



California Regulatory Notice Register

REGISTER 2020, NUMBER 6-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

FEBRUARY 7, 2020

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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

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

TITLE 2. SECRETARY OF STATE

Statewide Voter Registration System

NOTICE IS HEREBY GIVEN that the Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than 5:00 p.m. on March 24, 2020.

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 contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons 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.

Public Comment Period: February 7, 2020, through March 24, 2020.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code and Sections 10 and 2168, Elections Code.

Reference cited: National Voter Registration Act of 1993, 52 U.S.C. Section 20507; Help America Vote Act of 2002, 52 U.S.C. Sections 20102, 20505, 21083,

Pub.L. No. 107-252, Section 303(a) (October 29, 2002) 116 Stat. 1666, 42 U.S.C Section 15483; Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Sections 20302, et seq.; Voting Accessibility for the Elderly and Handicapped Act, 52 U.S.C. Section 20102(1)(b)(2)(B)(ii); California Elections Code Sections 323, 338.5 2000, 2100, 2101, 2102, 2150, 2153, 2154, 2155, 2166, 2166.5, 2166.7, 2168, 2170, 2187, 2189, 2193, 2201, 2205, 2206, 2212, 2220, 2221, 2223, 2224, 2225, 2226, 2227, 2263, 2500, 2501, 3000-3026, 3400, 3402, 3500 12223, 12241, 12260, 12281, 12286, 14310, 14311; Civil Code Sections 1798, et seq.; California Code of Regulations Title 2, Division 7, Chapter 1, Article 3.5 Section 20025, 20026; State Administration Manual Sections 5320, 5320.1, 5320.2, 5321.1; National Institute of Standards and Technology Special Publication 800-175B; Federal Information Processing Standards Publication 140-2.

INFORMATIVE DIGEST

A. Informative Digest

The Help America Vote Act of 2002 (HAVA) (52 U.S.C. 21083, et seq.), which was signed into law on October 29, 2002, provides federal funding to states conditioned upon the planned implementation of certain requirements, including the establishment of a statewide voter registration system database. Section 21083 of HAVA requires that each state having voter registration requirements shall, through the chief state elections official, establish a single, uniform, official, centralized, interactive computerized statewide voter registration list. In accordance with HAVA requirements, a new statewide voter registration database has been developed by the SOS and implemented in all 58 counties. These proposed new regulations will replace the current established standards and procedures used by counties for processing, transmitting, and maintaining voter registration records. These new regulations comply with the requirements of HAVA Section 21083 and assure the uniform application and administration of state election laws.

The purpose of repealing Title 2, Division 7, Chapter 2, Statewide Voter Registration Database, of the California Code of Regulations, and replacing it with Title 2, Division 7, Chapter 1, Article 2.5 of the California Code of Regulations is as follows:

1. To provide guidance to county elections officials on the procedures for processing voter registrations for all registrants including pre-registrants and confidential voters.
2. To eliminate outdated requirements that are no longer relevant to the processing of voter registrations.

3. To establish Election Management System (EMS) standards for certification.
4. To establish voter registration security requirements.
5. To ensure that EMS vendors adhere to any applicable federal and state laws, the statewide voter registration system EMS Integration Specifications, and the Data Standards, and participate in ongoing verification of compliance with these standards.
6. To require regular synchronization checks that identify and resolve data differences between the statewide voter registration system and county systems.
7. To clarify list maintenance activities such as matching voter records, processing Department of Motor Vehicle change of address records, felon and death records, and inactivating and cancelling voter registrations.
8. To ensure that the Report of Registration and Official List contain the most current list of voters that appears in their correct districts and precincts and accurately reflect the voters in each county.
9. To provide transparency for the public on voter registration and voter participation.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The proposed regulations were drafted for the purpose of addressing the new statewide voter registration system processes and to give guidance that will ensure data accuracy and consistency across the state. These changes amend definitions, define processes and add new procedures to conform to requirements needed for processing data in the new statewide voter registration system. These proposed regulations also eliminate outdated requirements that are no longer relevant to the processing of voter registrations. In addition, these regulations will provide transparency for voters to view their voter participation history and to determine if their vote by mail or provisional ballots were processed.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation of regulations in this area, the SOS has determined that these are the only regulations dealing with statewide voter registration system. This regulatory proposal updates existing regulations relating to the statewide voter registration database. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

D. Documents Incorporated by Reference:

- VoteCal System EMS Integration and Data Exchange Specifications Document, revised June 29, 2016
- VoteCal Data Standards, revised January 27, 2020
- California Application for Certification of an Election Management System, version 1.0
- National Institute of Standards and Technology Special Publication 800–175B, published August, 2016
 - Readily available online at: <https://csrc.nist.gov/publications/detail/sp/800-175b/final>
- Federal Information Processing Standards Publication 140–2, published May 25, 2001
 - Readily available online at: <https://csrc.nist.gov/publications/detail/fips/140/2/final>

E. Documents Relied Upon in Preparing the Regulations:

- Sections 20250 through 20253 of Division 7 of Title 2 of California Code of Regulations
- Brennan Center for Justice report titled “Preparing for Cyberattacks and Technical Failures: A Guide for Elections Officials” (https://www.brennancenter.org/sites/default/files/2019-12/2019_12_ContingencyPlanning.pdf)
- Election Security Advance Planning Checklist prepared by Brennan Center for Justice (https://www.brennancenter.org/sites/default/files/2019-12/2019_12_ContingencyPlanningChecklist_Final.pdf)
- Election Security Recourse Library developed by the Department of Homeland Security. (<https://www.dhs.gov/publication/election-security-resource-library?topic=election-security>)
- CIS Critical Security Controls, 41st Edition (dated Winter, 2016) (<https://www.cisecurity.org/white-papers/cis-controls-2016-poster/>)

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The SOS has made the following initial determinations:

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate on Local Agencies and School Districts: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

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

Cost Impact on Representative Private Person or Business: The SOS 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.

Effect on Small Business: The SOS has determined that the proposed regulations would not affect small businesses. The proposed regulations are updating the regulations to conform to current business practices. The proposed regulations affect counties and individuals, neither of whom are small businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SOS has determined that the proposed regulations are (1) unlikely to create or eliminate any jobs in California, (2) unlikely to create or eliminate any California businesses, and (3) unlikely to result in the expansion of businesses currently doing business within California. The proposed regulations reflect updated business practices for the new statewide voter registration system. These regulations do not significantly change existing business practices such that jobs or businesses would be created or eliminated.

Benefits of the Proposed Regulations: The benefits of the regulation to the health and welfare of California residents lies in the fact that these regulations will eliminate outdated requirements, define processes, add new procedures and give guidance to ensure data accuracy and data constancy statewide. These regulations will ultimately benefit California residents as they will expand the opportunities for them to participate in the democratic process by providing voters, via the SOS website, the ability to determine if they are registered to vote, their political party and language preference, if their participation history was recorded and the status of their vote by mail or provision ballot.

CONSIDERATION OF ALTERNATIVES

The SOS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome

to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments relevant to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

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

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

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

Raj Bathla
Secretary of State
1500 11th St., 5th Floor
Sacramento, CA 95814
(916) 695-1597
rbathla@sos.ca.gov

The backup contact person is:

Taylor Kayatta
Secretary of State
1500 11th St., 4th Floor
Sacramento, CA 95814
(916) 695-1530
tkayatta@sos.ca.gov

Website Access: Materials regarding this proposal can be found at: <https://www.sos.ca.gov/administration/regulations/proposed-regulations/>.

TITLE 10. DEPARTMENT OF
INSURANCE

REG-2020-00001

CALIFORNIA AUTOMOBILE
ASSIGNED RISK PLAN SIMPLIFIED
MANUAL OF RULES AND RATES

SUBJECT OF HEARING

California's Insurance Commissioner will hold a public hearing to consider the application of the California Automobile Assigned Risk Plan ("CAARP" or "Plan") for changes to the Simplified Manual of Rules and Rates.

AUTHORITY AND REFERENCE TO
ADOPT RATES

The Commissioner will consider the application pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner's decision on the application will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Government Code Section 11340.9(g) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the application at the following date, time, and place:

Date:

March 25, 2020

Time:

1:00 p.m.

Place:

**Department of Insurance Hearing Room
300 South Spring Street
Los Angeles, CA 90013**

The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

ACCESS TO HEARING ROOM

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 (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Emily Gallagher, Attorney
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street 21st Floor
San Francisco, CA 94105
gallagher@insurance.ca.gov
Telephone: (415) 538-4108

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on March 25, 2020**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regula-

tions, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Spring Street 12th Floor
Los Angeles, CA 90013
Telephone: (213) 346–6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CA 20–04–A

Currently, the definition of married does not include a classification as a person is/or becomes widowed. This causes confusion and can lead to policy being mis-rated. The change is necessary to ensure that the insured will not receive a change in classification or premium in the event he/she becomes widowed.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require re-

imbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal 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 proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not affect private persons or entities.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the application will not affect housing costs.

IMPACT ON SMALL BUSINESS

The proposed rate changes will not affect small businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The application would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner 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 or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's website.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

TITLE 10. DEPARTMENT OF INSURANCE

REG-2020-00003

CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN PLAN OF OPERATIONS

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara will hold a public hearing to address the proposed amendments to the California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

AUTHORITY TO ADOPT RULES AND PROCEDURES AND REFERENCE

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner's decision on the proposed changes will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Insurance Code Section 11620(c) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the application at the following date, time, and place:

Date:
March 25, 2020

Time:
1:00 p.m.

Place:
Department of Insurance Hearing Room
300 South Spring Street
Los Angeles, CA 90013

The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

ACCESS TO HEARING ROOM

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 (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS:
 AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney
 California Department of Insurance
 Rate Enforcement Bureau
 45 Fremont Street, 21st Floor
 San Francisco, CA 94105
riordanm@insurance.ca.gov
 Telephone: (415) 538-4226
 Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Emily Gallagher, Attorney
 California Department of Insurance
 Rate Enforcement Bureau
 45 Fremont Street 21st Floor
 San Francisco, CA 94105
gallagher@insurance.ca.gov
 Telephone: (415) 538-4108

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on March 25, 2020**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
 Office of the Public Advisor
 300 Spring Street 12th Floor
 Los Angeles, CA 90013
 Telephone: (213) 346-6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT
 OVERVIEW

CA 20-01

Currently CAARP mails assignment notices for CAARP applications to the producer and applicant when they are submitted electronically. The producer has the option to print an electronic assignment notice. Since producers have electronic access to assignment notices, the Plan's mailing of these documents to the producer is no longer necessary.

CAARP proposes eliminating mailing the assignment notice to producers for applications submitted electronically. Producers will have real time notification when an assignment is made, insureds will still have assignment notices mailed to them, and assignment notices for CAARP applications submitted through the alternate application submission procedure will continue to be mailed to the insured, company and the producer. Finally elimination of the mailing of the

assignment notice to the producer will reduce the CAARP's mailing budget.

CA 20-02

Plan rules currently do not address how unreported or inaccurate voluntary base data should be handled for insurers who are not affiliated with a statistical agent. In addition, current Plan rules do not provide a consistent method to estimate a company's unreported or inaccurate data when statistical agent efforts to obtain the data are ongoing or when the insurer reports directly.

To address this CAARP proposed new provisions clarifying how estimation of voluntary data for companies who do not report data or provide inaccurate data will be handled. This will help resolve any matters related to unreported or inaccurate voluntary data. Allowing CAARP to estimate a company's data, when it is not received, by accessing statistical data found in the company's NAIC Annual Statement Automobile Written premium. Finally a standard procedure for estimation of an insurer's unreported or inaccurate data is introduced.

CA 20-03

CAARP is the insurer of last resort for drivers who cannot get insurance anywhere else. Companies that are licensed to sell auto insurance in California must also participate in the CAARP. Companies are assigned risk based on their percentage of policies it writes in the voluntary market. It has come to CAARP's attention that some companies do not address their assignment obligation until they develop a quota and receive an assignment(s). Although the Plan monitors and contacts companies who develop a quota for the first time, a temporary assignment restriction must be placed until the company decides how to address its quota obligation.

CAARP proposes expanding the CAARP Plan of Operations to clarify how the Plan handles these companies and to introduce a fee for applications returned to the Plan.

CA 20-04

Currently, the definition of married does not include a classification as a person is/or becomes widowed. This causes confusion and can lead to policy being mis-rated. The change is necessary to ensure that the insured will not receive a change in classification or premium in the event he/she becomes widowed.

CA 20-05

Currently CAARP rules do not allow CAARP to reject passenger auto or commercial auto applications when misleading information is provided or the applicant and/or producer have failed to disclose requested information pertinent to the underwriting and rating of the policy.

CAARP proposes expanding the criteria review of applications prior to assignment. This will include pro-

visions that will allow the Plan to reject applications when the application provides misleading information appears on the application or when the applicant and/or producer fail to disclose information pertinent to the underwriting and rating of the policy.

The Plan will be allowed to reject a commercial application for an applicant requesting federal filings or endorsement when a completed CAIP Inspected Units Form either is not provided with the application or has not been thoroughly completed.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal 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 proposal will have no effect on the creation or elimination of jobs in California,

the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

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The proposed rate changes could affect small businesses.

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The application would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner 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 or would be as effective and less burdensome to affected private persons than the proposed action.

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TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection

or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's website.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

**TITLE 10. DEPARTMENT OF
INSURANCE**

REG-2020-00002

**REVISIONS TO CALIFORNIA LOW COST
AUTOMOBILE PLAN OF OPERATIONS**

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara will hold a public hearing to address the proposed amendments to the California Low Cost Automobile (“CLCA”) Plan of Operations.

**AUTHORITY TO ADOPT RULES AND
PROCEDURES AND REFERENCE**

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner’s decision on the proposed changes will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Insurance Code Section 11620(c) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date:

March 25, 2020

Time:

1:00 p.m.

Place:

**Department of Insurance Hearing Room
300 South Spring Street
Los Angeles, CA 90013**

The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

ACCESS TO HEARING ROOM

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 (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Emily Gallagher, Attorney
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street 21st Floor
San Francisco, CA 94105
gallagher@insurance.ca.gov
Telephone: (415) 538-4108

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on March 25, 2020**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section

2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Spring Street 12th Floor
Los Angeles, CA 90013
Telephone: (213) 346-6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

LC 20-01

Currently CAARP mails assignment notices for Low Cost applications to the producer and applicant when they are submitted electronically. The producer has the option to print an electronic assignment notice. Since producers have electronic access to assignment notices, the Plan's mailing of these documents to the producer is no longer necessary.

CAARP proposes eliminating mailing the assignment notice to producers for applications submitted electronically. Producers will have real time notification when an assignment is made, insureds will still have assignment notices mailed to them, and assignment notices for Low Cost applications submitted through the alternate application submission procedure will continue to be mailed to the insured, company and the producer. Finally, elimination of the mailing of the assignment notice to the producer will reduce CAARP's mailing budget.

LC 20-02

Plan rules currently do not address how unreported or inaccurate voluntary base data should be handled for insurers who are not affiliated with a statistical agent. In addition, current Plan rules do not provide a consistent method to estimate a company's unreported or inaccurate data when statistical agent efforts to obtain the data are ongoing or when the insurer reports directly.

To address this CAARP proposed new provisions clarifying how estimation of voluntary data for companies who do not report data or provide inaccurate data will be handled. This will help resolve any matters related to unreported or inaccurate voluntary data. Allow CAARP to estimate a company's data, when it is not received, by accessing statistical data found in the compa-

ny's NAIC Annual Statement Automobile Written premium. Finally, a standard procedure for estimation of an insurer's unreported or inaccurate data is introduced.

LC 20-03

The CLCA is a program that offers eligible applicants insurance at a discounted rate. Companies that are licensed to sell auto insurance in California must also participate in the CLCA. Companies are assigned risk based on their percentage of policies it writes in the voluntary market. It has come to CAARP's attention that some companies do not address their assignment obligation until they develop a quota and receive an assignment(s). Although the Plan monitors and contacts companies who develop a quota for the first time, a temporary assignment restriction must be placed until the company decides how to address its quota obligation.

CAARP proposes expanding the LCA Plan of Operations to clarify how the Plan handles these companies and to introduce a fee for applications returned to the Plan.

LC 20-04

Currently, the definition of married does not include a classification as a person is/or becomes widowed. This causes confusion and can lead to policy being misrated. The change is necessary to ensure that the insured will not receive a change in classification or premium in the event he/she becomes widowed.

LC 20-05

The current definition of an eligible vehicle for Low Cost Program purposes does not extend to an otherwise eligible private passenger vehicle that is furnished to the applicant by another individual for personal use. Because the nonowned vehicle is not registered to the applicant or their spouse, the applicant is not eligible for a CA Low Cost Auto Policy.

CAARP proposes expansion of eligible vehicles to include a private passenger vehicle that is not registered to the applicant, insured, or their spouse that is furnished to the applicant or insured by another individual for personal use.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL
AGENCIES OR SCHOOL DISTRICTS OR
COSTS WHICH MUST BE REIMBURSED
PURSUANT TO GOVERNMENT CODE
SECTIONS 17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE AGENCY;
FEDERAL FUNDING**

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT ON
BUSINESSES AND THE ABILITY OF
CALIFORNIA BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal 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 proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACT ON PRIVATE
PERSONS OR ENTITIES**

The Insurance Commissioner has initially determined that the proposal will not affect private persons or entities.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The Insurance Commissioner has initially determined that the proposal will not affect small business.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The Insurance Commissioner has initially determined that specific technologies or equipment will be needed.

ALTERNATIVES

The Insurance Commissioner 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 or would be as effective as and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendments in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Text of Regulations are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's website.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

TITLE 13. CALIFORNIA HIGHWAY PATROL

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5, AMEND ARTICLE 1, SECTION 1200 AND ARTICLE 6, SECTION 1234

FEDERAL CONSISTENCY

(CHP-R-2018-01)

The California Highway Patrol (CHP) proposes to amend Sections 1200 and 1234 contained in Title 13, California Code of Regulations (CCR), to reflect changes to statutes in 2016 and 1989, respectively, related to consistency with Federal Motor Carrier Safety Regulations (FMCSR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title 13, CCR, Division 2, Chapter 6.5, contains the CHP motor carrier safety regulations; Article 1, Section 1200, contains definitions and general provisions; and Article 6, Section 1234, contains carrier requirements.

This rulemaking action proposes to amend Title 13, CCR, sections in order to align with current California Vehicle Code (CVC) sections and increase the competi-

tiveness of California carriers by eliminating or modifying, to the extent possible, regulations which conflict with updated federal regulations, reducing negative impacts on businesses. This rulemaking will also allow the CHP to remain consistent with FMCSR adopted by the United States Department of Transportation, and addresses inconsistencies and incompatibilities between state and federal regulations.

Anticipated Benefits of the Proposed Regulation:

The proposed regulations will continue to provide nonmonetary benefits by protecting the health, safety, and welfare of the public, transportation industry workers, and the environment. The proposed regulations provide the regulatory authority for enforcement efforts as they relate to requirements of the CVC, and current adopted federal regulations and hazardous materials regulations found in Title 49, Code of Federal Regulations (CFR), which directly improves the safety of the motoring public.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The CHP has determined this proposed regulation is neither inconsistent, nor incompatible, with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the CHP has concluded that these are the only regulations that concern the Federal Consistency.

PUBLIC COMMENTS

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

California Highway Patrol
Commercial Vehicle Section
Attention: Officer David Kelly
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until March 23, 2020.

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

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Re-

quests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 322-3154, or by calling the CHP, CVS, at (916) 843-3400. All requests for information should include the following information: 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 information is incomplete or illegible).

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

All documents regarding the proposed action are available through the CHP's website at 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 be posted on the CHP's website.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations, or questions regarding the substance of the proposed regulations, should be directed to Officer David Kelly or Sergeant Jaime Nunez, CHP, CVS, 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 nonsubstantive 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 ANALYSIS

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will impose no new mandate upon local agencies or school districts; (3) will involve no nondiscretionary costs 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 or eliminate jobs in the state of California, nor result in the elimination of existing businesses, nor create or expand businesses in the state

of California; (5) will continue to provide a nonmonetary benefit to the protection and safety of public health, employees, and safety to the environment by providing a regulatory basis for enforcement efforts as they relate to the CFR; and (6) will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The 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 regulation will not affect small businesses as the proposed amendments are either already required by federal regulation or are editorial in nature and are without regulatory effect. However, the regulated community is encouraged to respond during the public comment period of this regulatory process if significant impacts are identified.

ALTERNATIVES

In accordance with GC, Section 11346.5(a)(13), the CHP must determine 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.

The CHP invites interested persons 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 Sections 2402 and 34501 CVC.

REFERENCE

This action implements, interprets, or makes specific Sections 2402 and 34501 CVC.

**TITLE 16. BOARD OF
BEHAVIORAL SCIENCES**

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Supervision–Related Requirements

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
March 23, 2020

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 March 23, 2020, or must be received by the Board at the hearing.

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

Authority and Reference: Pursuant to the authority vested by section 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 4980.03, 4980.35, 4980.40, 4980.42, 4980.43, 4980.43.1, 4980.43.3, 4980.43.4, 4980.43.5, 4980.44, 4980.45, 4980.60, 4980.72, 4980.74, 4996.17, 4996.18, 4996.20, 4996.23, 4996.23.1, 4996.23.2, 4996.23.3, 4999.12, 4999.20, 4999.32, 4999.33, 4999.46, 4999.46.1, 4999.46.2, 4999.46.3, 4999.46.4, 4999.46.5, 4999.48, 4999.50, 4999.60, and 4999.61 of the BPC, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs), Licensed Clinical Social Workers (LCSWs), and Licensed Professional Clinical Counselors (LPCCs).

The Board also registers and regulates individuals gaining supervised experience toward meeting the requirements for licensure. This includes registered Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCCs) and Associate Clinical Social Workers (ASWs) and applicants pending registration. The Board also sets forth certain requirements for Marriage and Family Therapist Trainees and Professional Clinical Counselor Trainees.

- Existing law:
 - Specifies the number and types of supervised experience hours required for licensure and sets forth parameters regarding those hours (BPC sections 4980.43, 4996.23 and 4999.46, and Title 16, California Code of Regulations (16CCR) sections 1820 and 1833).
 - Specifies the requirements pertaining to supervision of individuals gaining hours of experience toward licensure, including:
 - Supervisor qualifications (BPC sections 4980.03(g), 4996.20(a) and 4999.12(h), and 16CCR sections 1821, 1833.1, 1870 and 1874).
 - Supervisor responsibilities and acceptable supervision practices (BPC sections 4980.43.1, 4980.43.3, 4980.43.5, 4996.20(b), 4996.21, 4996.23.2, 4999.46.1, 4999.46.3 and 4999.46.5, and 16CCR sections 1821, 1833.1 and 1870).
 - Direct supervisor contact (BPC sections 4980.43.2, 4996.23.1 and 4999.46.2).
 - Required documentation pertaining to supervision (BPC sections 4980.43.4, 4996.23.3 and 4999.46.4, and 16CCR sections 1820(e)(4), 1821(b), 1822, 1833(e), 1833.1(a) and 1870(a)).

This proposal would do the following:

- Make technical, nonsubstantive and clarifying changes.

- Create consistency in supervisor requirements and responsibilities among the three substantially equivalent license types.
- Set standards for documentation when a supervisor is deceased or becomes incapacitated prior to signing off on an applicant's supervised experience.
- Require supervisors to notify the Board that they are supervising and that they meet the qualifications to supervise.
- Require supervisors and supervisees to complete and sign a supervision agreement.
- Codify how completed experience hours shall be verified to the Board.
- Require supervisors to monitor for and address dynamics that could lead to ineffective supervision.
- Address requirements pertaining to temporary substitute supervisors.
- Provide for flexibility in supervisor ongoing training requirements by allowing for certain continuing professional development activities to count.
- Set forth parameters for situations where an individual gaining supervised experience has been placed in an agency by a temporary staffing agency.
- Allow licensees who hold an approved supervisor certification from one of several specified entities to be exempt from certain supervisor qualifications.
- Clarify requirements pertaining to supervision of experience gained outside of California and allow for flexibility in the supervisor's license title.
- Clarify who can supervise the experience required with couples, families or children that is necessary for an LPCC to obtain the "couples and families" specialty designation.

There is not an existing federal regulation or statute comparable to this proposal, as the Board's license types are regulated at the state level.

ANTICIPATED BENEFITS OF PROPOSAL

This proposal is expected to result in the following benefits:

- Provide clarity and consistency in the Board's regulations, and promote consistency in the laws between three substantially equivalent professions.
- Help protect consumers by strengthening requirements that help to ensure competent and

effective supervision and facilitate supervisee development and competency.

- Help protect the safety of the supervisee and protect supervisees from losing experience hours.
- Address supervisor shortages, expand job prospects for out-of-state licensees upon licensure in California and improve portability of experience hours from another state to California.
- Allow the Board to target communications with supervisors, and simplify and streamline a substitute supervisor's responsibilities.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board of Behavioral Sciences has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent or incompatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE

No forms have been incorporated by reference.

FISCAL IMPACT ESTIMATES

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

The fiscal effect associated with this proposal was addressed through a legislative Budget Change Proposal (BCP), which was approved for Fiscal Year (FY) 2019–2020. The BCP was based on costs and workload identified in the fiscal analysis for Assembly Bill (AB) 93 (Chapter 743, Statutes of 2018), which included the following estimates:

- \$82,000 in FY 2019–2020 and \$74,000 annually thereafter to fund a 1.0 management services technician (MST) to handle the new workload for data entry to document compliance with the proposed supervisor self-assessment. It was estimated that the regulations would be approved around January 2020, at which time the MST position would need to be established.
- Minor and absorbable enforcement workload increase related to ensuring the new supervision requirements are being met.
- Minor and absorbable costs for the Department of Consumer Affairs' Office of Information Services for executing technical functions related to these changes.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

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

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action would result from the following:

This proposal increases the initial supervisor training required from 6 hours to 15 hours (a 9-hour increase) for LMFTs and LPCCs. A survey of three supervisor training course providers found an average cost of \$76.05 for 9 hours of continuing education (CE). There are no new costs for LCSWs as current regulations already require a 15-hour initial supervisor training.

The proposal also newly implements 6 hours of continuing professional development (CPD) for supervisors, for all three license types, every two years while supervising. However, there will be no additional costs for LMFTs and LPCCs, as these professions already have a 6-hour ongoing supervisor training requirement, and the new options for CPD do not typically have associated costs.

LCSW supervisors currently do not have an ongoing training requirement. However, there would also be no cost to LCSWs. The new 6-hour CPD requirement would allow for CE courses to fulfill the requirement. CE courses for supervisors would count toward the 36 hours of CE that is currently required for all LCSWs every two years per BPC section 4996.22(a)(1). In addition, the other options for CPD do not typically have associated costs.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would affect small businesses. Many of the Board's licensees either own or work for a small business, and would need to ensure that the business, as well

as their supervisors and supervisees, comply with the new requirements. The proposal would benefit small businesses by providing clarity, consistency and flexibility in the Board's laws. Small businesses would also benefit from consistency in supervision requirements among substantially equivalent professions, as well as flexibility in supervisor qualifications and training requirements.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

- Analysis of creation/elimination of jobs: This proposal will not create or eliminate any jobs within California. The vast majority of the proposed amendments are for the purpose of clarifying, streamlining, or creating consistency or flexibility. The proposed amendments that are more substantial in nature simply impose new minor training requirements for supervisors every two years, new one-time paperwork requirements, and new yearly supervisee evaluations.
- Analysis of creation/elimination of businesses: This proposal will not create or eliminate any businesses in California for the reasons described above.
- Analysis of expansion of business: This proposal will not expand any businesses in California for the reasons described above.
- Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: This regulatory proposal will help protect consumers who are receiving mental health treatment from an individual who is not yet licensed by setting standards that lead to proper and effective supervision of the unlicensed individual. Requiring supervisors to create written procedures to assist in handling crises and emergencies will help protect the safety of both the supervisee and consumers. The proposal will have no effect on the State's environment.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

CONSIDERATION OF ALTERNATIVES

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person or by accessing the Board's website at www.bbs.ca.gov.

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

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

CONTACT PERSON

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

Name:

Christy Berger

Address:

1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834

Telephone Number:

(916) 574-7817

Fax Number:

(916) 574-8625

E-Mail Address:

Christy.Berger@dca.ca.gov

The backup contact person is:

Name:

Rosanne Helms

Address:

1625 N. Market Blvd., Suite S-200
Sacramento, CA 95834

Telephone Number:

(916) 574-7897

Fax Number:

(916) 574-8625

E-Mail Address:

Rosanne.Helms@dca.ca.gov

Website Access: Materials regarding this proposal can be found on the Board's website at https://www.bbs.ca.gov/about/law_reg.html.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy (Board) is proposing to take the action described in the Informative Digest. 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 on March 23, 2020.

The Board does not intend to conduct a Regulation Hearing on the matter, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in 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: Pursuant to the authority vested by Section 4005 of the Business and Professions Code (B and P) to implement, interpret, and make specific Sections 4081, 4105, and 4333 of the Business and Professions Code, the Board is proposing to amend Section 1707 of Article 2 of Division 17 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Board proposes to amend Section 1707 of Article 2 of Division 17 of Title 16 of the California Code of Regulations (CCR) for the purpose of amending the Board's regulation specific to waiver requirements for the off-site storage of records.

Existing pharmacy law specifies that protection of the public is the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions and generally authorizes the Board to adopt and amend rules and regulations necessary for the protection of the public pertaining to the practice of pharmacy. Additionally, existing law authorizes the Board to issue a license to a pharmacy.

Existing law specifies the record keeping requirements for the manufacture, sale, acquisition, receipt, shipment, and disposition of dangerous drugs or dangerous devices (B and P section 4081). Additionally, current law requires that records of acquisition and disposition of dangerous drugs or dangerous devices be stored in a readily retrievable form (B and P section 4105). Lastly, existing statute requires that pharmacies keep a record of any prescriptions filled on the licensed premises of the pharmacy and allows for the Board to grant a waiver of that requirement (B and P section 4333 (a) and (c)(1)).

Some pharmacies struggle to find space to store these paper records and still maintain a safe working environment for their employees. This proposal will allow the Board more discretion when approving a waiver and clarify that a waiver will allow storage of these records outside of the licensed area of the pharmacy.

ANTICIPATED BENEFITS OF PROPOSAL

This proposal will benefit a pharmacy that lacks sufficient space to store records within the licensed area of the pharmacy by allowing the records to be stored outside the licensed premises while maintaining public protection. Smaller pharmacies as well as high-volume pharmacies do not have the physical space on the licensed premises to store the amount of records required by licensing regulations. This proposal will help to create a safer work environment by allowing the Board discretion to grant a waiver of the storage requirement so that a pharmacy can avoid the fire hazard as well as the health and safety hazard of storing boxes of files in a pharmacy with inadequate space.

**CONSISTENCY AND COMPATIBILITY WITH
EXISTING STATE REGULATIONS**

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

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None.

Business Impact:

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

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None.

Effect on Small Business:

While the Board does not have nor does it 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. The proposed regulation does not require the use of specific computer software.

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

Impact on Jobs/New Businesses:

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

State of California because this regulation is related to the storage of records and not jobs.

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit worker safety because the proposed regulation will allow pharmacies to minimize health and safety hazards within the pharmacy by allowing the storage of records outside of the licensed area of the pharmacy.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments in writing relevant to the above determinations at the address listed for the Contact Person.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 2720 Gateway Oaks Drive, Ste. 100, Sacramento, California 95833, or from the Board of Pharmacy's website <http://www.pharmacy.ca.gov>.

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

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

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

CONTACT PERSON

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

Name:

Lori Martinez

Address:

2720 Gateway Oaks Drive, Ste. 100
Sacramento, CA 95833

Phone Number:

(916) 518-3078

Fax Number:

(916) 574-8618

E-Mail Address:

Lori.Martinez@dca.ca.gov

The backup contact person is:

Name:

Debbie Damoth

Address:

2720 Gateway Oaks Drive, Ste. 100
Sacramento, CA 95833

Phone Number:

(916) 518-3090

Fax Number:

(916) 574-8618

E-Mail Address:

Debbie.Damoth@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at the Board of Pharmacy's website: www.pharmacy.ca.gov.

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 on March 23, 2020.

The board has not scheduled a public hearing on this proposed action. The board will, however, hold a hear-

ing 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 the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Sections 4001.1 and 4005 of the Business and Professions Code authorize the board to adopt these regulations. The proposed regulations implement, interpret, and make specific sections 141, 490, 4022.5, 4022.6, 4022.7, 4036, 4038, 4053, 4112, 4115, 4161, 4200.5, 4202, 4207, 4231, 4300, 4301, 4301.5, 4302, 4303, 4303.1, 4311, 4316, and 4400 of the Business and Professions Code and section 11105 of the Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California State Board of Pharmacy (board) proposes to amend or repeal the regulatory language of 16 CCR sections 1702, 1702.1, 1702.2, and 1702.5 to consolidate all board license types to ensure that the board's regulations remain efficient and consistently applied to all license types, even those that may be created in the future.

Existing pharmacy law specifies that protection of the public is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions and generally authorizes the board to adopt and amend rules and regulations necessary for the protection of the public pertaining to the practice of pharmacy. Additionally, existing pharmacy law at 16 CCR sections 1702, 1702.1, 1702.2, and 1702.5 establish the license renewal requirements for board licensees. These regulatory sections are necessary to provide clarity to the regulated public with respect to the requirements and criteria used by the board to deem an application for renewal complete.

As currently written, the regulation sections require frequent amendments to incorporate each new licensing program as they are established. Amending regula-

tions is a time intensive process and the board has not been able to update the regulation as frequently as necessary. Since 2014, the board's regulatory jurisdiction has increased in size. In 2018 alone, the board's licensing types grew from 25 to 39. This proposal will simplify the regulatory language and consolidate the license types into two categories: (1) a premises or facility license and (2) an individual license, with an exception for the pharmacist and advanced practice pharmacist licensee, as these licensing programs have specialized continuing education requirements. Consolidating the regulations text to only two categories will provide clarity to the regulated public by increasing the readability of the regulations and ensure consistent application of the renewal requirements.

Additionally, as currently written, the regulations do not require all premises or facility license types to report disciplinary action taken by other government agencies to the board; this is only required of nonresident pharmacies and nonresident wholesalers. The proposed regulations would allow the board a mechanism to identify such discipline for all premises or facility license types. If a licensee has been disciplined by another agency, the board must be made aware of this discipline in order to investigate and ensure that the licensee does not pose a risk to the safety of California residents by continuing to operate.

ANTICIPATED BENEFITS OF PROPOSAL

This regulatory proposal benefits California residents because the proposed regulation will simplify the regulatory language which will provide clarity to the regulated public. A premises/facility cannot operate with an expired license and an individual cannot work with an expired license. These regulations will ensure that the requirements for a complete renewal application are clearly specified based on the license type (premises/facility or individual). This will help to ensure that licensees are submitting complete applications, which will allow for the timely renewal of licenses. Renewing licenses timely ensures that individuals can continue to work and premises/facilities can continue to distribute and/or furnish prescription medication to California residents. Additionally, the disclosure of discipline by all premises or facility licensees will allow the board to investigate the disciplinary action and ensure that the licensees are operating in accordance with pharmacy law, which will ensure the health and welfare of California residents. Lastly, the proposed action will increase the board's efficiency by eliminating the need to prepare a regular rulemaking action each time a new license type is created.

CONSISTENCY AND COMPATIBILITY WITH
EXISTING STATE REGULATIONS

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs/Savings to State Agencies or Costs/Savings in Federal Funding to the State: There will be minor workload costs to the board, which are absorbable with the board's budget.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses and/or employees including the ability of California businesses to compete with businesses in other states. This determination is based on the absence of testimony to that effect during the development of the proposed regulation, which occurred over several months. Additionally, the proposed regulation will simplify the regulatory language, thereby providing clarity and consistency to the regulated public with respect to the requirements and criteria used by the board to deem an application of renewal complete. The proposed regulations require all premises or facility licensees to report discipline by another government agency at the time of the license renewal; however, this is done by marking an indicator on the application for renewal and will not impose an economic or fiscal impact on the licensee.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

While the board does not have nor does it 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 determination is based on the absence of testimony to that effect during the development of the proposed regulation, which occurred over several months. Additionally, the proposed regulation will simplify the regulatory language, thereby providing clarity and consistency to the regulated public with respect to the requirements and criteria used by the board to deem an application of renewal complete. The proposal requires all premises or facility licensees to report discipline by another government agency at the time of the license renewal; however, this is done by marking an indicator on the application for renewal and will not impose an economic or fiscal impact on the licensee.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

The board concludes that this regulatory proposal will have the following effects:

- (1) It will not create or eliminate any jobs within California;
- (2) It will not create new, or eliminate existing, businesses in California; and
- (3) It will not expand businesses currently doing business within the state.

As the board's licensing program authority has increased, the board has not been able to update these regulations at the same pace. The proposed regulations provide clarity to all licensees with respect to the requirements necessary for a renewal to be deemed complete by the board and will ensure consistent application of the renewal requirements. While this may allow a business or individual to renew their license timely, the regulatory proposal does not actually create the business or the job.

Benefits of Regulation:

This regulatory proposal benefits the health and welfare of California residents because the proposed regulation will simplify the regulatory language which will provide clarity to the regulated public. A premises/facility cannot operate with an expired license and an individual cannot work with an expired license. These regulations will ensure that the requirements for a complete renewal application are clearly specified based on the license type (premises/facility or individual). This will help to ensure that licensees are submitting complete applications, which will allow for the timely renewal of licenses. Renewing licenses timely ensures that individuals can continue to work and premises/fa-

cilities can continue to distribute and/or furnish prescription medication to California residents. If a business is able to continue services, it benefits the health and welfare of California residents by providing continued access to pharmacy related care. Additionally, it will ensure that the board is aware of any disciplinary action taken by other government agencies against a board licensee. This disclosure will allow the board to investigate the disciplinary action and ensure that the licensees are operating in accordance with pharmacy law, which will ensure the health and welfare of California residents. Lastly, the proposed action will increase the board's efficiency. The proposed regulation does not affect worker safety or the state's environment because it does not involve these matters.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments in writing relevant to the above determinations during the written comment period at the address listed for the Contact Person.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd., N219, Sacramento, California

95834, or from the Board of Pharmacy's website <http://www.pharmacy.ca.gov>.

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

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

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

CONTACT PERSON

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

Name:

Lori Martinez

Address:

2720 Gateway Oaks Dr., Ste. 100
Sacramento, CA 95833

Phone Number:

(916) 518-3078

Fax Number:

(916) 574-8618

E-Mail Address:

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Fax Number:

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WEBSITE ACCESS

Materials regarding this proposal can be found at the Board of Pharmacy's website: www.pharmacy.ca.gov.

**TITLE 17. DEPARTMENT OF
PUBLIC HEALTH**

**DPH-11-012
Clinical Laboratory Personnel
Standards: Definitions**

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: Veronica Rollin, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814, at (916) 558-1710, email to veronica.rollin@CDPH.ca.gov or use the California Relay Service by dialing 711.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by March 23, 2020, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments may be submitted as follows:

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-11-012 Clinical Laboratory Personnel Standards: Definitions" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier "DPH-11-012 Clinical Laboratory Personnel Standards: Definitions" with the comment author's name and email or mailing address.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

ASSISTIVE SERVICES

For individuals with disabilities, the Department will provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note taking, reading or writing assistance. To request these assistive services, please call (916) 558-1710 or California Relay at 711 or 1-800-735-2929, email Regulations@cdph.ca.gov or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are made less than 10 business days prior to a public hearing.

AUTHORITY AND REFERENCE

The Department is proposing to adopt, repeal, and amend portions of the regulations in the CCR, title 17, sections 1029 through 1067.15, Clinical Laboratory Regulations, under the authority provided in sections 1208, 1222, 1222.5, 1224, 1262, 1263, 1264, and 1320 of the Business and Professions Code (BPC), section 131200 of the Health and Safety Code (HSC), and section 14105 of the Welfare and Institutions Code (WIC).

General authority:

- Under HSC section 131200, the Department has authority to adopt and enforce regulations for the execution of its duties.
- Under BPC section 1224, the Department has authority to adopt, amend, or repeal any regulations necessary for the administration or enforcement of Chapter 3, Clinical Laboratory Technology.

Specific Authority:

- Under BPC section 1208, the Department has authority to create new categories of laboratory personnel licenses and to modify education,

training, examination, and licensing standards for existing license categories.

- Under BPC section 1262, the Department has authority to approve the evaluation of national or state accrediting boards for licensure.
- Under article 4, Licensing, sections 1262, 1263, and 1264 of the BPC, the Department has authority to issue licenses for clinical laboratory bioanalysts (Bus. and Prof. Code, section 1260), clinical laboratory scientists (Bus. and Prof. Code, section 1261), and clinical laboratory scientists limited to a specialty (Bus. and Prof. Code, section 1261.5), clinical laboratory scientist trainees and clinical laboratory scientist trainees limited to a specialty (Bus. and Prof. Code, section 1263), clinical chemists, clinical microbiologists, clinical toxicologists, clinical genetic molecular biologists, clinical cytogeneticists, and oral and maxillofacial pathologists (Bus. and Prof. Code, section 1264).
- Under BPC section 1222, the Department has authority to approve schools that are accredited by the National Accrediting Agency for Clinical Laboratory Sciences. Under BPC section 1246, the Department has authority to approve national accrediting agencies for phlebotomy (Bus. and Prof. Code, section 1246(b)(4)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Proposal

The California Department of Public Health (Department) intends to adopt, amend, and repeal sections of the license and certification standards for clinical laboratory personnel as specified in the Clinical Laboratory Regulations in the California Code of Regulations (CCR), title 17, sections 1029 through 1067.15. These changes specify requirements for education, training, experience, and examinations leading to licensure and certification.

Advancements in technology and the need for new avenues for training create new requirements for education and training of qualified persons seeking licensure or certification.

The purpose of these regulations is to:

- Facilitate licensure and certification of qualified laboratory personnel for employment in California.
- Standardize licensing and certification regulations for high-school graduate, associate-level, baccalaureate-level, masters-level, and doctorate-level license categories.

- Set requirements for academic coursework and degrees, practical training and experience, and examinations for each licensure and certification category.
- Repeal redundant or outdated standards and replace them with more relevant standards, and create new definitions as necessary.
- Modernize existing regulations to match the most updated technology and current demand of the industry.
- Clarify and adopt terms used in the industry, terms mandated through statutory language, and terms defined under federal law.

This proposal consists of Article 1, sections 1029 through 1029.197 (Definitions) and Article 5.3, sections 1054.1 and 1054.2 (Blood Electrolyte Analysis by Respiratory Care Practitioners). Future proposals will pertain to portions of Article 1 (Definitions), Article 1.5 (Licensure and Certification of Clinical Laboratory Personnel), Article 1.6 (Unlicensed Laboratory Personnel), Article 1.7 (Application and Renewal, Continuing Education), and Article 2 (Training Schools and Programs).

Background

The Department (through its Laboratory Field Services branch) is charged with ensuring the qualifications of personnel working in clinical laboratories by administering a licensure and certification program. California has one of the most extensive personnel licensure and certification programs in the nation. The Department monitors education, training, and experience of applicants, administers examinations, and oversees continuing education compliance in an effort to ensure that persons performing or assisting with clinical laboratory testing are well qualified. The Department also has authority to deny, suspend, and revoke licenses and certificates for failure to comply with California licensure and certification standards for quality assurance.

All clinical laboratory personnel who perform or assist with clinical laboratory tests or examinations must be qualified pursuant to chapter 3 of the BPC. The validity of a person's qualifications is demonstrated by meeting licensing and certification standards specified in departmental regulations. These standards include requirements for education, training, experience, and examination that must be met to qualify for licensure or certification. Maintenance of current and valid licensure and certification requires completion of continuing education and payment of a renewal fee. Testing personnel must be licensed or otherwise authorized to do testing. The work scope of a licensed or certified person is limited to that defined by the person's license or certificate category. Failure to comply with personnel li-

censing and certification standards may result in sanctions such as revocation or suspension of licensure or certification.

The Department is responsible for administering initial issuance and renewal of licenses or certificates for 32 categories. The Department currently administers over 62,000 active clinical laboratory personnel licenses and certificates in California. Out of the estimated 62,000 total, 35 percent are licensed and the remaining 65 percent are certified. The Department also has oversight of about 202 training programs and schools as well as accrediting agencies that provide continuing education offered to clinical laboratory personnel.

In 2010, the Department submitted a proposal to adopt, amend, or repeal sections of the license and certification standards for clinical laboratory personnel. That regulatory proposal (DPH-08-001) was withdrawn due to the high volume of public inquiries and comments received during the 45-day comment period, and the inability of the Department to respond to the volume of comments within the time constraints of the rulemaking process. As a result of that experience, the Department will submit proposed Clinical Laboratory Personnel regulations in eight separate regulatory proposals. This is the first of the eight proposals. This will allow adequate time for public review, submission of comments, and departmental response required by the rulemaking process.

Problem Statement

Existing licensing and certification standards are outdated and require revision to reflect advances in laboratory science and technology and consequent changes in industry procedures, tests, techniques, standards, and requirements for education and training. In addition, the standards need updating to account for changes to statutory law. The regulated community has also requested regulations to clarify the requirements of California laboratory law.

Objectives (Goals) of the Regulation

The goal of the proposed regulations is to ensure consistency and clarity in the Department regulations, specifically:

- To ensure California laboratories satisfy federal Clinical Laboratory Improvement Amendments (CLIA) standards.
- To ensure consistency and quality in clinical laboratories throughout the state.
- To address the regulatory challenges posed by new technological advances in the industry.
- To update the list of organizations that are accepted by the Department for licensure and certification purposes.

- To clarify the law and answer questions frequently received by the Department.
- To create a system of definitions in alphabetical order for ease of reference.
- To implement recommendations and proposals from the program's Clinical Laboratory Technology Advisory Committee (CLTAC) and stakeholders.

Anticipated Benefits

Implementation of these standards will enhance the efficiency of the licensing and certification program and help ensure compliance with related federal regulations. Other benefits of the proposed regulations include:

- Protecting the health and safety of the public by helping ensure high quality training schools produce qualified clinical laboratory personnel.
- Increasing worker safety through ensuring proper education, training, and experience of those working in laboratories.
- Promoting fairness of the licensing and certification process through more objective, consistent, and equitable standards for applying and qualifying for licensure and certification.
- Protecting the integrity and quality of test results produced by clinical laboratories.
- Implementing proper and safe use of new technologies.

Renumbering of all definitions and making non-substantive changes in existing regulations will benefit the industry and California residents by providing clarification and ease of reference, and clearer regulations will increase adherence to the regulations. This change may also reduce calls to the Department from individuals requesting clarification of the regulations, which will increase efficient use of departmental time.

EVALUATION AS TO WHETHER THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE AND FEDERAL REGULATIONS

The Department evaluated this proposal and determined that it, if adopted, will not be inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department's existing general regulations and those regulations specific to personnel in clinical laboratory science. An internet search of other state agency regulations was also performed. It was determined that no other state regulations address the same subject matter.

FORMS INCORPORATED BY REFERENCE

Not applicable.

**MANDATED BY FEDERAL
LAW OR REGULATIONS**

Not applicable.

OTHER STATUTORY REQUIREMENTS

Not applicable.

LOCAL MANDATE

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, and not impose any costs for which reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

FISCAL IMPACT ESTIMATES

- A) Cost to any local agencies or school districts that must be reimbursed pursuant to Section 17561 of Government Code:** None.
- B) The cost or savings to any state agency:** None.
- C) Impact on any cost or savings in federal funding of the program:** None.
- D) Other nondiscretionary costs or savings imposed on local agencies:** None.

HOUSING COSTS

The Department has determined that the proposed regulations will have no impact on housing costs. The regulations affect standards only for clinical laboratory personnel in licensed, certified, or registered clinical laboratories, accredited schools and training programs, military specialist programs, and U.S. government laboratories.

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

The Department has made an initial determination that these regulations would not have a significant statewide adverse economic impact directly affecting businesses and individuals, including the ability of California businesses to compete with businesses in other states.

**STATEMENT OF THE RESULTS OF THE
ECONOMIC IMPACT ASSESSMENT**

The Department has made the initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Most of the proposed changes to the regulations are clarifications and updates to definitions, and repeals of outdated and unused regulations for clarification and ease of reference.

Creation or elimination of jobs within California:

There would likely be no significant creation or elimination of jobs within the state. There may be a slight possible increase in the creation of jobs in California.

An applicant for licensure who submits a transcript from an educational institution located outside the U. S. and not accredited by a Department–approved accreditation association must submit an evaluation of the transcript by a Department–approved transcript evaluation service. This ensures that the education obtained in a non–U.S. educational institution is equivalent to an education obtained from an accredited college or university in the US, and that the applicant meets the Department’s educational requirements.

The existing regulatory law requires foreign transcript evaluations provided by an organization that no longer performs that service. The proposed regulations will allow the Department to accept transcripts evaluated by other transcript evaluation services. Since the proposed regulations will allow applicants to use other transcript evaluation services, applicants who obtained education at non–U.S. colleges and universities will have a choice of approved evaluation services to show, via their transcript evaluation, that they satisfy the Department’s educational requirement. More applicants who obtained education in a foreign country may apply for licensure. California laboratories have been unable to fill vacant positions because of the shortage of qualified personnel. The proposed regulations may enable them to fill the vacant positions or create new positions if a larger number of qualified individuals apply for and receive California licensure, expanding the number of

employees in their businesses in California. Since applicants with non-U.S. education are a small percentage of license applicants, this expansion of the number of acceptable evaluation services will not likely have a significant effect.

Creation or elimination of new businesses within California: There would likely be no significant creation or elimination of businesses within the state.

The clarification of the types of clinical laboratory techniques and procedures (in the proposed section 1029 definition of “Clinical Laboratory Practice”) is not likely to eliminate existing laboratories or create new laboratories. Instead, it will likely enable existing clinical laboratories to standardize their business practices. Clinical laboratories are not regionalized in the United States; therefore, the effect, if any, will affect the state as a whole.

Clarification regarding the acceptance of transcript evaluations is not likely to have a significant impact on the creation or elimination of business in California. AACRAO, the one organization specified under current regulations to review transcripts from a foreign educational institution, no longer reviews transcripts. The proposed regulations will allow applicants to submit a transcript evaluation from two specified organizations or another organization approved by the Department. Since there is no significant difference in the cost of services charged by these proposed transcript evaluation services versus the costs previously charged by AACRAO, there is no significant change in cost to individuals.

Clarification regarding the accreditation of U.S. educational institutions is also not likely to have a significant impact on the creation or elimination of businesses in California. Colleges and universities that provide education and training to clinical laboratory personnel will not be significantly impacted by changing the list of accreditation associations that accredit these educational institutions. (See the proposed section 1029 definition of “Accredited College or University”.) For over a decade the Department has been using authorized statutory discretion to accept education obtained at colleges or universities accredited not only by the Western Association of Schools and Colleges, which is the accreditation association listed in the existing regulations, but those with “equivalent standards.” These other associations include the associations listed by name in the proposed regulations.

Few, if any, colleges and universities will need to apply for new accreditation from an association listed in the proposed regulations and the Department will continue to accept education obtained at accredited educational institutions as usual. The proposed change to the list of acceptable accrediting associations is unlikely to increase or decrease the number of accredited educa-

tional institutions considered acceptable by the Department, and is thus not likely to affect the instructors or the graduates of those institutions.

Impact on California Businesses to compete with businesses in other states: There is no foreseeable negative impact on the ability of California businesses to compete with businesses in other states. The potential positive impact is not significant. The regulations may create a slight increase in the number of out-of-state laboratory personnel who apply and receive a license because (1) the proposed definition of official school transcript will now include optional electronic transcript submission in place of the paper submission currently required, (2) applicants will be able to have their transcripts evaluated by one of the newly approved transcript evaluation services, and (3) specifying the national accreditation associations acceptable by the Department creates clarity and reassurance to training programs and licensure applicants as to which educational institutions offer credentials that will qualify them. These changes may slightly increase the pool of qualified job candidates. This increase may provide a slight increase in the number of jobs created and/or increase the ability of California businesses to hire qualified clinical laboratory personnel. This will likely reduce the current industry shortage of licensed clinical personnel in California. However, there will be no significant economic or fiscal impact on businesses in California.

Expansion of businesses currently doing business within the state: There is not likely to be significant expansion of businesses currently doing business within the state. The proposed regulations are unlikely to affect educational institutions accredited by associations previously considered acceptable by the Department based on statutory departmental authority. (See the discussion under “Creation or elimination of new businesses within California.”)

The existing regulatory law allows for transcript evaluation services by a single organization, which no longer performs that service. The proposed regulations now allow applicants who obtained education at non-U.S. educational institutions to use other evaluation services when applying for Department licensure and certification. Expanding the number of transcript evaluation services available to applicants with transcripts from non-U.S. institutions increases the potential number of clinical laboratory license applicants, which may address the shortage of qualified clinical laboratory staff and allow for a small expansion of clinical laboratory businesses in the state. More staff may allow clinical laboratories to be more efficient, perform more tests or examinations, and possibly expand the number of laboratories in California. If there is an increase, it is likely not a substantial one. (See the discussion under

“Impact on California Businesses to compete with businesses in other states.”)

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment: There are several broad and specific benefits to the proposed regulations. Implementation of these standards will enhance the efficiency of the licensing and certification process.

The proposed regulations enable the Department to accept transcripts submitted through secure electronic systems. There are benefits to enabling the use of a secure electronic system for submitting official transcripts (by adopting the definition of “Official School Transcript” as listed in section 1029). It will improve efficiency, reduce environmental impact, reduce cost to applicants and the Department, and decrease fraud. For example, using electronic means to request and submit transcripts is easier than using a paper form, and submitting electronic documents through a computer system is quicker than mailing them. Further, electronic submissions received directly from educational institutions are harder to intercept and forge. The use of electronic systems reduces the amount of paper printed by the educational institutions and the amount of copying by the Department. The increase in speed and efficiency through use of electronic systems will likely increase productivity and decrease time and expenditures by educational institutions and by the Department.

Expanding the number of transcript evaluation services available to applicants educated at foreign educational institutions increases the potential number of clinical laboratory license applicants with degrees from foreign educational institutions, which may address the shortage of staff and allow for a small expansion of clinical laboratory businesses in the state.

These regulations are proposed to protect the health and safety of California residents by ensuring high quality training schools and programs that produce qualified clinical laboratory personnel. Other benefits of these proposed regulations include:

- Increasing the efficiency and accuracy of laboratory test results.
- Increasing worker safety by ensuring proper education, training, and experience of clinical laboratory personnel.
- Promoting fairness of the licensing and certification process by establishing more objective and equitable standards for applying and qualifying for licensure and certification.
- Protecting the integrity and quality of test results produced by clinical laboratories.
- Implementing proper and safe use of new technologies.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action would result from the following:

The total *initial* costs for individuals who obtained their education outside the U.S. and must submit a transcript evaluation are about \$12. There are no total *annual* ongoing costs for individuals because an applicant does not need to resubmit a transcript after the initial submission. Only a low percentage of applicants will incur the additional costs. Most applicants obtain their education in U.S. educational institutions and are not required to submit a transcript evaluation. Only applicants who submit transcripts from foreign educational institutions will incur the additional cost of submitting a transcript evaluation; therefore, no new cost will be incurred by most applicants. The costs for transcript evaluations by the services specified in the proposed regulations are not significantly different from the cost charged by the service specified in current regulations. Therefore, this new requirement is likely to cause no significant economic or fiscal impact.

BUSINESS REPORTING REQUIREMENT

The proposed regulatory amendments do not change current business reporting requirements.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations will have no adverse impact on small businesses. Defining terms used in the industry does not create new policies, procedures, or programs that do not already exist. Repealing outdated sections on blood electrolyte analysis by respiratory care practitioners will have no impact because those regulations are currently not being implemented; authorization for respiratory care practitioners to perform those tests is addressed in another section of the law.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

ALTERNATIVES CONSIDERED

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

The Department 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.

The CCR, title 17, section 1029, will define “Official School Transcript” and lay out the requirements and prescriptive standards of what the Department will consider an acceptable transcript and acceptable delivery method of a transcript. For example, a transcript must contain certain variables of information and must be physically sealed or electronically submitted by the registrar’s office of the college or university. The Department reviews various forms of transcripts from many sources around the world. Using a performance standard to evaluate whether a transcript seems official or fraudulent is more subjective, more burdensome, less reliable, and has been problematic for the Department in the past. Ensuring a more objective and fair method of accepting a transcript will mandate using prescriptive rather than performance standards.

The CCR, title 17, section 1029, will explicitly name the “accreditation associations” acceptable by the Department, which is a prescriptive standard. The Department will only accept degrees issued by educational institutions accredited by the accreditation associations listed in the definition, rather than accepting degrees from institutions accredited by any and all accreditation associations. The Department has vetted the named associations. It would be an unreasonable burden for the Department to research and vet any and all accreditation associations. It would also increase the possibility of subjectivity on the part of Department personnel in assessing and vetting any and all accreditation associations as opposed to using a standard list. Finally, using the performance non-standard list would increase the cost, increase the time, and decrease the efficiency of the application process.

TECHNICAL, THEORETICAL, AND/OR
EMPIRICAL STUDIES, REPORTS OR
DOCUMENTS RELIED UPON

None.

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Mary Wogec at (510) 620-3793. All other inquiries concerning the action described in this notice may be directed to Veronica Rollin, Office of Regulations, at (916) 558-1710, or to the designated backup contact, Linda Cortez, Office of Regulations, at (916) 558-1710.

AVAILABILITY STATEMENTS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address previously noted, will be the location of public records, including reports, documentation, and other material related to the proposed regulations.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 558-1710 (or the California Relay Service at 711), or send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department’s Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

A copy of the final statement of reasons when prepared will be available upon request from the Office of Regulations.

Internet Access

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov and by clicking on the following: Programs, Office of Regulations, and the Proposed Regulations link.

GENERAL PUBLIC INTEREST**DEPARTMENT OF
FISH AND WILDLIFE****CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NUMBER
2080-2019-010-05****Project:**

5665 Campbell Road, Lompoc, CA 93436
(Assessor's Parcel Number 099-110-047)

Location: Santa Barbara County

Applicant:

Matthew Primm, Terra Firma
Long Beach LLC

Background

Terra Firma Long Beach LLC, represented by Matthew Primm (Applicant), proposes to develop a 122.1-acre parcel for the purposes of cultivation, including the construction of cultivation areas and agricultural support buildings. The project is located at 5665 Campbell Road, near the City of Lompoc, in Santa Barbara County, California, 93436 (Assessor's Parcel Number 099-110-047). A 61-acre portion of the larger site will be impacted for cultivation activities. Cultivation on the southern portion of the parcel will occur within hoop house structures while cultivation on the central and northern portions of the parcel will occur without hoop house structures and will have the potential for growing in containers. Grading for the project includes approximately 15,000 cubic yards of cut and 15,000 cubic yards of fill. No import or export of fill material is anticipated.

The project will also include the construction of a pesticide and agricultural chemical storage area, guard shack, lighting and security structures, soil management area, compost area, and staging area. The central and northern portions will be enclosed by a wildlife-friendly wire mesh fence located on the parcel boundary and the southern portion of the parcel will be en-

closed by a wood board fence. Landscaping will be located near portions of the western, southern, and eastern parcel boundaries as well as around the outdoor growing areas in the northern part of the parcel. Access to and within the cultivation areas will be provided by utilizing the existing unpaved access road alignments on the parcel. Existing access roads will be widened to 24 feet wide and will remain unpaved. Water for the project will be provided by an existing onsite agricultural well and proposed water storage tanks. Drip irrigation will serve the cultivated areas. Three concrete pads (22 feet x 18 feet, 22 feet x 18 feet, and 16 feet x 16 feet, respectively) will be constructed for the placement of three 15,000-gallon water tanks.

Project impacts include the permanent removal of 40 acres of annual grassland habitat, 23 acres of coastal sage scrub habitat, 0.90 acres of coast live oak woodland, and 0.27 acres of pine woodland. In addition, a total of 51 coast live oak (*Quercus agrifolia*) trees will be removed. Proposed landscaping will include the planting of 144 coast live oak tree containers, 366 coast live oak acorns, 94 Monterey cypress (*Hesperocyparis macrocarpa*) trees, and 70 Catalina ironwood (*Lyonothamnus floribundus*) trees. Landscaping will primarily be located near portions of the western, southern, and eastern property boundaries as well as around the outdoor growing areas in the northern part of the parcel. Two drainages are located on the parcel and project activities will avoid these areas. A 50-foot setback from the top of bank for each of the drainages will be established to provide a buffer zone. Some of the proposed coast live oak plantings will be located within and adjacent to these buffer areas.

The project activities described above are expected to incidentally take¹ California tiger salamander (*Ambystoma californiense*) (CTS) where those activities take place within the 122.1-acre project area located at 5665 Campbell Road. Direct and indirect, short-term and long-term impacts associated with covered activities (ground disturbing construction, operations and maintenance activities) will result in take of CTS. Due to the proximity of the nearest documented CTS, dispersal patterns of CTS, and the presence of suitable CTS habitat within the project site, the U.S. Fish and Wildlife Service (USFWS) determined that CTS is reasonably certain to occur within the project site and that project activities are expected to result in the incidental take of CTS. In particular, CTS could be incidentally

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").

taken as a result of the development related activities and long-term related activities that include equipment access, staging, and material storage; trenching and backfilling for pipelines and other underground utilities; vegetation clearing, tree removal, plowing, grading and earth moving activities; installation of foundations for new structures; installation of landscaping; active agricultural activities; installation of new above ground agricultural structures; operation and maintenance of structures and facilities; operation and maintenance of agricultural fields and infrastructure; irrigation and water management; vehicular traffic; security fencing and lighting; and increased human activities. The Santa Barbara Distinct Population Segment (DPS) of CTS is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. section 1531 et seq.) and CTS is listed as a threatened species pursuant to the California Endangered Species Act (CESA) (Fish and G. Code, section 2050 et seq.). (See Cal. Code Regs., tit. 14, section 670.5, subd. (b)(3)(G).)

CTS are distributed in six metapopulations in Santa Barbara County:

1. Southwestern Santa Maria Valley (West Orcutt);
2. Southeastern Santa Maria Valley (Bradley-Dominion);
3. West Solomon Hills/north Los Alamos Valley;
4. East Los Alamos Valley;
5. Purisima Hills; and,
6. Santa Rita Valley.

The CTS that occur in the regional vicinity of the parcel belong to the Santa Barbara Distinct Population Segment (DPS) and are part of the Santa Rita Metapopulation (Service 2016). No CTS occurrences have been documented on the project site; however, the site is located within the potential range of CTS as shown on the USFWS map of CTS range and breeding ponds (Service 2010, 2016), and there are forty-three ponds located within 3.1 miles (5 kilometers; relevant to CTS per the site assessment protocol [Service 2003]) of the parcel (CDFW 2019) of the project site. Fifteen of these are known CTS breeding ponds, twenty-six are potential CTS breeding ponds, and for two the status is unknown (CDFW 2019, Service 2016). The project is not located within federal designated critical habitat for CTS; however, the site is located near two federally designated CTS critical habitat units (Units 5 and 6, Purisima Hills and Santa Rita Valley), less than 0.5 mile north of Unit 6 and roughly 3 miles southeast of Unit 5.

Fifteen (15) known CTS breeding pools are mapped within 3.1 miles (5 kilometers) of the parcel (Service 2010; Service 2016; Figure 4) and include the following: LOAL-2w, LOAL-2e, LOAL-17, LOAL-33, LOAL-34, LOAL-35, LOAL-36, LOAL-39, LOAL-

40, LOAL-48, LOAL-53, BUBO Pond, LOAL-61, LOAL-69, LOAL-70. Twenty-four (24) potential CTS breeding pools have also been identified within 3.1 miles of the parcel (Service 2010; Service 2016; Figure 4) and include the following: LOAL-1, LOAL-3, LOAL-4, LOAL-5, LOAL-6, LOAL-7, LOAL-8, LOAL-9, LOAL-10, LOAL-41, LOAL-42, LOAL-43, LOAL-44, LOAL-45, LOAL-46, LOAL-49, LOAL-50, LOAL-51, LOAL-59, LOAL-60, LOAL-65, LOAL-66, LOAL-67, and LOAL-68.

Four (4) CTS occurrences documented by the California Natural Diversity Database (CNDDDB) have been recorded within 3.1 miles (relevant to CTS per the site assessment protocol [Service, 2003]) of the parcel (CDFW, 2018). The following are descriptions of the locations of these occurrences:

- Occurrence #8: East of the intersection of Campbell Road and Highway 246, eight miles northwest of the City of Buellton, approximately 0.55 mile south of the project. Habitat consists of two large natural ponds, which have been modified by excavations and introduction of non-native fish. Both high-quality oak woodland upland dispersal habitat and low-quality agricultural upland dispersal habitat are found across Highway 246 to the south of the pond. Annual grassland and oak woodland habitats occur to the north of this pond and upland dispersal habitat quality appears to be high. However, due to land management practices that have included occasional pond and upland habitat discing, habitat quality at and around these ponds is likely more accurately described as medium. This occurrence corresponds with ponds LOAL-2w and LOAL-2e.
- Occurrence #477: Located in Santa Rita Valley along highway 246 East of Lompoc and approximately 1 mile west of the project. The accuracy of the occurrence is non-specific. Two CTS were collected at this location in 1982, and three adults were found in disturbed roadside vegetation in 2008. Habitat in the area consists of a mix of active and fallow agricultural fields. This occurrence corresponds with pond LOAL-43.
- Occurrence #1035: Located on the north side of Highway 246, about 2.8 miles southeast of the project. In 2008, approximately 12 CTS larvae were found at this location. Habitat consists of annual grassland and surrounding habitat quality for CTS upland dispersal habitat is high. This occurrence corresponds with pond LOAL-70.
- Occurrence #1279: Located approximately 4 miles northwest of Highway 246 at Cebada

Canyon Road, approximately 3 miles northwest of the project. In 2017, up to 23 CTS larvae were found at this location. This occurrence corresponds with pond LOAL-48.

The parcel is located within the dispersal range of the species (1.24 miles) from three known breeding ponds (LOAL-40, LOAL-2w, and LOAL-2e) and four potential CTS breeding ponds (LOAL-1, LOAL-41, LOAL-3, and LOAL-4) (Service 2010; Service 2016). The project site itself does not contain aquatic habitat; however, undisturbed natural habitat areas within the project provide high quality upland habitat for the species. The site also supports an abundance of small mammal burrows appropriate for upland refugia. CTS could utilize the project site as dispersal habitat and could utilize the small mammal burrows as non-breeding upland refuge. CTS are unlikely to be observed above ground at this site except during the breeding season when suitable conditions (i.e., rain events) allow for CTS to move between aquatic and upland habitats upon completion of metamorphosis.

The anticipated take of CTS resulting from implementation of the covered activities is expected to be low in the context of the local DPS. No aquatic habitat is present on the site, and the number of animals subject to incidental take from this action is expected to be low compared to the population of the DPS. The impacts associated with the proposed project are expected to affect only dispersing individuals or individuals in burrows during the non-breeding season. Take will include capture and relocation of individual animals, if present, out of harm's way prior to initial ground disturbance within the parcel, so any reduction in the DPS population size resulting from the proposed activity will be even lower than the estimated "take."

Because the project is expected to result in take of a species designated as endangered under the federal ESA, the Applicant has prepared a habitat conservation plan (HCP) in western Santa Barbara County for 5665 Campbell Road and received a federal incidental take permit (ITP) from the USFWS on October 24, 2019 (TE58523D) through Section 10 of the ESA for a period of 20 years commencing on the date of approval by USFWS. The HCP constitutes an application for an ITP under Section 10 of the ESA. The focus of the HCP is protection for the federally listed CTS DPS in Santa Barbara County under the jurisdiction of the USFWS. The HCP Area lies within the historic range and federal critical habitat of the state-listed threatened and federally listed endangered CTS in Santa Barbara County. Biological goals and objectives have been developed to ensure that the operating conservation program in the HCP is consistent with the conservation and recovery goals for CTS. Information provided in the HCP is also intended to address compliance with CESA. The feder-

al ITP authorizes take of CTS in the form of capture for up to sixteen individuals and up to eight individuals in the form of injury or mortality during project construction. Take of CTS is authorized in the form of capture for up to eight individuals and up to four individuals in the form of injury or mortality during any single year of project operations.

In order to determine the amount of mitigation needed, the value of the impacted habitat was calculated using the methodology outlined in Searcy and Shaffer (2008), incorporating the amount of CTS aquatic breeding habit and upland habitat covering the site to be impacted. A mitigation ratio of 1:1 (reproductive value lost: reproductive value conserved) was then applied for impacts to CTS and its habitats. The method described in Searcy and Shaffer (2008) attaches a value to habitat that scales with the reproductive value of the individuals estimated to be occupying an area. According to Searcy and Shaffer (2008) the reproductive value of a site is a function of: (1) distance from each known or potential breeding pond within dispersal distance of the site; and (2) land-use in the surrounding areas.

For the HCP, USFWS conducted a model run (utilizing Searcy and Shaffer [2008]). In order to determine the number of reproductive value units lost through implementation of a covered activity, the model was run to calculate the number of reproductive value units that will be lost. The project will consequently result in impacts of up to approximately 122.1 acres of upland habitat for the species and a corresponding loss of a reproductive value of up to 2,115 units as calculated in accordance with Searcy and Shaffer (2008); compensatory mitigation is based on the loss of this reproductive value for the CTS. The HCP and ITP include measures: (1) to avoid and minimize impacts to individual CTS during construction and operation; and, (2) mitigate for the loss of upland habitat and reproductive units through purchase of 2.5 credits at the La Purisima Conservation Bank prior to commencing any ground-disturbing activities or any other activity that could result in take of CTS.

On December 23, 2019, the Director of CDFW received a notice from Terra Firma Long Beach LLC, requesting a determination pursuant to Fish and Game Code section 2080.1 that the HCP and its related ITP are consistent with CESA for purposes of the project and CTS. (Cal. Reg. Notice Register 2020, No. 2-Z, p. 82.)

Determination

CDFW has determined that the HCP and its related ITP are consistent with CESA as to the project and CTS because the mitigation measures contained in the HCP and ITP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifi-

cally, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the HCP and ITP 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 CTS. The mitigation measures in the HCP and ITP include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

The following measures have been developed to aid in avoidance and minimization of take of CTS that could utilize the project site as upland dispersal or refuge. Permittee agrees to implement measures during construction and operation to ensure that take of the CTS is minimized and mitigated to the maximum extent practicable. These measures include, but are not limited to:

1. The disturbance area associated with each work activity will be minimized to the extent practicable.
2. Initial ground disturbance should occur during the dry season (April through October) when CTS are less likely to be mobile. Should work be delayed and work is required in the wet season, work will not begin until one-half hour after sunrise and will end one-half hour before sunset.
3. Initial ground disturbing activities shall be conducted during dry weather conditions to minimize the potential for encountering CTS.
4. Initial ground disturbance shall be postponed if chance of rain is greater than 70 percent based on the NOAA National Weather Service forecast or within 48 hours following a rain event greater than 0.1 inch. If work must occur during these conditions, a Service-approved biologist shall conduct a clearance sweep of work areas prior to the start of work.
5. All work shall occur during daylight hours.
6. The work area shall remain clean. All food-related trash items shall be enclosed in sealed containers and removed from the site regularly.
7. All vehicles/equipment should be in good working condition and free of leaks. All leaks should be contained and cleaned up immediately to reduce the potential of soil/vegetation contamination.
8. All vehicle maintenance/fueling/staging shall occur not less than 100 feet from any riparian habitat or water body. Suitable containment procedures shall be implemented to prevent spills.

A minimum of one spill kit shall be available at each work location near riparian habitats or water bodies.

9. Open trenches and excavations shall be covered or have adequate means of escape (earthen ramps not more than 2:1 slope, wooden boards, etc.).
10. All trenches, pipes, culverts or similar structures shall be inspected for animals prior to burying, capping, moving, or filling.
11. Pre-construction Survey: As a condition of ITP issuance, the applicant will retain Service-approved biologist(s) (i.e., persons in possession of valid recovery permits for and/or persons with demonstrated experience with CTS) to conduct surveys prior to the initiation of construction or, if phased, prior to the initiation of each phase as a measure to minimize take of the CTS. The objective of pre-construction surveys is to locate as many CTS and other native species as possible and move them out of harm's way. These surveys will be conducted within two weeks prior to the start of construction, and upon approval of the Translocation Plan described below, and will include full coverage visual surveys of the project site as well as burrow scoping and excavation within work areas. The Service-approved biologist(s) will be allowed sufficient time to gently hand-excavate burrows and relocate CTS to a Service-approved relocation site. Any soil that is excavated shall be looked through as it is removed to ensure no CTS are in the removed soil. To ensure that diseases are not conveyed between work sites by the Service-approved biologist(s), the fieldwork code of practice developed by the *Declining Amphibian Populations Task Force* should be followed at all times. The results of the pre-construction surveys shall be presented as part of HCP reporting requirements:

11.1 Service-approved biologists may conduct pre-site preparation and construction surveys, monitor for, capture, and relocate CTS to a receiver site approved by the Service. The permittees and/or their authorized officer, employee, contractor, or agent must request and receive approval of those biologists they wish to have perform said activities and the receptor site they wish to use prior to their commencement. The request(s) for approval must be made to the Ventura Fish and Wildlife Office at least 15 working days prior to the commencement of the specified activities.

11.2 The Service-approved biologist(s) will notify the Ventura Fish and Wildlife Office of their intent to conduct any monitoring events within 48 hours of commencing the activity.

11.3 The HCP and ITP requires the Applicant to retain a Service-approved biologist to conduct various measures including pre-site preparation and construction surveys, clearance sweeps, and submission of monitoring reports to the Service. Although not a condition of the HCP or ITP, CDFW requests the opportunity to review and approve the credentials of the CTS biologist and requests that the Applicant submit copies of the monitoring reports to CDFW at the following address. The reports should include the dates construction occurred and any relocation efforts. CDFW requests that the Applicant ensure that post construction monitoring reports are provided to CDFW and the Service, including photo documentation pre- and post-construction.

Reports may be sent to:

Ed Pert, Regional Manager
 California Department of Fish and Wildlife
 3883 Ruffin Road
 San Diego, CA 92123
 Telephone (858) 467-4201
 Fax (858) 467-4299

12. Capture and Moving of Individuals: Translocations will be conducted by a Service-approved biologist with appropriate necessary permits. The Service-approved biologist will work with the Service to determine the methods of translocation of CTS that may be necessary during project implementation and will propose appropriate relocation site(s) for CTS, if found. All live CTS of any life stage found during the preconstruction surveys (and/or construction monitoring) shall be captured and moved out of harm's way to a Service-approved offsite location by a Service-approved biologist. Captured CTS will immediately be placed in containers with moist soil and plant material from the capture location (if any), and released in designated release areas no more than three (3) hours after capture.

12.1 Although not a condition of the HCP or ITP, CDFW requests the opportunity to review and approve the credentials of the CTS biologist and requests that the Applicant submit copies of translocation and monitoring reports to CDFW.

13. Worker Environmental Awareness Program: A Service-approved biologist knowledgeable about CTS as well as their ecological requirements shall conduct worker environmental awareness program (WEAP) training(s) for all personnel who will work onsite during construction. The WEAP training(s) is (are) intended to inform construction crews, field supervisors, equipment operators, and others working onsite about the status and presence of the species, grading and construction activity restrictions, and the avoidance and minimization measures specified in the HCP.

14. Construction Monitoring: A Service-approved biological monitor shall be present during the installation of construction fencing, initial vegetation clearing and grubbing, and earthwork in the form of initial grading and excavation. Any live CTS found during these monitoring events will be captured and relocated to the approved relocation site(s) by an authorized biological monitor. This monitor shall have the authority to order any reasonable measure necessary to avoid the take of CTS and to immediately stop any work or activity that is not in compliance with the conditions set forth in the ITP. The Service Ventura Field Office shall be notified of any "stop work" order and the order shall remain in effect until the issue has been resolved. No construction work will be initiated until the biological monitor determines that the work area is clear of CTS.

14.1 Although not a condition of the HCP or ITP, CDFW requests copies of construction monitoring reports. The reports should include the dates construction occurred and pre- and post-construction conditions, including photo documentation.

15. To compensate for the loss of a reproductive value of up to 2,115 units, the applicant will purchase credits at the La Purisima Conservation Bank. The Service has determined that one credit at the La Purisima Conservation Bank has a reproductive value of 850 units. Therefore, prior to commencing ground-disturbing activities, the applicant will purchase a total of 2.5 credits at the La Purisima Conservation Bank. Based on personal communication with the La Purisima Conservation Bank, sufficient credits are available (K. Knowles 2019, pers comm.).

16. Per condition section H of the federal ITP (TE58523D):

H3. Prior to the commencement of any activity that could result in take of CTS, the applicant will demonstrate that mitigation credits have

been purchased from the La Purisima Conservation Bank.

- H4. Minimization measures and reporting obligations must be consistent with those identified in the GCP [General Conservation Plan for Cultivation Activities in Santa Barbara (USFWS 2019)].
- H5. Any remains of dead, intact CTS must be repositied at a professionally maintained facility that is widely accessible for scientific study, such as the Santa Barbara Museum of Natural History 2559 Puesta del Sol Road, Santa Barbara, California 93105, (805) 682-4711. Arrangements regarding the disposition of potential museum specimens must be made with a receiving institution prior to the implementation of any fieldwork. Other arrangements for disposition of specimens may be made with prior written approval from the Ventura Fish and Wildlife Office.

17. The HCP and ITP requires the Applicant to demonstrate the purchase of 2.5 acres (2,115 units) of conservation credits at the La Purisima Conservation Bank prior to the commencement of any activity that could result in take of CTS. Although not a condition of the HCP or ITP, CDFW requests a copy of the documentation of the credit purchase at La Purisima Conservation Bank.

Monitoring and Reporting Measures

18. Annual reports and a final report will be submitted to the Service by December 31 of each year for the duration of the 20-year ITP when construction and/or initial ground disturbing activities (new habitat impacts) take place in a calendar year. Operations and maintenance of proposed activities does not require submission of an annual report. Reporting will include: (1) a brief summary or list of project activities accomplished during the reporting year (e.g., this includes development/construction activities, and other covered activities); (2) project impacts (e.g., number of acres graded, number of buildings constructed, etc.); (3) a description of any take that occurred for the covered species (includes cause of take, form of take, take amount, location of take and time of day, and deposition of dead or injured individuals); (4) a brief description of conservation strategy implemented; (5) results of monitoring (compliance, effects and effectiveness monitoring) and survey information (if applicable); (6) a description of any changed or unforeseen circumstances that occurred and how

they were addressed; (7) all funding expenditures, balance, and accrual; and (8) a description of any minor or major amendments. Preparation and submittal of all reports will be the responsibility of the permittee and will include supporting information in the form of field notes compiled and signed by the Service-approved biological monitor(s).

18.1 The HCP and ITP requires the Applicant to submit annual reports and a final report, and construction monitoring reports to the Service. Although not a condition of the HCP or ITP, CDFW requests copies of the annual reports and final report as well.

Financial Assurances

The Applicant has provided financial assurances consistent with CESA, in the form of: (1) a binding commitment to purchase of 2.5 acres of conservation credits from the La Purisima Conservation Bank prior to commencement of any activity that could result in take of CTS; and, (2) funding for implementation of avoidance/minimization measures (including construction monitoring) as provided in the HCP and ITP. The HCP and ITP also require the Applicant to demonstrate the purchase of 2.5 acres of conservation credits at the La Purisima Conservation Bank prior to the commencement of any activity that could result in take of CTS (Table 1):

Table 1. Implementation Costs

Avoidance and Minimization Measures*

Item/Activity: Pre-construction Survey — Unit Cost: \$2000 — One-Time Cost: \$2000 — Re-occurring Costs: None — Total: \$2000

Item/Activity: Capture and Relocation — Unit Cost: \$1000 — One-Time Cost: None — Re-occurring Costs: 1 event — Total: \$1000

Item/Activity: Worker Environmental Awareness Program (materials and presentation) — Unit Cost: \$500 — One-Time Cost: None — Re-occurring Costs: 1 event — Total: \$500

Item/Activity: Weather Related Pre-activity Surveys — Unit Cost: \$500/day — One-Time Cost: up to 2 events — Re-occurring Costs: \$1000 — Total: None

Item/Activity: Construction Monitoring — Unit Cost: \$1000/day — One-Time Cost: None — Re-occurring Costs: up to 5 events — Total: \$5000

Subtotal: \$9,500

Mitigation

Item/Activity: Conservation Bank Credits — Unit Cost: \$40,000/credit — One-Time Cost: \$112,500 — Re-occurring Costs: None — Total: \$112,500
Subtotal: \$

Item/Activity: Changed Circumstances: To Be Determined (if applicable) — Unit Cost: \$5000 — One-Time Cost: \$5000 — Re-occurring Costs: None — Total: \$5000
Subtotal: \$5000

*Item/Activity: Reporting: * Annual Report — Unit Cost: \$1000 — One-Time Cost: None — Re-occurring Costs: 1 event — Total: \$1000*

Item/Activity: Reporting: Final Report — Unit Cost: \$1000 — One-Time Cost: \$1000 — Re-occurring Costs: None — Total: \$1000
Subtotal: \$2,000

GRAND TOTAL: \$129,000

*Costs assume initial ground disturbance to be completed within a single calendar year.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the project for incidental take of CTS, provided the Applicant implements the project as described in the HCP and ITP, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the HCP and ITP. If there are any substantive changes to the project, including changes to the mitigation measures, or if the Service amends or replaces the HCP or ITP, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the project from CDFW. (See generally Fish and G. Code, sections 2080.1 and 2081, subds. (b) and (c).)

REFERENCES

Department of the Interior, U.S. FISH and WILDLIFE SERVICE. 2019. Endangered Species Permit Office; 2800 Cottage Way, Suite W-2606, Sacramento, CA 95825-1846; permitsR8ES@fws.gov. NATIVE ENDANGERED SP. HABITAT CONSERVATION PLAN ENDANGERED WILDLIFE; Permit Number: TE58523D. Effective: 10/24/2019 Expires: 10/23/2039. Permittee: TERRA FIRMA LONG BEACH, LLC, P.O BOX 94825, LAS VEGAS, NV 89193, U.S.A. MATTHEW PRIMM — OWNER/MEMBER; Permit area is 122 acres of a parcel located at 5665 Campbell Road (Assessor’s Parcel number

099-110-047), in the Lompoc area of Santa Barbara County. Authority: Statutes and Regulations: 16 USC 1539(a); 50 CFR 17.22, 50 CFR 13.

Consistency Determination Request to CDFW Direct Charles Bonham. 2019. Matthew Primm. 5665 Campbell Road, Lompoc, CA, 93436 (APN 099-110-047). December 23, 2019. Manager, Terra Firma Long Beach, LLC. (858) 245-3277, 1159 Diamond Street, San Diego, CA 92109, or at matt@oliberty.com.

Habitat Conservation Plan for 5665 Campbell Road; APN 099-110-047. 2019. Prepared for: Matthew Primm. 501 West Broadway Street, Suite 700, San Diego, California 92101. Prepared by: Rincon Consultants, Inc. 1530 Monterey Street, Suite D, San Luis Obispo, California 93401. August 2019

Searcy, C. A. and H. B. Shaffer. 2008 Calculating biologically accurate mitigation credits: insights from the California tiger salamander. *Conservation Biology* 22: 997-1005.

DEPARTMENT OF FISH AND WILDLIFE

**CALIFORNIA ENDANGERED SPECIES ACT
 CONSISTENCY DETERMINATION
 NUMBER 2080-2019-011-03**

Project:

Phase 4 and 5 of the 2017 Storm Damage Department of Water Resources Rehabilitation Project (SDDR)

Location:

Butte, Colusa, Glenn, Sutter, Sacramento, San Joaquin, Tehama, and Yolo Counties

Applicant:

California Department of Water Resources

Background

The California Department of Water Resources (Applicant) proposes to repair 29 levee erosion sites in Butte, Colusa, Glenn, Sutter, Sacramento, San Joaquin, Tehama, and Yolo Counties. See Table 1 below.

Construction will occur at each site throughout the summer and fall of 2020 and 2021 (July 1 through October 31). Each site will require no more than two to four weeks of active construction. All work will take place during daylight hours. The maximum length of the workday will be 5 a.m. to 8 p.m., depending on allowable daylight. At least three sites will be repaired concurrently, with up to nine sites being repaired at the same time.

Table 1: List of Phase 4 and 5 Repair Sites

Phase: 4 — Site Number: 42 — Waterway: Yolo Bypass — Damage and Repair Description: Landside Stability — Earthen fill

Phase: 4 — Site Number: 44 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 46 — Waterway: Steamboat Slough — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 47 — Waterway: Steamboat Slough — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 48 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 49 — Waterway: Elk Slough — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 50 — Waterway: Elk Slough — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 51 — Waterway: Elk Slough — Damage and Repair Description: Waterside Erosion — Seepage, Rockfill

Phase: 4 — Site Number: 52 — Waterway: Elk Slough — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 53 — Waterway: Elk Slough — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 4 — Site Number: 54 — Waterway: Yankee Slough — Damage and Repair Description: Waterside Erosion — Earthen Fill

Phase: 4 — Site Number: 55 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 5 — Site Number: 58 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 5 — Site Number: 59 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 5 — Site Number: 60 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 5 — Site Number: 61 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill

Phase: 5 — Site Number: 62 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 63 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 65 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 67 — Waterway: Sacramento River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 69 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 70 — Waterway: Old River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 71 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 72 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 73 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 74 — Waterway: San Joaquin River — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 76 — Waterway: Elder Creek — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 77 — Waterway: Georgiana Slough — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

Phase: 5 — Site Number: 79 — Waterway: Butte Creek — Damage and Repair Description: Waterside Erosion — Rockfill with soil filled rock

The Phase 4 and 5 of the 2017 Storm Damage Department of Water Resources Rehabilitation Project (SDDR) (Project) includes mobilization, site preparation, construction, demobilization, restoration, and clean-up activities.

Mobilization — Mobilization will take place at each levee rehabilitation site. Mobilization includes creation of temporary access roads, if needed; securing the site; and transporting equipment and materials to the site for later repair phases (e.g., clearing and grubbing, and construction repair). Access to the rehabilitation sites will occur primarily along existing paved public roads, levee crown roads, or unpaved private farm roads. At several sites, a barge crane may be used to transport and stockpile rock and soil to the repair site. Staging areas (about 0.25 to 0.5 acre in size) will be located close to the repair area and avoid sensitive habitats. The staging

areas will be selected so removal of native trees or shrubs is avoided, and previously disturbed areas will be preferred. For waterside repairs, staging areas will be preferentially located along the levee crown or waterside berm, where these areas are of sufficient size and free of woody vegetation. However, landside staging areas are frequently required for stockpiling of materials and equipment. For landside and certain waterside repairs, staging areas may require construction easements from the landowners adjacent to the repair area. Activities that will occur within staging areas will include: storing imported materials (e.g., rock, soil); parking, refueling, and servicing of construction equipment; establishing a temporary restroom; and parking construction staff vehicles.

Site Preparation — Clearing and grubbing will be the first step in preparing each site for construction. Vegetation clearing may include the removal of submerged in-stream woody debris and fallen trees on the levee slope within the repair footprint. A turbidity curtain will be installed, when feasible, prior to any in-water work conducted on the waterside of the levee where there is potential for listed fish. The repair work limits and staging areas will be fenced (orange construction fencing) to prevent vehicles and equipment from approaching the waterside edge of the existing bank (where applicable), to protect sensitive habitat, and to identify disturbance area limits.

Where necessary, existing vegetation within the repair area will be removed during project construction except for trees and shrubs identified and marked for protection prior to construction. Box protection or other appropriate methods will be installed to protect remaining trees from damage. Trees within the repair area identified for protection may require trimming or removal for equipment clearance, excavation, or due to severely undermined tree health. Trees that require trimming or removal will be under the guidance of a certified arborist. All tree and sensitive plant removal will be documented. The construction site will be cleared of grasses, ground cover, trash, or any other undesirable materials, using mechanized equipment.

Construction — Once each site is cleared and grubbed, existing rock and levee soils will be excavated, then the site will be graded to a 1.4H:1V slope unless otherwise specified in the design drawings. The back slope of the levee will be shaped for stability of clean rock placement. All excavated materials will be hauled off-site.

Geotextile fabric and rock materials will be placed in the excavated areas as specified in the design drawings. Geotextile fabric will be used as a filter separator between natural ground and rock slope protection, i.e., rockfill (levee slope revetment)/launch rock (in-water rock revetment), and soil filled rock (soil filled revet-

ment) above and below standing or flowing water surfaces. Geotextile fabric will also be used to separate soil filled rock from launch rock/rockfill. The repair area slope will be graded to provide a smooth, uniform surface. The slope will be cleared of debris or sharp objects that may tear or damage the fabric during installation. Geotextile fabric will be placed loosely upon the surface to prevent damage to the fabric when placing rock slope protection. Geotextile fabric placed above the water surface will be covered with rock slope protection within 72 hours of placement. Additional course bedding layer will be required as a transition to prevent migration of earthfill or soil-filled rock into launch rock/rockfill.

Geotextile fabric was incorporated into the erosion repair design because it:

- Minimizes excavation into the levee since bedding layer cannot be placed on steep slopes greater than 1 horizontal:1 vertical.
- Reduces the total number of truck hauls that will be required to bring in sand or gravel to repair site if a bedding layer was utilized.
- Is difficult or infeasible to place bedding layer underwater.
- Is thinner than a sand or gravel bedding layer which may create a seepage path due to the thickness required.

Using a long-arm bucket excavator or barge crane, the clean rock will be placed in the water at the toe of the bank up to the water elevation at time of construction. Instream woody material (IWM), usually orchard tree stock, may be installed, if feasible, near the water surface during construction at 20-foot interval spacing to replace or enhance riverine aquatic habitat in the repair area. IWM locations were selected if the levee slope was greater than 2-foot horizontal:1-foot vertical and thickness of rock slope protection was greater than 10 feet to properly embed IWM in the slope without a separate anchoring mechanism. For soil-filled rockfill, rock will be placed in 2-foot lifts, and the voids will be filled with clean soil. Willow poles (if applicable) will be placed after construction to ensure underlying soil contact. Willows will be staggered at two different elevations at a typical spacing interval of 5 feet if placed in soil-filled rockfill and an interval of 10 feet if placed in soil filled sonotubes buried in launch rock. Willow locations were selected where finished slope grade was no steeper than a 1.5-foot horizontal:1-foot vertical and waterside levee profile was wider than 15 feet to be compliant with current the United States Army Corps of Engineers (USACE) vegetation policy. In locations with earthfill, 3 inches of clean topsoil will be placed above the fill and covered with erosion fabric to stabilize the bank. Once bank construction is completed, all

remaining disturbed soil within the repair area will be seeded with a native erosion control seed mix as per the planting specifications.

Demobilization, Restoration, and Clean-up — Following levee rehabilitation construction, all equipment and materials will be removed from the repair area, and excess materials will be disposed of at appropriate facilities. Staging areas and temporary access roads, if constructed, will be ripped to loosen the soil surface and then seeded with a native grass mix to promote revegetation and minimize soil erosion. These areas will be restored to pre-project conditions. Any damage as a result of the construction, including haul route roads and fencing, will be repaired. All areas will be cleaned and cleared of rubbish and left in a safe and suitable condition.

Table 2 lists the sites with listed species and the repair characteristics.

Table 2: Repair Characteristics

GGS — giant garter snake

DS — delta smelt

WYBC — western yellow-billed cuckoo

Site Number: 42 — Area of Repair (acres): 0.08 — Repair Site Length (feet): 75 — Area Above OHWM (acres): 0.08 — Area Below OHWM (acres): 0 — Species: GGS

Site Number: 46 — Area of Repair (acres): 0.27 — Repair Site Length (feet): 250 — Area Above OHWM (acres): 0.09 — Area Below OHWM (acres): 0.18 — Species: DS

Site Number: 47 — Area of Repair (acres): 0.45 — Repair Site Length (feet): 270 — Area Above OHWM (acres): 0.16 — Area Below OHWM (acres): 0.29 — Species: DS

Site Number: 48 — Area of Repair (acres): 0.6 — Repair Site Length (feet): 345 — Area Above OHWM (acres): 0.09 — Area Below OHWM (acres): 0.51 — Species: DS

Site Number: 49 — Area of Repair (acres): 0.2 — Repair Site Length (feet): 280 — Area Above OHWM (acres): 0.09 — Area Below OHWM (acres): 0.11 — Species: DS

Site Number: 50 — Area of Repair (acres): 0.28 — Repair Site Length (feet): 410 — Area Above OHWM (acres): 0.17 — Area Below OHWM (acres): 0.11 — Species: DS

Site Number: 51 — Area of Repair (acres): 0.06 — Repair Site Length (feet): 55 — Area Above OHWM (acres): 0.03 — Area Below OHWM (acres): 0.03 — Species: DS

Site Number: 52 — Area of Repair (acres): 0.08 — Repair Site Length (feet): 105 — Area Above OHWM (acres): 0.04 — Area Below OHWM (acres): 0.04 — Species: DS

Site Number: 53 — Area of Repair (acres): 0.04 — Repair Site Length (feet): 60 — Area Above OHWM (acres): 0.02 — Area Below OHWM (acres): 0.02 — Species: DS

Site Number: 54 — Area of Repair (acres): 0.08 — Repair Site Length (feet): 170 — Area Above OHWM (acres): 0.08 — Area Below OHWM (acres): 0 — Species: GGS

Site Number: 55 — Area of Repair (acres): 0.82 — Repair Site Length (feet): 610 — Area Above OHWM (acres): 0.32 — Area Below OHWM (acres): 0.5 — Species: DS

Site Number: 58 — Area of Repair (acres): 0.38 — Repair Site Length (feet): 430 — Area Above OHWM (acres): 0.32 — Area Below OHWM (acres): 0.06 — Species: DS

Site Number: 59 — Area of Repair (acres): 0.32 — Repair Site Length (feet): 430 — Area Above OHWM (acres): 0.32 — Area Below OHWM (acres): 0 — Species: DS

Site Number: 60 — Area of Repair (acres): 0.11 — Repair Site Length (feet): 120 — Area Above OHWM (acres): 0.09 — Area Below OHWM (acres): 0.02 — Species: DS

Site Number: 61 — Area of Repair (acres): 1.16 — Repair Site Length (feet): 1000 — Area Above OHWM (acres): 0.83 — Area Below OHWM (acres): 0.33 — Species: DS

Site Number: 62 — Area of Repair (acres): 0.19 — Repair Site Length (feet): 125 — Area Above OHWM (acres): 0.16 — Area Below OHWM (acres): 0.03 — Species: DS

Site Number: 63 — Area of Repair (acres): 0.41 — Repair Site Length (feet): 210 — Area Above OHWM (acres): 0.26 — Area Below OHWM (acres): 0.15 — Species: DS

Site Number: 65 — Area of Repair (acres): 0.27 — Repair Site Length (feet): 150 — Area Above OHWM (acres): 0.17 — Area Below OHWM (acres): 0.1 — Species: DS

Site Number: 67 — Area of Repair (acres): 0.23 — Repair Site Length (feet): 180 — Area Above OHWM (acres): 0.14 — Area Below OHWM (acres): 0.09 — Species: DS

Site Number: 69 — Area of Repair (acres): 0.3 — Repair Site Length (feet): 350 — Area Above OHWM (acres): 0.25 — Area Below OHWM (acres): 0.05 — Species: DS

Site Number: **70** — Area of Repair (acres): 0.02 — Repair Site Length (feet): 60 — Area Above OHWM (acres): 0.01 — Area Below OHWM (acres): 0.01 — Species: DS

Site Number: **71** — Area of Repair (acres): 0.06 — Repair Site Length (feet): 130 — Area Above OHWM (acres): 0.03 — Area Below OHWM (acres): 0.03 — Species: DS

Site Number: **72** — Area of Repair (acres): 0.13 — Repair Site Length (feet): 220 — Area Above OHWM (acres): 0.01 — Area Below OHWM (acres): 0.03 — Species: DS

Site Number: **73** — Area of Repair (acres): 0.12 — Repair Site Length (feet): 175 — Area Above OHWM (acres): 0.06 — Area Below OHWM (acres): 0.06 — Species: DS

Site Number: **74** — Area of Repair (acres): 0.23 — Repair Site Length (feet): 250 — Area Above OHWM (acres): 0.15 — Area Below OHWM (acres): 0.08 — Species: DS

Site Number: **77** — Area of Repair (acres): 0.04 — Repair Site Length (feet): 120 — Area Above OHWM (acres): 0.03 — Area Below OHWM (acres): 0.01 — Species: DS, GGS

Site Number: **79** — Area of Repair (acres): 0.2 — Repair Site Length (feet): 400 — Area Above OHWM (acres): 0.13 — Area Below OHWM (acres): 0.07 — Species: WYBC*

* Note that WYBC is included for the purposes of calculation and is not included for the determination of consistency with the Biological Opinion.

The Project activities described above are expected to incidentally take¹ giant garter snake (*Thamnophis gigas*) at sites 42, 54, and 77 and delta smelt (*Hypomesus transpacificus*) at five sites on Elk Slough (sites 49, 50, 51, 52, 53), one site located on Georgiana Slough (77), eight sites on the Sacramento River (48, 58, 59, 60, 61, 63, 65, 67), seven sites on San Joaquin River (55, 62, 69, 70, 72, 73, 74), one site on Old River (71), and two sites on Steamboat Slough (46, 47). In particular, giant garter snake and delta smelt could be incidentally taken as a result of use of heavy equipment to clear vegetation, grubbing, excavation, and site preparation to place geotextile fabric, fill or rock by grading, installation of rock material, soil compaction

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”).

and crushing by equipment or vehicles in aquatic and upland areas for giant garter snake and shallow water habitat for delta smelt. Giant garter snake is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. section 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish and G. Code, section 2050 et seq.). (See Cal. Code Regs., tit. 14, section 670.5, subd. (b)(4)(E).) Delta smelt is designated as a threatened species pursuant to the ESA (16 U.S.C. section 1531 et seq.) and an endangered species pursuant to CESA (Fish and G. Code, section 2050 et seq.). (See Cal. Code Regs., tit. 14, section 670.5, subd. (a)(2)(O).)

Giant garter snake individuals are documented as present at sites 42, 54, and 77 and occur within 200 feet of irrigation or drainage ditches that serve as aquatic habitat for the giant garter snake. Site 42 is located on the Yolo Bypass Levee within a mile of a previous siting of giant garter snake. This site is located in the Yolo Basin Recovery Unit for the giant garter snake. Site 54 is located along Yankee Slough in the American Basin Recovery Unit and less than 5 miles from the nearest known location of giant garter snakes (CNDDDB 2019). Site 77 is located along Georgiana Slough, less than 5 miles from the nearest known location of giant garter snake (CNDDDB 2019) and within the Delta Basin Recovery Unit.

Delta smelt use the 24 sites on Elk Slough, Georgiana Slough, Sacramento River, San Joaquin River, Old River, and Steamboat Slough as indicated in Table 2. Delta smelt use these sites when they move into these waterways in the winter months to spawn. The sites on Elk Slough are connected to the Sacramento River on the southern side, but do not have throughflow to the Sacramento River on the northern end. Larval smelt will move west in the spring and summer and rear in the low salinity zone.

Because of the proximity of the nearest documented giant garter snake and delta smelt, dispersal patterns of giant garter snake and delta smelt, and the presence of suitable giant garter snake and delta smelt habitat within the Project sites, the United States Fish and Wildlife Service (Service) determined that giant garter snake and delta smelt are reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of giant garter snake and delta smelt.

According to the Service, the Project will result in the temporary loss of 0.22 acres of aquatic/upland giant garter snake habitat. Construction of the Project will also result in the permanent loss of 0.04 acres of aquatic/upland giant garter snake habitat and 2.84 acres of shallow water delta smelt habitat, totaling 2.88 acres of permanent habitat loss.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, the USACE consulted with the Service as required by the ESA. On December 6, 2019, the Service issued a biological opinion (Service file No. 08ESMF00–2019–F–3198) (BO) to the USACE. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The BO also requires the Applicant to implement and adhere to measures contained within the Project Biological Assessment, Essential Fish Habitat, and Incidental Take Permit Application.

On December 24, 2019 the Director of the Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITS are consistent with CESA for purposes of the Project and giant garter snake and delta smelt. (Cal. Reg. Notice Register 2020, No. 2–Z, p. 81.)

Determination

CDFW has determined that the BO, including the ITS, is consistent with CESA as to the Project, giant garter snake, and delta smelt because the mitigation measures contained in the BO and ITS as well as the conditions in the Project Biological Assessment, Essential Fish Habitat, and Incidental Take Permit Application and Mitigated Negative Declaration, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of giant garter snake and delta smelt will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS, Project Biological Assessment, Essential Fish Habitat, and Incidental Take Permit Application, and Mitigated Negative Declaration 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 giant garter snake and delta smelt. The mitigation measures in the BO and ITS Project Biological Assessment, Essential Fish Habitat, and Incidental Take Permit Application and Mitigated Negative Declaration include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

General Measures:

- Applicant shall submit in writing the name, qualifications, business address, and contact information of a biologist(s) (Designated Biologist) at least 30 days before starting project activities. Applicant shall ensure that the

Designated Biologist is knowledgeable and experienced in the biology and natural history of the listed species. The Designated Biologist shall be responsible for monitoring project activities to help avoid, minimize, and mitigate effects to listed species and their habitat. Applicant shall obtain Service, National Marine Fisheries Service (NMFS), and CDFW approval of the Designated Biologist in writing before starting project activities and shall also obtain written approval in advance if the Designated Biologist must be changed.

- The Designated Biologist may authorize Biological Monitors to assist in monitoring efforts. The Biological Monitors will be approved by the Service, NMFS, and CDFW in writing before starting project activities.
- Prior to initiation of repair activities (72 hours or less), Designated Biologists will conduct a preconstruction survey to identify special status species and associated habitat. Surveys will be conducted within the project footprint, laydown area, and adjacent haul route. If required, species and/or buffers will be marked in the field by a Designated Biologist using temporary fencing, high-visibility flagging, or other means that are equally effective.
- Applicant will provide environmental awareness training by a Designated Biologist to Applicant construction lead, construction foreman, crew leader, and any contractor personnel working on construction sites. Environmental awareness training will include descriptions of all special-status fish and wildlife species potentially occurring in the repair area for activity-specific training, their habitat, and methods of identification, including visual aids as appropriate. The training will also describe activity-specific measures that will be followed to avoid and minimize impacts. Hard copies of environmental permits and training materials will be provided to the Applicant construction lead, construction foreman, crew leader, and any contractors participating in repair work.
- Prior to initiation of repair activities, a Designated Biologist will identify potential riparian habitat, wetlands, shallow water habitat, shaded riverine aquatic cover, and native oaks. Where feasible, Applicant will mark the boundaries of these areas using temporary fencing, high-visibility flagging, or other means that are equally effective in clearly delineating the boundaries. When feasible, repair activities will be excluded from these areas. In many situations, equipment can be operated to

avoid disturbing isolated riparian trees or low-height riparian scrub habitat.

- Applicant will use existing staging sites, maintenance roads, and levee crown roads to the extent practicable for staging and access to avoid affecting undisturbed areas.
- Applicant will limit the number of access routes and the size of staging and work areas to the minimum necessary to conduct the activity.
- Where feasible and practicable (e.g., based on the size of the repair area and repair to be performed), Applicant will clearly mark work area limits (e.g., with flagging or fencing), including access roads; staging and equipment storage areas, stockpile areas for spoil disposal, soil, and materials; fueling and concrete washout areas; and equipment exclusion zones. Work will occur only within the marked limits. This measure is intended to apply to repair activities occurring in discrete areas as opposed to activities occurring over an extensive area where flagging work limits would be infeasible.
- Applicant will inspect under all vehicles and heavy equipment for the presence of wildlife before the start of each workday when equipment is staged overnight. Look for wildlife in all pipes, culverts, and similar structures that have been stored onsite for one or more nights before being buried, capped, or moved.
- Applicant will cover all excavated, steep-walled holes or trenches with appropriate covers (thick metal sheets or plywood) at the end of each workday. Covers will be placed to ensure that trench edges are fully sealed. Alternatively, such trenches may be furnished with one or more escape ramps constructed of earth fill or wooden planks to provide escape ramps for wildlife.
- Applicant will ensure that all project-related trash items, such as wrappers, cans, bottles, and food scraps, are collected in closed containers, removed from repair sites each day, and disposed of at an appropriate offsite location to minimize attracting wildlife to work areas.
- Applicant (or its contractor) shall initiate a trash abatement program before starting construction activities and shall continue the program for the duration of the repair activities. Applicant (or its contractor) shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic animals such as ravens, raccoons, coyotes, bears, and feral pigs. Applicant (or contractor) shall provide trash receptacles that are equipped with latching or locking lids.
- Applicant will keep the clearing of vegetation and grubbing for temporary vehicle access to the minimum necessary; especially minimize the clearing of native riparian vegetation and native oaks.
- Where feasible, Applicant will avoid removal of native trees with a trunk greater than four inches diameter at breast height (DBH) (4.5 feet above the ground). Work will be done in a manner that ensures, to the extent feasible, that living native riparian vegetation within the vegetation-clearing zones is avoided and left undisturbed, where this can reasonably be accomplished without compromising repair requirements.
- Trees within the repair area identified for protection and outside the work limit may require trimming or removal for equipment clearance, excavation, or due to severely undermined tree health. Trees that require trimming or removal will be under the guidance of a certified arborist. A Designated Biologist will document all tree and sensitive plant trimming or removal.
- Applicant will protect trees that are designated to be protected in place using tree wrap protection or other techniques as designated by the Designated Biologist.
- If erosion control fabrics are used, Applicant will not use products with plastic monofilament or cross-joints in the netting that are bound/stitched (such as straw wattles, fiber rolls, or erosion control blankets), which could trap giant garter snake and other wildlife.
- Applicant will install erosion control materials that minimize soil or sediment from entering waterways and wetlands. Applicant will monitor the erosion control materials for effectiveness and maintain them throughout the repairs and monitoring. Applicant will immediately repair or replace any erosion control barrier that is not functioning effectively.
- Applicant will limit the amount of revetment and similar materials used for bank protection and other repair activities to the amount necessary to ensure proper flood protection system integrity and function.
- Applicant will remove temporary fill, construction debris, and refuse, and properly dispose of these materials following completion of any repair activities.
- Applicant will restore habitat, including sensitive natural communities, to pre-project conditions

wherever feasible. Restoration could include recontouring by grading and disking, revegetating with native seeds and plants reflective of the target plant community, decompacting soil, and installing appropriate erosion control measures to return the disturbed onsite habitat to pre-activity conditions.

- For invasive plant species removal, Applicant will implement measures to minimize the potential for invasive plants to be introduced or spread during activities. Measures to avoid contamination and spread of invasive species will be created for each site as deemed necessary by a Designated Biologist and will be approved by a Designated Biologist prior to implementation.
- Applicant will provide the Service, CDFW, and NMFS staff with reasonable access to all sites and shall otherwise fully cooperate with Service, CDFW, and NMFS efforts to verify compliance with or effectiveness of conservation measures.
- The Designated Biologist and Biological Monitors will be authorized to stop repair activities that, in the biologist's opinion, threaten to cause unanticipated and/or unpermitted adverse effects on special status wildlife. If repair activities are stopped, the Designated Biologist will consult with the Service, CDFW, and/or NMFS as appropriate to determine appropriate measures that Applicant will implement to avoid adverse effects. Buffers, determined in consultation with the Service, CDFW, and NMFS, will be maintained until there is no longer a threat of disturbance to the sensitive biological resource, as determined by the Designated Biologist, Biological Monitors, Service, CDFW, and NMFS.
- Applicant will immediately notify the Designated Biologist if a species is taken or injured by a project-related activity, or if a species is otherwise found dead or injured within the vicinity of the proposed project. The Designated Biologist shall provide initial notification to the Service, CDFW, and/or NMFS by contacting the appropriate agencies. The initial notification to the Service, CDFW, and/or NMFS shall include information regarding the location, species, and number of animals taken or injured, and site number. Following initial notification, Applicant will send the Service, CDFW, and/or NMFS a written report within two (2) calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and, if possible, provide a photograph, explanation as to the cause of take or injury, and any other pertinent information.

- If, during project activities, Applicant encounters any species listed as threatened, endangered, or a candidate species pursuant to CESA, work shall be suspended, and CDFW notified. Applicant shall not re-initiate project activities until Applicant has consulted with CDFW and can demonstrate compliance with State laws.
- The Biological Monitors will be responsible for maintaining daily records of compliance-related activities, and for communicating to the Service, CDFW, and NMFS when any aspect of the project is out of compliance.

Water Quality Specific Measures:

- Applicant will conduct environmental awareness training to the contractor on the proper use of BMPs and applicable permit requirements to protect receiving water quality.
- Applicant will install erosion control measures, such as use of straw bales, silt fences, fiber rolls, or equally effective measures, at repair areas adjacent to stream channels, drainage canals, and wetlands, as needed. Erosion control measures shall be monitored during and after each storm event for effectiveness. Modifications, repairs, and improvements to erosion control measures shall be made as needed to protect water quality.
- Applicant will install turbidity curtains or similar methods during in-channel work to control silts and sediments, if needed.
- Applicant will minimize ground and vegetation disturbance by establishing designated equipment staging areas, access routes, spoils and soil stockpile areas, and equipment exclusion zones prior to the commencement of activity.
- Applicant will prepare and implement hazardous materials management and spill response plan. Applicant shall ensure any hazardous materials are stored at the staging areas, with an impermeable membrane between the ground and hazardous material and that it is bermed to prevent the discharge of pollutants to groundwater and runoff water. Applicant will immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so, according to the spill response plan. Applicant will notify the Service, CDFW, and/or NMFS within 24 hours of any leaks or spills. Applicant will properly contain and dispose of any unused or leftover hazardous products off-site. Applicant will use and store hazardous materials, such as vehicle fuels and lubricants, in designated staging areas located

away from stream channels and wetlands according to local, state, and federal regulations, as applicable.

- Applicant will check construction vehicles and equipment daily for leaks and will be properly maintained to prevent contamination of soil or water from external grease and oil or from leaking hydraulic fluid, fuel, oil, and grease.

Giant Garter Snake Specific Measures

Applicant will implement the following conservation measures at Sites 42, 54, and 77:

- If suitable aquatic habitat for giant garter snake has been identified in or within 200 feet of work by a Designated Biologist, Applicant will establish a 200-foot buffer around the aquatic habitat. Buffers will be marked in the field with guidance from a Designated Biologist using temporary fencing, high-visibility flagging, or other means that is equally effective in clearly delineating the buffers. Where possible, project activities will not occur within the buffer, and workers will avoid entering the buffer at all times. Regardless of whether project activities occur within the buffer, Applicant will implement the following measures as determined to be necessary by a Designated Biologist.
- If giant garter snakes are observed in a repair area, Applicant will stop work in the immediate area until the snake is out of the repair area and will notify a Designated Biologist immediately. If possible, the snake will be allowed to leave on its own, and the biologist will remain in the area until the biologist deems his or her presence no longer necessary to ensure that the snake is not harmed. If the snake does not leave the work area on its own volition, CDFW and the Service will be consulted to identify next steps. This may include the capture and relocation of the snake unharmed to suitable habitat at least 200 feet (but no more than 1 mile) from the repair area by a Designated Biologist with a CDFW and Service giant garter snake handling permit. Applicant will notify CDFW and the Service by telephone or email within 24 hours of a giant garter snake observation during work activities.
- Applicant will ensure that the Designated Biologist survey areas of planned ground disturbance, spoils placement, and rock slope protection placement for burrows, soil cracks, and crevices that may be suitable for use by giant garter snakes when within suitable terrestrial habitat. Surveys will be completed no more than three (3) days before conducting any ground-disturbing activities, placement of spoils, or rock slope

placement in terrestrial habitat potentially supporting giant garter snakes. Any identified burrows, soil cracks, crevices, or other habitat features will be flagged or marked by the Designated Biologist or otherwise identified as biologically sensitive areas (BSAs). Applicant will avoid these BSAs within proposed staging and interim laydown areas and in placement of spoils and rock slope protection to the maximum extent feasible. If activities temporarily stop for more than 14 days, surveys for soil cracks and similar features will be repeated by a Designated Biologist, as described above.

- When ground disturbance will occur in areas of suitable giant garter snake habitat, a Biological Monitor will monitor the work and walk the site prior to the beginning of construction.
- A Biological Monitor shall be on-site during all grading activities, vegetation removal activities, trenching activities, spoils placement, and rock slope protection placement. A Biological Monitor shall be on-site and monitor all locations where repairs will alter giant garter snake hibernacula/refugia (rip rap, burrows, vegetation, etc.).
- Whenever possible, Applicant will complete work activities in giant garter snake upland habitat between May 1 and October 1. If it is not possible to complete the work by October 1, Applicant may continue work past October 1. Project activities will only extend beyond October 1 if ground disturbance begins on or prior to September 15 and a Biological Monitor is on-site during construction, regardless of activity after October 1. Geotextile fabric must be laid by October 1. Biological Monitors will walk the site each day prior to initiation of the day's activities and monitor all aspects of work, including monitoring haul routes and staging and laydown areas. Applicant will notify the Service and CDFW of work in these locations. Applicant will include a justification for the request and any additional information the Service or CDFW deem necessary.
- If giant garter snake upland or aquatic habitat is temporarily affected, Applicant will restore the habitat to pre-existing conditions. Temporarily affected giant garter snake aquatic habitat will be restored to pre-existing conditions and monitored for 5 years.
- When feasible, Applicant will place spoils in areas that do not provide suitable giant garter snake upland habitat (for example: compacted or gravel roadbeds, orchards, and recently disked agricultural fields).

- If BSAs exist in planned repair areas, excavated spoils will be placed to avoid these BSAs, as feasible.
- Project related vehicles will observe a 15-mile-per-hour speed limit within the project areas.
- Prior to placement of geotextile fabric, the slope will be inspected by a Monitoring Biologist to verify that no animals or burrows will be covered. Any burrows should be excavated to ensure there are not any snakes within them. If geotextile fabric is not covered with rock slope protection within 24 hours, then the area will be resurveyed for giant garter snake that may have moved under the geotextile fabric for thermoregulation.
- Applicant will compensate for any areas that cannot be restored through the purchase of compensatory mitigation credits from a Service- and CDFW-approved bank at a ratio of 2:1 for permanent effects, 0.5:1 ratio for temporary effects (see Table 3).
- Applicant will provide a funding assurance letter committing Applicant to the necessary funds needed to complete all conservation measures and the purchase of giant garter snake mitigation credits. Applicant will provide proof of purchase for giant garter snake credits within 90 days of starting repairs unless Applicant receives written approval from the Service and CDFW extending this timeline.

Table 3: Impacts and Mitigation for Giant Garter Snake

Site Number: **42** — Impacts Temporary (acres): 0.08 — Impacts Permanent (acres): 0 — Mitigation Temporary (0.5:1): 0.04 — Mitigation Permanent (2:1): 0

Site Number: **54** — Impacts Temporary (acres): 0.08 — Impacts Permanent (acres): 0 — Mitigation Temporary (0.5:1): 0.04 — Mitigation Permanent (2:1): 0

Site Number: **77** — Impacts Temporary (acres): 0.06 — Impacts Permanent (acres): 0.04 — Mitigation Temporary (0.5:1): 0.03 — Mitigation Permanent (2:1): 0.08

Total Impacts Temporary (acres): 0.22 — Total Impacts Permanent (acres): 0.04 — Total Mitigation Temporary (0.5:1): 0.11 — Total Mitigation Permanent (2:1): 0.08

Delta Smelt Specific Measures:

- Applicant will survey, avoid (whenever possible), or mitigate areas of suitable habitat when avoidance is not possible.
- Repairs are scheduled to occur during standard in-water work windows for delta smelt, August through November.
- In areas where rock is placed to provide slope protection, Applicant will place clean soil to fill voids, which could potentially provide favorable habitat for non-native predatory fish species.
- Where shallow water habitat cannot be feasibly avoided and is filled or otherwise impacted, then Applicant will secure shallow water habitat (smelt) credits at a Service- and CDFW-approved mitigation bank for impacts at the repair area, at a ratio of either 1:1 or 3:1 depending on site-specific conditions, as proposed below (see Table 4).

Table 4: Compensatory Mitigation for Delta Smelt

Site: **46** — Shallow Water Impacts: 0.18 — Compensatory Mitigation: 0.54

Site: **47** — Shallow Water Impacts: 0.29 — Compensatory Mitigation: 0.87

Site: **48** — Shallow Water Impacts: 0.51 — Compensatory Mitigation: 1.53

Site: **49** — Shallow Water Impacts: 0.11 — Compensatory Mitigation: 0.11

Site: **50** — Shallow Water Impacts: 0.11 — Compensatory Mitigation: 0.11

Site: **51** — Shallow Water Impacts: 0.03 — Compensatory Mitigation: 0.03

Site: **52** — Shallow Water Impacts: 0.04 — Compensatory Mitigation: 0.04

Site: **53** — Shallow Water Impacts: 0.02 — Compensatory Mitigation: 0.02

Site: **55** — Shallow Water Impacts: 0.50 — Compensatory Mitigation: 0.50

Site: **58** — Shallow Water Impacts: 0.06 — Compensatory Mitigation: 0.18

Site: **60** — Shallow Water Impacts: 0.02 — Compensatory Mitigation: 0.06

Site: **61** — Shallow Water Impacts: 0.33 — Compensatory Mitigation: 0.99

Site: **62** — Shallow Water Impacts: 0.03 — Compensatory Mitigation: 0.09

Site: **63** — Shallow Water Impacts: 0.15 — Compensatory Mitigation: 0.45

Site: 65 — Shallow Water Impacts: 0.10 — Compensatory Mitigation: 0.30	
Site: 67 — Shallow Water Impacts: 0.09 — Compensatory Mitigation: 0.27	
Site: 69 — Shallow Water Impacts: 0.05 — Compensatory Mitigation: 0.15	
Site: 70 — Shallow Water Impacts: 0.01 — Compensatory Mitigation: 0.03	
Site: 71 — Shallow Water Impacts: 0.03 — Compensatory Mitigation: 0.09	
Site: 72 — Shallow Water Impacts: 0.03 — Compensatory Mitigation: 0.09	
Site: 73 — Shallow Water Impacts: 0.06 — Compensatory Mitigation: 0.18	
Site: 74 — Shallow Water Impacts: 0.08 — Compensatory Mitigation: 0.24	
Site: 77 — Shallow Water Impacts: 0.01 — Compensatory Mitigation: 0.03	
Total Shallow Water Impacts: 2.84 — Total Compensatory Mitigation: 6.90	

Monitoring and Reporting

- No later than 45 days after completion of the repair, Applicant will provide the Service, CDFW, and NMFS with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Weekly Compliance Reports, (2) notes showing when each of the mitigation measures was implemented, (3) all available information about project-related incidental take of species, (4) information about other project impacts on the species, (5) beginning and ending dates of the repair, (6) an assessment of the effectiveness of conservation measures in minimizing and fully mitigating project impacts on the species, (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impact of future projects on the species, and (8) any other pertinent information.

Financial Assurances

- The Applicant provided a funding assurance letter committing the necessary funds needed to complete all conservation measures and compensatory mitigation consistent with the requirements of CESA, in the form of 0.19 acre of conservation credits for giant garter snake and 6.90 acres of conservation credits for delta smelt. The Applicant will provide proof of purchase for GGS credits within 90 days of starting emergency repairs unless the Applicant receives written

approval from the Service and CDFW extending this timeline.

- The Applicant shall provide a copy of the bill of sale and payment receipt to CDFW upon the purchase of giant garter snake and delta smelt conservation credits.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of giant garter snake and delta smelt, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS, Project Biological Assessment, Essential Fish Habitat, and Incidental Take Permit Application and Mitigated Negative Declaration. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS, Project Biological Assessment, Essential Fish Habitat, and Incidental Take Permit Application, or the Mitigated Negative Declaration, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish and G. Code, sections 2080.1, 2081, subs. (b) and (c).)

References:

California Natural Diversity Database (CNDDDB). 2019. <https://wildlife.ca.gov/Data/CNDDDB>.

**DEPARTMENT OF
FISH AND WILDLIFE**

**HABITAT RESTORATION AND
ENHANCEMENT ACT
CONSISTENCY DETERMINATION
NUMBER 1653-2019-051-001-R1**

Project:

North Fork Battle Creek Barrier Modification and Fish Passage Improvement Project — Upper Barrier Site

Location:

Shasta and Tehama County

Applicant:

Laurie Earley, United States Fish and Wildlife Service

Notifier:

Jeff Souza, Tehama Environmental Solutions

Background

Project Location: The North Fork Battle Creek Barrier Modification and Fish Passage Improvement Project

— Upper Barrier Site (Project) is located within Eagle Canyon on the North Fork Battle Creek and Digger Creek, approximately 15 river miles upstream of the confluence with the Sacramento River. The Project is west of Manton, on a property owned by David Gamon and April Gage, Assessor Parcel Number (APN) 704-260-024-000, 011-020-004-000, and affects North Fork of Battle Creek, Tributary to Battle Creek. The North Fork of Battle Creek supports populations of spring-run Chinook Salmon (*Oncorhynchus tshawytscha*), fall-run Chinook Salmon, late-fall run Chinook Salmon, and Central Valley Steelhead (*O. mykiss*). In addition, winter-run Chinook Salmon will likely be present based on implementation of the Battle Creek Jumpstart Fish Reintroduction Program. Other species present include Pacific lamprey (*Entosphenus tridentatus*), Riffle Sculpin (*Cottus gulosus*) other native fishes, western pond turtle (*Actinemys marmorata*), foothill yellow-legged frog (*Rana boylei*), nesting raptors, migratory birds and special status plant species.

Project Description: United States Fish and Wildlife Service (Applicant) proposes to enhance or restore habitat within North Fork Battle Creek to provide a net conservation benefit for winter-run Chinook Salmon and spring-run Chinook Salmon. Conservation benefits are proposed by removing a fish barrier that prevents fish from accessing 7.68 miles of additional habitat. This will be accomplished by removing a series of boulders that block fish passage. Approximately 720 cubic yards of boulder will be broken down into smaller pieces and either removed from the Project area or used for other Project needs. Removal of smaller pieces of boulder will include the use of either a logging style yarder or crane to lift material out of the work site. The Project will also regrade approximately 30 linear feet of creek channel and install five channel spanning hydraulic structures. The hydraulic structures will be installed to control channel grade and water surface profile. Hydraulic structures will include boulder steps and bedrock chutes and/or pools to create surface drops between two and three feet in height. Each hydraulic structure is designed with three different flow paths, each with specific elevations or specific relationships to the other defined flow path elevations and vertical tolerances. These hydraulic structures will create variable swimming paths and will accommodate a variety of salmonid class sizes. The California Department of Fish and Wildlife (CDFW) funded the Project design that CDFW Engineering and Fisheries staff reviewed and approved. Detailed Project plans, discussion of proposed work, species protection measures, site photos, and maps are on file with CDFW's Habitat Conservation Planning Branch and Northern Region Fisheries Program.

Other Project Items

Revegetation—Vegetation to be removed will be restored upon completion of the Project, as required. Project revegetation would occur after the Project site construction-related activities are completed. A revegetation plan will be prepared prior to final demobilization. Following construction, disturbed vegetated areas would be revegetated in accordance with the revegetation plan. Revegetation would likely occur in the fall or spring following construction and would require access along the existing north and/or south access roads and staging within the developed contractor use areas. Following revegetation, additional maintenance activities would be required to care for the trees and shrubs planted as a part of the revegetation plan. Work will include irrigation, replanting and non-native plant removal, as needed.

Fish Rescue Operations — During dewatering of North Fork Battle Creek, the Applicant and/or CDFW biologists will conduct fish rescue operations for salmonids and other species of concern as warranted. The construction contractor will be responsible for coordinating dewatering activities with fish rescue activities and will be required to dewater the creek slowly.

Project Size: The total area of ground disturbance associated with the Project is approximately 0.305 acres and 264 linear feet. The Applicant has included Project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, section 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) reinforced concrete (2) recycled boulders/rock/gravel (3) crushed rock (4) native material/soil (5) 1.5 inch rock/crushed aggregate (6) 12" or 18" hdpe, cmp or pvc pipe culvert (7) geotextile fabric (8) sand bags (9) super-sandbags (10) water-filled bladder (11) 3-foot clear gravity stream diversion pipe (12) impermeable liner (13) straw wattles/fiber (14) temporary fish screen (15) native trees and shrubs.

Project Timeframes:

Start date: February 1, 2020

Completion date: November 30, 2021

Work window: July 1, 2020–October 15, 2020

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California (and improve fish passage to 7.68 miles of spawning and rearing habitat), the Central Valley Regional Water

Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) Waste Discharge Identification (WDID) No. 5A52CR00197 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Chinook Salmon, Central Valley Steelhead, Pacific Lamprey, Riffle Sculpin, other native fishes, western pond turtle, foothill yellow-legged frog, nesting raptors, migratory birds and special status plant species.

Receiving Water: North Fork Battle Creek, tributary to Battle Creek.

Filled or Excavated Area:

Permanent area impacted: 0.023 acres

Temporary area impacted: 0.282 acres

Length temporarily impacted: 246 linear feet

Length permanently impacted: 18 linear feet

Dredge Volume: 192 cubic yards

Discharge Volume: (1) reinforced concrete 2 cubic yards (2) recycled boulders/rock/gravel (size varies) 540 cubic yards, (3) crushed rock (3–4 inches) 16 linear feet, (4) up to 10 cubic yards, native material/soil 1.5 cubic yards, (5) 1.5 inch rock/crushed aggregate 1.5 cubic yards, (6) 12- or 18-inch hdpe, cmp or pvc pipe culvert 16 linear feet, (7) geotextile fabric 870 square feet, (8) sand bags (small — 0.4 cubic yards) (9) 5,663, super-sandbags (bulk—1.1 cubic yards), (10) water-filled bladder 140 square feet (35 linear feet), (11) 3-foot clear gravity stream diversion pipe 230 linear feet, (12) impermeable liner 1,312 square feet, (13) straw wattles/fiber rolls to be determined, (14) temporary fish screen 1, (15) native trees and shrubs.

Project Location: Latitude 40.425264 degrees and Longitude 121.917147degrees

Regional Water Board staff determined that the Project may proceed under the Order. Additionally, Regional Water Board staff determined that the Project, as described in the Notice of Intent (NOI) complies with the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.). On December 31, 2019, the Director of CDFW received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on January 14, 2020, for publishing in the General Public Interest section of the Cali-

fornia Regulatory Notice Register (Cal. Reg. Notice File Number Z–2020–0114–06) on January 24, 2020. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in the NOI as two tables. The first table is entitled “*Species Protection Measures Incorporated into Project Design*” and includes protection measures for specific species of plants, animals, birds, bats, and fish. The second table is entitled “*Supplemental Avoidance and/or Minimization Measures to Protect Fish, Wildlife, and Plant Resources*” and includes general protection measures relating to vegetation, fish, wildlife, wetlands, hazardous materials, water quality, soil and geology.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included information on monitoring that will be conducted for the Project. Pre- and post-monitoring activities may include pre-construction biological surveys, as-built surveys, initial postconstruction monitoring of hydraulic structures, biological monitoring for salmonid passage success, and post-construction site inspection and maintenance. Monitoring will be conducted throughout construction, and post-Project as-built drawings as well as paired pre and post-construction photos will be provided within 90 days of completion of construction. Additional details regarding monitoring and reporting can be found in Section VIII of the NOI.

Notice of Completion

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Applicant to submit a Notice of Completion (NOC) no lat-

er than 30 days after the project has been completed. A complete NOC includes at a minimum:

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

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

Project Authorization

Pursuant to Fish and Game Code section 1654, CDFW's approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA, and comply with other conditions described in the NOI.

If there are any substantive changes to the Project or if the Water Board amends or replaces the NOA, the Applicant shall be required to obtain a new consistency determination from CDFW. (See generally Fish and G. Code, section 1654, subd. (c).)

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

South Fresno PCE Groundwater Plume Site Proposed Administrative Settlement NOTICE OF PUBLIC COMMENT PERIOD: February 10, 2020 through March 11, 2020

The Department of Toxic Substances Control (DTSC) invites you to review and comment on a pro-

posed Administrative Settlement regarding the South Fresno PCE Groundwater Plume Site located at 2376 South Railroad Avenue in Fresno, California (Site) 93721. Since 2008, DTSC has been investigating releases of hazardous substances at the Site and adjacent properties. The proposed Administrative Settlement resolves DTSC's claims against the Kenneth L. Lust and Helen C. Lust Living Trust (Lust Trust), dated November 6, 1998, for its liability for contamination at the Site and includes contribution protection provided by CERCLA section 113(f)(2), 42 U.S.C. section 9613(f)(2). The California High Speed Rail Authority (HSRA) is the current owner of the Site after it took possession of the Property by eminent domain in January of 2016. Under the Administrative Settlement, the Lust Trust will pay DTSC \$325,000, which is equal to the amount that the Lust Trust was paid by the HSRA for the property. The amount DTSC receives under the Administrative Settlement will be used to reimburse DTSC for a portion of its cleanup and oversight costs, subject to certain conditions and reservations.

You may view documents at the following locations: The Administrative Settlement and background documents are available for review on the Activities and Summary tabs, respectively, on the DTSC EnviroStor website at: https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=60000706.

You may also review documents in the File Room at DTSC's Clovis office by appointment: 1515 Tollhouse Road, Clovis, California 93611, call (559) 297-3901 for an appointment.

WHERE DO I SUBMIT MY COMMENTS: DTSC will consider comments that are postmarked on or before March 11, 2020 or received electronically by 11:59 p.m. on that date. Please submit comments with **"South Fresno PCE Groundwater Plume AS Comment"** in the subject line to:

CONTACT INFORMATION: If you have any questions or concerns, please contact:

Ryan Mitchum, DTSC Project Manager
1515 Tollhouse Road
Clovis, California 93611
(559) 297-3958
Ryan.Mitchum@dtsc.ca.gov

Veronica Villaseñor
 Public Participation Specialist
 Phone: (916) 255-3651
 Toll-free (866) 495-5651
Veronica.Villasenor@dtsc.ca.gov

**OFFICE OF ENVIRONMENTAL
 HEALTH HAZARD ASSESSMENT**

California Environmental Protection Agency

**ANNOUNCEMENT OF PUBLICATION OF
 PUBLIC HEALTH GOALS AND TECHNICAL
 SUPPORT DOCUMENT FOR
 TRIHALOMETHANES IN DRINKING WATER**

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency is announcing the publication of Public Health Goals (PHGs) for four trihalomethanes (THMs) found in drinking water as a result of disinfection methods: chloroform, bromodichloromethane (BDCM), dibromochloromethane (DBCM), and bromoform. A PHG is the level of a drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996¹ requires OEHHA to develop PHGs based exclusively on public health considerations.² PHGs published by OEHHA are considered by the State Water Resources Control Board in setting drinking water standards (Maximum Contaminant Levels, or MCLs) for California.³

The technical support document, posted on the OEHHA website (<https://oehha.ca.gov/water>), presents the scientific information available on the toxicity of the THMs and the calculation of the PHGs. The PHGs of 0.4 parts per billion (ppb) for chloroform, 0.06 ppb for BDCM, 0.1 ppb for DBCM, and 0.5 ppb for bromoform are based on carcinogenicity and are set at a level of risk of one additional cancer case per one million persons exposed over a 70-year lifetime. OEHHA also presents health-protective drinking water concentrations for noncancer health effects for the THMs.

A companion document, also available at <https://oehha.ca.gov/water>, contains responses to public comments received during the two public comment periods that ended in January and December 2019, and comments received in June 2019 from an external scientific peer review. OEHHA has evaluated all of the comments

and revised the technical support document as appropriate.

If you would like to receive further information on this announcement or have questions, please contact Hermelinda Jimenez at PHG.Program@oehha.ca.gov or at (916) 324-7572. Written inquiries can also be addressed to:

Pesticide and Environmental Toxicology Branch
 Office of Environmental Health Hazard Assessment
 California Environmental Protection Agency
 P.O. Box 4010, MS-12B
 Sacramento, California 95812-4010
 Attention: PHG Program

**ACCEPTANCE OF PETITION
 TO REVIEW ALLEGED
 UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
 California Code of Regulations)**

The Office of Administrative Law (OAL) has accepted for consideration two petitions challenging the California Department of Corrections and Rehabilitation's memorandums regarding Non-Designated Programming Facilities (NDPF). The challenged rules establish NDPF requirements and set a schedule for the transition to NDPF for multiple facilities throughout the state of California. Since the issues raised by the petitions are related, OAL will address them as one determination.

If you would like to comment on the issues raised by the petitions, please send your comments to:

Nicole C. Carrillo, Attorney
 Office of Administrative Law
 300 Capitol Mall, Ste. 1250
 Sacramento, CA 95814

A copy of your comment must also be sent to the petitioners and the agency contact person.

Petitioners:

Joseph R. McCoy
 C-29239
 Post Office Box 5242
 B3-02-003L
 Corcoran, California 93212-5242

David A. Perysian
 T-10808
 Post Office Box 8101
 San Luis Obispo, California 93409

¹ Codified at Health and Safety Code, section 116270 *et. seq.*

² Health and Safety Code, section 116365(c).

³ Health and Safety Code, section 116365(a) and (b).

Agency contact:

Ying Sun, Associate Director
Department of Corrections and Rehabilitation
Post Office Box 942883
Sacramento, California 94283-0001

Please note the following timelines:

Publication of Notice of Acceptance of
Petition: 1/31/2020
Deadline for Public Comments: 3/9/2020
Deadline for Agency Response: 3/23/2020
Deadline for Petitioner Rebuttal: No later than 15
days after receipt of the agency's response.
Deadline for OAL Decision: 6/8/2020

The petitions are not being printed for practical reasons or space consideration. However, if you would like to receive a copy of the petition, please contact Margaret Molina at (916) 324-6044 or Margaret.Molina@oal.ca.gov.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

File# 2019-1212-01
BOARD OF ACCOUNTANCY
Licensee Applications

The California Board of Accountancy filed a nonsubstantive change to update six forms to comply with Assembly Bill 1521 (Stats. 2019, Ch. 359) which requires if an applicant has a valid email address, the applicant shall provide that email address to the Board.

Title 16
AMEND: 15.1, 16, 19, 20
Filed 01/23/2020
Agency Contact: Peter Renevitz (916) 561-1742

File# 2019-1212-05
BOARD OF EDUCATION
English Language Proficiency Assessments for
California

In this Certificate of Compliance, which makes permanent the changes made in OAL Matter No. 2020-0110-04EE, the Board of Education is adopting and amending regulations to transition from a paper-based English Language Proficiency Assessment for California to an online test delivery system.

Title 5
ADOPT: 11518.37, 11518.77
AMEND: 11518, 11518.5, 11518.15, 11518.20,
11518.25, 11518.30, 11518.35, 11518.40, 11518.45,
11518.50, 11518.75
Filed 01/27/2020
Effective 01/30/2020
Agency Contact: Hillary Wirick (916) 319-0860

File# 2019-1218-02
BOARD OF EQUALIZATION
Veterans' Exemption

In this change without a regulatory effect, the Board amends its regulation to modify the maximum welfare exemption amount for low-income housing properties, pursuant to Senate Bill 1115 (Stats. 2018, Ch. 694). The regulation is changed from stating that the amount of the exemption shall not exceed \$20,000 in tax to stating that the amount of the exemption shall not exceed \$20,000,000 in assessed value.

Title 18
AMEND: 140
Filed 01/29/2020
Agency Contact: Lawrence Lin (916) 322-1982

File# 2019-1218-03
BOARD OF EQUALIZATION
Veterans' Exemption

In this change without a regulatory effect, the Board renumbers section 464 as section 149 to move the regulation, entitled Veterans Exemptions, to Division 1, Chapter 2, Article 3, of Title 18 of the California Code of Regulations, which addresses Exemptions and Immunities.

Title 18
AMEND: 464 [renumbered as section 149]
Filed 01/29/2020
Agency Contact: Lawrence Lin (916) 322-1982

File# 2019-1211-01
BOARD OF PHARMACY
Naloxone Fact Sheet

The California Board of Pharmacy is making changes to allow the executive authority to approve alternate

fact sheets for distribution to patients after being furnished naloxone hydrochloride by a pharmacist, as long as the alternate fact sheets contain the same elements of the current Board-approved fact sheet. Additionally the Board of Pharmacy is clarifying that fact sheets provided to patients in alternate languages must be the current naloxone fact sheet approved and translated by the Board of Pharmacy.

Title 16
 AMEND: 1746.3
 Filed 01/27/2020
 Effective 04/01/2020
 Agency Contact: Lori Martinez (916) 574-7917

File# 2019-1206-01
 CALIFORNIA GAMBLING CONTROL
 COMMISSION
 Updates and Amendments to Hearings

This resubmittal action amends the evidentiary hearing process related to applications for licenses or other approvals under Commission jurisdiction, pursuant to Business and Professions Code section 19800 et seq. (See OAL Matter No. 2019-0910-02.)

Title 4
 ADOPT: 12057
 AMEND: 12002, 12006, 12012, 12014, 12015, 12017, 12035, 12050, 12052, 12054, 12056, 12058, 12060, 12062, 12064, 1266, 12068
 Filed 01/22/2020
 Effective 04/01/2020
 Agency Contact: Josh Rosenstein (916) 274-5823

File# 2019-1213-01
 CALIFORNIA HORSE RACING BOARD
 Occupational Licenses and Fees

This resubmittal of OAL Matter No. 2019-0916-01SR by the California Horse Racing Board (the "Board") requires the licensure of officers, directors, partners, and individuals holding five percent or more of the outstanding shares of an advance deposit wagering, mini-satellite wagering, or exchange wagering provider. Similarly, the Board is requiring the licensure of specified individuals of an advance wagering, mini-satellite wagering, or exchange wagering provider whose duties routinely require access to restricted areas of the inclosure. Lastly, the Board is amending two applications for licensure to collect additional information from applicants.

Title 4
 AMEND: 1481, 2071, 2072
 Filed 01/28/2020
 Effective 04/01/2020
 Agency Contact: Harold Coburn (916) 263-6026

File# 2019-1213-03
 COMMISSION ON STATE MANDATES
 General Cleanup Provisions

The Commission on State Mandates (Commission) submitted this action to make comprehensive amendments to its regulations. The amendments clarify, streamline, and clean up the Commission's regulations, update language for consistency, and make changes to Commission procedures.

Title 2
 AMEND: 1181.1; 1181.2; 1181.3; 1181.4; 1181.8; 1181.9; 1183.1; 1183.2; 1183.3; 1183.4; 1183.6; 1183.7; 1183.8; 1183.9; 1183.10; 1183.11; 1183.12; 1183.13; 1183.15; 1183.16; 1183.17; 1183.18; 1184.1; 1185.1; 1185.2; 1185.3; 1185.4; 1185.5; 1185.6, 1185.7, 1185.8, 1185.9, 1186.2, 1186.4, 1186.6, 1186.7, 1187.1, 1187.2, 1187.3, 1187.4, 1187.6, 1187.7, 1187.8, 1187.9, 1187.13, 1187.14, 1187.15, 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, 1190.5
 Filed 01/23/2020
 Effective 04/01/2020
 Agency Contact: Jill Magee (916) 323-3562

File# 2019-1212-02
 DEPARTMENT OF CHILD SUPPORT SERVICES
 Repeal MPP Chapter 12-500; Adopt Refunds of Over-Collections

This action repeals all of Chapter 12-500 of the Manual of Policies and Procedures, and adds new procedures for processing over-collected payments.

Title 22, MPP
 ADOPT: 110487, 119905
 REPEAL: 12-501, 12-505, 12-510, 12-515, 12-520
 Filed 01/22/2020
 Effective 04/01/2020
 Agency Contact: Andrew Enriques (916) 464-6689

File# 2019-1220-04
 DEPARTMENT OF CORRECTIONS AND
 REHABILITATION
 Condemned Inmate Transfer Pilot Program

This action by the Department of Corrections and Rehabilitation adopts section 3999.27 as a pilot program for the condemned inmate transfer program. This filing is exempt from chapter 3.5 of part 1 of division 3 of title 2 of the Government Code pursuant to Penal Code sec-

tion 5058.1 and is not subject to review by the Office of Administrative Law. This action is effective on filing with the Secretary of State pursuant to Penal Code section 5058.1 and remains in effect for two years.

Title 15
ADOPT: 3999.27
Filed 01/29/2020
Effective 01/29/2020
Agency Contact: Josh Jugum (916) 445-2266

File# 2019-1210-01
DEPARTMENT OF FOOD AND AGRICULTURE
Hydrogen Gas-Measuring Device

In this regular rulemaking, the Department of Food and Agriculture amends two sections related to requirements set forth in the National Institute of Standards and Technology Handbook 44 "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" and other requirements applicable to hydrogen gas-measuring devices.

Title 4
AMEND: 4001, 4002.9
Filed 01/23/2020
Effective 01/23/2020
Agency Contact: Samuel Ferris (916) 229-3000

File# 2019-1212-04
DEPARTMENT OF INDUSTRIAL RELATIONS
Reporting Work-Connected Fatalities and Serious Injuries

This action without regulatory effect aligns regulatory reporting of work-connected fatalities and serious injuries to statute. (See Lab. Code, section 6409.1.)

Title 8
AMEND: 342
Filed 01/28/2020
Agency Contact: John Cumming (415) 486-2038

File# 2019-1227-02
DEPARTMENT OF JUSTICE
Self-Manufactured or Self-Assembled Firearms

This action by the Department of Justice makes permanent, with additional changes, amendments to the requirements for new residents seeking to obtain a unique serial number for self-manufactured or self-assembled firearms in accordance with Penal Code section 29180.

Title 11
AMEND: 5505, 5507, 5509, 5510, 5511, 5513, 5514, 5516, 5517, 5518, 5521
Filed 01/28/2020
Effective 01/28/2020
Agency Contact: Julia Zuffelato (916) 210-6040

File# 2019-1210-05
EMERGENCY MEDICAL SERVICES
AUTHORITY
Paramedic Regulations

This rulemaking action amends Emergency Medical Technician — Paramedic (EMT-P) regulations concerning: EMT-P training program reviews, approvals, and accreditation requirements; EMT-P applications and licensure processes; and curriculum content for tactical casualty care. The action also amends provisions concerning record keeping requirements and adjusts license application, renewal, and reinstatement fees and continuing education provider approval and re-approval fees.

Title 22
ADOPT: 100141.1, 100143.1, 100144.1
AMEND: 100137, 100140, 100141, 100144, 100146, 100148, 100149, 100150, 100153, 100154, 100155, 100156, 100157, 100158, 100159, 100160, 100162, 100163, 100164, 100165, 100167, 100170, 100171, 100172
REPEAL: 100161
Filed 01/24/2020
Effective 04/01/2020
Agency Contact:
Esam El-Morshedy (916) 431-3656

File# 2020-0117-01
VETERINARY MEDICAL BOARD
Fee Schedule

The Veterinary Medical Board submitted this emergency action to increase fees for licensure to their statutory maximums for veterinarians and registered veterinary technicians.

Title 16
AMEND: 2070, 2071
Filed 01/27/2020
Effective 01/27/2020
Agency Contact: Jessica Siefertman (916) 515-5222

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

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