIC INTEREST**

**AIR RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO  
CONSIDER AN APPLICATION FOR A  
VARIANCE FROM THE EVAPORATIVE  
EMISSION REGULATIONS FOR SMALL  
OFF-ROAD ENGINES**

At the direction of the Executive Officer of the California Air Resources Board (CARB), a public hearing will be conducted at the following time and place to consider an application for a variance from the evaporative emission regulations for small off-road engines ("the small engine regulations," title 13, California Code of Regulations, sections 2750-2774). The Executive Officer or his nominee will hear evidence on whether the granting of a variance is appropriate.

**DATE:**

**December 20, 2019**

**TIME:**

**10:00 a.m.**

**PLACE:**

**California Air Resources Board  
Monitoring and Laboratory Division  
First Floor Conference Room  
1927 13<sup>th</sup> Street  
Sacramento, California 95811**

**BACKGROUND**

Section 2754(a) of the small engine regulations specifies diurnal emission standards for engines with displacement greater than 80 cubic centimeters. The current diurnal emission standards have been in effect since 1) model year 2008 for engines with displacement greater than or equal to 225 cubic centimeters, 2) model year 2009 for walk-behind mowers with engine displacement greater than 80 cubic centimeters and less than 225 cubic centimeters, and 3) model year 2012 for engines with displacement greater than 80 cubic centimeters and less than 225 cubic centimeters other than walk-behind mowers. Section 2754(c)(1) of the small

engine regulations requires an applicant certifying engines or equipment to comply with the diurnal emission standards to provide diurnal emission test data in a certification application. The test data must be for the engine or equipment model in the evaporative family that is expected to exhibit the highest diurnal emission rate relative to the applicable diurnal emission standard, in accordance with CARB test procedure TP-902.

Section 2 of TP-902 details pre-certification requirements that must be met before conducting a diurnal emission test. One of those pre-certification requirements is in section 2.2 of TP-902; it requires evaporative emission control systems that use a carbon canister and do not pressurize the fuel tank to have a working capacity of at least 1.4 grams of vapor storage capacity per liter of fuel tank nominal capacity for tanks greater than or equal to 3.78 liters, and 1.0 grams of vapor storage capacity per liter of fuel tank nominal capacity for tanks less than 3.78 liters. In addition, section 2768 of the small engine regulations allows any manufacturer of small off-road engines or equipment that use small off-road engines that cannot meet the requirements set forth in sections 2754 through 2757, due to extraordinary reasons beyond the manufacturer's reasonable control, to apply in writing for a variance. The application criteria and procedures for granting a variance are also specified in section 2768.

On November 13, 2019, CARB staff received a variance application, pursuant to section 2768, from the applicant listed below. The applicant is seeking a variance from the minimum working capacity requirement in section 2.2 of TP-902 (a portion of the diurnal emission testing requirement in section 2754(c)(1)), for eleven evaporative families, listed below the applicant's name.

American Honda Motor Co., Inc.  
1919 Torrance Boulevard  
Torrance, California 90501-2746

Evaporative families for which the applicant is seeking a variance

HNXCC13A  
HNXCC13B  
HNXCC19A  
HNXCC23A  
HNXCCW2A  
HNXCM21A  
HNXCM22A  
HNXCM15A

HNXCM18A  
HNXCM27A  
HNXCM29A

In accordance with section 2768, the Executive Officer or his nominee shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance is necessary and should be allowed, within 75 days of CARB's receipt of a variance application containing the information required under section 2768, subsection (a).

AVAILABILITY OF DOCUMENTS AND  
AGENCY CONTACT PERSONS

The public may inspect a copy of the variance application at CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

Further inquiries regarding this matter should be directed to Dr. Manisha Singh, Chief, Quality Management Branch at (916) 327-1501; or to Dr. Christopher Dilbeck, Air Pollution Specialist, at (916) 319-0106.

HEARING PROCEDURES

The public hearing to consider the variance application will be conducted in accordance with procedures set forth in section 2768 of the small engine regulations. At the hearing, CARB staff may provide a brief staff presentation, after which the applicant will be asked to present evidence demonstrating that the criteria for granting a variance have been met. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing. All parties may, but are not required to, be represented by counsel at the hearing. Subsequent to the hearing, the Hearing Officer shall determine whether, under what conditions, and to what extent, a variance is necessary and should be allowed.

SPECIAL ACCOMMODATION REQUEST

If you require a special accommodation or need this document in an alternate format (i.e. Braille, large print) or another language, please contact Abigail Trowbridge at (916) 327-4725 as soon as possible, but no later than 10 business days before the scheduled hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

**AIR RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO  
CONSIDER AN APPLICATION FOR A  
VARIANCE FROM THE EVAPORATIVE  
EMISSION REGULATIONS FOR SMALL  
OFF-ROAD ENGINES**

At the direction of the Executive Officer of the California Air Resources Board (CARB), a public hearing will be conducted at the following time and place to consider an application for a variance from the evaporative emission regulations for small off-road engines (“the small engine regulations,” title 13, California Code of Regulations, sections 2750–2774). The Executive Officer or his nominee will hear evidence on whether the granting of a variance is appropriate.

**DATE:**

**December 19, 2019**

**TIME:**

**10:00 a.m.**

**PLACE:**

**California Air Resources Board  
Monitoring and Laboratory Division  
First Floor Conference Room  
1927 13<sup>th</sup> Street  
Sacramento, California 95811**

**BACKGROUND**

Section 2754(a) of the small engine regulations specifies diurnal emission standards for engines with displacement greater than 80 cubic centimeters. The current diurnal emission standards have been in effect since 1) model year 2008 for engines with displacement greater than or equal to 225 cubic centimeters, 2) model year 2009 for walk-behind mowers with engine displacement greater than 80 cubic centimeters and less than 225 cubic centimeters, and 3) model year 2012 for engines with displacement greater than 80 cubic centimeters and less than 225 cubic centimeters other than walk-behind mowers. Section 2754(c)(1) of the small engine regulations requires an applicant certifying engines or equipment to comply with the diurnal emission standards to provide diurnal emission test data in a certification application. The test data must be for the engine or equipment model in the evaporative family that is expected to exhibit the highest diurnal emission rate relative to the applicable diurnal emission standard, in accordance with CARB test procedure TP-902.

Section 2 of TP-902 details pre-certification requirements that must be met before conducting a diurnal

emission test. One of those pre-certification requirements is in section 2.2 of TP-902; it requires evaporative emission control systems that use a carbon canister and do not pressurize the fuel tank to have a working capacity of at least 1.4 grams of vapor storage capacity per liter of fuel tank nominal capacity for tanks greater than or equal to 3.78 liters, and 1.0 grams of vapor storage capacity per liter of fuel tank nominal capacity for tanks less than 3.78 liters. In addition, section 2768 of the small engine regulations allows any manufacturer of small off-road engines or equipment that use small off-road engines that cannot meet the requirements set forth in sections 2754 through 2757, due to extraordinary reasons beyond the manufacturer’s reasonable control, to apply in writing for a variance. The application criteria and procedures for granting a variance are also specified in section 2768.

On October 28, 2019, CARB staff received a variance application, pursuant to section 2768, from the applicant listed below. The applicant is seeking a variance from the minimum working capacity requirement in section 2.2 of TP-902 (a portion of the diurnal emission testing requirement in section 2754(c)(1)), for the BSXCMH002 evaporative family.

Briggs and Stratton Corporation  
3300 North 124<sup>th</sup> Street  
Wauwatosa, Wisconsin 53222

In accordance with section 2768, the Executive Officer or his nominee shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance is necessary and should be allowed, within 75 days of CARB’s receipt of a variance application containing the information required under section 2768, subsection (a).

**AVAILABILITY OF DOCUMENTS AND  
AGENCY CONTACT PERSONS**

The public may inspect a copy of the variance application at CARB’s Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

Further inquiries regarding this matter should be directed to Dr. Manisha Singh, Chief, Quality Management Branch at (916) 327-1501; or to Dr. Christopher Dilbeck, Air Pollution Specialist, at (916) 319-0106.

**HEARING PROCEDURES**

The public hearing to consider the variance application will be conducted in accordance with procedures set forth in section 2768 of the small engine regulations. At the hearing, CARB staff may provide a brief staff



presentation, after which the applicant will be asked to present evidence demonstrating that the criteria for granting a variance have been met. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing. All parties may, but are not required to, be represented by counsel at the hearing. Subsequent to the hearing, the Hearing Officer shall determine whether, under what conditions, and to what extent, a variance is necessary and should be allowed.

SPECIAL ACCOMMODATION REQUEST

If you require a special accommodation or need this document in an alternate format (i.e. Braille, large print) or another language, please contact Abigail Trowbridge at (916) 327-4725 as soon as possible, but no later than 10 business days before the scheduled hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**30-Day Public Notice and Comment Period Unified Program Fee Schedule Adjustments for Imperial County**

**Notice is hereby given** that the Secretary for the California Environmental Protection Agency (CalEPA) proposes revising the Unified Program fee schedule included in this notice for regulated businesses in Imperial County, pursuant to the California Code of Regulations, Title 27, Section 15241(i). The California Department of Toxic Substances Control (DTSC) is the Certified Unified Program Agency (CUPA) for Imperial County and provided CalEPA with information necessary to revise the fee schedule, which will cover the necessary and reasonable costs to implement the Unified Program according to Title 27, Section 15241(b).

In 2005, CalEPA designated DTSC as the CUPA for Imperial County, as specified by Health and Safety Code Section 25404.3, Subdivision (f)(2)(A).

Health and Safety Code Section 25404.5, Subdivision (a)(2)(B) states that if the Secretary of CalEPA has designated a state agency to act as the CUPA, the Secretary will determine the amount to be paid under the single fee system.

DTSC has identified a deficit in CUPA funding and submitted a request to CalEPA to approve increases to the flat fees on all regulated businesses and to fees on each individual program element. The revised fee rates will result in an overall increase in revenue from

\$1,435,078 to \$2,105,247. The fee increase on individual businesses will vary. The increase is necessary as the current funding level, established in 2005, is insufficient to cover the necessary and reasonable costs incurred by DTSC to implement the CUPA program in Imperial County.

The public comment period for this notice will be from November 29, 2019 through December 29, 2019. CalEPA requests the public to submit written comments by the closing date to:

Mr. Jason Boetzer  
Acting Assistant Secretary for Local Program Coordination  
California Environmental Protection Agency  
P.O. Box 2815, MS-2D  
Sacramento, California 95812-2815

or

E-mail address: [cupa@calepa.ca.gov](mailto:cupa@calepa.ca.gov)

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

DTSC noticed impending Fiscal Year (FY) 2019/2020 fee adjustments in recent invoices to all regulated entities. CalEPA expects the new fees to go into effect immediately upon approval.

**Unified Program Fee Schedule For Imperial County CUPA Effective FY2019/2020**

*Fee Type: All Regulated Businesses — Current Rate: \$369 — Increase Amount: \$72 — New Rate: \$441*

*Fee Type: Hazardous Materials Business Plan (HMBP) — Current Rate: \$527 — Increase Amount: \$78 — New Rate: \$605*

*Fee Type: Hazardous Waste Generators (HWG): Less than 1 ton — Current Rate: \$395 — Increase Amount: \$266 — New Rate: \$661*

*Fee Type: HWG: 1 ton to less than 500 tons — Current Rate: \$527 — Increase Amount: \$521 — New Rate: \$1,048*

*Fee Type: HWG: 500 tons or more — Current Rate: \$658 — Increase Amount: \$1,187 — New Rate: \$1,845*

*Fee Type: Aboveground Storage Tanks (APSA): Less than 19,000 gallons — Current Rate: \$33 — Increase Amount: n/a — New Rate: n/a*

*Fee Type: APSA:* Greater than or equal to 19,000 to less than 34,000 gallons — *Current Rate:* \$66 — *Increase Amount:* n/a — *New Rate:* n/a

*Fee Type: APSA:* Greater than or equal to 34,000 gallons — *Current Rate:* \$99 — *Increase Amount:* n/a — *New Rate:* n/a

*Fee Type: APSA:* Less than or equal to 10,000 gallons — *Current Rate:* n/a — *Increase Amount:* \$516\* — *New Rate:* \$549

*Fee Type: APSA:* Greater than 10,000 to less than 100,000 gallons — *Current Rate:* n/a — *Increase Amount:* \$703\* — *New Rate:* \$769

*Fee Type: APSA:* Greater than or equal to 100,000 to less than 1 million gallons — *Current Rate:* n/a — *Increase Amount:* \$999\* — *New Rate:* \$1,098

*Fee Type: APSA:* Greater than 10,000 to less than 100,000 gallons — *Current Rate:* n/a — *Increase Amount:* \$1,438\* — *New Rate:* \$1,537

*Fee Type: Underground Storage Tanks (UST):* Less Than 19,000 gallons — *Current Rate:* \$1,200 — *Increase Amount:* \$2,695 — *New Rate:* \$3,954

*Fee Type: UST:* Between or Equal To 19,000 to 34,000 gallons — *Current Rate:* \$2,518 — *Increase Amount:* \$2,424 — *New Rate:* \$4,942

*Fee Type: UST:* Greater Than 34,000 gallons — *Current Rate:* \$3,777 — *Increase Amount:* \$1,824 — *New Rate:* \$5,601

*Fee Type: California Accidental Release Program* — *Current Rate:* \$3,258 — *Increase Amount:* (\$183) — *New Rate:* \$3,075

*Fee Type: Hazardous Waste Recyclers* — *Current Rate:* \$527 — *Increase Amount:* \$521 — *New Rate:* \$1,048

*Fee Type: Tiered Permitting Conditional Exemption* — *Current Rate:* \$864 — *Increase Amount:* \$184 — *New Rate:* \$1,048

*Fee Type: Permit by Rule/Conditional Authorization* — *Current Rate:* \$518 — *Increase Amount:* \$143 — *New Rate:* \$661

**Imperial County CUPA  
Non-Recurring Fees for UST Permits**

*Permit Activity:* Tank Installations — *Flat Rate Time:* 30 Hours — *Initial Fee:* \$4,950

*Permit Activity:* Repairs and Updates — *Flat Rate Time:* 6 Hours — *Initial Fee:* \$990

*Permit Activity:* Tank Removals — *Flat Rate Time:* 20 Hours — *Initial Fee:* \$3,300

Additional hours beyond the *Permit Activity's* designated *Flat Rate Time* are charged at \$165 per hour.

\*Calculated using an average based on the previous volume categories

**OCCUPATIONAL SAFETY AND  
HEALTH STANDARDS BOARD**

**NOTICE OF PUBLIC MEETING AND BUSINESS  
MEETING OF THE OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting and Business Meeting:

**PUBLIC MEETING:**

On **January 16, 2020**, at 10:00 a.m.  
in Room 358 of the County Administration Center  
1600 Pacific Highway, San Diego, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**BUSINESS MEETING:**

On **January 16, 2020**, at 10:00 a.m.  
in Room 358 of the County Administration Center  
1600 Pacific Highway, San Diego, California.

At the Business Meeting, the Board will conduct its monthly business.

**DISABILITY ACCOMMODATION NOTICE:**

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL  
PROTECTION AGENCY  
SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986  
(PROPOSITION 65)**

**CARCINOGEN IDENTIFICATION  
COMMITTEE MEETING POSTPONED  
ANNOUNCEMENT OF ADDITIONAL PUBLIC  
COMMENT PERIOD**

The Office of Environmental Health Hazard Assessment (OEHHA) is announcing the postponement of the Carcinogen Identification Committee (CIC) meeting scheduled for December 5, 2019, and the opening of an additional public comment period on the potential listing by the CIC of acetaminophen as a carcinogen under Proposition 65. OEHHA is postponing the meeting to provide the public additional time to submit relevant scientific information concerning the potential listing. The public comment period will commence on November 29, 2019 and end on January 27, 2020. All comments received will be provided to the committee for their consideration. The CIC meeting will be rescheduled after the close of the public comment period.

Hazard Identification Materials, including the OEHHA document "Evidence on the Carcinogenicity of Acetaminophen," additional references identified by OEHHA and public comments, may be found at [www.oehha.ca.gov/Proposition-65](http://www.oehha.ca.gov/Proposition-65). We encourage interested parties to submit comments in electronic form, rather than in paper form. Comments can be submitted electronically through OEHHA's website at <https://oehha.ca.gov/comments>. Comments submitted in paper form should be mailed, faxed, or delivered in person to the addresses below:

**Mailing Address:**

Julian Leichty  
Office of Environmental Health Hazard Assessment  
Proposition 65 Implementation  
P.O. Box 4010, MS-12B  
Sacramento, California 95812-4010

**Fax:** (916) 323-2265

**Street Address:**

1001 I Street  
Sacramento, California 95814

Comments must be received by OEHHA on or before January 27, 2020 in order to be considered.

**RULEMAKING PETITION  
DECISION**

**DEPARTMENT OF JUSTICE**

**NOTICE OF DISAPPROVAL OF REQUEST  
FOR ADOPTION OR REPEAL**

**Agency:**

Department of Justice, Division of Law Enforcement, Bureau of Gambling Control

**Petitioner:**

Jarhett Blonien, J. Blonien APLC

**Authority:**

California Business and Professions Code sections 19826 and 19827

**Issue:**

On October 18, 2019, the Department of Justice, Division of Law Enforcement, Bureau of Gambling Control received a request to repeal California Code of Regulations, Title 11, Division 3, Chapter 1, Article 5, Sections 2050, 2051, 2052, and 2053; Article 6, Section 2060; and Article 7, Sections 2070, and 2071

**Determination:**

The Department of Justice (Department) reviewed the request to repeal California Code of Regulations, Title 11, Division 3, Chapter 1, Article 5, Sections 2050, 2051, 2052, and 2053; Article 6, Section 2060; and Article 7, Sections 2070, and 2071, and denies the request as explained below.

**Preliminary Statement:**

The Gambling Control Act (GCA), codified at Business and Professions Code section 19800 et seq., is a comprehensive scheme for statewide regulation of legal gambling under a bifurcated system of administration involving the Bureau of Gambling Control<sup>1</sup> within the Department of Justice, and the California Gambling Control Commission. Contrary to the implication in the request that the Commission is responsible for enforcement of the Gambling Control Act, the Bureau is statutorily charged with the investigation and enforcement of controlled gambling activities in California. (Gov. Code, section 15001.1.)

The Bureau's responsibility to conduct investigations and to enforce the Gambling Control Act are multifac-

<sup>1</sup> Formerly the Division of Gambling Control. See Government Code section 15002.5.

eted, and include, without limitation: monitoring the conduct of licensees, investigating applicants to determine whether they are suitable for licensure, approving the play of controlled games, investigating suspected violations of the Gambling Control Act, and initiating disciplinary actions. (See Bus. and Prof. Code, section 19826.) In order to meet its responsibilities, the Bureau has extensive investigatory authority to, among other things, inspect and examine all gambling premises, equipment, and supplies in any gambling establishment; seize, remove, and impound any equipment, supplies, documents, or records from licenses premises; and demand access to and inspect, examine, photocopy, and audit all papers, books, and records of an owner licensee. (Bus. and Prof. Code, section 19827.)

Given the above, the Legislature provided the Bureau the authority to adopt regulations “reasonably related to its functions and duties as specified in [the Gambling Control Act].” (Bus. and Prof. Code, section 19826, subd. (g).) This regulatory authority has been delegated to the Bureau since the Gambling Control Act was first enacted. (See Stats. 1997, Ch. 867, section 16 (former Bus. and Prof. Code, section 19824A).)

With this framework in mind, the Bureau provides the following responses to the request to repeal the above-referenced regulations:

**Request claim:** “[T]he Bureau’s regulatory authority regarding these regulations was repealed in 2001, by Senate Bill 952, and all regulatory authority concerning the issues discussed in the above regulations<sup>2</sup> was granted to the Commission.”

Senate Bill 952 (Stats. 2001, Ch. 945) amended the Gambling Control Act with respect to certain specified provisions, none of which address the subject matter

covered by the above-referenced regulations.<sup>3</sup> The Bu-

<sup>3</sup> Senate Bill 952 added, amended, or repealed the Business and Professions Code as follows:

Section 1: amended Business and Professions Code section 19805, subdivision (af) defining “work permit,” and specifying that the Commission shall issue work permits.

Section 2: repealed former Business and Professions Code section 19818, which specified that the executive secretary of the Board may appoint no more than two attorneys, or, in lieu of such appointed attorneys, the Board may request representation by the Attorney General in any proceeding before any court.

Section 3: added former Business and Professions Code section 19818A, which allowed the Commission to employ no more than eight attorneys, but specifying that the Commission was not exempt from Government Code sections 11040, 11042, and 11043.

Section 4: amended former Business and Professions Code section 19823A, which specified that the Commission may grant temporary work permits, and may issue subpoenas for the attendance of witnesses and production of documents and things at a meeting or hearing of the Commission.

Section 5: added former Business and Professions Code section 19823.5, which allowed the Commission to refer a hearing to the Office of Administrative Hearings pursuant to Government Code section 11500, et seq.

Section 6: amended former Business and Professions Code section 19827, which provided that the Commission is entitled to immunity from liability for defamation, or constituting grounds for recovery in any civil action, for communications made under specified circumstances, and providing a process by which information may be disclosed by the Commission to third parties.

Section 7: repealed former Business and Professions Code section 19830, which provided the rulemaking authority of the Division and the Board.

Section 8: repealed former Business and Professions Code section 19834, which provided the scope of the regulations promulgated by the Division. (See Bus. and Prof. Code, section 19841. Neither the repeal of former Business and Professions Code section 19834, nor any other provision of Senate Bill 952, affected the Division’s regulatory authority provided in former Business and Professions Code section 19824A.)

Section 9: amended former Business and Professions Code section 19841A, which required that each person who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities apply for and obtain a state gambling license.

Section 9.5: amended former Business and Professions Code section 19851.5, which specified the authority of the Commission to approve or deny a license to gambling establishments that are not open to the public.

Section 10: amended former Business and Professions Code section 19853.5, which specified the means of submitting fingerprints to the Division by “live scan” or other prevailing technologies.

Section 11: amended former Business and Professions Code section 19910, which required that the Division make recommendations to the Commission for approval of persons for employment in a gambling establishment.

Section 12: amended former Business and Professions Code section 19910.5A, which provided that work permits are to be issued by the Commission

Section 13: amended former Business and Professions Code section 19950.3, which restricted the Commission’s authority to issue new licenses to operate a gambling establishment due to the moratorium on licensing of new gambling establishments.

<sup>2</sup> California Code of Regulations, Title 11, sections 2050, 2051, 2052, 2053, 2060, 2070 and 2071.

reau's regulatory authority remains untouched from that provided to it when the Gambling Control Act first came to be, though the section numbers under which that authority exists has changed. That authority, found in Business and Professions Code section 19826, subdivision (f), provides the basis upon which the above-referenced regulation sections continue to have force, effect, and validity.

**California Code of Regulations, Title 11, section 2050. Owner or Key Employee on Premises:** The requirement that an owner or key employee remain on the premises at all times while gambling establishment is open is a requirement that is reasonably related to the Bureau's responsibility to monitor the conduct of licensees under Business and Professions Code section 19826 as well as its investigatory functions under Business and Professions Code section 19827. The Bureau may conduct site visits, or other investigatory inspections, without notice, and under circumstances that may require the immediate seizure of evidence. In order to provide licensees with adequate notice of any such actions taken by the Bureau, and to ensure that the Bureau's investigations are not impeded, there must be a person on premises who has the authority to comply with any demands made by the Bureau in connection with its investigatory responsibilities.

It should also be noted that this section was amended in 2004, as a result of the Commission promulgating a regulation related to accounting and financial reporting. During both rulemakings, neither the Commission nor a member of the industry or the public commented that California Code of Regulations, Title 11, section 2050 was outside the Bureau's authority to regulate.

Based upon the foregoing, the Bureau's promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau's authority to continue to enforce the provisions of California Code of Regulations, Title 11, section 2050, and that section remains in full force and effect.

**California Code of Regulations, Title 11, section 2051. Gambling Chips:** The requirement that gambling chips be designed, manufactured, and constructed so as to prevent counterfeiting is reasonably related to the Bureau's responsibility to ensure that gambling operations are not conducted in a manner that is inimical to the public health, safety, and welfare, and to enforce the provisions of Penal Code section 337w, subdivision (a). Penal Code section 337w specifically prohibits the use of counterfeit chips or other counterfeit wagering instruments in a gambling game. It is of paramount importance that gaming chips be honored by licensees for the benefit of its patrons. The proliferation of counterfeit chips would necessarily jeopardize patrons' inter-

ests in their own funds. Accordingly, the Bureau's authority to regulate gambling chips is within the Bureau's authority under Business and Professions Code section 19826, subdivision (b).

Gaming chips may be subject to Bureau approval. The authority to approve gaming equipment is specifically vested in the Bureau by Business and Professions Code section 19841, subdivision (b). Additionally, Business and Professions Code section 19827, subdivision (a)(1)(C), provides the Bureau specific authority to "[i]nspect all equipment and supplies in any gambling establishment." The Legislature has declared that the appropriate regulation of gambling equipment and devices requires an adequately funded *law enforcement agency*, i.e., the Bureau, with the capability to inspect, test, and evaluate gambling equipment and devices (Bus. and Prof. Code, section 19802, subd. (b)); this provides implicit authority for the Bureau to regulate gambling chips, which are considered gambling equipment or devices. Thus, California Code of Regulations, Title 11, section 2051, as written, is necessary and within the Bureau's scope of regulatory authority.

Based upon the foregoing, the Bureau's promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau's authority to continue to enforce the provisions of California Code of Regulations, Title 11, section 2051, which remains in full force and effect.

**California Code of Regulations, Title 11, section 2052. Information to be Furnished by Licensees:** The requirement that licensees provide bi-annual reports to the Bureau of all persons who received, or had a right to receive, payments generated from controlled gambling, and all persons to whom an interest in the assets, earnings, profits, or receipts of the gambling establishment have been pledged or hypothecated is directly related to the Bureau's responsibility to "monitor the conduct of all licensees and other persons having a material involvement, directly or indirectly, with a gambling operation or its holding company, for the purpose of ensuring that licenses are not issued or held by, and that there is no direct or indirect material involvement with, a gambling operation or holding company by ineligible, unqualified, disqualified, or unsuitable persons, or persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare." (Bus. and Prof. Code, section 19826, subd. (b).) Regular reporting of persons profiting from controlled gaming is necessary for the Bureau to ensure that ineligible, unqualified, or disqualified persons are denied the opportunity to improperly receive such profits, and is thus reasonably related to the Bureau's responsibilities.

The requirement that licensees report violations of the GCA within five days is reasonably related to the Bureau’s monitoring responsibilities, as well as the Bureau’s responsibility to investigate complaints, and to take disciplinary actions against licensees for violations of the GCA. (Bus. and Prof. Code, section 19827, subd. (a).) The reporting requirement operates in tandem with the incident reporting requirements of California Code of Regulations, Title 4, section 12395, subdivision (a)(3)–(4), a Commission regulation. It should be noted that when California Code of Regulations, Title 4, section 12395 was promulgated in 2010, neither the Commission nor the industry or the public voiced any concerns that California Code of Regulations, Title 11, section 2052 infringed upon the Commission’s rulemaking authority or that it would be invalidated with the enactment of California Code of Regulations, Title 4, section 12395.

Based upon the foregoing, the Bureau’s promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau’s authority to continue to enforce the provisions of California Code of Regulations, Title 11, section 2052, which remains in full force and effect.

**California Code of Regulations, Title 11, section 2053. Adequate Financing:** Adequate financing is directly related to the Department’s responsibility “[t]o monitor the conduct of all licensees and other persons having a material involvement, directly or indirectly, with a gambling operation or its holding company, for the purpose of ensuring that licenses are not issued or held by, and that there is no direct or indirect material involvement with, a gambling operation or holding company by ineligible, unqualified, disqualified, or unsuitable persons, or persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.” (Bus. and Prof. Code, section 19826, subd. (b).)

Monitoring the conduct of licensees and other persons involved in a gambling operation includes ongoing and regular review of the adequate financing of a gambling operation. A licensee’s ability to maintain adequate financing of its gambling operation is a factor in determining a licensee’s continued suitability for licensure. Failure to maintain adequate financing of a gambling operation contravenes the public trust, and is inimical to the health, safety, and welfare of the public, because, absent those financial protections, the public, in particular the licensee’s patrons, would be left without the assurance that the money they exchange for chips will be honored, or that any money they have on deposit with the gambling establishment will ultimately be returned to them.

Business and Professions Code section 19827 outlines the powers that the Department has to effectuate its duties and responsibilities. The authority to inspect, examine, and audit all papers, books, and records is directly related to ensuring that “licenses are not issued or held by, and that there is no direct or indirect material involvement with, a gambling operation or holding company by ineligible, unqualified, disqualified, or unsuitable persons, or persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.”

Based upon the foregoing, the Bureau’s promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau’s authority to continue to enforce the provisions of California Code of Regulations, Title 11, section 2053, which remains in full force and effect.

**California Code of Regulations, Title 11, section 2060. Employee Reports:** Similar to the requirement that an owner or key employee be on the premises at all times,<sup>4</sup> the requirements that licensees (1) keep the Bureau apprised of the names and job classifications of each employee, (2) notify the Bureau of changes to its organizational structure, and (3) submit a bi-annual report identifying all key employees, are reasonably related to the Bureau’s monitoring responsibilities and investigatory authorities. (Bus. and Prof. Code, section 19826, subd. (b).) Since the Bureau will work directly with a gambling enterprise’s employees in the course of an investigation, it is reasonable and appropriate for the Bureau to require that a licensee provide accurate and up-to-date information to the Bureau about who has authority to act on behalf of the gambling enterprise.

It should also be noted that the form referenced in California Code of Regulations, Title 11, section 2060 (BGC-LIC. 101 (Rev. 07-2017)), is incorporated by reference in California Code of Regulations, Title 4, section 12342, a Commission regulation. Additionally, California Code of Regulations, Title 4, section 12342 has been amended from time to time, and not once has the Commission, industry, or the public voiced concern over the validity of California Code of Regulations, Title 11, section 2060, or that that Bureau has infringed upon the Commission rulemaking authority.

Based upon the foregoing, the Bureau’s promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau’s authority to continue to enforce the provisions of California Code of Regulations,

<sup>4</sup> See discussion of California Code of Regulations, title 11, section 2050, *supra*.

Title 11, section 2060, which remains in full force and effect.

**California Code of Regulations, Title 11, section 2070. Unsuitable Gaming Activities:** Business and Professions Code section 19826, subdivision (g) specifically requires the Bureau to approve the play of any controlled game, and authorizes the Bureau to place restrictions and limitations on how a controlled game may be played. The Bureau’s finding that the practices delineated in California Code of Regulations, Title 11, section 2070 are unsuitable are reasonably related restrictions and limitations on the play of controlled games, as well as part of the comprehensive regulation of the practices and activities related to the operation of gambling establishments. (Bus. and Prof. Code, section 19801, subd. (h).)

California Code of Regulations, Title 11, section 2070 is also within the Bureau’s regulatory authority because it is reasonably related to the Bureau’s responsibilities under the Gambling Control Act to investigate and enforce “suspected violations of the [Gambling Control Act] or laws of this state relating to gambling, including any activity prohibited by Chapter 9 (commencing with Section 319) or Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.” (Bus. and Prof. Code, section 19826, subd. (c).) This includes controlled gambling activities that are made unlawful by statute, local ordinance, or regulation. (Cal. Code Regs., tit. 11, section 2070, subd. (a).) The prohibition on the offering of a game which has not been authorized by the Bureau is consistent with Penal Code section 337j, subdivision (e)(1). Failure to display at every table where a game is offered the specific game name or its variation, notice of collection fee rates, and the failure to determine or collect applicable rates is consistent with Penal Code section 337j, subdivisions (e)(1) and (f).

Based upon the foregoing, the Bureau’s promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau’s authority to continue to enforce the provisions of California Code of Regulations, Title 11, section 2070, which remains in full force and effect.

**California Code of Regulations, Title 11, section 2071. Gaming Activity Authorization:** Business and Professions Code section 19826, subdivision (g) requires the Bureau to approve the play of any controlled game, and authorizes the Bureau to place restrictions and limitations on how a controlled game may be

played. This subdivision was expanded in 2004, requiring that, in addition to approval of any controlled game, the Bureau make available to the public the rules of play and the collection rates of each gaming activity approved for play at each gambling establishment on the Attorney General’s Web site. The Legislature recently confirmed the Bureau’s vested authority over the approval of games with the enactment of Assembly Bill 156 in 2012 (Stats. 2011, Ch. 391, section 3), which added Business and Professions Code section 19943.5, relating to the “play of a controlled game that has been *approved by the department pursuant to Section 19826.*” (Emphasis added.)

In 2017, the Commission recognized the Bureau’s authority to approve games with the promulgation of California Code of Regulations, Title 4, section 12290, by specifically requiring registrants and licensees subject to that section to “comply with game rules approved by the Bureau . . .” (Cal. Code Regs., tit. 4, section 12290, subd. (a).) California Code of Regulations, Title 4, section 12290 is not new text as it was first enacted in emergency regulations and subsequently made permanent in 2004. Finally, the Commission points to the Bureau’s authority to approve game rules in California Code of Regulations, Title 4, section 12392, subdivision (b), which requires that a “licensee’s house rules shall be in addition to, and shall not conflict with, the game rules approved by the Bureau for any controlled game or gaming activity.”

Based upon the foregoing, the Bureau’s promulgation and continued enforcement of this section is not outside the scope of regulatory authority granted to it under the Gambling Control Act. Senate Bill 952 did not remove the Bureau’s authority to continue to enforce the provisions of California Code of Regulations, Title 11, section 2071, which remains in full force and effect.

#### Contact Person and Availability of Petition

Pursuant to Government Code section 11340.7, subsection (d), any interested party, or his or her duly authorized representative, may obtain a copy of the petition related to this determination by contacting:

Susanne George, Regulations Coordinator  
 California Department of Justice  
 Bureau of Gambling Control  
 P.O. Box 168024  
 Sacramento, CA 95816-8024  
 E-mail: Susanne.George@doj.ca.gov  
 916-830-9032

**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# 2019-1001-01  
**BOARD OF BARBERING AND COSMETOLOGY**  
 Fines and Payment Plans

This action amends the schedule of administrative fines for violations of the Barbering and Cosmetology Act and related regulations and establishes payment plan requirements.

Title 16  
 ADOPT: 974.3  
 AMEND: 974  
 Filed 11/13/2019  
 Effective 01/01/2020  
 Agency Contact: Kevin Flanagan (916) 575-7104

File# 2019-1002-01  
**BOARD OF FORESTRY AND FIRE PROTECTION**  
 Permanent Post-Fire Recovery Exemption, 2019

In this regular rulemaking, the Board of Forestry and Fire Protection is creating an exemption from the plan completion and submission, completion report, and stocking report requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Resources Code, sec. 4511, et seq.) to persons engaging in specified forest management activities. This exemption applies to (1) Timber Operations consistent with, and within the geographic scope of, an existing valid and effective gubernatorial proclamation of a state of emergency or executive order and (2) Timber Operations necessary to remove dead or Dying Trees as a result of a wildfire which occurred no more than three years prior to the submission of a notice of exemption, but such Timber Operations are not consistent with, or within the geographic scope of, an existing valid and effective gubernatorial proclamation of a state of emergency or executive order.

Title 14  
 AMEND: 895.1, 1038, 1038.1, 1038.2  
 REPEAL: 1038.5  
 Filed 11/14/2019  
 Effective 01/01/2020  
 Agency Contact: Eric Hedge (916) 653-9633

File# 2019-1003-01  
**BOARD OF FORESTRY AND FIRE PROTECTION**  
 Stocking and Silvicultural Amendments, 2019

In this regular rulemaking, the Board of Forestry and Fire Protection (the "Board") is amending the Forest Practice Rules by modifying the point-count requirements by reducing the number of trees planted post-logging and also establishing a methodology to count trees. Additionally, the Board is allowing for site specific basal area stocking levels if existing minimums could lead to reduced forest health.

Title 14  
 AMEND: 912.7, 913.2, 913.3, 913.4, 916.9, 932.7, 933.2, 933.3, 933.4, 936.9, 952.7, 953.3, 953.4, 956.9, 1072.6, 1080.1  
 Filed 11/14/2019  
 Effective 01/01/2020  
 Agency Contact: Eric Hedge (916) 653-9633

File# 2019-1004-02  
**BOARD OF FORESTRY AND FIRE PROTECTION**  
 NTMP Amendments, 2019

The Board of Forestry and Fire Protection amended 25 regulations and adopt one regulation related to non-industrial timber management plans (NTMPs). The action includes amendments to NTMP regulations to comply with recent legislative changes made in S.B. 901 (Stats.2018, c. 626).

Title 14  
 ADOPT: 1090.01  
 AMEND: 923.3, 943.3, 963.3, 1090, 1090.1, 1090.2, 1090.3, 1090.4, 1090.5, 1090.6, 1090.7, 1090.9, 1090.10, 1090.11, 1090.14, 1090.16, 1090.17, 1090.18, 1090.19, 1090.20, 1090.21, 1090.22, 1090.23, 1090.25, 1090.26  
 Filed 11/14/2019  
 Effective 01/01/2020  
 Agency Contact: Eric Hedge (916) 653-9633

File# 2019-1009-02  
**BOARD OF PAROLE HEARINGS**  
 Youth Offender Parole Consideration and Application of Youth Factors

This rulemaking action adopts the process for providing parole consideration hearings for qualified youth offenders, as defined, including: the process for scheduling and conducting the hearings, and the mitigating



youth offender factors which must be considered in making parole determinations. This action also adopts provisions to ensure that inmates who do not qualify as youth offenders, but whose controlling offense was committed prior to the age of 26, also receive consideration under the same youth offender factors as qualified youth offenders do.

Title 15  
 ADOPT: 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448  
 Filed 11/20/2019  
 Effective 01/01/2020  
 Agency Contact: Christopher Hoefl (916) 322-6729

File# 2019-1114-03  
 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING  
 Conflict-of-Interest Code

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

Title 2  
 AMEND: 10500  
 Filed 11/20/2019  
 Effective 12/20/2019  
 Agency Contact: Adam Chayes (916) 565-7109

File# 2019-1010-02  
 DEPARTMENT OF INSURANCE  
 Workers' Compensation Classification/Rating Rules

The Department of Insurance amends three documents incorporated by reference in its regulations, effective January 1, 2020. Section 2318.6 is amended to update the California Workers' Compensation Uniform Statistical Reporting Plan — 1995. Section 2354 is amended to update the Miscellaneous Regulations for the Recording and Reporting of Data — 1995. And section 2353.1 is amended to update the California Workers' Compensation Experience Rating Plan — 1995. The full text is available at the Insurance Commissioner's Offices and is published by the Workers' Compensation Insurance Rating Bureau of California. These amendments are exempt from the APA and from OAL review under the rates exemption of Government Code section 11340.9(g).

Title 10  
 AMEND: 2318.6, 2353.1, 2354  
 Filed 11/19/2019  
 Effective 11/19/2019  
 Agency Contact: Patricia Hein (415) 538-4430

File# 2019-1023-03  
 DEPARTMENT OF JUSTICE  
 Conflict-of-Interest Code

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

Title 11  
 AMEND: 20  
 Filed 11/20/2019  
 Effective 12/20/2019  
 Agency Contact: Julia Zuffelato (916) 210-6040

File# 2019-1031-02  
 DEPARTMENT OF JUSTICE  
 Pawn and Secondhand Dealer System Regulations

In this resubmittal of OAL Matter No. 2019-0829-02S, the Department of Justice is adopting regulations pertaining to an initial license fee and a license renewal fee for a licensed pawnbroker or secondhand dealer.

Title 11  
 ADOPT: 999.501, 999.502  
 Filed 11/19/2019  
 Effective 01/01/2020  
 Agency Contact: Julia Zuffelato (916) 210-6040

File# 2019-1001-04  
 STATE LANDS COMMISSION  
 Permits for Geophysical Surveys

This action establishes a permit program for the conduct of geophysical surveys on state lands, including granted and ungranted tidelands and submerged lands, so as to protect the environment and enhance public safety.

Title 2  
 ADOPT: 2100.02, 2100.03, 2100.04, 2100.05, 2100.06, 2100.07, 2100.08, 2100.09, 2100.10  
 Filed 11/13/2019  
 Effective 01/01/2020  
 Agency Contact: Joe Fabel (916) 574-0964

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

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

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the