



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. CENTRAL VALLEY FLOOD PROTECTION BOARD**

NOTICE IS HEREBY GIVEN that the Central Valley Flood Protection Board, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment of its conflict-of-interest code. A comment period has been established commencing on May 31, 2019 and closing on July 15, 2019. All inquiries should be directed to the contact listed below.

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

The provisions of the conflict-of-interest code include:

The Central Valley Flood Protection Board's conflict-of-interest provisions are currently contained in 23 CCR, § 595 under the Conflict-of-Interest Provision pertaining to the Department of Water Resources. As the Central Valley Flood Protection Board is a separate and distinct state agency, it is appropriate that its conflict-of-interest provisions reside within Title 23, Division 1. The provisions proposed are essentially the same as those that appear in 23 CCR, § 595.

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

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than July 15, 2019 or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than July 1, 2019.

The Central Valley Flood Protection Board has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no cost or savings on any state agency.

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

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

Sarah Backus, Staff Attorney, (916) 574-1448, [sarah.backus@cvflood.ca.gov](mailto:sarah.backus@cvflood.ca.gov).

**TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE**

Hydrogen Gas-Measuring Devices (3.39)  
CCR Title 4, § 4002.9

The California Department of Food and Agriculture (Department) proposes to amend California Code of Regulations (CCR) Title 4, § 4002.9. Hydrogen Gas-Measuring Devices (3.39).

**PUBLIC HEARING**

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department by mail, fax, or email addressed to the primary contact person listed below. Please include 'Hydrogen Device Rule-making' in the subject line of any letter, fax, or email regarding this rulemaking. The written comment period begins on May 31, 2019, and closes at 5:00 p.m. on July 16, 2019. The Department will only consider comments received at the office of the Division of Measurement Standards by 5:00 p.m. on July 16, 2019.

**AUTHORITY/REFERENCE**

The Legislature has charged the Department in California Business and Professions Code (BPC) Division

5, § 12100 with the responsibility of supervising weights and measures activities within California. The secretary of the Department is granted authority in BPC § 12027 to adopt such regulations as are reasonably necessary to carry out the provisions of Division 5. Authority and reference for these regulations is provided in BPC § 12107, which requires the secretary to adopt specifications and tolerances for weighing and measuring devices used for commercial purposes in California.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

BPC Division 5, Chapter 2, § 12107 requires the Department to adopt the latest specifications, tolerances, and other technical requirements published in the National Institute of Standards and Technology (NIST) Handbook 44, “*Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices*” (NIST Handbook 44), except as specifically modified, amended, or rejected by regulation adopted by the Department. The Department does so by adopting regulation in Title 4 CCR §§ 4000, 4001, and the appropriate subsection of 4002.

In 2014, the Department adopted Section 3.39. of NIST Handbook 44, with modifications, in Title 4 CCR §§ 4000, 4001, and 4002.9, making those requirements enforceable in California. During that rulemaking process, the Department adopted four California-specific hydrogen gas-measuring device accuracy classes: (2.0), (3.0), (5.0) and (10.0). The Department has since determined that no hydrogen gas-measuring device in commercial use meets accuracy classes (2.0) or (3.0), nor has the Department approved for use a device having those accuracy classes. In 2016, the Department submitted test data which served as the basis for the National Conference on Weights and Measures (NCWM) to adopt accuracy class (7.0), a compromise between device functionality, manufacturing cost, and the technologically feasible measurement of hydrogen sold as retail motor vehicle fuel. Currently, there are devices having accuracy classes (5.0) and (10.0) approved for commercial purposes in the state.

With this rulemaking, the Department proposes to keep accuracy classes (5.0) and (10.0), remove accuracy classes (2.0) and (3.0), and adopt the national standard accuracy class (7.0) adopted by NCWM in 2016. Other nonsubstantive changes having no regulatory effect are also proposed to improve the grammar, formatting, and sentence structure of the regulation. The specific purpose and necessity of each of the amendments is discussed in the Initial Statement of Reasons of this rulemaking file.

*Anticipated Benefits of the Proposed Regulation*

The proposed regulation will facilitate the development of more hydrogen fueling stations and in turn, promote increased production and sales of hydrogen gas-measuring devices in the state. With this proposed regulation, hydrogen gas-measuring device manufacturers doing business in California may design, produce, and sell hydrogen gas-measuring devices with the uniform national standard accuracy class (7.0) alongside accuracy class (5.0) devices to streamline design, production, and marketing costs. National standardization of specifications and requirements will also promote increased consumer confidence during their hydrogen fueling experience. The Department believes this will lead to a greater number of consumers that choose to purchase hydrogen fuel cell vehicles and so increase demand for devices dispensing hydrogen as retail motor vehicle fuel. By adopting accuracy class (7.0) the Department will be able to regulate, enforce, and respond to consumers’ complaints against a hydrogen device having that accuracy class.

*Consistency and Compatibility with Existing State and Federal Laws and Regulations*

The Department has initially determined this proposal is consistent and compatible with existing California and federal laws and regulations. The Department is the only state agency with the authority to regulate hydrogen devices used for commercial purposes that dispense hydrogen as motor vehicle fuel.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

*The Department makes the following initial determinations:*

- 1) Mandate on local agencies and school districts: None.
- 2) Cost to any local agency or school district requiring reimbursement pursuant to Government Code §§ 17500 et seq.: None.
- 3) Fiscal impact on public agencies including costs/savings to state agencies: None.
- 4) Any other non-discretionary costs/savings imposed upon local agencies: None.
- 5) Costs/savings in federal funding to the state: None.
- 6) Significant effect on housing costs: None.

The Department concludes the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS

Removing two outdated accuracy classes and adopting the uniform national standard accuracy class will not incur additional financial costs or savings to a business to reasonably comply with this proposed regulation. Businesses that manufacture hydrogen gas-measuring devices do not need to change business procedures or acquire additional equipment to comply.

The Department initially concludes that the proposed regulation: (1) is unlikely to create or eliminate jobs in California; (2) is unlikely to create or eliminate existing businesses in California; and (3) is unlikely to affect the expansion of businesses currently doing business in California.

*Anticipated Benefits of the Proposed Regulation*

This proposed regulation supports the Governor’s goals to increase the number of zero-emission vehicles (ZEV) operating on state highways, reduces dependence on petroleum-sourced fuels, and decreases California’s carbon footprint. The proposed regulation both supports the growth of the ZEV market and facilitates the development of a hydrogen fueling infrastructure having nationally standardized hydrogen fueling devices — two paramount factors positively influencing California’s long-term transportation mitigation strategy.

The California Air Resources Board’s Greenhouse Gas Emission Inventory website reports that the transportation sector is the biggest contributor (41%) to California’s greenhouse gas emissions. Vehicle emissions are a primary source of atmospheric particulate matter, air toxins, and smog-forming chemicals in California’s air. Conversely, hydrogen fuel cell vehicles emit only water vapor. Cleaner air in the state potentially reduces medical risks associated with vehicular emissions.

COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES,  
INCLUDING SMALL BUSINESSES

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. Moreover, the Department is not aware of any small businesses involved in the hydrogen gas-measuring device manufacturing industry. Since businesses in the state only manufacture and install hydrogen gas-measuring devices having accuracy class (5.0) and (10.0), removing accuracy classes (2.0) and (3.0) and adding accuracy class (7.0) to regulation does not impose additional economic impacts.

CONSIDERATION OF ALTERNATIVES

Government Code § 11346.5 (a)(13) requires that the Department must determine 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, 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 Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period or public hearing, if one is scheduled.

CONTACT PERSONS

*Primary Contact:*

California Department of Food and Agriculture  
Division of Measurement Standards  
Samuel Ferris  
Senior Environmental Scientist (Specialist)  
6790 Florin Perkins Road, Suite 100  
Sacramento, CA 95828-1812  
Main: (916) 229-3000  
Fax: (916) 229-3055  
Email: [dms@cdfa.ca.gov](mailto:dms@cdfa.ca.gov)

*Secondary Contact:*

California Department of Food and Agriculture  
Division of Measurement Standards  
Kevin Schnepf  
Environmental Program Manager I  
6790 Florin Perkins Road, Suite 100  
Sacramento, CA 95828-1812  
Main: (916) 229-3000  
Fax: (916) 229-3055  
Email: [dms@cdfa.ca.gov](mailto:dms@cdfa.ca.gov)

AVAILABILITY OF THE RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process by request to the contact(s) above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text (the “express terms”) of the regulation, the Initial Statement of Reasons, and all the supporting documents and information relied upon in the development of this proposed regulation.

AVAILABILITY OF  
CHANGED OR MODIFIED TEXT

After receiving and considering all timely and relevant comments, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the revised regulation. Requests for copies of any modified regulation can be made by emailing [dms@cdfa.ca.gov](mailto:dms@cdfa.ca.gov) or calling (916) 229-3000. Please include 'Hydrogen Device Rulemaking' in the subject line of any letter, fax, or email regarding this rulemaking. The Department will accept written comments on the modified text of the regulation for 15 days after the date it is made available.

AVAILABILITY OF THE  
FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Department by email at [dms@cdfa.ca.gov](mailto:dms@cdfa.ca.gov) or calling (916) 229-3000.

AVAILABILITY OF DOCUMENTS ON THE  
INTERNET

Electronic copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the proposed text of the regulation in underline and strikethrough will be posted at [www.cdfa.ca.gov/dms/regulations.html](http://www.cdfa.ca.gov/dms/regulations.html) by the Division of Measurement Standards.

**TITLE 5. EDUCATION AUDIT  
APPEALS PANEL**

*Audits of K-12 Local Education Agencies*  
Fiscal Year 2019-20

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2019-20 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 per-

son, 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, July 15, 2019**. 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](mailto: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), subparagraphs 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 2019-20, 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. Appendix B likewise guides auditors in the performance audits of construction activity under State School Facility Bond Funds.

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 “~~2018–19~~2019–20 Guide for Annual Audits of K–12 Local Education Agencies and State Compliance Reporting,” (March 1, 2018~~July 1, 2019~~), 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](http://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 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 2019–20 Audit Guide includes the following amendments:

- Report Components, paragraph 4, Supplementary Information, is amended consistently with the amendments to Section F (described next) as the Schedule of Instructional Time no longer needs to differentiate among districts by historical factors rendered moot by the fact that all districts as of Fiscal Year 2019–20 will have met their Local Control Funding Formula (LCFF) targets.
- *Section F. Instructional Minutes* is revised to delete language made unnecessary as a result of all districts having met their LCFF apportionment target by school year 2019–20. References to districts’ history of participation under the old longer day and longer year incentive programs are no longer necessary pursuant to Sections 46207 and 46208 of the Education Code.
- *Section DD. Determinations of Funding for Nonclassroom–Based Instruction* is technically amended, consistent with section 11963.3(b)(3), to include situations in which an entity has received, or will receive in the current fiscal year, \$50,000 or 10 percent of the charter school’s applicable total expenditures as defined in subparagraphs (B), (C), (D), and (E) of subdivision (a) of section 11963.3(a).

Name of document incorporated by reference: 2019–20 Guide for Annual Audits of K–12 Local Education Agencies and State Compliance Reporting (July 1, 2019). (Note: there are no proposed changes to the Appendices (A and B).)

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](mailto: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](http://www.eaap.ca.gov).

### TITLE 13. CALIFORNIA HIGHWAY PATROL

TITLE 13 CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6, ARTICLE 2.5 AMEND SECTION 1157.20

#### Inhalation Hazards Routes — Map 8 (CHP–R–2019–06206)

The California Highway Patrol (CHP) proposes to amend regulations in Title 13 of the California Code of Regulations, Division 2, Chapter 6, Article 2.5, Section



1157.20, regarding designated routes for the transportation of inhalation hazards by commercial vehicles on highways in the state.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Pursuant to Division 14.3, Transportation of Inhalation Hazards, commencing with Section 32100 of the California Vehicle Code (CVC), the CHP shall adopt regulations specifying routes to be used in the transportation of inhalation hazards. The CVC requires the CHP to keep information current in regulations, with maps clearly indicating designated routes and a list of locations for inspection stops, required inspection stops, and safe stopping places. The CHP's field commands conduct annual surveys on the inhalation hazard routes and stops to determine if changes are necessary. The proposed amendments will keep inhalation hazards routes consistent with the changed location of the port of entry for commercial vehicles, from San Ysidro to Otay Mesa, and enhance public health and safety in the border area south of San Diego.

The proposed amendments have received concurrence from the CHP's Border Division, San Diego County Fire Authority, State Fire Marshal, and California Department of Transportation.

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

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

PUBLIC COMMENT

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

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

Written comments must be received by July 15, 2019.

PUBLIC HEARINGS

Section 32102(b) CVC requires the CHP to hold public hearings in each field operation division of the department in which are located proposed routes. Thus, the CHP will conduct a public hearing on the proposed regulation amendments at:

California Highway Patrol  
Border Division  
9330 Farnham Street  
San Diego, CA 92123-1216

from 9:00 to 10:00 a.m. on July 26, 2019.

AVAILABILITY OF INFORMATION

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

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

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

CONTACT PERSON

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

ADOPTION OF PROPOSED REGULATIONS

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

FISCAL IMPACT AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

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

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action will not affect small businesses. The action is intended to clarify and update the designated routes for

commercial vehicles transporting inhalation hazards on highways. As a result, no small business will be affected by the update.

ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the CHP, or otherwise identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

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

REFERENCE

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

**TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

**“Nonindustrial Timber Management Plan Amendments, 2019”**

**Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 4, Subchapter 7, Article 6.5**

NATURE OF PROCEEDING

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

PUBLIC HEARING

The Board will hold a public hearing on August 11, 2019, at its regularly scheduled meeting commencing at 9:00 a.m., at the Natural Resources Building Auditorium, 1416 9th Street, Sacramento, CA. At the hearing,

any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

#### WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on Monday, July 15, 2019.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

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

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

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

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

(916) 653-0989

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

PublicComments@BOF.ca.gov

#### AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14, 14 CCR § 1122)

Authority cited: Sections 4551, 4593.4, 4593.5, 4593.9, and 4594, Public Resources Code. Reference: Sections 4593, 4593.4, 4593.5, 4593.8, 4594, and 4597, Public Resources Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

The Z'berg-Nejedly Forest Practice Act declares the existence of a public interest in the management and treatment of the forest resources and timberlands of the state. Pursuant to Article 7.5, the Board "shall adopt rules and regulations to implement Article 7.5 (commencing with Section 4593) of Chapter 9 of Part 2 of Division 4 of the Public Resources Code." The provisions of the article (Nonindustrial Timber Management Plan) provided under Public Resources Code (PRC) § 4593(c) declare "that it is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving nonindustrial timber management plans in advance and withdrawing governmental discretion to disapprove nonindustrial timber harvest notices submitted pursuant to the approved nonindustrial timber management plans." PRC § 4551 requires the Board to "... adopt district forest practice rules . . . to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources . . ." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

In 2018, Senate Bill (SB) 901 (chapter 626) was approved by the Governor, filed with the Secretary of State, and became effective January 1, 2019. Section 17 of SB 901 amended PRC § 4593.2(e) to read "Nonindustrial timber management plan means a management plan for nonindustrial timberlands with an objective of an uneven aged managed timber stand and sustained yield for each parcel or group of contiguous parcels meeting the requirements of Section 4593.3. A nonindustrial timber management plan may include multiple nonindustrial tree farmers, but shall not cover more than 2,500 acres."

The proposed action was developed in response to address the statutory amendments in SB 901 related to multiple landowners and acreage restrictions and to additionally 1) expand upon the use of a designated agent for various reporting requirements for Nonindustrial Timber Management Plans (NTMPs) with multiple landowners; 2) clarify the use of various exemptions

within the footprint of an NTMP; and 3) to update the mapping requirements for the NTMP and the associated Nonindustrial Timber Harvest Notice. The problem is that statutory amendments within SB 901 create issues of clarity and consistency with the existing regulations in the Forest Practice Rules (FPRs). Additionally, the Department of Forestry and Fire Protection (Department) requested clarification on the use of exemptions within the footprint of an NTMP, which allow for the bypassing of the Nonindustrial Timber Harvest Notice process contained within the regulations for NTMP to achieve certain, specified, management objectives. Lastly, mapping standards for the NTMP have not been updated for 27 years and do not adequately reflect current technology and other existing regulatory mapping standards.

The **problem** is that the issues of clarity and consistency exist within the Forest Practice Rules related to both existing regulations as well as the statutory amendments within SB 901. Additionally, the Department requested clarification on the use of exemptions within the footprint of an NTMP, which allow for the bypassing of the Nonindustrial Timber Harvest Notice process contained within the regulations for NTMP in order to achieve certain, specified, management objectives. Lastly, mapping standards for the NTMP have not been updated for 27 years and do not adequately reflect current technology and other existing regulatory mapping standards.

The **purpose** of the proposed action is to make the regulations congruent with changes resulting from the passage of SB 901, to update 14 CCR § 1090 et seq. to make the NTMP regulations more consistent with the Working Forest Management Plan (WFMP) regulations, to clarify the use of exemptions within the footprint of an NTMP, and to improve clarity within the existing regulations.

The **effect** of the proposed action is to: 1) clarify and effectuate the statute in the regulations provided for NTMPs in PRC § 4593 to add provisions for multiple landowners; 2) to allow the use of exemptions pursuant to 14 CCR § 1038 et seq. within the footprint of an NTMP; and 3) to update the mapping standards by making them consistent with the companion document and more recently approved WFMP.

The **benefit** of the proposed action is that it will make regulations for NTMPs clearer and more consistent with regulations for WFMPs, and thus allow for better stewardship of California's forests. SB 901 clarifies what had been assumed in the initial NTMP regulations: that multiple landowners may indeed participate in an NTMP. The new regulations proposed will provide for a single point of contact for NTMPs with multi-

ple owners by using a designated agent to aid the department in the administration of NTMPs. It will also provide benefits to the nonindustrial tree farmer by clarifying that the use of some exemptions will be allowed within the footprint of an NTMP, which is a more flexible permitting vehicle for the landowner than using a Nonindustrial Timber Harvest Notice associated with the NTMP. The clarification elements will make plan development easier for land owners, allow for cooperation amongst landowners, and enable land owners with an NTMP to participate in relevant exemptions within the NTMP area; the updated mapping requirements will help protect California's forests by improving documentation of harvest activities and awareness of sensitive areas in the harvest area. The mapping updates will also make it easier for the Department to review NTMPs and WFMPs by providing consistency between the two plans. Finally, changes to NTMP mapping requirements will improve enforcement and implementation of these regulations by the Department.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to secondary egress routes and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statutes to which the proposed action was compared: §§ 4551, 4593.4, 4593.5, 4593.9, 4594, and 4597, Public Resources Code.

MANDATED BY  
FEDERAL LAW OR REGULATIONS

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

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

There are no comparable Federal regulations related to management plans for the non-industrial harvesting of timber. No existing Federal regulations meeting the same purpose as the proposed action were identified.

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

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

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

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

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

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

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

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

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

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the preparation, submittal, and administration of documents and activities related to the non-industrial management and harvesting of timber, with clarifications which may reduce state costs in the review and administration of these documents and activities.

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

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

The proposed action will not significantly affect housing costs.

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

The proposed action 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 (by making it costlier to produce goods or services in California).

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

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating fire safety in land use and development in California that the Board brings to bear on regulatory development.

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

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

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

**COST IMPACTS ON REPRESENTATIVE PERSON  
OR BUSINESS**

(pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

**BUSINESS REPORT**

(pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

**SMALL BUSINESS**

(defined in GOV § 11342.610)

Small businesses, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

Small businesses, pursuant to 1 CCR § 4(a):

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

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

**ALTERNATIVES INFORMATION**

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

**CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of

the regulations and any questions regarding the substance of the proposed action may be directed to:

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

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

**AVAILABILITY STATEMENTS**

(pursuant to GOV § 11346.5(a) (16), (18))

All of the following are available from the contact person:

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

FINAL STATEMENT OF REASONS

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

INTERNET ACCESS

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

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF  
FISH AND WILDLIFE**

FISH AND GAME CODE  
SECTION 1653 CONSISTENCY  
DETERMINATION REQUEST FOR  
Janes Creek at Alliance Avenue  
Fish Passage Improvement Project  
(Tracking Number: 1653-2019-036-001-R1)  
Humboldt County

California Department of Fish and Wildlife (CDFW) received a Request to Approve on May 15, 2019, that the City of Arcata proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves retrofitting an existing concrete box culvert to improve fish passage for all life stages of salmonids and lamprey while maintaining the flood conveyance capacity of the channel and crossing. The proposed project will be carried out on the channel, banks, and floodplain of Janes Creek immediately downstream of Alliance Avenue in the City of Arcata, Humboldt County, California.

On May 21, 2018, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Janes Creek at Alliance Avenue Fish Passage Improvement Project. On August 20, 2018, additional information was submitted and the NOI was deemed complete. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review

(section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID No. 1B180077WNHU; ECM PIN No. CW-848343) for coverage under the General 401 Order on October 3, 2018.

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

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

**OCCUPATIONAL SAFETY AND  
HEALTH STANDARDS BOARD**

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

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

**PUBLIC MEETING:**

On **July 18, 2019**, at 10:00 a.m.  
in Room 358 of the County Administration Center  
1600 Pacific Highway, San Diego, California.

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

**BUSINESS MEETING:**

On **July 18, 2019**, at 10:00 a.m.  
in Room 358 of the County Administration Center  
1600 Pacific Highway, San Diego, California.

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

**DISABILITY ACCOMMODATION NOTICE:**  
Disability accommodation is available upon request. Any person with a disability requiring an accommoda-

tion, 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.

**RULEMAKING PETITION  
DECISIONS**

**BOARD OF PAROLE HEARINGS**

**RESPONSE TO PETITION TO ADOPT,  
AMEND, OR REPEAL A REGULATION  
PURSUANT TO GOVERNMENT CODE  
SECTIONS 11340.6 AND 11340.7**

**BPH PETITION RESPONSE 2019-03**

The Board of Parole Hearings (Board) Legal Division received a Petition to Adopt, Amend, or Repeal a Regulation under Government Code sections 11340.6 and 11340.7 from petitioner Kristin Himmelberger on April 12, 2019. In accordance with subdivision (a) of section 11340.7, this document serves as the board’s response to the petition.

The following information is provided with the response in compliance with subdivision (d) of Government Code section 11340.7:

1. **NAME OF AGENCY:** Board of Parole Hearings
2. **PARTY SUBMITTING THE PETITION:** Kristen Himmelberger (K40664)
3. **PROVISIONS OF THE CALIFORNIA CODE OF REGULATIONS REQUESTED TO BE AFFECTED:** Petitioner requests the board to

amend California Code of Regulations, title 15, section 2402.

4. **REFERENCE TO AUTHORITY TO TAKE THE ACTION:** The petitioner cites to the Board’s general rulemaking authority under Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 to promulgate, amend, or repeal regulations in division 2 of title 15 of the California Code of Regulations.
5. **REASONS SUPPORTING THE AGENCY’S DECISION:** Petitioner requested the Board amend California Code of Regulations, title 15, section 2402, subdivision (a) due to a lack of clarity. The Board fully reviewed petitioner’s request as well as petitioner’s explanation for the request.

**Petitioner’s request is DENIED.** California Code of Regulations, title 15, section 2402, subdivision (a) provides in relevant part, “Regardless of the length of time served, a prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.” (Cal. Code Regs., tit. 15, § 2402, subdivision (a).) Petitioner argues that the term “unreasonable risk” lack clarity because it does not have a meaning generally familiar to those directly affected by the statute. Petitioner requests that the Board amend Section 2402, subdivision (a) to define “unreasonable risk” of danger to mean “an unreasonable risk that a prisoner will commit a new violent felony within the meaning of Penal Code section 667.5.” However, petitioner’s allegation is unsupported.

As an initial matter, the Community Release Board, which was a predecessor agency to the Board of Parole Hearings, adopted title 15, section 2402, including subdivision (a). In adopting this regulation, the Community Release Board relied on Penal Code section 3041 for authority and reference, as is reflected in the history note of section 2402. Penal Code section 3041, as it previously existed, required the board to “establish criteria for the setting of parole dates.”

The APA was enacted by statute in 1979. Section 2402 of title 15 was filed with the Secretary of State on September 8, 1981, and took effect thirty days later. It was subsequently published in the California Code of Regulations (Register 1981, No. 37). Since the Community Release Board adopted this regulation after the enactment of the APA, the Community Release Board met all APA requirements. Under the APA, the California Government Code section 11343.6 states:

The filing of a certified copy of a regulation . . . with the Secretary of State raises the rebuttable presumptions that:

- (a) It was duly adopted.



(b) It was duly filed and made available for public inspection at the day and hour endorsed on it.

(c) All requirements of this chapter [the APA] and the regulations of the office relative to such regulation have been complied with.

(d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

Therefore, California Code of Regulations, title 15, section 2402, subdivision (a) is presumed to have been duly adopted and consistent with the statutory duties it was intended to clarify.

Moreover, the California Supreme Court has expressly discussed and relied on the “unreasonable risk” to public safety legal standard in reaching its decisions regarding cases related to parole suitability, which demonstrates the Supreme Court’s approval of the standard. (See *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal.4th 1241.) Specifically, the Supreme Court provided, “[T]he Board or the Governor may base a denial-of-parole decision upon the circumstances of the offense, or upon other immutable facts such as an inmate’s criminal history, but some evidence will support such reliance only if those facts support the ultimate conclusion that an inmate continues to pose an unreasonable risk to public safety.” (*Lawrence, supra*, 44 Cal.4th at 1221.) In addition, the Supreme Court has clarified that the regulations are “designed to guide the Board’s assessment of whether the inmate poses ‘an unreasonable risk of danger to society if released from prison,’ and thus whether he or she is suitable for parole.” (*Shaputis, supra*, 44 Cal.4th at 1258.) Of importance, neither the Penal Code nor relevant case law supports petitioner’s proposition that “unreasonable risk” is limited only to the risk of an inmate committing a new violent crime.

Consequently, the board DENIES petitioner’s request because petitioner’s allegation is not supported by current law.

**6. BOARD CONTACT PERSON:**

**George Bakerjian**  
 Staff Attorney  
 Board of Parole Hearings  
 P. O. Box 4036  
 Sacramento, CA 95812-4036  
 Office: (916) 322-6729  
 Fax: (916) 322-3475  
 BPH.Regulations@cdcr.ca.gov

**7. NOTICE TO INTERESTED PERSONS:**  
 Under subdivision (d) of Government Code section 11340.7, the board will provide a copy of this decision to the Office of Administrative Law for publication in the California Regulatory Notice Register. Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the board. In submitting such a request, please reference **BPH PETITION RESPONSE 2019-03** in the request.

**DATE OF DECISION: May 7, 2019**

**BOARD OF PAROLE HEARINGS**

**RESPONSE TO PETITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO GOVERNMENT CODE SECTIONS 11340.6 AND 11340.7**

**BPH PETITION RESPONSE 2019-04**

The Board of Parole Hearings (Board) Legal Division received a Petition to Adopt, Amend, or Repeal a Regulation under California Government Code sections 11340.6 and 11340.7 from petitioner Thaddeus Boudreaux on April 24, 2019. In accordance with subdivision (a) of section 11340.7, this document serves as the Board’s response to the petition.

The following information is provided with the response in compliance with subdivision (d) of Government Code section 11340.7:

1. **NAME OF AGENCY:** Board of Parole Hearings
2. **PARTY SUBMITTING THE PETITION:** Thaddeus Boudreaux (J08886)
3. **PROVISIONS OF THE CALIFORNIA CODE OF REGULATIONS REQUESTED TO BE AFFECTED:** Petitioner requested the Board add provisions to the California Code of Regulations, title 15 implementing California Penal Code sections 3051, subdivisions (d), (e), and (f)(1) and 4801, subdivision (c) concerning parole consideration hearings for qualified youth offenders and the youth offender factors.
4. **REFERENCE TO AUTHORITY TO TAKE THE ACTION:** Petitioner cited authority under Penal Code sections 3051. Further, the Board acknowledges general rulemaking authority under Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 to promulgate, amend, or repeal regulations in division 2 of title 15 of the California Code of Regulations.
5. **REASONS SUPPORTING THE AGENCY’S DECISION:** Petitioner requests the Board add

provisions to the California Code of Regulations, title 15 implementing the youth offender parole hearing process under Penal Code sections 3051 and 4801(c) to provide qualified youth offenders with a meaningful opportunity for release.

Petitioner's request is **GRANTED**, in that the Board is already in the process of enacting regulations implementing, interpreting, and specifying the provisions of Penal Code sections 3051 and 4801(c). On December 24, 2018, the Board filed regulation package BPH RN 18-02 with the Office of Administrative Law and notice of the filing was published in the California Regulatory Notice Register on January 4, 2019. The proposed regulations implement the youth offender parole hearing process created by Penal Code sections 3051 and 4801(c), and are still undergoing the rulemaking process outlined by the California Administrative Procedure Act. (Gov. Code, §§ 11340 et. seq.)

While the proposed youth offender regulations are not yet in effect, the Board is already providing youth offender parole hearings as mandated under the provisions of Penal Code sections 3051 to qualified youth offenders. The Board also requires hearing panels conducting parole consideration hearings for qualified youth offenders to give great weight to the youth offender factors, as required by Penal Code section 4801(c). Once enacted, the proposed regulations will clarify the Board's implementation of these processes.

**6. BOARD CONTACT PERSON:**

**Christopher Hoeft**

Staff Attorney  
Board of Parole Hearings  
P. O. Box 4036  
Sacramento, CA 95812-4036  
Office: (916) 322-6729  
Fax: (916) 322-3475  
BPH.Regulations@cdcr.ca.gov

**7. NOTICE TO INTERESTED PERSONS:**

Under subdivision (d) of Government Code section 11340.7, the Board will provide a copy of this decision to the Office of Administrative Law for publication in the California Regulatory Notice Register. Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the Board. In submitting such a request, please reference **BPH PETITION RESPONSE 2019-04** in the request.

**DATE OF DECISION: May 17, 2019**

**DEPARTMENT OF  
CORRECTIONS AND REHABILITATION**

**NOTICE OF DECISION ON  
PETITION TO AMEND REGULATIONS**

Pursuant to Government Code 11340.7

**Petitioner**

Brian Barnett, AS-7182

**Department Contact Person**

Please direct any inquiries regarding this action to Ying Sun, Associate Director, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

**Availability of Petition**

The petition to amend regulations is available upon request directed to the Department's contact person.

**Authority**

Penal Code Sections 5054 and 5058

**Provisions of California Code of Regulations  
Affected**

Title 15, Crime Prevention and Corrections  
Division 3, Adult Institutions, Programs and Parole

**Summary of Petition and Department Decision**

**Section 3054**

**Petitioner's Request:** Amend Section 3054, Religious Diet Program, to adopt new provisions establishing that inmates who are in the process of being transferred between institutions shall be provided with their approved Religious Diet meal during layovers. Petitioner requests the adoption of new provisions to establish that an inmate's Religious Diet status shall be transmitted along with other required information such as medical or custody status when an inmate is being transferred.

**Reason for Request:** Petitioner states that he did not receive his authorized Religious Diet meal while he was on a layover while being transferred between two institutions. Petitioner states that while being transferred from Calipatria State Prison to California State Prison — Los Angeles, the Department bus in which he was travelling stopped for an overnight layover at Wasco State Prison (WSP). Petitioner states that he informed staff at WSP that he is authorized to receive kosher meals, but was not provided with the authorized meal during the layover. Petitioner states this problem would be eliminated if the inmate's Religious Diet status was

transmitted in hard copy form along with medical and other records.

**Department's Response:** The Secretary of CDCR denies the petitioner's request in its entirety. Sections 3054 through 3054.4 regarding the Religious Diet Program are sufficiently clear to ensure the issuance of approved religious diets to inmates who are in transit between institutions, and therefore do not need amendment. Subsection 3054.4(b)(9) establishes that the Chaplain or designated representative of the Religious Review Committee shall, upon making a determination that an inmate is eligible for a religious diet, provide the inmate with a CDCR Form 3030-B, Religious Diet Card. Subsection 3054.4(c)(1) establishes that inmate participants shall show their Religious Diet Card when receiving their approved religious diet.

If any inmate believes he/she did not receive their authorized religious diet meal, the inmate may file an appeal pursuant to California Code of Regulations, Title 15, Division 3, Article 8.

<p><b>SUMMARY OF REGULATORY ACTIONS</b></p>
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**REGULATIONS FILED WITH  
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2019-0422-01  
**CALIFORNIA HEALTH FACILITIES FINANCING  
 AUTHORITY**  
 Investment in Mental Health Wellness Grant Program

This action makes permanent the emergency regulations adopted to implement the Investment in Mental Health Wellness Grant Program, within the Mental Health Wellness Act of 2013, specific to the needs of children and youth. The regulations establish the application process, selection criteria, eligible costs, minimum and maximum grant amounts, appeal process, and reporting requirements for grants awarded to local government and nonprofit entities for the purpose of increasing mental health service capacity for children and youth in the following service domains: crisis intervention and stabilization, crisis residential treatment, mobile crisis support teams, and family respite care.

Title 4  
 ADOPT: 7313, 7314, 7315, 7316, 7317, 7318, 7319, 7319.1, 7320, 7321, 7322, 7323, 7324, 7325, 7325.1, 7326, 7327, 7328, 7329  
 Filed 05/20/2019  
 Effective 05/20/2019  
 Agency Contact: Sondra Jacobs (916) 653-2799

File# 2019-0411-01  
**CALIFORNIA HIGHWAY PATROL**  
 Removal of Duplicative Title 26 Toxics Regulations  
 This action by the California Highway Patrol removes regulations contained in title 26 of the California Code of Regulations that are duplicative of regulations contained in title 13.

Title 26  
 REPEAL: 13-1150, 13-1150.1, 13-1150.2, 13-1150.3, 13-1150.4, 13-1150.5, 13-1151, 13-1151.1, 13-1151.2, 13-1151.3, 13-1151.4, 13-1151.5, 13-1151.5.1, 13-1151.6, 13-1151.7, 13-1151.8, 13-1151.8.1, 13-1151.8.2, 13-1151.8.3, 13-1151.8.4, 13-1151.9, 13-1151.9.1, 13-1151.10, 13-1151.10.1, 13-1152.1, 13-1152.2, 13-1152.2.1, 13-1152.3, 13-1152.3.1, 13-1152.4, 13-1152.4.1, 13-1152.4.2, 13-1152.5, 13-1152.6, 13-1152.6.1, 13-1152.7, 13-1152.7.1, 13-1153, 13-1160, 13-1160.1, 13-1160.2, 13-1160.3, 13-1160.4, 13-1160.5, 13-1161, 13-1161.1, 13-1161.2, 13-1161.3, 13-1161.6, 13-1161.7, 13-1162, 13-1162.1, 13-1163, 13-1163.1, 13-1164, 13-1166, 13-1167, 13-1200, 13-1202.1, 13-1216  
 Filed 05/20/2019  
 Agency Contact: David Kelly (916) 843-3400

File# 2019-0507-01  
**CALIFORNIA HIGHWAY PATROL**  
 Explosives Routes and Stopping Places  
 This action amends three maps to add two required inspection stops in the Nipton and Jacumba areas, and add one inspection stop to the Carson area.

Title 13  
 AMEND: 1152.3.1, 1152.5, 1152.7  
 Filed 05/15/2019  
 Effective 05/15/2019  
 Agency Contact: Tian-Ting Shih (916) 843-3400

File# 2019-0425-03  
**CALIFORNIA HORSE RACING BOARD**  
 Presence of Clenbuterol in Quarter Horses  
 As changes without regulatory effect, the California Horse Racing Board is amending the Veterinarian Report form (CHRB-24) to specify that time must be reported in a "00:00" format and add check boxes to the

column where the veterinarian is required to check if the horse is racing on the day the Report is completed.

Title 4  
AMEND: 1866.1  
Filed 05/16/2019  
Agency Contact: Rick Pimentel (916) 274-6043

File# 2019-0418-01  
CALIFORNIA STATE UNIVERSITY  
Catastrophic Leave Donation Program

This action by the Board of Trustees of the California State University, submitted to OAL for a courtesy filing with the Secretary of State and for printing in the California Code of Regulations, amends several sections dealing with the Catastrophic Leave Donation Program. This action is exempt from the Administrative Procedure Act under Education Code section 89030(b) and takes effect upon filing with the Secretary of State under Education Code section 89030.1.

Title 5  
AMEND: 42930, 42931, 42932, 42933  
Filed 05/22/2019  
Effective 05/22/2019  
Agency Contact: Jason Taylor (562) 951-4500

File# 2019-0409-01  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION  
Provisions of Care and Treatment Exclusions

This timely certificate of compliance action makes permanent the amendments made in OAL File Nos. 2018-0718-02EON and 2018-1218-04EON. The action amends two sections regarding the basis for providing health care services including definitions and conditions that may be excluded from care.

Title 15  
AMEND: 3999.98, 3999.200  
Filed 05/20/2019  
Effective 05/20/2019  
Agency Contact: Doug Dinnell (916) 691-3836

File# 2019-0506-01  
DEPARTMENT OF HOUSING AND COMMUNITY  
DEVELOPMENT  
Income Limits

This regulatory action by the Department of Housing and Community Development (Department) is the annual update of income limits for households of varying sizes. The Department transmitted this action to the Office of Administrative Law (OAL) for filing with the Secretary of State and publishing in the California Code

of Regulations pursuant to Health and Safety Code section 50093. This filing is exempt from the rulemaking requirements of Articles 5 and 6 of Chapter 3.5 of the Administrative Procedure Act, and, therefore, is not subject to OAL's review. (Health and Saf. Code, sec. 50093.) This regulation is effective May 6, 2019, the date the regulations were filed with OAL, pursuant to Health and Safety Code section 50093.

Title 25  
ADOPT: 6932  
REPEAL: 6932  
Filed 05/21/2019  
Effective 05/06/2019  
Agency Contact: Zach Olmstead (916) 263-5883

File# 2019-0502-02  
DEPARTMENT OF JUSTICE  
Department of Business Oversight Bond

This action by the Department of Justice is a request to file with the Secretary of State the "Student Loan Servicing Act Licensee Bond" form of the Department of Business Oversight and to print the title of the adopted bond form in the California Code of Regulations.

Title 11  
ADOPT: 31.27  
Filed 05/22/2019  
Effective 05/22/2019  
Agency Contact: Cara M. Porter (415) 510-3508

File# 2019-0424-02  
DEPARTMENT OF MOTOR VEHICLES  
Ignition Interlock Devices

This resubmittal action amends the Ignition Interlock Device (IID) Program to implement statutory changes and adopt and amend related forms and procedures.

Title 13  
ADOPT: 120.03, 125.21, 128.00, 128.01, 128.02  
AMEND: 120.00, 124.92, 124.95, 125.00, 125.02, 125.12, 125.16, 125.18, 125.20, 125.22, 127.00, 127.02, 127.04, 127.08, 127.10  
Filed 05/21/2019  
Effective 05/21/2019  
Agency Contact: Randi Calkins (916) 657-8898

File# 2019-0429-02  
DEPARTMENT OF REAL ESTATE  
Conflict-of-Interest Code

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

Title 10  
 AMEND: 3200  
 Filed 05/22/2019  
 Effective 06/21/2019  
 Agency Contact: Daniel Kehew (916) 263-8681

File# 2019-0408-02  
 FRANCHISE TAX BOARD  
 Definitions (Check the Box Regulations)  
 The Franchise Tax Board filed this rulemaking action to amend three regulations and adopt one regulation that address the classification of business entities for tax purposes to make these regulations consistent with corresponding federal regulations as in effect May 1, 2014, as required by Revenue and Taxation Code section 23038(b)(2)(B)(i).

Title 18  
 ADOPT: 23038(b)-5  
 AMEND: 23038(b)-1, 23038(b)-2, 23038(b)-3  
 Filed 05/20/2019  
 Effective 07/01/2019  
 Agency Contact: Christy Keith (916) 845-6080

File# 2019-0415-01  
 NEW MOTOR VEHICLE BOARD  
 Conflict-of-Interest Code  
 This is conflict-of-interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 13  
 AMEND: 599  
 Filed 05/21/2019  
 Effective 06/20/2019  
 Agency Contact:  
 Danielle R. Phomsopha (916) 327-3129

File# 2019-0410-01  
 STATE WATER RESOURCES CONTROL BOARD  
 San Francisco Bay BP Pescadero-Butano Watershed  
 Sediment TMDL

On June 13, 2018, the San Francisco Bay Regional Water Quality Control Board adopted Resolution R2-2018-0027, amending the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) by establishing a total maximum daily load (TMDL) for sediment in the Pescadero-Butano watershed. The State Water Resources Control Board approved the Basin Plan amendment in Resolution No. 2018-0058 on December 11, 2018.

Title 23  
 ADOPT: 3919.19  
 Filed 05/21/2019  
 Effective 05/21/2019  
 Agency Contact:  
 Setenay Bozkurt Frucht (510) 622-2388

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

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

