



California Regulatory Notice Register

REGISTER 2018, NO. 31-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

AUGUST 3, 2018

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

CALIFORNIA REGULATORY NOTICE REGISTER is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 328-4880. The Register can also be accessed at <http://www.oal.ca.gov>.

**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. DEPARTMENT OF HUMAN
RESOURCES**

**DIVISION 1, CHAPTER 3,
SUBCHAPTER 1
ARTICLE 25 — HEARINGS**

The California Department of Human Resources (CalHR) proposes to amend and adopt regulations as described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person, or his/her authorized representative, may submit written comments relevant to the proposed rulemaking to CalHR. All comments will be considered if received by 5:00 p.m. on September 17, 2018, the closure of the comment period.

Please submit comments to:

Stanley Marubayashi
California Department of Human Resources
Legal Division
1515 "S" Street, North Building, Suite 500
Sacramento, California 95811

or
stanley.marubayashi@calhr.ca.gov

ADOPTION OF PROPOSALS

Following the public hearing, if any, CalHR may thereafter adopt proposals that are in substantially the same form as those described below and modify proposals if the modifications are sufficiently related to the original text. The full text of any modified proposal will be made available for fifteen (15) days prior to their adoption, unless merely technical or grammatical changes. Modified proposals will also be mailed to those persons who: 1) submit written comments related to the proposals; 2) provide oral comments at the public hearing; or 3) request notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code sections 18502, 19815.4(d) and 19815.4(e) authorize CalHR to adopt proposed regulations to the California Code of Regulations, title 2, Division 1, Chapter 3, Subchapter 1, Article 25. These proposed amendments implement and refer to the following statutes and case law:

Code of Civil Procedure sections 1985, 1985.1.

Evidence Code sections 205, 210, 350, 401, 500, 602, and 915.

Government Code sections 18502, 18672, 18672.1, 18673, 18674, 19579, 19815.4(d), and 19815.4(e).

Government Code sections 19832, 19836, 19837, 19841, 19992.14, 19994–19994.4, 19996.1, 19996.2, 19997–19997.14, 19998, and 19998.1.

Government Code sections 11400 through 11475.70.
Gonzalez v. SPB (1977) 76 Cal.App.3d 364.

REGULATIONS SECTIONS AFFECTED

CalHR is proposing to amend sections 599.894, 599.895, 599.896, 599.897, 599.898, 599.903, 599.904, 599.905, 599.906, 599.907, 599.908, 599.909, and 599.910.

CalHR is proposing to adopt sections 599.894.1, 599.894.2, 599.895.1, 599.897.1, 599.899, 599.900, 599.901, 599.902 and 599.909.1.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Government Code section 18502, added by Gov. Reorg. Plan No. 1 of 2011, created the California Department of Human Resources which succeeds to and is vested with all of the powers and duties exercised and performed by the Department of Personnel Administration. Government Code section 19815.4(d) authorizes CalHR to formulate, adopt, amend or repeal rules, regulations and general policies affecting the purposes, re-

sponsibilities and jurisdiction of CalHR. Government Code section 19815.4(e) requires CalHR to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to CalHR’s jurisdiction. The proposed regulations will clarify the appeals process under these statutes.

The broad objective of these regulations is to comply with Gov. Reorg. Plan No. 1 of 2011 and to benefit any State Civil Service employee, appointing power and/or their representatives, in filing an appeal with or making an appearance before the Statutory Appeals Unit, which is a quasi-judicial forum. CalHR, through these proposed regulations, will clearly define the types of hearings processed by the Statutory Appeals Unit, identify the powers and duties of the Statutory Appeals Unit’s Administrative Law Judge, and make explicit the method for computing time limits under the regulations. The proposed regulations clarify the procedures for requesting subpoenas and preparing a case for hearing. The proposed regulations explain terms, outline the process for requesting hearing audio copies or the certified administrative record, and make it easier for self-represented employees to exercise relevant due process rights. The proposed regulations provide for reasonable accommodation and interpreter services.

Existing regulations, amended in 2004 by CalHR’s predecessor, the Department of Personnel Administration, define terms, identify elements of an appeal, and set forth time limits for filing an appeal. These proposed regulations will further define terms relevant to the CalHR hearing process, provide additional definitions of hearing procedures, outline the continuance and pre-hearing conference processes, and explain the procedural requirements and ramifications of failure to present a prima facie case or appear at a duly scheduled evidentiary hearing. The proposal also provides definitive guidance for employees who are incarcerated and/or voluntarily resigned under Government Code section 19996.2; clarifies the making and basis of the administrative record; explains how to file a request for reasonable accommodation and interpreter services; and incorporates excluded employees appeal rights.

Currently, CalHR relies on portions of the Administrative Procedure Act (APA) which regulates formal and informal administrative hearings of State of California agencies, departments, commissions and boards. Although no changes are proposed to the portions of the APA previously adopted, these proposed regulations further outline and explain the CalHR hearing process. Additionally, CalHR proposes to adopt the California appellate court ruling in *Gonzalez v. SPB* (1977) 76 Cal.App.3d 364 which defined “good cause” to formalize its criteria required for continuances, pre-hearing conferences and late-filed appeals.

These proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting an evaluation for any other regulations in this area, CalHR has concluded that these regulations are the only regulations dealing with the procedures and rules of CalHR’s Statutory Appeals Unit. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The Department has made the following initial determinations:

Mandate on local agencies and school districts:

CalHR has determined these proposed regulations pertain only to State of California Civil Service employees and do not impose a mandate on local governments, state agencies or school districts. CalHR has made a policy determination that there is no mandate imposed on local agency or school district that requires reimbursement pursuant to Government Code section 17500 et seq.

Cost or savings to any state agency:

The proposed regulations are not anticipated to add any costs to state agencies because the proposed regulations do not mandate a new program or higher level of service. These proposed regulations merely regulate the procedures applicable to CalHR’s appeal and hearing process which have been in place for two decades.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

None.

Other nondiscretionary cost or savings imposed on local agencies:

None.

Cost or savings in federal funding to the state:

None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:

None. These regulations only affect the procedures applicable to CalHR’s appeal and hearing process.

Cost impacts on a representative private person or business:

CalHR has made an initial determination there are no cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action. CalHR is not aware of any cost impacts that a representative private person or business

would necessarily incur in reasonable compliance with the proposed action.

Small Business Impact:

None. These regulations only affect CalHR’s appeal and hearing processes for state employees, their employers, and their representatives.

Impact on Reporting:

None. The proposed action does not require the making of any reports.

Effect on Housing Costs:

None.

RESULTS OF THE ECONOMIC
IMPACT ANALYSIS

CalHR has also determined these proposed regulations will not:

- Create/eliminate California jobs.
- Create/eliminate California businesses.
- Expand existing California businesses.
- Have an adverse effect on the health and welfare of California residents, worker safety, or the State’s environment.

These proposed regulations have no impact on businesses because they apply only to State Civil Service employees and merely regulate procedures applicable to CalHR’s appeal and hearing process. CalHR has determined that the proposed regulations will not affect the creation or elimination of jobs in California.

CalHR has determined the proposed regulations will benefit state employees, state agencies and their representatives and promote fairness and efficiency to the hearing process.

CONSIDERATION OF ALTERNATIVES

CalHR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency:

- Would be more effective in carrying out the purpose for which the action is proposed;
- Would be as effective and less burdensome to affected private persons than the proposed action; or
- Would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS

Inquiries concerning the proposed regulations may be directed to:

Stanley Marubayashi, Labor Relations Counsel
California Department of Human Resources
Legal Division

1515 S Street, suite 500
Sacramento, CA 95811
916-324-0512

Stanley.Marubayashi@calhr.ca.gov

The designated back-up contact person shall be:

Karla Broussard-Boyd, Administrative Law Judge
California Department of Human Resources

Statutory Appeals Unit
1515 S Street, suite 500
Sacramento, CA 95811

916-324-3857

Karla.Broussard-Boyd@calhr.ca.gov

AVAILABILITY OF STATEMENTS

CalHR’s Statutory Appeals Unit shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at:

1515 S Street, North Building, Suite 500
Sacramento, California 95811

As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this Notice, the Proposed Text of the Regulations, and the Initial Statement of Reasons.

Any substantial changes to the original proposed regulations shall be available at least fifteen (15) days prior to the adoption, repeal or amendment of the resulting regulation.

AVAILABILITY OF DOCUMENTS

The Internet

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the Proposed Text of the Regulations in strikeout and underline format may be accessed through the CalHR website at: <http://www.cal.hr.ca.gov/Pages/public-notice.aspx>.

Changed or Modified Text

After considering timely and relevant comments, CalHR may adopt the proposal substantially as described in this notice. Any modifications which are sufficiently related to the original proposed regulation will be available to the public for at least fifteen (15) days before CalHR adopts the revised regulations. CalHR will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available to the public.

Final Statement of Reasons

When complete, the Final Statement of Reasons may be obtained by contacting Stanley Marubayashi at the

address noted above, or through the CalHR website at:
<http://www.cal.hr.ca.gov/Pages/public-notice.aspx>.

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: State Board of Education

A written comment period has been established commencing on August 3, 2018, and closing on September 17, 2018. 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 her review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than September 17, 2018. 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 2. STATE PERSONNEL BOARD

Notice is hereby given that the State Personnel Board (Board) proposes to adopt the regulatory changes described below. The Board will consider any and all comments, objections, or recommendations that may be timely submitted regarding this proposed action.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action will be held on September 20, 2018, at 10:00 a.m. in Room 150 at 801 Capitol Mall, Sacramento, California.

WRITTEN COMMENT PERIOD

The written comment period closes on September 17, 2018, at 5:00 p.m. Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Dorothy B. Egel
 Senior Attorney
 State Personnel Board
 801 Capitol Mall, MS 53
 Sacramento, CA 95814
 Fax: (916) 653-4256
 Email: dorothy.egel@spb.ca.gov

Comments must be received by the contact person no later than 5:00 p.m. on September 17, 2018.

AUTHORITY AND REFERENCE

The Board proposes to adopt the proposed action under the authority granted by the California Constitution, article VII, sections 3 and 5, and Government Code sections 18502, 18660, 18701, 19050, 19050.4, 19050.8, 19083, 19889, and 19889.2 in order to implement, interpret, and make specific the provisions of California Constitution, article VII, section 1 and Government Code sections 18500, 18546, 18547, 18525.3, 18930, 18933, 18934, 19050, 19050.3, 19050.4, 19050.8, 19230, 19702.2, and 19889.2.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

A. Summary of Existing Laws and Regulations Related to the Proposed Action

The Board is a constitutional body responsible for enforcing California’s civil service statutes. (Cal. Const., art. VII, § 3.) In addition, the Board, by majority vote of

all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*) The Board also establishes rules implementing and enforcing the merit principle in the state civil service system. (Gov. Code, § 18660; see Cal. Const., art. VII, § 1, subd. (b).)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.) The Board’s regulations concerning selection, examinations, and classification may be adopted by the Board without public notice or comment; however, regulations related to selection and examinations shall be reasonably available to all interested parties. (Gov. Code, § 18213.) The rulemaking procedures set forth in Government Code section 18214 apply to the adoption of Board regulations concerning other matters.

In this instance, the subject matter of the proposed regulations relates to examinations and selection. These regulations are thus exempt from the APA process; however, the Board finds that a public comment period would be appropriate for this regulatory action.

B. Comparable Federal Regulations or Statutes

The Board has conducted a review of federal regulations and statutes and determined there are no comparable federal regulations or statutes.

C. Policy Statement Overview

With advancements in technology, online state civil service examinations and online application systems are available. Mobile bar codes are also used by many individuals when mailing envelopes. The Board’s current regulatory scheme does not include any process and procedure related to these advances. As to civil service examination announcements and applications and job announcements and applications, this proposed regulatory action will update the Board’s rules to include standards relative to online examinations, online application systems, and the use of mobile bar codes on envelopes. This regulatory action will also conform the Board’s regulations to Government Code section 18934.

In addition, this regulatory action will clarify the length of time an appointing power can hold an employee who has accepted a new civil service appointment. To ensure that limited term appointments are properly used, this regulatory action will require written justifications for limited term positions.

Regarding transfers, this regulatory action maintains the same standards for salary calculations and comparisons as the Board’s current regulations; however, the action will clarify the Board’s regulations related to transfers by adding a definition section and standards for deep class transfers. The regulatory action will also

clarify when movement of an employee should be considered a transfer or reinstatement, thus promoting consistent and uniform personnel transactions.

The Board's current regulations do not address whether employees with temporary or limited term status may use their temporary or limited term status as a basis for transfer. This regulatory action clarifies that temporary or limited term status may not be used as a basis for transfer. Further, this regulatory action simplifies and streamlines the use of temporary assignments and loans, which will also serve to promote upward mobility.

Other changes are technical for purposes of style and consistency.

D. Evaluation of Consistency and Compatibility with Existing State Regulations

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

DETERMINATION OF FISCAL IMPACT ON PUBLIC AGENCIES

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: This proposed regulatory package is intended to clarify and update the Board's regulations and make more simplified and streamlined the procedures for temporary assignments and loans. Therefore, the Board expects that any costs or savings to State agencies will be minimal, if any.
- Other nondiscretionary cost of savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

ECONOMIC IMPACT ON BUSINESS

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: The proposed regulations only set standards related to state civil service examinations and selection. Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

DESCRIPTION OF COST IMPACT

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Adoption of these regulations 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. Affect worker safety or the state's environment.

It is expected that the adoption of this regulatory package will have a positive impact on the general health and welfare of California residents in that the benefits of this proposed regulatory action include simplifying and streamlining procedures related to temporary assignments and loans, which will also promote upward mobility.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Dorothy B. Egel
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1403
Fax: (916) 653-4256
Email: dorothy.egel@spb.ca.gov

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Alvin Gittisriboongul
Chief Counsel
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1403
Alvin.gittisriboongul@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Senior Attorney Egel at the above address.

AVAILABILITY OF RULEMAKING FILE

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, Fax: (916) 653-4256. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and ~~strikeout~~ can be accessed on the Board's website at www.spb.ca.gov under "What's New?"

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS NOTICE OF PROPOSAL TO AMEND RULE 1865, ALTERING OF SEX OF HORSE

The California Horse Racing Board (Board/CHRB) 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 1865, Altering of Sex of Horse. The proposed amendment modifies subsection 1865(e)(1) to remove the \$1,000 minimum fine specifically levied on a trainer if the true sex of the horse he or she has entered to race is not correctly identified in the official program. In place of the minimum \$1,000 fine, subsection 1865(e)(1) will provide that if the true sex of the horse is not identified in the official program, the responsible party may be sanctioned by the stewards. Subsection 1865(e)(2) has been changed to provide that if a horse has started in a race, and then has been altered prior to starting in a subsequent race, the stewards shall declare the horse from the race if the public is not informed of its true sex prior to the opening of wagering for the race in which it is entered. (To "declare" a horse from a race means the horse is removed from the race.) The proposed amendment to Rule 1865 deletes subsections 1865(e)(3) and 1865(e)(3)(A). The deleted subsections are no longer necessary, as the \$1,000 minimum fine under subsection 1865(e)(1) has been eliminated.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, September 27, 2018**, or as soon after

that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed actions 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 actions to the Board. The written comment period closes at **5:00 p.m., on September 17, 2018**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

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

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19460 and 19562, Business and Professions Code. Reference: Sections 19420, 19562 and 19661, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19460 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19420, 19562 and 19661, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the CHRHB. 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, but not be limited to, 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 19460 provides that all licenses granted under this chapter are subject to all rules, regulations, and conditions prescribed by the Board. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State. Business and Professions Code section 19661 states unless otherwise expressly provided, the Board may impose a monetary penalty of not more than one hundred thousand dollars (\$100,000) for a violation of any of the provisions of this chapter.

It is widely acknowledged within the horseracing industry that gelding has its benefits. While male horses generally are not fully mature until two years of age, they may begin to reach sexual maturity around 12 to 14 months. At a little over one year old, male horses can start to show interest in fillies and become challenging for handlers. Colts can become fractious, fight their handlers, and lose focus if they think a filly is near. As a group, colts tend to be contrary which makes them difficult to train. A colt's behavior may not be safe for horsemen or the horse, and can become more problematic if it injures itself and requires stall rest and controlled exercise for an extended period of time. The injured colt is likely to chafe under the confining regimen.

In addition to behavioral problems, the gelding procedure may have practical health considerations. Sometimes gelding will help the horse lose some weight and keep it sounder. This can be significant because as the male horse matures, testosterone in its system predisposes it to build extra muscle mass and retain more fat; the growth pattern can outstrip the maturity of the horse's joints. Some male horses may have testicular abnormalities. Cryptorchidism, the failure of one or both testes to descend into a normal scrotal position from the abdominal cavity, is an example. Stallions can still produce normal amounts of testosterone. Such horses are called ridglings and should not be used for breeding.

Regardless of the reasons for gelding a racehorse, the proper identification of a gelding is most important to the wagering public when a horse has been gelded between starts. Some believe a gelding's performance improves significantly in the start after the horse has been gelded, because in its un-altered state, the horse might not have been training as well, performing below his ability, and refusing to put out an honest effort. When the true sex of a horse entered to race is not reported, horseplayers claim the misinformation cost them a valuable data point in evaluating the horse for wagering purposes.

Rule 1865 currently provides that a trainer who enters a horse, or who causes a horse to be entered on his be-

half, is responsible for ensuring that the true sex of the entered horse is listed on its certificate of registration on file in the racing office. If the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the trainer of the horse shall be subject to a minimum fine of \$1,000. The \$1,000 penalty was added in 2009, as the Board believed it would cause trainers to ensure they were reporting the horse's correct sex at time of entry; however, the errors continued. Unreported geldings were still slipping through the reporting process and the public was not receiving the information in a timely manner. In the calendar years 2016/2017 twelve trainers were fined for violations of Rule 1865. However, the trainer may not always be entirely at fault. Having been informed of a gelding by the trainer, the racing office may fail to notify the stewards. Errors may also occur when a trainer takes on a new owner and receives horses with which he has never worked. The owner may fail to inform the trainer about a recent gelding. The reality of mitigating circumstances is demonstrated by the fact that of the twelve violations of Rule 1865 in the calendar years 2016/2017, ten of the fines levied against trainers were under \$1,000. That means the stewards found there were mitigating circumstances in accordance with subsection 1865(e)(3) and (e)(3)(A).

The proposed amendment to Rule 1865 will remove the trainer's minimum \$1,000 fine from subsection 1865(e)(1). Instead, the subsection will provide that the party responsible for a misidentification of a horse's true sex in the official program may be sanctioned by the stewards. Such sanctions may include a fine, and/or a number of days of suspension of license. The removal of the \$1,000 fine is the result of the Board's determination that declaration of the horse alone is a penalty which renders the fine an unnecessary deterrent. Declaring a horse from a race penalizes the owner and the trainer. From the owner's perspective, there are still costs associated with maintaining the horse, and preparing it to race. In addition, the owner loses any potential purse money the horse may earn. The trainer loses an opportunity to earn a percentage of the purse, and is placed in the position of having to explain, often to an angry and disappointed owner, why the gelding of the horse was not properly reported. The trainer may lose the owner's business to another trainer. If the racing office is the responsible party, it has to explain to the owner and trainer how it failed to report that the horse was gelded since its last start. The proposed change recognizes that such mix-ups are not always the fault of the trainer, and that others may be the responsible parties. The stewards' sanctions may include a fine, or a number of suspension days, or both, depending on the responsible party.

In 2018, Rule 1865 was amended to add subsection 1865(e)(2), which provided that if the true sex of the horse was not reported to the racing office prior to the opening of wagering for the race in which it was entered, the horse would be declared from the race. This provides adequate time for the trainer to inform the racing office about the true sex of the horse, and for the information to be disseminated to the wagering public. The morning routine on the backside can begin as early as 4:00 a.m. The racing office generally opens at 7:00 a.m., and the totalizator* begins operating at 8:30 a.m. PST. As the first post time for a race meeting is generally between 12 noon and 2:00 p.m., the racing office will have time to inform the stewards of the true sex of the horse. (*The totalizator is an automated system of wagering on races that dispenses and records wagering tickets, calculates and displays odds and payoffs. It also provides for cashing winning tickets.) The 2018 amendment was meant to protect the wagering public against instances where it learns, after placing wagers, that a horse has been gelded. That is exactly the effect of the provision. However, for the wagering public, information regarding gelding is only considered critical if the horse has previously run in a race in an unaltered state. A horse that has never run in a race has no "past performance" statistics on which to base a wager, so gelding is not as much of an issue. The proposed amendment to subsection 1865(e)(2) is meant to acknowledge the fact that information regarding gelding is material when, having started in any race, the horse is subsequently altered, and the public is not informed of the true sex of the horse prior to the opening of wagering for the race in which the horse is entered. Because they are starting their racing career as geldings, the proposed amendment provides a break for horses that have never run. Declaring the horse that has previously run in a race protects the wagering public and provides an additional incentive for responsible parties to pay attention to the information provided to the racing office. Depending on the types of wagers they placed, persons who selected the horse that is scratched will have their wagers cancelled and refunded, or their selections replaced by the favorite or by an alternate they designated at the time they made their wagers. Trainers will have an incentive to pay close attention to their entries, as scratching the horse precludes any possibility of earning a share of the purse. In addition, the responsible parties may be sanctioned by the stewards. The racing office will have incentive to ensure it keeps the stewards informed of any changes, as it may be subject to sanctions.

POLICY STATEMENT OVERVIEW OF
ANTICIPATED BENEFITS OF PROPOSAL

Board Rule 1865 requires that any alteration of the sex of a horse from the sex as recorded on the certificate of foal registration or the eligibility certificate or other official registration certificate of the horse shall be reported to the racing secretary and the official horse identifier if the horse is entered to race at any race meeting. The primary purpose of the regulation is to ensure that the public has full and correct information regarding horses entered in a race. The proposed amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible parties may be sanctioned by the stewards. The proposed amendment deletes the trainer's \$1,000 minimum fine under subsection 1865(e)(1), as the Board determined that withdrawal of the horse alone is a penalty which renders the fine an unnecessary deterrent. The proposed amendment amends subsection 1865(e)(2) to provide that if, having started in a race, the sex of the horse has been altered, and the public is not informed of the true sex of the horse, prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race.

The proposed amendments to Rule 1865 benefits California's horsemen and the public by providing an additional incentive to ensure that any alteration to the sex of a horse is reported as required under Rule 1865. Full information regarding the condition of a horse entered to race helps level the playing field for horsemen and provides valuable information to the wagering public. Full, accurate disclosure regarding horses entered to race assists the industry in providing transparency, which is essential in maintaining the integrity of the sport. The proposed amendment is consistent with current Board regulations in that the trainer is responsible for the condition of the horse entered to race, and the stewards have general authority and supervision over all licensees and other persons attendant on horses. The proposed amendment does not protect public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in government. The regulation promotes transparency in business by requiring that the true sex of the horse entered to race is disclosed to the public.

CONSISTENCY EVALUATION

During the process of developing the amendment to Rule 1865, the CHRB has conducted a search of any similar regulations on this topic. Rule 1865 is the only regulation dealing with the alteration of the sex of a

horse. Therefore, the Board has concluded that the 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 of Rule 1865 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

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

RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT

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

The proposed amendment will provide consistency and clarity with regards to the necessity for disclosing the true sex of a horse entered to race, and the consequences if such disclosure is not accomplished prior to the opening of wagering for the race in which the horse is entered. The proposed amendment will protect the interests of California horsemen and the public by ensuring full disclosure and transparency regarding the condition of horses entered to race.

The proposed amendment to Rule 1865 will impact horsemen, or other responsible parties, who fail to report any alteration of the sex of a horse entered to race. However, the net economic effect of the proposed amendment will be neutral. Scratching a horse simply means the horse will not be running in the race. In most instances, wagers on a scratched horse will be refunded. In multi-race wagers, such as a Pick-4 or Pick-6, the scratched horse will be replaced with the favorite (some wagers allow the patron to designate alternate wagering interests).

The adoption of the proposed amendment of Rule 1865 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) impact the state's environment; (5) impact worker safety.

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

Significant effect on housing costs: none.

Effect on small businesses: none. The proposal to amend Rule 1865 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 has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSON

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

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

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

Andrea Ogden, Manager
Policy and Regulations
Telephone (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based, may be obtained by contacting Harold Coburn, or the alternative contact 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 regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

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

BOARD WEB ACCESS

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

**TITLE 4. CALIFORNIA HORSE
RACING BOARD**

**TITLE 4. DIVISION 4. CALIFORNIA CODE OF
REGULATIONS**

**NOTICE OF PROPOSAL TO AMEND
RULE 1843.3. PENALTIES FOR
MEDICATION VIOLATIONS**

The California Horse Racing Board (Board/CHRB) 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 1843.3, Penalties for Medication Violations. The proposed amendment will modify subsection 1843.3(d) to correct a discrepancy in the licensed trainer phenylbutazone levels within the Category "C" penalty chart. The Licensed Trainer category, 2nd offense within 365-day period, which currently reads "Phenylbutazone (≥ 10.0 mcg/ml)," will be changed to "Phenylbutazone (≥ 5.0 mcg/ml)." The proposed amendment will bring the Licensed Trainer levels in line with the Licensed Owner.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, September 27, 2018**, or as soon after that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Cypress, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on September 17, 2018**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

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

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19461 and 19580, Business and Professions Code. Reference: sections 19461, 19580, 19581 and 19582, Business and Professions Code, and section 11425.50, Government Code.

Business and Professions Code sections 19440, 19461 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19461, 19580, 19581 and 19582, Business and Professions Code.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19461 states every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. Business and Professions Code section 19580 provides the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines and penalties shall include, at a minimum, the provisions set forth in this article. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and the composition thereof. Business and Professions Code section 19582 states violations of Section 19581, as determined by the Board are punishable as set forth in regulations adopted by the Board. The Board may classify violations of section 19581 based on each class of prohibited drug substances, prior violations within the previous three years, and prior violations

within the violator's lifetime. The Board may provide for the suspension of a license for not more than three years, except as provided in subdivision (b), or a monetary penalty of not more than one hundred thousand dollars, or both, and disqualification from purses, for a violation of Section 19581. The actual amount of the monetary penalty imposed pursuant to this paragraph shall be determined only after due consideration has been given to all the facts, circumstances, acts, and intent of the licensee, and shall not be solely based on the trainer-insurer rule, as established in Section 1843 and 1887 of Title 4 of the California Code of Regulations. The punishment for second and subsequent violations of section 19581 shall be greater than the punishment for a first violation of section 19581 with respect to each class of prohibited drug substances, unless the administrative law judge, in findings of fact and conclusions of law filed with the Board, concludes that a deviation from this general rule is justified. A third violation of section 19581 during the lifetime of the licensee, determined by the Board to be at a class I or class II level, may result in the permanent revocation of the person's license. The administrative law judge shall, after consideration of the circumstances surrounding a violation specified in paragraph (1), file a decision with the Board that includes findings of fact and conclusions of law. Any person whose license is suspended or revoked pursuant to this section shall not be entitled to receive any material benefit or remuneration in any capacity or from any business activity permitted or allowed by the license during any period of its suspension or revocation. The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions. Business and Professions Code section 19461 provides that every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. All proceedings to revoke a license shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. Government Code section 11425.50 states the decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

In 2016, the Board amended Rule 1843.3. One element of the amendment eliminated the phenylbutazone measurements in serum or plasma for Category "D" penalties which were found under subsection 1843.3(f). The measurements were moved to the Category "C" penalties column under subsection 1843.3(d). The first levels of Category "C" phenylbutazone penalties were changed to match the levels previously found in the Cat-

egory "D" penalties for Rule 1844(c)(1) phenylbutazone violations. This meant the second level of measurements of serum or plasma for Licensed Trainer and Licensed Owner had to be adjusted so they would be sequential without a gap. The subsequent Licensed Trainer and Licensed Owner columns were supposed to be changed to "Phenylbutazone (≥ 5.0 mcg/ml)." The Licensed Owner category was changed; however, the changes that should have been made to the Licensed Trainer category were omitted from the final text submitted to OAL on September 13, 2016. The proposed amendment to Rule 1843.3 is necessary, as it will correct the discrepancy by adjusting the Licensed Trainer category, 2nd offense within 365-day period, which currently reads "Phenylbutazone (≥ 10.0 mcg/ml)," to "Phenylbutazone (≥ 5.0 mcg/ml)." The proposed amendment will not alter the fact that a licensed trainer with a phenylbutazone positive of 10.0 mcg/ml is subject to a penalty. Rather, the proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1843.3 will modify subsection 1843.3(d) to correct a discrepancy in the Licensed Trainer phenylbutazone levels within the Category "C" penalty chart. The Licensed Trainer category, 2nd offense within 365-day period, which currently reads "Phenylbutazone (≥ 10.0 mcg/ml)," will be changed to "Phenylbutazone (≥ 5.0 mcg/ml)." The proposed amendment will bring the Licensed Trainer Category in line with the changes made to the Licensed Owner category in a 2016 amendment.

The proposed amendment to Rule 1843.3 is necessary to ensure consistency and clarity within the text of the regulation. Correcting the Licensed Trainer category, 2nd offense within 365-day period, to match the licensed owner category, will provide greater clarity regarding Category "C" penalties for Rule 1844(c)(1). The proposed amendment to Rule 1843.3 will promote the health and welfare of race horses and licensees by removing those with the most egregious medication violation from the inclosure.

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 1843.3 is the only regulation deal-

ing with classification of drug substances and penalties for medication violations with regards to California horse racing. Therefore the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

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

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

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

The Board has made an initial determination that the proposed amendment to Rule 1843.3 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

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

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

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The results of the Board's Economic Impact Assessment as required by Government Code section 11346.3(b) are as follows: The adoption of the proposed amendment to Rule 1843.3 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; or (4) increase or decrease investment in California; (5) benefit the state's environment. The proposed amendment to Rule 1843.3 impacts individuals who violate the Board's medication regulations. In making the determination that the proposed amendment to Rule 1843.3 will not have an adverse economic impact, the Board looked at the number of licensed trainers who might be affected, and compared it to the total number of persons who hold CHRB occupational licenses. The individuals impacted are licensed horse trainers. The CHRB has 18,874 licensees; of that number, 626 persons hold CHRB trainer licenses. Penalties for medication violations act as deterrents. This is demonstrated by the number of trainers who

have had an 1844(c)(1) violation in fiscal year 2017/2018. A total of 12 trainers have been fined. The proposed amendment to Rule 1843.3 promotes the health and safety of race horses, which are jeopardized if they work out or race when they are not sound due to the unauthorized administration of medications or drug substances. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory. Ensuring that horses entered to race are sound also promotes jockey/driver safety. Accordingly, the proposed amendment benefits the health and welfare of California residents and improves worker safety. Sound, healthy horses result in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact on the industry.

Effect on small businesses: none. The proposal to amend Rule 1843.3 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:

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

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

Andrea Ogden, Manager
Policy and Regulations
Telephone (916) 263-6033

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based on, may be obtained by contacting Harold Coburn, 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 regulation. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

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

BOARD WEB ACCESS

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

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE COMMISSION ON TEACHER CREDENTIALING

NOTICE IS HEREBY GIVEN that the Commission on Teacher Credentialing, pursuant to the authority vested in it by Section 87306 of the Government Code, proposes amendment to its conflict-of-interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Commission on Teacher Credentialing 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.

This amendment makes changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than **September 14, 2018**, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than **September 14, 2018**, by contacting the Contact Person set forth below.

Copies of the proposed amendments may be obtained by contacting the Contact Person set forth below.

The Commission on Teacher Credentialing has determined that the proposed amendments:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any state agency.
3. Imposes 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.

In making these proposed amendments, the Commission on Teacher Credentialing must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons that the proposed amendments.

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

Christopher M. Rose
1900 Capitol Avenue
Sacramento, CA 95811
(916) 445-0474
crose@ctc.ca.gov

TITLE 5. EDUCATION EDUCATION AUDIT APPEALS PANEL

Audits of K-12 Local Education Agencies Fiscal Year 2018-19

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2018-19 using the Guide's incorporating regulation, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the written comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be addressed to Mary Kelly.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes **Monday, September 17, 2018**. EAAP will consider only written comments received by that time. Written comments for EAAP's consideration should be directed to:

Mary Kelly, Executive Officer
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814

Fax: (916) 445-7626
e-mail: mkelly@eaap.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 14501, 14502.1, 14503 and 41024, California Constitution. Article XIII, Section 36, subdiv. (e), subpara 7, and Article XIII A, Section 1, subdiv. (b), subparas 3(C) and 3(D). Reference: Reference: California Constitution Article XIII B, Section 1.5; and Sections 2574(b)(3)(C), 8482.3(f)(5), 14501, 14502.1, 14503, 14509, 15286, 41024, 42238.02(b)(3)(B), 47612.5, 47634.2 and 48000, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking amends title 5, California Code of Regulations, section 19810 to clarify the incorporation by reference language and make reference to the audit guide. It also adopts the audit guide for 2018-19 which makes clarifying revisions and addresses legislative changes in the conditions of apportionment of school funding.

This rulemaking meets the requirements of Education Code section 14502.1, which mandates that an annual audit guide be adopted by the EAAP. The purpose of the audit guide is to define terms and specify procedures to guide accountants in the conduct of statutorily required financial and compliance audits of K-12 local education agencies. The Controller, pursuant to Education Code section 14502.1, has proposed changes from the previous year's audit guide to be reflected in the 2018-19 audit guide. The proposed changes derive from the Controller's proposals and also contain changes designed to clarify audit steps.

EAAP does not anticipate that these proposed amendments would create specific benefits for the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, nor the increase in openness and transparency in business and government. EAAP has determined that the proposed amendments will ultimately benefit the welfare of California residents by ensuring that local education agencies are in compliance with regulatory requirements. In developing the rulemaking, EAAP evaluated the proposed

changes to regulations and determined that they are not inconsistent or incompatible with existing regulations, state or federal.

A description of proposed changes to section 19810, and a discussion of revisions to the audit guide, follow.

Title 5, Division 1.5
Chapter 3.
Audits of California K–12 Local Education
Agencies
Article 1 General Provisions

§ 19810. Annual Audit Guides.

The “~~2017–18~~ 2018–19 Guide for Annual Audits of K–12 Local Education Agencies and State Compliance Reporting,” (July 1, 2018~~March 1, 2018~~), adopted by the Education Audit Appeals Panel, is incorporated by reference. The guide provides the audit steps, reporting requirements, and other guidance, for the required annual financial and compliance audits, subject to auditor judgment where alternative or additional audit steps may be appropriate. The annual guide is superseded by a supplemental audit guide, if needed, adopted before March 1 of each fiscal year. Each annual guide and any applicable supplement are available on www.eaap.ca.gov/audit-guide, with paper or electronic copies available on request.

Note: Authority cited: Sections 14502.1 and 47612, Education Code; California Constitution, Article XIII, Section 36, subdiv. (e), subpara 7, and Article XIII A, Section 1, subdiv. (b), subparas 3(C) and 3(D). Reference: California Constitution Article XIII B, Section 1.5; and Sections ~~8482.3(f)(5)~~, 2574(b)(3)(C), ~~8482.3(f)(5)~~, 14501, 14502.1, 14503, 14509, 15286, 41020, 41024, 42238.02(b)(3)(B), 47612.5, 47634.2 and 48000, Education Code.

AUDIT GUIDE AMENDMENTS

The proposed annual 2018–19 Audit Guide uses the text of existing 2017–18 Audit Guide with the following amendments:

Deletion:

- *Section R Educator Effectiveness* was funded for fiscal years 2015–16, 2016–17 and 2017–18, with LEAs to submit a final report on the use of those funds on July 1, 2018 (Assembly Bill 104, Section 58(b)(1) (Chapter 13, Statutes of 2015), as amended by Senate Bill 103, Section 8 (Chapter 324, Statutes of 2015). The Controller recommended not including this item in the audit guide for 2018–19 because the funding period was

over and there were no expenditures that had not been evaluated as consistent with that program.

Additions:

- *Section R* is added to ensure every public school has reviewed and revised, or adopted, a comprehensive safety plan, by March 1, and has submitted it for approval to the school district or county office of education. The auditor will verify that the LEA has a process in place to ensure that its schools have such a plan and will check a representative sample of schools to verify compliance, or to verify that the LEA notified the State Department of Education by October 15 of any school not having a comprehensive safety plan.
- *Section S District of Choice* is added to verify that school districts electing to be “districts of choice” pursuant to Education Code sections 48300–48317 acted in compliance with the statutory requirements for board resolution, specification of the number of transfer pupils to be accepted, election, registration with CDE, and utilization of a neutral selection process except as to giving priority to pupils eligible for free or reduced-price meals, siblings of current pupils, and children of military personnel; and collected the data required by Education Code section 48313(a) about the district of choice procedure and results.
- *New Amendment B School Facilities Program Bond Fund Audits* fulfills the Legislative mandate in Education Code Section 41024(b)(1) to revamp expenditure audits of State grants for new construction and modernization projects, with distinct provisions for Financial Hardship and Non-Financial Hardship grants, as well as construction and modernization grants for charter schools and career technical education (CTE) schools’ facilities projects. This section is necessary to effectuate Education Code Section 41024(b)(1), as well as the specific citations within the text, namely various sections in Education Code, Public Contracting Code, and title 2, chapter 3, subchapter 4, group 1 of the California Code of Regulations (School Facility Program regulations). For audit guide steps, EAAP relied upon the expert opinion of the audit guide workgroup, led by the State Controller’s Office, and including representatives of the Department of Finance, Department of Education, Office of Public School Construction, and stakeholders, including school districts, Certified Public Accounts and education associations.

Amendments:

- *General Provisions Auditing Standards* is revised to adopt a table for guidance as to the size of samples tested in audits, parallel to the standards used in federal audits and consistent with the federal compliance requirements contained in the American Institute of Certified Public Accountants, Audit Guide for Government Auditing Standards and Single Audits. Education Code section 41020(b)(4) requires that these annual audits are conducted in accordance with Government Auditing Standards. Minor and technical changes also clarify existing sampling directions in Sections A, D, E, F, M, O, and W
- *General Provisions Report Components* Item 6.a.(6), is revised for the auditor to add a note if the finding is a repeat of or related to a finding in the previous audit year. This statement is added to ensure consistency with the Government Auditing Standards, under which these audits are conducted. Government Auditing Standards states that auditors should follow up on findings and recommendations from previous audits, and whether the auditee has taken corrective action.
- *Section D Independent Study* is revised as proposed by the Controller to add new paragraph 3(g) which requires the auditor to verify that independent study pupils meet the age requirements of Education Code sections 46300.1 and 46300.4. This amendment is to include the age eligibility requirements to the “Local Education Agencies Other Than Charter Schools” section. The current Audit Guide includes instructions for auditors to check the pupil’s age eligibility in order to claim attendance for the purpose of funding for the course-based independent study program (Section Y of the Audit Guide), but did not have a step regarding age eligibility requirements for pupils participating in an independent study program at a district or county school. This amendment corrects that oversight.
- *Section W Unduplicated Local Control Funding Formula Pupil Counts* is revised to clarify that procedure 1 requires the auditor to use the certified report that excludes any transitional kindergarten pupils who had their fifth birthday after December 2, to clarify procedures l.b. and l.c. to facilitate identifying which pupils are eligible only under the ELAS (English Learner) designation and which are eligible under both the ELAS and NSLP (National School Lunch Program) designations. In addition, a clarification to sampling procedures authorizes the auditor to substitute a new selection for a pupil who received ELAS designation while

enrolled in a different LEA, to avoid uncertainties that can result from delays in obtaining documentation from the LEA for the ELAS designation.

Name of document incorporated by reference: 2018–19 Guide for Annual Audits of K–12 Local Education Agencies and State Compliance Reporting (July 1, 2018).

DISCLOSURES REGARDING THE PROPOSED ACTION

1. Mandate on local agencies and school districts: None.
2. Cost to any local agency or school district which must be reimbursed: None.
3. Cost or savings to any state agency: None.
4. Other non-discretionary cost or savings imposed upon local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Significant effect on housing costs: None.
7. Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
8. Results of the Economic Impact Assessment:
 - (a) Adoption of these regulations will not:
 - create or eliminate jobs within California;
 - create new businesses or eliminate existing businesses within California; or
 - affect the expansion of businesses currently doing business within California.
 - (b) Benefit of the proposed regulation to the health and welfare of California residents, worker safety, or the State’s environment and quality of life: As stated under the “Informative Digest/Policy Statement Overview” above, the proposed regulations will update and improve audit procedures of K–12 local education agencies, which would ultimately benefit the welfare of California residents by ensuring that local education agencies are in compliance with regulatory requirements.
9. Cost impact on a representative private person or business: EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
10. Business report requirements: None.

11. Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed action, requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, and other technical information upon which the rulemaking is based, and questions on the proposed administrative action may be directed to Timothy Morgan, Staff Attorney III, at (916) 445-7745 or by e-mail: tmorgan@eaap.ca.gov, or Mary C. Kelly, Executive Officer, at (916) 445-7745.

AVAILABILITY OF RULEMAKING FILE

The entire rulemaking file will be available for inspection and copying throughout the rulemaking process at EAAP’s office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Economic Impact Assessment. A copy may be obtained by contacting Timothy Morgan at the above address. The bill analyses are also available online at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, a hearing, if requested, and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with

changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of Timothy Morgan at the address stated above. EAAP will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, any changed or modified text, and the Final Statement of Reasons will be accessible through the EAAP website: www.eaap.ca.gov.

TITLE 9. DEPARTMENT OF STATE HOSPITALS

NOTICE OF PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE PATIENT ELECTRONIC PROPERTY REGULATIONS

California Code of Regulations
 Title 9. Rehabilitative and Developmental Services
 Division 1. Department of Mental Health
 Chapter 16. State Hospital Operations
 Article 3. Safety and Security

The Department of State Hospitals (DSH or Department) will conduct a public hearing at the time and place noted below to consider proposed amendments to the Patient Electronic Property Regulation after considering all relevant public comments, objections, and recommendations.

DATE: September 20, 2018
 TIME: 2:00 p.m.
 LOCATION: California Health and Human Services Agency
 Department of State Hospitals
 Conference Room 100
 1600 9th Street
 Sacramento, California 95814

At the hearing, any interested person or his or her representative may, orally or in writing, submit comments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that a person who makes an oral comment at the hearing also prepare and submit a written copy of his or her testimony. Furthermore, the Department requests, but does not require, that all written and email state-

ments on this item be filed at least 10 days prior to the hearing, so that Department staff have sufficient time to consider each comment. The Department encourages members of the public to bring any suggestions for modifications to the proposed regulatory action to staff's attention in advance of the hearing.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any interested person or his or her representative may present comments orally or in writing at the hearing and may provide comments by personal delivery, postal mail service, fax, or email submittal before the hearing as described in detail below. The public comment period for this regulatory action will begin on August 3, 2018. For any written comment to be considered, comments not physically submitted at the hearing, must be received by the Department **no later than 5:00 p.m., September 17, 2018.**

Comments sent to persons and/or addresses other than that specified, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission. For consideration, any written comments shall be submitted as follows:

1. By email to DSH.Regulations@dsh.ca.gov. It is requested that all comments, particularly those emailed with attachments, contain the regulation package identifier "**Electronic Property**" in the subject line to facilitate timely identification and review;
2. By fax transmission to (916) 651-3090;
3. By United States Postal Service to:
California Department of State Hospitals
Regulations Unit
Electronic Property
1600 9th Street, Room 410
Sacramento, CA 95814; or
4. Hand-delivered to the address above.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted to the Department in Welfare and Institutions Code, sections 4005.1, 4011, 4027, 4101 and 4109. This action is proposed to implement, interpret or make specific Welfare and Institutions Code, sections 4005.1, 4027, 4101, 4109 and 7295.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)

Sections Affected: The Department proposes to amend section 4350, title 9, California Code of Regulations (CCR).

Existing Laws/Regulations:

Welfare and Institutions Code, section 4005.1, provides that DSH may adopt and enforce rules and regulations necessary to carry out their respective duties.

Welfare and Institutions Code, section 4011, provides that DSH shall have jurisdiction over the execution of the laws relating to care and treatment of persons with mental health disorders under the custody of DSH.

Welfare and Institutions Code, section 4027, provides that DSH may adopt regulations concerning patients' rights and related procedures applicable to the inpatient treatment of mentally ill offenders and mentally disordered sex offenders.

Welfare and Institutions Code, section 4101, provides that unless specifically authorized by law, all institutions under the jurisdiction of DSH shall be governed by uniform rule and regulation of DSH.

Welfare and Institutions Code, section 4109, provides that DSH has general control and direction of the property and concerns of each state hospital. DSH shall take care of the interests of the hospital according to law, establish bylaws, rules, and regulations as deemed necessary for its internal government, discipline, and management, and maintain effective inspection of the hospital.

Welfare and Institutions Code, section 7295, provides that DSH shall develop a list of items deemed contraband at every state hospital subject to review by the Contraband Committee and Director of State Hospitals every six months. This section defines "contraband" as materials, articles, or goods that a patient is prohibited from having in his or her possession because the materials, articles, or goods present a risk to the safety and security of the facility. This section provides that inclusion on a contraband list does not necessitate regulations but does not address harm to public or ensure a permanent solution.

Section 891, title 9, CCR, provides that patients not committed pursuant to the Lanterman-Petris-Short Act (LPS) shall not have access to the internet.

Effect of the Proposed Action

This proposed rulemaking amendment would amend the current California Code of Regulations section 4350 regarding patient electronic property contraband to address technological advances and meet the hospital's security needs. The proposed amendments would better delineate which electronic devices are prohibited and which are permitted, and under what circumstances.

The amendments will also address the technological advances of digital memory storage, specifically USB devices and gaming devices, that are the most prone to permit the storage, download, and transfer of illegal and illicit material. This proposed action would help to minimize or eliminate patient possession of illegal and illicit material that is harmful to a secured mental health treatment environment.

Specific Proposal:

This proposed action will make changes to Division 1, title 9, CCR, as follows:

Amend section 4350. Contraband Electronic Devices with Communication and Internet Capabilities.

- Title: The title of the regulation would be amended to better match the content of the amended regulatory language for simplicity and clarity.
- Subsection (a), would reorganize the current regulatory language to group information into subsections and paragraphs for clarity
- Subsection (a), paragraph (1), would utilize the language of the current regulation and permit the delineation of examples of prohibited electronic devices with the actual or potential capability to connect to the internet.
- Subparagraph (A), maintains the electronic devices delineated in current regulation, adding tablets, single-board computers and motherboards as devices meeting the same criteria but not known to be an issue at the adoption of the current regulation.
- Subparagraph (B), maintains the device modification language of the current regulation.
- Subsection (a), paragraph (2), would prohibit patient personal possession of digital media recording devices, including but not limited to Compact Discs (CDs), Digital Video Discs (DVDs), and Blu-Ray burners.
- Subsection (a), paragraph (3), would prohibit patient personal possession of voice or visual recording devices.
- Subsection (a), paragraph (4), would prohibit patient personal possession of any items capable of memory storage.
- Subsection (a), paragraph (4), subparagraph (A), prohibits patient possession of any device capable of patient-accessible digital memory or remote memory access.
- Subsection (a), paragraph (4), subparagraph (B), prohibits patient possession of recordable disks.
- Subsection (a), paragraph (4), subparagraph (C), prohibits patient personal possession of USB devices.

- Subsection (a), paragraph (4), subparagraph (D), prohibits patient personal possession of various data storage devices and describes future devices of similar purpose.
- Subsection (a), paragraph (4), subparagraph (E), prohibits patient possession of gaming devices with personally accessible digital memory, the ability to access the internet, or the ability to play games or other media not proprietary to the device.
- Subsection (a), paragraph (4), subparagraph (F), prohibits patient possession of memory storage and audio/visual items that can be recorded on to store or distribute illegal or illicit material.
- Subsection (b), would delineate electronic items patients are permitted to access when they do not conflict with subsection (a).
- Subsection (b), paragraph (1), limits the number of electronic items patients are permitted and codifies limits set by individual contraband authority currently enforced at a majority of DSH's hospitals for patient space, fire code, and enforcement purposes.
- Subsection (b), paragraph (2), would limit the number of commercially manufactured and unmodified disks immediately accessible to the patients to 30.
- Subsection (b), paragraph (3), also permits tablets or other devices designed for confined individuals through authorized vendors of DSH or California Department of Corrections and Rehabilitation (CDCR).
- Subsection (c), would reiterate Welfare and Institutions Code, section 7295, by permitting the hospitals to create a more comprehensive contraband list as appropriate for the safety of the patient population or the hospital.
- Subsection (d), would permit hospitals to make items prohibited from patient possession available on a supervised basis. Subsection (d) also limits any data storage device within access of a patient to be no greater than eight gigabytes (8GB).

Comparable to Federal Law

There are no existing federal regulations or statutes comparable to the proposed regulations to manage electronic devices within a California DSH facility

Policy Statement Overview/Anticipated Benefits

The objective of the proposed amendments is to implement, regulations pursuant to Welfare and Institutions Code, sections 4005.1, 4027, 4101, and 7295, by expanding prohibitions against patient possession of digital memory devices and certain electronic devices. The regulation would specify what items patients are prohibited from possessing. The regulation will provide

for uniform prohibitions statewide, at each DSH state hospital for the welfare of the public, DSH staff, and every DSH patient.

By amending section 4350, title 9, CCR, DSH can better serve the public by enforcing child pornography prohibitions, better serve DSH staff and patients by minimizing threats to safety and security, and better serve the patients of DSH by providing a more therapeutic inpatient environment by better controlling triggers, stimuli, and temptations.

DSH has a legitimate governmental duty in protecting the public, patients, and the functions of the facility while providing treatment to the type of patient populations entrusted to DSH. This interest includes protecting victims of child pornography from possession and distribution of their victimization by our patient population. This interest also includes protecting members of the public and staff from victimization over the internet by our patients, protecting the facility by preventing aerial maps and other information about the facility from being downloaded and distributed, and creating the most therapeutic and secure inpatient hospital setting possible.

Patients' inappropriate and illegal use of electronic items is dangerous. For both of our forensic and civilly committed patients, DSH must balance safety and patient rights to property. The dangers to the public, other patients, the staff, and facility outweigh a patient's desire to unlimited access to electronic devices. The ability to enforce safety over patient property access is supported by law (Welf. & Inst. Code, §§ 4011, 4027, 4101, 4109, 7295; Cal Code Regs., tit. 9, § 884) as well as judicial precedent.

Restrictions on electronic devices do not interfere with patient's constitutional rights to communication as they still may use the phone, writing, typing and printing without internet. There is no constitutional right to possess or access an electronic device.

Therefore, restricting electronic devices is an appropriate response to the present issues and dangers.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

During the development of this regulatory action, DSH reviewed the regulations on this topic and concluded that the proposed amendments are neither inconsistent nor incompatible with existing state regulations or statutes. In arriving at this conclusion, DSH reviewed the Welfare and Institutions Code, the Penal Code, and its own regulations in title 9 of the CCR. As provided in Welfare and Institutions Code sections 4011 and 4109, DSH is vested with jurisdiction and supervision over all hospitals as designated in Welfare and Institutions Code section 4100. The scope and content of DSH's regulato-

ry authority is set forth in Welfare and Institutions Code, sections 4005.1, 4027, 4101 and 4109.

MANDATES ON LOCAL AGENCIES OR
SCHOOL DISTRICTS

DSH anticipates there will be no fiscal impact to Local Agencies. This proposed regulation would only affect the state hospitals and the patients. The local government would not have an additional role on the enforcement of the regulation.

Mandate Requires State Reimbursement Pursuant to Part 7 (commencing with §17500) of Division 4 of the Government Code: None.

FISCAL IMPACT ESTIMATES

DISCLOSURES REGARDING THE PROPOSED
REGULATIONS

Costs to any Local Agency or School District that Requires Reimbursement Pursuant to Part 7, commencing with Section 17500, of Division 4 of the Government Code:

DSH anticipates there will be no fiscal impact to Local Agencies or School Districts.

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

DSH anticipates increased costs of hospital security, including overtime, while the regulation is implemented and legal costs to respond to litigation in response to the regulation. Further, DSH anticipates costs of USP devices and other equipment to be used on a supervised check-out basis for patients. DSH may continue to find more illegal content in the existing electronic devices of the patients, completing this search will take more staff time and may require more storage space at the facility to properly search these items. After the regulations have been promulgated, DSH would incur savings as it would be easier to enforce the contraband policy within the facilities and would decrease the need for searches to find contraband devices.

At the time emergency regulations on this issue were adopted in 2010, it was unknown how many digital storage devices patients would submit purporting to contain appropriate material to be transferred to a state-issued data storage device. Prior to transferring the information, DSH would need to review the devices for illegal material. Currently, only 160 patients out of approximately 1300 patients submitted devices containing appropriate material, and the search of these devices is complete. Since the adoption of the emergency regula-

tion, DSH has incurred costs of approximately \$920,000. Coalinga State Hospital's implementation costs are estimated to be approximately \$881,700. Patton State Hospital has spent approximately \$2000 on implementation by purchasing flash drives. Napa State Hospital's implementation costs are negligible and both Metropolitan and Atascadero State Hospitals had no fiscal impact because implementation of the regulation had no impact. The financial impact to search data storage devices for appropriate material is now expected to be minimal at every hospital. Litigation costs statewide from January 2018 through May 2018 is estimated to be \$35,265. DSH is not aware of any other costs/savings to any other public agency. There will be no costs or savings in federal funding to the state because federal funding is not connected to the use of electronics by individual patients.

Non-Discretionary Costs or Savings Imposed on Local Agencies:

DSH anticipates there will be no fiscal impact to Local Agencies. This proposed regulation would only affect the state hospitals and the patients. The local government would not have an additional role on the enforcement of the regulation.

HOUSING COSTS

In accordance with Government Code Section 11346.5, subdivision (a)(12), the Department has made the initial determination that the proposed regulatory action will not have a significant effect on housing costs. These proposed regulations do not impact housing since they affect only inmates in California Department of Corrections and Rehabilitation custody or individuals committed to the Department and in Department custody.

SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

There will not be a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California:

It has been determined that the proposed action will not affect the creation or elimination of jobs. Instead, it

better assists current positions by assisting law enforcement in maintaining a safe environment as well as assisting treatment staff in creating a more therapeutic inpatient setting.

Creation of New Businesses or Elimination of Existing Businesses within the State of California:

It has been determined that the proposed action will not affect the creation of new businesses or the elimination of existing businesses. It only makes adjustments to allowable patient property for safety and therapeutic reasons.

Expansion of Business Currently doing Business within the State of California:

It has been determined that the proposed action will not affect the expansion of businesses currently doing business in California. It only makes adjustments to allowable patient property for safety and therapeutic reasons.

Benefits of the regulation to the Health and Welfare of California Residents:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by reducing if not eliminating dangers to the public, patients, and staff generated by unlimited access to electronic devices by Department of State Hospital patients who are housed in secure inpatient mental health facilities. The dangers posed to California residents include:

- The possession and distribution of child pornography, facility area maps, and harmful information on victims, staff, and other patients;
- Access to previous victims and the ability to create new victims through the internet;
- Harm to therapeutic treatment for the possessing patient; and
- Harm to therapeutic treatment environment for surrounding patients or patients encountering images or discussions on triggering topics.

Worker Safety/State's Environment:

It has been determined that the proposed action will positively affect worker safety because it will create a more therapeutic environment, and better control safety concerns and breaches at the hospitals. It has been determined that the proposed action will not affect the State's environment because it has nothing to do with environmental issues.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

EFFECT ON SMALL BUSINESS

There will be no cost impact on small businesses because the proposed regulation only affects individual patients who are in state hospitals.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed action does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternatives it considered or that have otherwise been identified and brought to its attention would be either 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 regulation, or more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

Alternative: Fully enforce section 4350 without amendment.

Reason for Rejection: The current regulation fails to exempt the hospital and staff from the prohibition on the use of electronics. Enforcing the current section 4350 would eliminate the ability for the hospital and staff to utilize computers and electronic personal safety devices, necessary for a safe and efficient secured inpatient hospital.

Alternative: Prohibit patients from possessing all electronic devices.

Reason for Rejection: While prohibiting patients from possessing all electronic items would eliminate harm created by the devices and subsequent illegal access to the internet, it would also eliminate the ability of the devices to be used for healthy purposes as well. The goal of this proposed action was to eliminate harm while maintaining therapeutic uses of electronics. Thus, a total prohibition was not determined to be a proper balance at this time, creating more burdensome restrictions than necessary on patients and treatment staff.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representatives: Amy Whiting, Manager, Regulations Unit,

by telephone at (916) 654-2748 or (designated back up person) Trini Balcazar, Regulations Coordinator, Regulations Unit, by telephone at (916) 562-2824.

AVAILABILITY OF DOCUMENTS

The Department staff has compiled a record for this rulemaking action which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action and the proposed text (the "express terms") of the regulation. Copies of the proposed regulation text and the ISOR, which includes a summary of the economic and fiscal impacts of the proposal, may be accessed on the Department's Internet web site listed below or may be obtained from the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed: Trini Balcazar, Regulations Coordinator, Regulations Unit, by telephone at (916) 562-2824.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with § 11340). After holding the public hearing, and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, with the exception of grammatical changes, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address indicated 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, the Final Statement of Reasons (FSOR) shall be available and copies may be requested from the agency contact persons in this notice or may be accessed on the Department's Internet web site listed below.

INTERNET ACCESS

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the

FSOR, when completed, are available on the Department's web site for this rulemaking at <http://www.dsh.ca.gov/Publications/Regulations.aspx>.

TITLE 10. DEPARTMENT OF INSURANCE

AVERAGE CONTRACTED RATE METHODOLOGY (AB 72)

REG-2018-00016

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that the California Department of Insurance ("the Department") proposes to adopt California Code of Regulations ("CCR") Title 10, Chapter 5, Subchapter 2, Article 5.1, sections 2238.10, 2238.11, and 2238.12 after considering comments from the public. (All references to the CCR in this Notice are references to sections in CCR Title 10.) The Department proposes to add these sections under the authority granted by California Insurance Code ("CIC") sections 10112.8 and 10112.82.

The regulations govern the methodology for calculating the average contracted rate (ACR) for purposes of determining the reimbursement of individual noncontracting health professionals who provide covered services to insureds at contracting health facilities.

HEARING

Public Hearing Date and Location

The Department will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations, as follows:

Date: September 17, 2018

Time: 11:00 a.m. If it is necessary for the hearing to exceed one hour, there will likely be a one-hour break from 12:00 noon to 1:00p.m.

Location: California Department of Insurance
300 Capitol Mall, 13th Floor,
Room 13025
Sacramento, California

The hearing will continue on the date noted above until all testimony has been submitted or until 2:00 p.m., whichever is earlier.

Access to Hearing Rooms

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

WRITTEN COMMENT PERIOD

Presentation of Written Comments; Contact Persons

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on September 17, 2018.**

Please direct all written comments to the following contact person:

Bruce Hinze, Attorney IV
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4392
Bruce.Hinze@insurance.ca.gov

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

Sheirin Ghoddoucy, Attorney III
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3591
Sheirin.Ghoddoucy@insurance.ca.gov

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments, and associated contact information (e.g., your address, phone number, e-mail, etc.) become part of the public record and can be released to the public upon request.

Deadline for Written Comments

All written materials must be received by the Department, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on September 17, 2018.** Any written materials received after that time may not be considered.

Please identify the action in any written comments by using the Department's rulemaking title and control

number, **Average Contracted Rate Methodology (AB 72), Control No. 2018-00016.**

Comments Transmitted by E-Mail or Facsimile

The Department will accept written comments transmitted by e-mail provided they are sent to the following two e-mail addresses: Bruce.Hinze@insurance.ca.gov and Sheirin.Ghoddoucy@insurance.ca.gov. The Department will also accept written comments transmitted by facsimile provided they are directed to the attention of Bruce Hinze and sent to the following facsimile number: (415) 904-5729. However, e-mail comments are preferred.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AUTHORITY AND REFERENCE

(Government Code § 11346.5(a)(2); 1 CCR § 14)

The Department proposes the adoption of Title 10, Chapter 5, Subchapter 2, Article 5.1, sections 2238.10, 2238.11, and 2238.12 pursuant to the rulemaking authority provided by Insurance Code sections 10112.8 and 10112.82.

The Department’s proposed additions of CCR sections 2238.10, 2238.11, and 2238.12 will implement, interpret, and make specific the provisions of Insurance Code sections 10112.8 and 10112.82, California Insurance Code.

INFORMATIVE DIGEST

Summary of Existing Law

Insurance Code section 10112.8, enacted by Assembly Bill (AB) 72 (Stats. 2016, Chpt. 492), requires that if an insured receives covered services from a contracting health facility at which, or as a result of which, the insured receives services provided by a noncontracting individual health professional, the insured shall pay no more than the same cost-sharing that the insured would have paid if the services had been provided by a contracting individual health professional. Subject to limited exceptions, the noncontracting health professional may not “balance bill” or collect any amount from the insured except the in-network cost-sharing amount. For services rendered pursuant to Insurance Code section 10112.8, unless otherwise agreed to by the noncontracting individual health professional and the insurer, the insurer shall reimburse the greater of the average contracted rate or 125 percent of the amount Medicare

reimburses on a fee-for-service (FFS) basis for the same or similar services in the general geographic region in which the services were rendered. Pursuant to Insurance Code section 10112.82(a)(3)(A), the Department must specify the methodology that insurers will use to calculate the average contracted rate for services most frequently subject to Insurance Code section 10112.8.

Effect of Proposed Action (Government Code § 11346.5(a)(3)(A))

The proposed regulation will provide a methodology insurers will use to correctly determine the average contracted rate, which may then be applied to determining the reimbursement rate of noncontracting individual health care professionals.

Policy Statement Overview

This rulemaking implements the requirements of Insurance Code section 10112.82, which requires the Department of Insurance (Department) to establish a methodology for insurers to use “to determine the average contracted rates for services most frequently subject to Section 10112.8.” (Ins. Code section 10112.82(a)(3)(A).) The methodology must take into account information from the independent dispute resolution process (IDRP),¹ the specialty of the individual health professional, the geographic region in which the service was rendered, and include the insurer’s highest and lowest contracted rates. Additionally, the Department was required to consult with the Department of Managed Health Care (DMHC) and other stakeholders in developing the methodology.

As AB 72 moved through the legislative process, concerns were raised that enactment of the bill would distort insurer / provider contracting practices because the statutory alternative rate of 125 percent of Medicare FFS could be used to exert downward pressure on negotiated rates.² Historically, the Medicare FFS rate has been significantly lower than the ACR and the noncontracted rate paid to noncontracting individual health professionals, especially for the specialties most likely to be at issue under AB 72: radiology, pathology, and anesthesiology. For example, in 2016, the typical noncontracted rates for surprise medical bills was estimated to be 260 percent of the Medicare rate for inpatient ser-

¹ The IDRP is not part of this proposed rulemaking. A separate guidance, effective September 1, 2017, is available on the Department’s website at: https://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/hpab/upload/AB_72_2-IDRP_GUIDANCE_CD1.pdf.

² Stephanie O’Neill, *California Aims to Limit Surprise Medical Bills*, NPR (Sept. 11, 2016) <https://www.npr.org/sections/health-shots/2016/09/11/493233748/california-aims-to-limit-surprise-medical-bills>.

vices in California.³ Additionally, since enactment, the Department has received anecdotal reports of situations in which health insurers are using AB 72 as a basis to drive down current contract rates.

Benefits Anticipated

The proposed regulation ensures a uniform methodology for health insurers and providers to calculate the ACR for the health care services most frequently subject to Insurance Code section 10112.8. The ACR is then compared to the Medicare FFS rate to determine a reimbursement rate for a noncontracting individual health professional who provides covered services subject to Insurance Code section 10112.8 at a contracting health facility. This will reduce disputes between health insurers and providers by providing a clear methodology for rate calculation. Additionally, using the 2015 calendar year as the baseline year for the ACR will reduce the likelihood of contract rates being artificially deflated as a result of AB 72.

Consistency or Compatibility with Existing State Regulations

The Department has evaluated the proposed additions to the regulations for any related regulations in this area and has found that these are the only regulations concerning the determination of an average contracted rate for purposes of reimbursement to noncontracting health care professionals providing covered services under a health insurance policy. Therefore, the proposed regulations are neither inconsistent nor incompatible with any existing state regulations.

NOT MANDATED BY FEDERAL LAW
OR REGULATIONS
(Government Code § 11346.5(a)(3)(B))

These regulations are not mandated by federal law or regulations. There are no existing federal regulations or statutes that are comparable to the proposed regulations.

OTHER STATUTORY REQUIREMENTS

The Department evaluated whether there were other requirements prescribed by statute applicable to these regulations by reviewing statutes and regulations relating to this issue, and determined that there were no such requirements.

³ *Analysis of California Assembly Bill AB 533 Out-of-Network Coverage, A Report to the 2015–2016 California State Legislature*, California Health Benefits Review Program (January 7, 2016) <http://analyses.chbrp.com/document/view.php?id=1053>.

LOCAL MANDATE
(Government Code § 11346.5(a)(5))

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

FISCAL IMPACT
(Government Code § 11346.5(a)(6))

The Department has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

HOUSING COSTS
(Government Code § 11346.5(a)(12))

The Department makes an initial determination that the proposed regulations will have no significant effect on housing costs.

ECONOMIC IMPACT ON BUSINESS AND THE
ABILITY OF CALIFORNIA BUSINESSES
TO COMPETE
(Government Code § 11346.5(a)(7))

The Department has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
2. Consolidation or simplification of compliance and reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses that will be affected are health insurers.

The projected reporting requirements related to this proposed regulation are required by statute; this pro-

posed regulation provides specificity as to these statutory requirements, but does not itself create reporting requirements. Insurance Code section 10112.82(a)(4), enacted as part of Assembly Bill 72, requires that insurers report the number of payments made to noncontracting individual health professionals, as well as other data to determine the proportion of noncontracting individual health professionals to contracting professionals at contracting facilities. The same section requires that this information be reported concurrently with the annual network reporting required by the Department's existing network regulation, which is made specific in this proposed regulation. This proposed regulation specifies the information required to determine the proportion of contracting and noncontracting health professionals, including the service code, specialty, and the number of times payment was made to a contracting versus a noncontracting individual health professional. The proposed regulation also requires information on the overall number of claims submitted for reimbursement for each contracting health facility by noncontracting individual health professionals versus contracting individual health professionals.

Additionally, Insurance Code section 10112.82(a)(3)(B), also enacted as part of Assembly Bill 72, requires that insurers provide the commissioner with the insurer's policies and procedures used to determine average contracted rates in accordance with the methodology specified by the commissioner in this proposed regulation. This proposed regulation specifies the means and frequency by which these policies and procedures are to be submitted in compliance with this statutory reporting requirement. Insurers are to submit policies and procedures prepared under this section by June 1, 2019, which aligns with the network adequacy reporting requirements noted in the statute, via the SERFF online filing system, as well as filing thereafter when and if the insurer's policies and procedures regarding average contracted rates are amended.

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

The Department is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; and to assess the expansion of businesses currently doing business within the State of California.

The Department projects that the proposed regulations will have a minimal impact on employment within the State of California. The proposed regulations are not

expected to impact the creation of new businesses or the elimination of existing businesses within California, and the Department has determined that the proposed regulations will not affect California businesses' ability to expand.

The proposed regulations will not impact worker safety and will have no effect on the state's environment.

As the Department stated above in its Informative Digest, the proposed regulations to the regulations will have the following benefits:

- 1) A uniform methodology for health insurers and providers to calculate the ACR for the health care services most frequently subject to Insurance Code section 10112.8.
- 2) Reduced disputes between health insurers and providers by providing a clear methodology for rate calculation.
- 3) The ACR will reduce the likelihood of contract rates being artificially deflated as a result of AB 72 by relying on 2015 calendar year rates.

The full text of the Department's Economic Impact Assessment is included in the Initial Statement of Reasons.

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

Except for health insurance companies, the Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The cost known to the Department that a health insurer could incur to comply with the proposed regulation is approximately \$300,000 on average.

BUSINESS REPORT
(Government Code § 11346.3(d))

The Department finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

IMPACT ON SMALL BUSINESS
(1 CCR § 4(a) and (b))

The Department has made an initial determination under Government Code section 11342.610(b)(2) that small businesses will not be adversely affected by the adoption of the proposed regulations. Rather, the proposed regulation is expected to benefit providers. This regulation defines the methodology for determining the ACR. The ACR is only paid when it is greater than 125

percent of Medicare. Further, the regulation provides that the ACR is based on 2015 rates, to avoid the influence of AB 72 on subsequent insurer contracting practices. As a result, affected health care providers that are small businesses will benefit from greater certainty in payment, more expeditious payment of disputed amounts, and, in some circumstances, will see an increase in payments due to the regulation.

The Department invites public comments on the question of economic impact on small businesses.

ALTERNATIVES INFORMATION (Government Code § 11346.5(a)(13))

Insurance Code section 10112.82, subdivision (a)(3) mandates that the Department adopt regulations specifying a methodology that insurers are to use to determine the average contracted rate for services most frequently subject to Insurance Code section 10112.8. Therefore, the option of not adopting a specific methodology was not an available alternative. Instead, the alternatives considered involved the following factors used in the methodology selected:

a. “Services most frequently subject” threshold: prescriptive list vs. claims experience, threshold other than 80 percent

The Department evaluated the use of a predetermined list of “services most frequently subject to Insurance Code section 10112.8” as an alternative to each insurer determining these services based on its own claims experience, but rejected this approach because it was too prescriptive. Allowing insurers to determine the “most frequent” services based on their own claims experience is a more flexible threshold and allows for change over time as experienced by the insurer. The 80 percent threshold was selected because a number of insurers demonstrated that this was a reasonable threshold level, as they reported that they used that level when responding to the Department’s July 1, 2017 request for existing insurer ACR data, policies, and procedures. Additionally, this threshold will promote the uniform application of the proposed methodology by all health insurers. The Department of Managed Health Care selected an 80 percent level in their currently pending rulemaking implementing AB 72. Further, the Department independently determined that an 80 percent threshold level was a workable, appropriate, and fair standard.

b. Paid Contracted Commercial Rates vs. Contracted Rates

The Department considered using contracted rates rather than using paid contracted rates, but determined that this would be less effective and was rejected. By requiring the use of contracted commercial rates paid, rather than all contract rates, contract rates that have no

association with actual paid claims will not be used to determine the ACR. This eliminates the potential of manipulation of the ACR by the use of “phantom rates,” below-market contracts with providers that do not actually provide care to insureds. Additionally, using actual claims paid rather than simply calculating based on the number of contracts entered into similarly reduces potential for manipulation.

c. Inflation adjustment

The Department considered not applying an inflation adjustment to the ACR, but determined that this would result in an inaccurate rate for the year the service was provided and, therefore, rejected this alternative. The average contracted rate must be determined based on claims that have actually been paid. Even if the baseline year was not used, claim data lags the service year due to claim processing times and resolution of disputed claims. As a result, useable claim data is available only for past years. In the 3 years between May 2015 and May 2018 the Consumer Price Index for medical care services increased an average of 2.8 percent annually.⁴ To not include an inflation adjustment would result in reduced payments, in service year dollars, to providers for these services, putting them at a greater disadvantage. Under the proposed regulation, once the ACR is calculated for the baseline year, the baseline year amount is adjusted by multiplying that amount by the Consumer Price Index for Medical Care Services (CPI-M) between the baseline year and the date of service. This is the same inflation adjustment method chosen by the Legislature in Insurance Code section 10112.8(a)(2)(B) for the interim methodology and is similarly adopted here to accurately reflect the value of the services at the time they were provided.

d. Baseline year

The Department examined whether using a “look back” period or a baseline year would be more effective. This proposed regulation uses, as the foundation for the ACR calculation methodology, 2015 rates. Calendar year 2015 was used to limit the impact of contract rates negotiated as a result of the introduction of AB 72. Opponents of AB 72 have posited that insurers would decline to contract at market rates, if the alternative was to pay only 125 percent of Medicare. Since the passage of AB 72, there have been anecdotal allegations of insurers proposing contract rates that are artificially lowered to be closer to 125 percent of Medicare. Stakeholders have indicated that insurers take the position during contract negotiations that providers should either accept a lower contract rate or not contract, and, potential-

⁴ Bureau of Labor Statistics: Consumer Price Index—Medical care services in U.S. city average, all urban consumers, not seasonally adjusted (series ID: CUUR0000SAM2); <https://data.bls.gov/timeseries/CUUR0000SAM2> (Accessed July 3, 2018).

ly, receive only 125 percent of Medicare FFS rates. Additionally, the increase in non-contracted providers could result in these providers seeking waivers from patients under Insurance Code section 10112.8(c), which would allow those providers to balance bill patients for the out-of-network cost sharing amounts, thus depriving patients of the protections intended under AB 72.

e. Exclusion of Modifiers From Average Contracted Rate Calculation

The Department considered including modifiers, as well as the base rate for the service code in question, when calculating the average contracted rate for that service code. The Department rejected this approach because the modifier would introduce factors specific to a particular patient's episode of care, and, therefore, including it in the calculation of average contracted rate would distort the calculation by a patient-specific factor. Excluding modifiers instead focuses the calculation more accurately on the service itself, without confounding patient-specific factors, and therefore allows the ACR to be calculated as a base rate, facilitating comparison to the Medicare rate. Once the ACR is determined through the proposed methodology, the regulation provides a modifier specific to a particular patient's care may then be applied.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period. As part of this process, the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY STATEMENTS
(Government Code § 11346.5(a)(16))

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the Initial Statement of Reasons, all the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and

other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

MODIFIED LANGUAGE
(Government Code §§ 11346.5(a)(18); 11346.8(c))

If the Department adopts regulations that differ from those that have originally been made available but are sufficiently related to original proposed regulations, the full text of the amended regulations, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date the Department adopts the amended regulations. Interested persons should request a copy of the amended regulations from the contact person listed above.

AUTOMATIC MAILING
(Government Code § 11346.4(a)(1))

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to every person who has filed a request for notice of regulatory actions that encompass life and disability insurance (including health insurance).

FINAL STATEMENT OF REASONS
(Government Code § 11346.5(a)(19))

Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared pursuant to Government Code section 11346.9(a). Requests for the Final Statement of Reasons should be directed to the contact person in this Notice.

INTERNET ACCESS
(Government Code § 11346.5(a)(20))

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Click on "Insurers" then "Legal Information" then "Proposed Regulations" then "Search for Proposed Regulations." When the "Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search for "REG-2018-00016" or by browsing for them by name as "Average Contracted Rate Methodology (AB 72)" 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 §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 September 17, 2018, at 5:00 p.m.

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

Commission on POST
 Attn: Cheryl Smith
 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 §13503 (authority of Commission on POST) and Penal Code §13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code §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

Penal Code § 13510 requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers. This proposed action will update the incorporated by reference document, Training and Testing Specifications for Peace Officer Basic Courses (revised 2/1/2019), to include removal of a presenter-approved impact weapon technique and adding the student making a less-than-deadly force option decision. Additionally, the incorporation by reference statements in POST Regulations sections 1005, 1007, and 1008 will be revised to reflect the updated revised date for the Training and Testing Specifications for Peace Officer Basic Courses.

The benefit anticipated by the proposed amendments to the regulations will be to update the training specifi-

cations for Peace Officer Basic Courses, which will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of public health and safety, and welfare of California.

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

All changes to curriculum begin with recommendations from law enforcement practitioners or in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts who provide recommended changes to existing curriculum. The completed work of all committees is presented to the POST Commission for final review and adoption. Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test the updated curriculum. The proposed effective date is February 1, 2019.

DOCUMENT INCORPORATED BY REFERENCE

Training and Testing Specifications for Peace Officer Basic Courses, revised 2/1/2019.

ADOPTION OF PROPOSED REGULATIONS

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

ESTIMATE OF ECONOMIC IMPACT

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

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

Local Mandate: None.

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

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

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

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT PER GOVERNMENT CODE
§ 11346.3(b)**

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

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

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

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

CONSIDERATION OF ALTERNATIVES

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

effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSON

Questions regarding this proposed regulatory action may be directed to Cheryl Smith, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630, at cheryl.smith@post.ca.gov, or (916) 227-0544. The alternate contact is Mike Barnes at (916) 227-3454. General questions regarding the regulatory process may be directed to Robert "RC" Smith at (916) 227-4864, rc.smith@post.ca.gov, or by FAX at (916) 227-5271.

TEXT OF PROPOSAL

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

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

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

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

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (board) is proposing to take the rulemaking action described below under the heading "Informative Digest/Policy Statement Overview." Any person interested may present statements or arguments relevant to the action proposed in writing. 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 not later than 5:00 p.m. on September 17, 2018.

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

The board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Sections 4005 and 4127 of the Business and Professions Code authorize the board to adopt these regulations. The proposed regulations implement, interpret, and make specific sections 4005, 4029, 4036, 4037, 4051, 4052, and 4127 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The board proposes to clarify and make specific the standards for pharmacies and pharmacists compounding drug preparations.

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

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

B&P section 4127 generally authorizes the board to adopt and amend regulations establishing standards for compounding sterile drug products in a pharmacy.

B&P section 4029 established the definitions of a hospital pharmacy and a hospital satellite compounding pharmacy.

B&P section 4036 establishes the definition of a pharmacist.

B&P section 4037 establishes the definition of a pharmacy.

B&P section 4051 generally specifies those functions and duties relating to dangerous drugs or dangerous de-

VICES, including compounding, which must be performed by a pharmacist.

B&P section 4052 further specifies general functions a pharmacist may perform, including how a pharmacist may furnish drugs to a prescriber and those functions a pharmacist may perform in a health care facility, clinic or in other health care settings.

California Code of Regulations, title 16, division 17, articles 4.5 and 7 specify the conditions under which pharmacies and pharmacists may compound drug preparations.

The regulations proposed in this rulemaking would modify the requirements for a pharmacy and pharmacist compounding drug preparations, including how pharmacists may establish beyond use dates (BUD) for compounded drug preparations. The proposed amendments would also clarify definitions of compounding terms used, clarify standards relating to equipment used in compounding (including biological safety cabinets), and clarify standards for facilities performing sterile compounding (including smoke studies).

The regulations regarding BUDs for compounded drug preparation were also the subject of an emergency regulation that took effect on December 19, 2017.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The broad objective of this proposal is to ensure that compounding is performed in a manner and under conditions that ensure the compounded drug preparations dispensed to the public by a pharmacy and pharmacist are safe and effective. The specific benefits anticipated by the proposed amendments are to protect the public from risks of unsafe and or ineffective compounding of drug preparations. Unsafe compounded drug preparations pose risks to patients, including a risk of death. Ineffective compounded drug preparations can pose a risk to patients if the patient does not receive the prescribed dose of a medicine. A pharmacist's expanded ability to extend the BUD for non-sterile compounded drug preparations makes such preparations more accessible, and therefore makes patients healthier by increasing the compliance with a doctor's directions. It also includes benefits such as the protection of public health and safety, worker safety, the environment, and the increase in openness and transparency in business and government.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

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

FISCAL IMPACT AND RELATED ESTIMATES

The board has made the following initial fiscal impact determinations:

Local Mandate: None.

Fiscal Impact on Public Agencies:

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

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

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses:

The board concludes that it is:

- (1) Unlikely that the proposal will create or eliminate any jobs within California;
- (2) Unlikely that the proposal will create new, or eliminate existing, businesses in California;
- (3) Unlikely that the proposal will expand businesses currently doing business within the state;
- (4) The benefits to the public are for consumer protection and increased assurance that any compounding services will be provided safely and effectively with minimal risk, that patients will have better access to nonsterile compounded medications, that workers and environments will be protected during the compounding of drugs and that the board will be better able to monitor compliance.

Benefits of the Proposal:

The board has determined that this regulatory proposal will benefit the health and welfare of California residents, worker safety, and the state's environment. Unsafe or inadequately prepared or handled compounded medications pose risks to consumers' health; drugs

compounded in an unsafe manner pose risks to employees and the environment. By regulating the circumstances under which a pharmacy and pharmacist may compound drug preparations and provide them to consumers, the board makes it more likely compounded drugs are safe and effective for consumers and makes it more likely that the employees and the environment are protected. The proposed amendments modify how pharmacists and pharmacies can compound drug preparations, which will increase patient access to these products, will ensure they are safely prepared, will ensure that workers and the environment are protected, and that the board can appropriately monitor for compliance.

Cost Impact on Representative Private Person or Business:

The board anticipates that the regulatory proposal could result in patients receiving a larger supply of medication at one time and could result in fewer visits to the doctor and/or pharmacy and therefore lower patient costs. Pharmacies may also experience cost savings due to decreased testing requirements to extend the duration of a drug preparation's usefulness. It anticipates minimal, if any, additional costs in pharmacy recordkeeping and storage when a pharmacy documents its extension of a beyond use date.

BUSINESS REPORTING REQUIREMENT

The proposal requires pharmacies and pharmacists extending the BUD for nonsterile compounded drug preparations to create a record of their analysis and to keep it in the pharmacy's files. For the health, safety, or welfare of the people of the state, the board finds that it is necessary that proposed section 1735.2(i)(1)(G) apply to businesses.

EFFECT ON SMALL BUSINESS

The board believes this regulation will impact small businesses. Although the board does not have nor maintain data to define if any of its licensees (pharmacies) are a "small business" as defined in Government Code section 11342.610, the board has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small businesses. This is based on the determination that the regulatory proposal could result in existing pharmacies, some of which are likely small businesses, offering more nonsterile compounding services, lower costs for those services, patients receiving a larger supply of medication at one time, and fewer patient visits to the doctor and/or pharmacy. Pharmacies that are small businesses may experience cost savings due to decreased testing requirements to extend the du-

ration of a drug preparation's usefulness; it is also possible that they may experience a very minor increase in costs related to record keeping in so doing.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention (1) would be more effective in carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or (3) would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The board invites interested persons to present statements or arguments with respect to the alternatives to the proposed regulations during the public comment period.

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

The board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all of the documents upon which the proposal is based.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

CONTACT PERSON

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

Name: Lori Martinez
 Address: 1625 N. Market Blvd., N219
 Sacramento, CA 95834
 Phone No.: (916) 574-7917
 Fax No.: (916) 574-8618
 E-Mail
 Address: Lori.Martinez@dca.ca.gov

The backup contact person is:

Name: Anne Sodergren
 Address: 1625 N. Market Blvd., N219
 Sacramento, CA 95834
 Phone No.: (916) 574-7910
 Fax No.: (916) 574-8618
 E-Mail
 Address: Anne.Sodergren@dca.ca.gov

WEBSITE ACCESS

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

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

ORD #0318-03

ITEM #1 Safe Sleep Regulations

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on September 19, 2018, at the following address:

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

The public hearing will convene at 10:00 a.m. and will remain open only if attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. CDSS will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you need a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on September 19, 2018.

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

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

California Department of Social Services
Office of Regulations Development
744 P Street, MS 8-4-192
Sacramento, CA 95814
Tel: (916) 657-2856
Fax: (916) 654-3286
Email: ord@dss.ca.gov

CHAPTERS

Title 22 sections 101239, 101416.5, 101419.2, 101429, 101430, 101439.1, 102352, 102417, 102425, and 102426.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CDSS is proposing amendments and adoptions to California Code of Regulations (CCR), Title 22, Division 12 for Child Care Centers (CCC) and Family Child Care Homes (FCCH) to support safe sleep for infants in child care facilities. Currently, the only statute governing child care licensing regarding safe sleep or Sudden Infant Death Syndrome (SIDS) is Health and Safety (H&S) Code section 1596.847, which requires CDSS to distribute materials regarding SIDS. There is also a Federal mandate from the Child Care and Development Block Grant Act of 2014, which includes provisions related to health and safety requirements for all providers that receive payment from the Child Care and Development Fund, which includes prevention of SIDS and use of safe sleeping practices. CDSS is offering enhanced requirements to ensure a safe sleep environment for infants in licensed child care. The proposed regulations

will ensure that risk factors are addressed regarding safe sleep.

In 2012, a white paper was created by the Health and Safety Regulatory Workgroup through stakeholder collaboration. This white paper proposed eight regulatory changes supporting safe sleep for infants in CCCs and FCCHs. CDSS utilized these recommendations along with the California SIDS Program, American Academy of Pediatrics, and Caring for Our Children National Health and Safety Performance Standards to develop new requirements and strengthen existing requirements to reduce risk of unsafe sleeping environments. CDSS has worked closely with stakeholders in the development of concepts and recommendations to address potential hazards in child care settings related to safe sleep.

In 2017, there were 13 sleep-related infant deaths in child care. The lack of current enforcement authority when situations have placed infants at risk is a large issue throughout the state.

Within the proposed regulations, CDSS will require safe sleep equipment such as cribs or play yards for FCCHs, supervision requirements during the time infants are asleep for FCCHs, clear guidelines surrounding supervision for sleeping infants in CCCs, adding in requirements for the safest sleep position for infants, and removing hazards in the crib while the infant is sleeping for all facilities. In addition, the proposed regulations will address proper and timely procedures to obtain emergency medical care. These regulations will support the importance of preventative measures in child care facilities, lowering the risk of SIDS, and requiring safe sleep environments and practices for infants in care.

After conducting an evaluation for any other regulations in this area, CDSS has found that these are the only regulations concerning safe sleep practices by providing clear enforcement authority to address risk factors that are present for infant sleep environments, ensuring infants receive adequate and timely medical care and responding to stakeholder requests for additional clarity and protections. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Anticipated Benefits

The benefits of the regulatory action to the health and welfare of infants served in child care environments are as follows: risks posed to the infants in child care settings will be decreased or eliminated, expected reduction of infant deaths in child care settings, and adequate and timely medical care will be required and create more proportionate requirements for FCCH providers, thus, ensuring a higher standard of care.

COST ESTIMATE

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

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no “state–mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code (GC) because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the GC.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only the licensees that make the business decision to serve infants who are the most fragile clients served. There is no requirement for licensees to serve infants and the number of infants served, if any, is at the licensees’ discretion.

The provisions in these Title 22 regulations do not create any new cost outside of what should currently be adhered to as a best practice per the American Academy of Pediatrics and National recommendations to ensure infants are not placed in undue harm. Therefore, the proposed changes have no adverse economic impact on the businesses.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS has determined that there is a potential cost impact on businesses as a result of the proposed action, as the regulations for FCCHs require that the licensee has a crib or play yard for each infant in care. There are currently 28,875 FCCHs, who may or may not serve infants, and who may serve one to four infants. If every FCCH bought one play yard the statewide cost would be

\$1,443,750. If every FCCH bought four play yards the statewide cost would be \$5,775,000. Due to the uncertainty of how many FCCHs serve infants, how many infants they serve, and what equipment they may already possess, an exact cost impact varies.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is a potential impact on small businesses as a result of filing these regulations because the regulations for FCCHs require that the licensee has a crib or play yard for each infant in care.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The benefits of the regulatory action to the health and welfare of infants served in child care environments are as follows: risks posed to the infants in child care settings will be decreased or eliminated; expected reduction of infant deaths in child care settings; adequate and timely medical care will be required; and additional proportionate requirements for FCCH providers that will ensure a higher standard of care.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

In accordance with GC section 11346.5, subdivision (a)(13), CDSS has determined that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private 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. CDSS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AUTHORITY AND REFERENCE CITATIONS

H&S Code section 1596.81 gives CDSS the authority to develop these regulations and H&S Code sections

1596.70–1597.21 and CCR, Title 22 sections 101151–101439.1 are being referenced to make these regulations more specific.

CDSS REPRESENTATIVE REGARDING THE
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person:
Oliver Chu
(916) 657–2586

Backup:
Sylvester Okeke
(916) 657–2586

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NO. 2080–2018–007–03

Project: California State Water Project Delta
Facilities and Operations
Location: California Delta and Central Valley
Applicant: California Department of Water
Resources

Background

California Department of Water Resources (Applicant or DWR) proposes ongoing implementation of the project description for the California State Water Project Delta Facilities and Operations (Project), described in the (USFWS) 2008 Biological Opinion for Delta smelt (2008 BiOp). In August 2018, the Applicant proposes to modify the operation of the Suisun Marsh Salinity Control Gates (SMSCG) from the project description in the 2008 BiOp to implement a Pilot Study. This Pilot Study is being undertaken as part of a multiagency Delta Smelt Resiliency Strategy, to determine if summer operations of the SMSCG are effective in enhancing Delta smelt (*Hypomesus transpacificus*) habitat in select locations throughout Suisun Marsh and Bay.

The Project is the continued operation of the State Water Project (SWP), and other water diversion, storage, and conveyance actions, as described in the Opera-

tions Criteria and Plan (OCAP) and the 2008 BiOp, in the Sacramento–San Joaquin Delta. Project facilities in the Sacramento–San Joaquin Delta include Clifton Court Forebay, John E. Skinner Fish facility, Harvey O. Banks Pumping Plant (collectively referred to as the Banks Pumping Plant Complex), and the North Bay Aqueduct at Barker Slough (NBA). Facilities that are operated in coordination with the federal Central Valley Project (CVP) are the Suisun Marsh Salinity Control Gates, Roaring River Distribution System, Morrow Island Distribution System, Goodyear Slough Outfall, and the South Delta Temporary Barriers Project (TBP). The TBP has four rock barriers across south Delta channels (at Middle River near Victoria Canal, Old River near Tracy, Grant Line Canal near Tracy Boulevard Bridge, and at the head of Old River near the confluence of Old River and the San Joaquin River). Other facilities of the SWP include Lake Oroville which is operated for flood control, water supply, and power generation. Oroville facilities are part of the SWP but are not part of the Project. Oroville facilities are operated in accordance with a Federal Energy Regulatory Commission (FERC) license, which is in the process of being renewed.

The SWP is operated to provide flood control and water for agricultural, municipal, industrial, recreational, and environmental purposes. Water from Oroville facilities and the Sacramento–San Joaquin River flows are captured in the Delta and conveyed to SWP contractors. Water is stored in Oroville Reservoir and released to serve three Feather River–area contractors and two NBA contractors, and water is delivered to an additional 24 contractors in the SWP service areas south of the Delta from the Harvey O. Banks Pumping Plant.

Facilities of the SWP are permitted by the California State Water Resources Control Board (SWRCB) to divert water in the Delta and to re-divert water that is stored in upstream reservoirs. The U.S. Bureau of Reclamation (Reclamation) and DWR coordinate the operations of the SWP and CVP to meet water quality, quantity, and operational criteria in the Delta set by the SWRCB and to meet federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) requirements for Delta smelt, winter– and spring–run Chinook salmon, Central Valley steelhead, and green sturgeon.

The Suisun Marsh Salinity Control Gates (SMSCG) are located in the eastern portion of Montezuma Slough approximately two miles downstream from the confluence of the Sacramento and San Joaquin Rivers and three miles north of Collinsville. The SMSCG consist of radial gates, flashboards, and a boat lock. As described in the 2008 BiOp, the SMSCG begins tidally–operating in early October, depending on salinity, and may continue operating through the end of May. This period is referred to as the control season. During the

control season, the radial gates are lowered during the flood tides and opened during the ebb tides (i.e., tidally operated), flashboards are installed, and the boat lock is operated as-needed for passing vessels. Outside of the control season, the radial gates remain open (allowing unrestricted tidal flow), the flashboards are removed, and the operation of the boat lock is not needed.

The Project activities described above are expected to incidentally take¹ Delta smelt where those activities take place within the Sacramento–San Joaquin Bay–Delta, Suisun Marsh and Suisun Bay. In particular, Delta smelt could be incidentally taken as a result of Project operations due to entrainment into Project facilities, and loss of habitat and food supply as a result of changes in Delta inflows and outflow. Delta smelt is designated as a threatened species pursuant to the federal ESA and an endangered species pursuant to CESA. (See Cal. Code Regs., tit. 14, § 670.5, subd. (a)(2)(O).)

Delta smelt individuals are endemic to the waters of the Sacramento–San Joaquin Bay Delta, Suisun Bay and Marsh and the upper reaches of San Pablo Bay and are regularly salvaged in the winter and spring at the Project’s John E. Skinner Fish Facility. Project operations also affect the quality and abundance of Delta smelt habitat within its entire range. The USFWS determined that Delta smelt is reasonably certain to occur within the Project area and that Project activities are expected to result in the incidental take of Delta smelt.

Because the Project has the potential to take a species listed under ESA, Reclamation, on behalf of DWR, consulted with the USFWS under Section 7 of the ESA. On December 15, 2008, USFWS issued a Biological Opinion (Ref. No. 814200–2008–F–1481–5), which includes an incidental take statement. The 2008 USFWS BiOp describes the Project, including conservation measures developed to minimize impacts to Delta smelt, and sets forth measures to mitigate any remaining impacts to Delta smelt and its habitat. The measures in the 2008 USFWS BiOp include one “Reasonable and Prudent Alternative” (RPA) with five components that must be implemented and adhered to. The RPA actions are to be implemented using an adaptive approach with specific defined constraints. The 2008 USFWS BiOp includes a detailed description of the adaptive process, its framework, and the rationale for each of the RPA components. The 2008 USFWS BiOp also required the Applicant to implement and adhere to

measures contained within the Project Biological Assessment (BA).

On June 17, 2009 Chief Deputy Director McCamman of the Department of Fish and Game, now the Department of Fish and Wildlife (CDFW), received correspondence from DWR Director Snow, requesting a determination from CDFW that the BiOp and its incidental take statement are consistent with CESA pursuant to Fish and Game Code section 2080.1 for purposes of the Project and Delta smelt. (Cal. Reg. Notice Register 2009, No. 27–Z, p. 1057.) On July 16, 2009, CDFW issued a consistency determination to DWR which was signed by CDFW Deputy Director Sandra Morey. (Ref. No. 2080–2009–007–00.)

On September 26, 2011, Federal District Court Judge Oliver Wanger issued a second amended order enjoining full implementation of RPA Component 3, Action 4 (the “Fall X2 Action”) set forth in the December 15, 2008 USFWS BiOp. Specifically, the Wanger order enjoined the implementation of the 74 km X2 target and prohibited the imposition of an X2 target west of 79 km commencing October 16 through November 30, 2011. The Wanger order did not eliminate the Fall X2 Action but modified the 74 km criteria from the RPA for calendar year 2011 only. All other requirements of the RPA remained in effect.

On October 10, 2011, CDFW Director Bonham received a written request from DWR Director Cowin for a determination pursuant Fish and Game Code section 2080.1 that the USFWS BiOp for Delta smelt, as enjoined in part by the Wanger order, including its ITS, was consistent with CESA such that no further authorization from CDFW was necessary for Project related incidental take of Delta smelt. (Cal. Reg. Notice Register 2011, No. 42–Z, p. 1704.) On October 14, 2011, CDFW issued a consistency determination to DWR which was signed by CDFW Deputy Director Sandra Morey. (Ref. No. 2080–2011–022–00.)

On June 14, 2018, Reclamation, in coordination with DWR, requested reinitiation of consultation with the USFWS to modify the project description of the 2008 USFWS BiOp to undertake a Pilot Study that involves operating the SMSCG from August 1, 2018 through August 31, 2018. Operation of the SMSCG in August is anticipated to result in an increase in salinity at Jersey Point, near the confluence of the Sacramento and San Joaquin Rivers. The Applicant expects that this pilot study will require an augmentation of 28,000 acre feet of Delta outflow to maintain compliance with salinity standards required by D–1641 and DWR guidance standards during this time. The Applicant will monitor the Pilot Study operation to determine if it is effective in enhancing Delta smelt habitat in select locations throughout the Suisun Marsh. The Applicant has an ongoing monitoring program to report on the location of X2. The

¹ Pursuant to Fish and Game Code section 86, “‘Take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), “‘take’ . . . means to catch, capture or kill”).

results of the Pilot Study will help inform both the efficacy of summer SMSCG operations on improving Delta smelt habitat and will also support development of a more permanent operations plan, as needed.

On June 29, 2018, the USFWS issued to Reclamation a memorandum regarding “Reinitiation of the Biological Opinion on the Coordinated Operations of the Central Valley Project and State Water Project (U.S. Fish and Wildlife Service File Number 81420–2008–F–1481) for the Proposed Change in Operation of the Suisun Marsh Salinity Control Gates for the August 2018 Pilot Study,” which confirmed that the one-month SMSCG Pilot Study will not result in adverse effects to Delta smelt and its critical habitat not previously analyzed in the 2008 USFWS BiOp based on the expectation that the proposed action will be wholly beneficial to the species and critical habitat. USFWS determined that the temporary modification to the project description is consistent with and is covered by the incidental take statement as issued in 2008 and the authorization it provides. No terms or conditions of the 2008 incidental take statement are otherwise modified or affected by the USFWS determination.

Subsequently on July 11, 2018, CDFW Director Bonham received a written request from DWR for a determination pursuant to Fish and Game Code section 2080.1 that the USFWS BiOp for Delta smelt, including the temporary modification to implement the Pilot Study, is consistent with CESA for the purposes of the Project and Delta smelt.

According to the USFWS memorandum dated June 29, 2018, the 2008 BiOp did not evaluate SMSCG operation during the month of August, but documented that in some years September through May operation decreases salinities in Suisun Marsh but shifts X2 upstream. The 2008 BiOp determined this shift in the fall decreases the extent of Delta smelt habitat and may move Delta smelt distribution upstream and decrease juvenile survival.

The modified August 2018 operation of the SMSCG has been modeled using DSM2 and meets D–1641 and DWR guidance standards for salinity in August, which is consistent with the 2008 BiOp’s project description. The DSM2 results provided do not show changes in X2 as a result of the August 2018 operation.

The Applicant provided UnTrim hydrodynamic modeling that evaluated an August 2018 operation with augmented outflow of 57 TAF and 61 TAF but did not evaluate the proposed augmented outflow of 28 TAF. In a below normal water year like 2018, the UnTrim modeling shows a reduction on salinity in Grizzly Bay and a shift in X2 westward, increasing the extent of habitat with operation of the SMSCG. UnTrim was also used to model changes in Delta Smelt Station Index, to characterize habitat condition for Delta smelt catch. Pro-

posed SMSCG operations in August at the modeled outflows resulted in slight improvements in habitat conditions to no change in habitat conditions in Suisun Bay. The modeled scenarios are more than double the outflow the Applicant proposes to provide, and the USFWS determined the effects under the proposed operation are likely to be similar to the effects analyzed in the 2008 BiOp for fall operation of the SMSCG.

The 2008 BiOp also addressed the potential for entrainment behind the SMSCG when closed, recognizing uncertainty whether it would harm Delta smelt other than exposing them to predators. The proposed operation during August is not anticipated to entrain Delta smelt since the boat locks will remain open except to briefly pass vessels during the operational period. Additionally the SMSCG flash boards will not be installed and the gates themselves are opened and closed with the tides, which provides freedom of movement past the SMSCG. All changes in available habitat for Delta smelt resulting from the Pilot Study will be temporary.

Determination

CDFW has determined that the BiOp and ITS, as temporarily modified by the June 29, 2018 USFWS memorandum, are consistent with CESA as to the Project and Delta smelt because the mitigation measures contained in the BiOp and ITS meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. This determination supersedes and replaces the prior determination (Ref. #2080–2011–022–00) issued by CDFW on October 14, 2011. Specifically CDFW finds that the short-term and one-time modification to the project description will result in no adverse effects to Delta smelt beyond what has previously been authorized, and has the potential to benefit Delta smelt. No other changes to the Project’s minimization and mitigation measures, RPA, or ITS of the 2008 BiOp are provided or affected by this consistency determination. CDFW further finds that: (1) take of Delta smelt will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BiOp, ITS and the BA will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of Delta smelt. The mitigation measures in the BiOp, ITS and the BA include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

The BiOp requires SWP operational actions that are expected to provide flow conditions that reduce entrainment of Delta smelt and retain necessary outflow and habitat to support all its life stages. Specific flow modi-

fication requirements are presented in BiOp RPA Components 1 and 2, including the information necessary to determine Delta smelt risk of exposure to impacts associated with Project operations. These requirements include real-time scientific evaluation of data to inform operational changes to avoid impacts and reduce entrainment losses of Delta smelt.

The BiOp includes two actions to increase the area of suitable Delta smelt habitat in the estuary: (1) Delta outflow augmentation in the fall following wet and above-normal water years; and (2) restoration of at least 8,000 acres of intertidal and associated subtidal habitat in the Delta and Suisun Marsh.

Reporting and Monitoring Actions

Conditions of the BiOp and respective RPAs require DWR to develop and follow specific monitoring programs to adaptively evaluate specific flow requirements and action triggers to achieve the RPA objectives. Participation in (including CDFW among others), review of, and reporting requirements for these processes are all a condition of and detailed within the BiOp and RPAs. The BiOp outlines a monitoring and reporting process to determine specific operational actions set forth in RPA Components 1 and 2. RPA Components 3 and 4 include similar requirements for the design, monitoring, and adaptive management of fall flow actions to improve Delta smelt habitat, as well as the implementation of required habitat restoration actions. RPA Component 5 ensures that information is gathered and reported appropriately.

The Applicant will monitor the Pilot Study operation to determine if it is effective in enhancing Delta smelt habitat conditions in Suisun Marsh and Bay. Monitoring will begin in July to capture baseline conditions before the start of the operation. Monitoring will continue from August to October to document the full temporal range of the Pilot Study’s effects. The Applicant will collect data from three new zooplankton sampling stations, 17 Summer Towntnet stations, ten Environmental Monitoring Program stations, and 12 water quality monitoring stations as described in the monitoring work plan submitted with the request for consistency determination.

The Applicant will assess the monitoring data and coordinate with the Collaborative Science and Adaptive Management Program and Interagency Ecological Program to review and communicate the results.

Financial Assurances

All SWP operational actions are a conditional requirement of the BiOp RPAs. RPA Component 4 lays out specific conditions for DWR to create or restore the required 8,000 acres of intertidal and associated subtidal habitat in the Delta and Suisun Marsh. Included in these conditions is the requirement that an endowment

or other secure financial assurance and easement be held by a third-party or CDFW, and approved by the USFWS. This also includes secure financial assurances to fund the monitoring effort and operation and maintenance of the restoration lands. To fund these mitigation actions, DWR has the statutory authority to require reimbursement in the SWP contracts for water and power for any costs DWR incurs for SWP-related fish and wildlife preservation. (Water Code, sections 12937, 12938.)

Based on this consistency determination, DWR does not need to obtain authorization from CDFW under CESA for incidental take of Delta smelt that occurs in connection with the Project, provided DWR implements the Project as described in the BiOp, including as the project description is modified for August 2018, and complies with the measures, RPA, and other conditions described in the BiOp.

If the Project as described in the BiOp, excluding the temporary SMSG operations modification for August 2018, changes after the date of this Consistency Determination, or if the USFWS amends or replaces the BiOp, including any of the RPA components, DWR will need to obtain from CDFW a new consistency determination (in accordance with Fish and Game Code section 2080.1) or an incidental take permit (in accordance with Fish and Game Code section 2081, subdivision (b)).

DEPARTMENT OF FISH AND WILDLIFE

**CESA CONSISTENCY DETERMINATION
REQUEST FOR
Elsie Gridley Mitigation Bank Phase 3 Restoration
Project
2080-2018-008-03
Solano County**

The California Department of Fish and Wildlife (CDFW) received a notice on July 18, 2018 that the Elsie Gridley Mitigation Bank proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves restoration of vernal pool landscape by construction of new vernal pools. Proposed activities will include, but are not limited to, grading and soil disturbance to create mounds, swales, and pools. The proposed project will occur at the Elsie Gridley Mitigation Bank in Northwestern Solano County, east of the city of Fairfield, California.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (Service Ref. No. 08ESMF00-2017-F-3189) in a memorandum to the

U.S. Army Corps of Engineers on July 13, 2018, which considered the effects of the proposed project on state and federally threatened California tiger salamander (*Ambystoma californiense*).

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

DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH AND RECOVERY ACTIONS FOR A FULLY PROTECTED SPECIES

Research and Recovery Efforts for San Francisco Garter Snake (*Thamnophis sirtalis tetrataenia*) on State Parks Properties

The Department of Fish and Wildlife (Department) received a proposal on July 24, 2018, from California State Parks (State Parks), requesting amendments to its existing Memorandum of Understanding (MOU) authorizing take of the San Francisco Garter Snake (*Thamnophis sirtalis tetrataenia*) ('SFGS') for scientific research and recovery purposes, including habitat enhancement activities. The SFGS is a Fully Protected reptile and is also listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

The State Parks' MOU is issued to Portia Halbert, Senior Environmental Scientist, who also possesses a federal recovery permit (TE-161496) to survey for SFGS, mark them using PIT-tags and ventral scute clipping or microbranding, and for habitat enhancement activities that contribute to the recovery of the species. The proposed amendments would append the Butano Creek Channel Reconnection and Resilience Project (Project) to the habitat enhancement activities authorized under Ms. Halbert's MOU. The Project, undertaken within Pescadero Marsh Natural Preserve and Pescadero State Beach, will benefit the SFGS and their primary prey, California Red-legged Frogs (*Rana draytonii*), through expansion of high quality, freshwater marsh habitat and reduction of dense riparian vegetation along Butano Creek. This will increase the extent of open, sunny basking habitat for SFGS, provide an improved migra-

tion corridor, and expand foraging opportunities. The proposed amendment would also authorize future habitat enhancement activities and population monitoring on other State Parks properties where SFGS may occur when, in the opinion of the Department and the U.S. Fish and Wildlife Service (Service), they would contribute to the recovery of the species.

The Department intends to amend, under specified conditions, Ms. Halbert's MOU to carry out and oversee the proposed research and recovery activities. The applicant is also required to have a valid federal recovery permit for the SFGS, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 5050(a)(1), the Department may authorize take of Fully Protected reptiles after 30 days' notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research and recovery activities are consistent with the requirements of FGC Section 5050 for take of Fully Protected reptiles, it will issue the MOU on or after September 3, 2018. The MOU may be subsequently renewed. Contact: Laura Patterson; Wildlife Branch, Laura.Patterson@wildlife.ca.gov, 916-341-6981.

DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH ON FULLY PROTECTED SPECIES

Research on the Salt-Marsh Harvest Mouse

The Department of Fish and Wildlife (Department) received a proposal on April 4, 2018 from Katherine R. Smith, U.C. Davis, requesting authorization to take the salt-marsh harvest mouse (*Reithrodontomys raviventris*) (mouse), a Fully Protected mammal, for scientific research purposes consistent with conservation and recovery of the species. The mouse is listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Ms. Smith is planning to conduct surveys throughout the historical range of the mouse in California, in accordance with a standard protocol approved by the Department and the U.S. Fish and Wildlife Service (Service). The proposed research and population monitoring activities include capture using baited cage traps, handling, measuring and weighing, temporary marking via non-toxic ink or fur clipping, and release at the site of capture. Genetic samples will be collected (e.g., fur and fecal material) to help determine population status. Unbaited camera traps will be used to document predators and monitor their behavior, and baited non-invasive au-

tonomous mouse detection units will be tested for efficacy at determining mouse presence and abundance. Additional research activities may include use of passive integrated transponders (PIT-tags) for individual identification, ear-tagging, biotelemetry, and other methods approved by the Department and the Service. If any mice are found dead, they will be salvaged (including any parts thereof) and donated to a scientific institution open to the public, as designated by the Department and the Service. No adverse effects on individual mice or mouse populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize qualified professional wildlife researchers, with Ms. Smith as the Principal Investigator, to carry out the proposed activities. The applicant is also required to have a valid federal recovery permit for the mouse and a Scientific Collecting Permit (SCP) to incidentally take other mammal species in California.

Pursuant to California Fish and Game Code (FGC) Section 4700(a)(1), the Department may authorize take of Fully Protected mammal species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 4700 for take of Fully Protected mammals, it would issue the authorization on or after September 3, 2018, for an initial and renewable term of up to, but not to exceed five years. Contact: Dr. Scott Osborn, Scott.Osborn@wildlife.ca.gov, (916) 324- 3564.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING AND BUSINESS MEETING

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 **September 20, 2018**, at 10:00 a.m. in Room 310 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 **September 20, 2018**, at 10:00 a.m. in Room 310 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

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE OF INTENT TO MODIFY A LISTING BY THE LABOR CODE MECHANISM: ALCOHOLIC BEVERAGES

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) intends to modify the listing of alcoholic beverages as shown in the table below as known to the state to cause cancer under the Safe Drinking Water and

Toxic Enforcement Act of 1986 (Proposition 65¹). This action is being taken pursuant to the “Labor Code” listing mechanism². OEHHA has determined that the current listing of “Ethanol in Alcoholic Beverages” should be modified as follows³:

Chemical	CAS No.	Endpoint	References
Ethanol in Alcoholic beverages	—	Cancer	IARC (2010) IARC (2018)

Background: Health and Safety Code section 25249.8(a) incorporates California Labor Code section 6382(b)(1) into Proposition 65. The law requires that certain substances identified by the International Agency for Research on Cancer (IARC) be listed as known to cause cancer under Proposition 65. Labor Code section 6382(b)(1) refers to substances identified as human or animal carcinogens by IARC. OEHHA has adopted regulations concerning this listing mechanism in Title 27, Cal. Code of Regs., section 25904. As the lead agency for the implementation of Proposition 65, OEHHA evaluates whether a chemical’s listing is required by Proposition 65.

“Ethanol in Alcoholic Beverages” was listed as known to cause cancer in April 2011 based on a determination by IARC that ethanol in alcoholic beverages was classified in Group 1 (the agent is carcinogenic to humans)⁴.

OEHHA’s determination: IARC Monograph volume 96 (IARC, 2010) states:

Alcoholic beverages are carcinogenic to humans (Group 1)

In its online listing of classifications, IARC also lists alcoholic beverages as Group 1, carcinogenic to humans (IARC, 2018), also referencing Monograph 100E (IARC, 2012). Therefore, OEHHA has determined that the existing listing should be modified to reflect IARC’s broader classification by striking the words “ethanol in” from the listing.

¹ Health and Safety Code section 25249.5 *et seq.*

² Health and Safety Code section 25249.8(a) and Title 27, Cal. Code of Regs., section 25904.

³ There are two other related listings that will not be changed by this proposed action. “Ethyl Alcohol in Alcoholic Beverages” will remain listed for reproductive toxicity (developmental endpoint) and “Alcoholic Beverages, when Associated with Alcohol Abuse” will remain listed for cancer. These listings were made pursuant to other mechanisms and those findings have not changed.

⁴ International Agency for Research on Cancer (IARC, 2010) IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Alcohol Consumption and Ethyl Carbamate. Vol. 96. World Health Organization. Lyon, France. Available at: <http://monographs.iarc.fr/ENG/Monographs/vol96/mono96.pdf>.

Opportunity for comment: OEHHA is providing this opportunity to comment as to whether the listing of “Ethanol in Alcoholic Beverages” should be modified by striking the words “ethanol in” so that it reflects the broader IARC determination. Because the Labor Code mechanism is a ministerial listing process, comments should be limited to whether IARC has changed its identification of “Ethanol in Alcoholic Beverages” to “Alcoholic Beverages”. Under this listing mechanism, OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by IARC when it identified this substance and will not respond to such comments if they are submitted (Title 27, Cal. Code of Regs., section 25904(c)).

Written comments must be received by 5:00 p.m. on Tuesday, September 4, 2018 to be considered.

Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below.

Mailing

Address: Ms. Michelle Ramirez
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-12B
Sacramento, California
95812-4010

Fax: (916) 323-2265

Street

Address: 1001 I Street
Sacramento, California 95814

Comments received during the public comment period will be posted on the OEHHA website after the close of the comment period. Please do not include your address or phone number in your comments if you do not wish for that information to become publicly available.

If you have any questions, please contact Ms. Michelle Ramirez at Michelle.Ramirez@oehha.ca.gov or at (916) 445-6900.

References

International Agency for Research on Cancer (IARC, 2010). IARC monographs on the evaluation of carcinogenic risks to humans, Volume 96. Alcohol consumption and ethyl carbamate. Lyon, France. Available from:

<http://monographs.iarc.fr/ENG/Monographs/vol96/mono96-11.pdf>.

International Agency for Research on Cancer (IARC, 2012). IARC monographs on the evaluation of carcinogenic risks to humans, Volume 100E. Consumption of alcoholic beverages. Lyon, France. Available from: <http://monographs.iarc.fr/ENG/Monographs/vol100E/mono100E-11.pdf>.

IARC (2018). Agents Classified by the IARC Monographs, Volumes 1–121. Available from: http://monographs.iarc.fr/ENG/Classification/latest_classif.php

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# 2018–0607–02
CALIFORNIA ENERGY COMMISSION
Electric Spas–Battery Charger Appliance Rulemaking

In this regular rulemaking, the California Energy Commission is amending regulations regarding portable electric spas and battery chargers. Specifically, these regulations (1) revise efficiency standards for standard spas, exercise spas, and combination spas manufactured on or after June 1, 2019; (2) add an efficiency standard for inflatable spas manufactured on or after June 1, 2019; (3) beginning June 1, 2019, change the test procedure to ANSI/APSP/ICC–14 2014, American National Standard for Portable Electric Spa Energy Efficiency; (4) add definitions for the subgroups of portable electric spas to enable implementation of the updated test methods and standby power standard; (5) institute a label requirement for all portable electric spas manufactured on or after June 1, 2019; and (6) modify the data submittal requirements to collect information that is needed to confirm compliance with these requirements.

Title 20
AMEND: 1602, 1604, 1605.3, 1606, 1607
Filed 07/19/2018
Effective 10/01/2018
Agency Contact: Lisa DeCarlo (916) 654–5195

File# 2018–0615–01
CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY
Nondiscrimination Compliance and Enforcement

This filing of changes without regulatory effect by the California Health and Human Services Agency re-

peals provisions relating to compliance and enforcement of the prohibition of discrimination in state-funded programs and activities. SB 1442 (Stats. 2016, ch. 870) reorganized various statutes regarding discrimination and transferred authority over such matters to the Department of Fair Employment and Housing.

Title 22
REPEAL: 98300, 98301, 98302, 98303, 98304, 98305, 98306, 98310, 98311, 98312, 98313, 98314, 98320, 98321, 98322, 98323, 98324, 98325, 98326, 98340, 98341, 98342, 98343, 98344, 98345, 98346, 98347, 98348, 98349, 98360, 98361, 98362, 98363, 98364, 98365, 98366, 98370, 98380, 98381, 98382, 98400, 98410, 98411, 98412, 98413
Filed 07/25/2018
Agency Contact: Jerry Scribner (916) 651–6906

File# 2018–0606–01
CALIFORNIA HORSE RACING BOARD
Beneficiaries, Welfare Programs and Activities

This action by the California Horse Racing Board expands the pool of persons eligible to receive health care services provided by the welfare fund in accordance with Business and Professions Code section 19641, as amended by Assembly Bill 1723 (Stats. 2017, ch. 420).

Title 4
AMEND: 2050
Filed 07/18/2018
Effective 07/18/2018
Agency Contact: Harold Coburn (916) 263–6026

File# 2018–0713–03
CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE
Conflict-of-Interest Code

This is an amendment to 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 in the California Code of Regulations only.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Title 17
AMEND: 100000
Filed 07/24/2018
Effective 08/23/2018
Agency Contact: C. Scott Tocher (415) 740–8735

File# 2018–0611–02
CALIFORNIA STATE UNIVERSITY
Doctor of Nursing Practice Degree

This file and print action by the Board of Trustees of the California State University System amends several

sections on the Doctor of Nursing Practice degree. This action is exempt from the Administrative Procedure Act and takes effect upon filing with the Secretary of State under Education Code sections 89030(b) and 89030.1, respectively.

Title 5
 AMEND: 40050.2, 40100.1, 40513, 40514, 41021
 Filed 07/23/2018
 Effective 07/23/2018
 Agency Contact: Kyle Rowen (562) 951-4500

File# 2018-0717-03
 DEPARTMENT OF FOOD AND AGRICULTURE
 Oriental Fruit Fly Eradication Area

This emergency rulemaking action adds Santa Cruz County to the list of California counties proclaimed to be eradication areas for the Oriental Fruit Fly, *Bactrocera dorsalis*.

Title 3
 AMEND: 3591.2
 Filed 07/19/2018
 Effective 07/19/2018
 Agency Contact: Kyle Beucke (916) 403-6741

File# 2018-0612-01
 DEPARTMENT OF MOTOR VEHICLES
 Private Carriers of Passengers

This rulemaking action by the Department of Motor Vehicles (Department) adopts sections to transfer regulatory oversight of private carriers of passengers from the California Public Utilities Commission to the Department.

Title 13
 ADOPT: 223.00, 223.02, 223.04, 223.06, 223.08, 223.10, 223.12, 223.14, 223.16
 Filed 07/23/2018
 Effective 07/23/2018
 Agency Contact: Randi Calkins (916) 657-8898

File# 2018-0608-01
 DEPARTMENT OF PUBLIC HEALTH
 Posting of Radiologic Technology Act Certificates and Permits

This rulemaking by the California Department of Public Health modifies the requirements for displaying certificates and permits issued pursuant to the Radiologic Technology Act.

Title 17
 AMEND: 30305
 Filed 07/19/2018
 Effective 10/01/2018
 Agency Contact: Dawn Basciano (916) 440-7367

File# 2018-0713-02
 DEPARTMENT OF PUBLIC HEALTH
 Newborn Screening Program Fee Increase

This request for filing with the Secretary of State and printing in the California Code of Regulations is a statutorily deemed emergency and exempt from review by the Office of Administrative Law. The action raises the Newborn Screening Program all-inclusive program participation fee to \$141.25 from \$129.25.

Title 17
 AMEND: 6508
 Filed 07/19/2018
 Effective 07/19/2018
 Agency Contact: Laurel Prior (916) 440-7673

File# 2018-0620-01
 STATE MINING AND GEOLOGY BOARD
 Financial Assurance Cost Estimate (FACE) Form

The State Mining and Geology Board is revising its Financial Assurance Cost Estimate form and instructions in response to input from users of the form regarding ways to make it easier to complete. All changes are without regulatory effect.

Title 14
 AMEND: 3805.1
 Filed 07/19/2018
 Agency Contact: Nicholas Lash (916) 310-1082

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN February 21, 2018 TO
 July 25, 2018**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1
 05/21/18 AMEND: 44

Title 2
 07/17/18 REPEAL: 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2700, 2701, 2702, 2703, 2704, 2705
 07/03/18 ADOPT: 18308, 18308.1, 18308.2, 18308.3
 06/21/18 AMEND: 1859.190, 1859.194, 1859.195, 1859.198
 06/19/18 AMEND: 554.7

05/17/18	ADOPT: 11027.1 AMEND: 11028	8301, 8302, 8303, 8304, 8305, 8306,
05/16/18	ADOPT: 20150, 20151, 20152, 20153, 20154, 20155, 20156, 20157, 20158, 20159, 20160, 20161, 20162, 20163, 20164, 20165	8307, 8308, 8400, 8401, 8402, 8403, 8404, 8405, 8406, 8407, 8408, 8409, 8500, 8501, 8600, 8601, 8602, 8603, 8604, 8605, 8606, 8607, 8608
05/09/18	AMEND: 321	05/30/18 AMEND: 3439(b)
05/09/18	AMEND: 11034	05/24/18 AMEND: 3439(b)
04/25/18	AMEND: 18401	05/24/18 AMEND: 6502
04/25/18	AMEND: 18450.1	05/18/18 AMEND: 3439(b)
04/23/18	ADOPT: 1859.90.4 AMEND: 1859.2, 1859.90, 1859.90.2, 1859.90.5	04/30/18 AMEND: 3439(b)
04/16/18	AMEND: 1859.2, 1859.51, 1859.70, 1859.82, 1859.93.1	04/04/18 AMEND: 3591.15
04/12/18	AMEND: 1859.2, 1859.81	03/27/18 AMEND: 3439(b)
04/04/18	AMEND: 41000	03/26/18 AMEND: 3439(b)
04/02/18	ADOPT: 243, 243.1, 243.2, 243.3, 243.4, 243.5, 243.6, 548.120, 548.120.1, AMEND: 249, 266, 266.1, 266.2, 266.3, 548.121, 548.122, 548.123, 548.124	03/13/18 AMEND: 3591.15
04/02/18	AMEND: 38000, 38000.5, 38000.10	03/01/18 AMEND: 6628
03/20/18	AMEND: 18746.1, 18746.4	02/27/18 AMEND: 3439(b)
03/20/18	AMEND: 18746.3	Title 4
03/20/18	REPEAL: 18901	07/18/18 AMEND: 2050
03/14/18	ADOPT: 61200, 61201, 61210, 61211, 61212, 61213, 61214, 61215, 61216, 61217	07/09/18 AMEND: 10325, 10326
03/12/18	AMEND: 586.1(a)	07/03/18 AMEND: 10152, 10153, 10154, 10155, 10158 (amended and renumbered), 10159 (amended and renumbered), 10160 (amended and renumbered). REPEAL: 10156, 10157
03/12/18	ADOPT: 599.855	07/02/18 ADOPT: 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731 AMEND: 5000, 5020, 5100
03/08/18	ADOPT: 20020, 20021, 20022, 20023, 20024, 20025, 20026, 20027	05/30/18 AMEND: 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7, 10091.8, 10091.9, 10091.10, 10091.12, 10091.13, 10091.14, 10091.15
02/27/18	AMEND: 1181.2, 1181.3, 1182.2, 1182.7, 1182.9, 1182.10, 1182.15, 1183.1, 1183.2, 1183.3, 1183.4, 1183.6, 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.15, 1183.16, 1183.17, 1184.1, 1185.1, 1185.2, 1185.3, 1185.7, 1185.8, 1186.2, 1186.4, 1187.5, 1187.7, 1187.8, 1187.9, 1187.12, 1187.14, 1187.15, 1190.1, 1190.2, 1190.3, 1190.5	05/25/18 AMEND: 5000, 5033, 5035, 5037, 5054, 5060, 5101, 5102, 5120, 5144, 5170, 5191, 5212, 5230, 5240, 5250, 5540 REPEAL: 5259
02/22/18	AMEND: 58100	05/17/18 AMEND: 12590
02/22/18	AMEND: 59800	05/15/18 AMEND: 12204, 12220, 12238, 12560
Title 3		04/30/18 AMEND: 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.9, 10170.10
07/19/18	AMEND: 3591.2	04/10/18 AMEND: 10179
06/28/18	AMEND: 3435(b)	04/09/18 ADOPT: 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731 AMEND: 5000, 5020, 5100
06/21/18	AMEND: 3439(b)	03/29/18 AMEND: 7051, 7054, 7055, 7056, 7063, 7071
06/21/18	AMEND: 3591.5	03/22/18 AMEND: 1699
06/18/18	AMEND: 1280.11	03/15/18 ADOPT: 8078.22, 8078.23, 8078.24, 8078.25, 8078.26, 8078.27, 8078.28, 8078.29, 8078.30, 8078.31, 8078.32, 8078.33, 8078.34, 8078.35 AMEND: 8070, 8071, 8072, 8073, 8074, 8076, 8078.3 REPEAL: 8078.1, 8078.2
06/04/18	ADOPT: 8000, 8100, 8101, 8102, 8103, 8104, 8105, 8106, 8107, 8108, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8200, 8201, 8202, 8203, 8204, 8205, 8206, 8207, 8208, 8209, 8210, 8211, 8212, 8213, 8214, 8215, 8216, 8300,	

CALIFORNIA REGULATORY NOTICE REGISTER 2018, VOLUME NO. 31-Z

03/13/18 AMEND: 5032, 5033, 5170, 5180, 5190, 5193, 5194, 5230, 5240, 5255, 5260, 5342, 5350, 5400, 5700

03/05/18 AMEND: 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7, 10091.8, 10091.9, 10091.10, 10091.12, 10091.13, 10091.14, 10091.15

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