



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

**CONFLICT-OF-INTEREST CODES
AMENDMENT**

MULTI-COUNTY:

- Regional Water Authority
- College of the Sequoias
- Redwood Empire School's Insurance Group

A written comment period has been established commencing on March 13, 2020 and closing on April 27, 2020. Written comments should be directed to the Fair Political Practices Commission, Attention Amanda Apostol, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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

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

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the

proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than March 13, 2020. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES

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

**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **April 16, 2020**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **April 14, 2020**.

BACKGROUND/OVERVIEW

Section 83110 of the Act provides that “[m]eetings of the Commission shall be public except that the Commission may provide otherwise for discussions of personnel and litigation.” Section 83111 states that “[t]he Commission has primary responsibility for the impartial, effective administration and implementation of this title.” Section 83112 provides that “[t]he commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of this title, and to govern procedures of the Commission.”

Regulation 18310 includes general provisions relating to public meetings held by the Commission. Regulation 18310 does not include any provisions relating to public participation at Commission meetings.

The proposed regulation would implement rules pertaining to public participation at Commission meetings for the purpose of affording members of the public the opportunity to address the Commission during meet-

ings, while also allowing the Commission to run meetings effectively and without disruption.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18310.1 — Public Participation at Meetings

The Commission will consider the adoption of proposed Regulation 18310.1, which will establish procedural rules for public participation at meetings, including, but not limited to, provisions relating to time limitations for public comments, order and organization of public comments, and electronically submitted public comments. At a minimum, the Commission, may consider:

- A provision establishing a default three-minute time limit per speaker, per agenda item;
- A provision allowing the Chair to require a member of the public to leave a meeting, or have that individual’s opportunity to provide public comment limited, if that individual has purposefully violated the regulation or otherwise purposefully disrupted the meeting, or expressly encouraged another to do so; and
- A provision allowing the Commission to reject or “block” any content received from a non-human source, such as a software “bot.”

SCOPE

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

FISCAL IMPACT STATEMENT

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

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

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

AUTHORITY

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

REFERENCE

Sections 83110, 83111 and 83112, Government Code.

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

CONTACT

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

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **April 16, 2020** at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **April 14, 2020**.

BACKGROUND/OVERVIEW

Sections 85301, 85302, and 85303 establish limits on contributions to candidates for elective state office. Under Regulation 18531, candidates subject to contributions may return excessive contributions within 14 days to avoid violating the Act’s contributions limits. Currently, a committee may return a contribution only *prior* to deposit.

As stated in public comment to the Commission at the December 19, 2019, Commission meeting, a committee may be unaware of an excessive contribution until it has already been deposited if received by auto deposit or if the contribution only exceeds the limits when aggregated with previous contributions from the same contributor or affiliated contributors. Under existing Regulation 18531, a committee would not be permitted to return the contribution and avoid a violation of the Act’s contribu-

tions limits because the contribution has already been deposited.

REGULATORY ACTION

The Commission will consider amending Regulation 18531 and the applicable rules for returning excessive contributions. At a minimum, it is anticipated that the Commission will consider permitting the return of excessive contributions after deposit in some circumstances. In addition, the Commission may consider any and all other provisions related to Regulation 18531 including, but not limited to, the following:

- The current 14-day deadline for the return of excessive contributions.
- Limiting the return of excessive contributions when the committee has actual knowledge that the contribution exceeds the limits at the time of receipt or makes use of the contribution prior to returning it.
- Expressly requiring reporting of excessive contributions deposited into the campaign account on the Committee’s applicable campaign statements.
- Non-substantive and technical amendments for clarity and readability.

SCOPE

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

FISCAL IMPACT STATEMENT

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

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

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

AUTHORITY

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

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

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 85301, 85302, and 85303.

CONTACT

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

**TITLE 14. DEPARTMENT OF
RESOURCES RECYCLING AND
RECOVERY**

**Chapter 4: Resource Conservation Programs
Article 8: Sustainable Packaging for the
State of California Act
Sections: 17989-17989.8**

PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (department) proposes to add to the California Code of Regulations, Title 14, Division 7, Chapter 4, Article 8 commencing with Section 17989. The proposed regulation is intended to clarify processes and develop criteria to determine the types of food service packaging that are reusable, recyclable, or compostable as required by the Sustainable Packaging for the State of California Act (referred to throughout as the "Act") [Chapter 610, Statutes of 2018 (Allen, Senate Bill 1335)].

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for April 28, 2020. The hearing will be held at the:

Joe Serna Jr., Cal EPA Building
Byron Sher Auditorium
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **2:00 p.m. on April 28, 2020** and will conclude after all testimony is given. The department requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheelchair accessible. If you have any questions, please contact SB1335@calrecycle.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation to the department. **The written comment period for this rulemaking closes on April 28, 2020.** The department will also accept written comments during the public hearing described above. Please submit your written comments to:

Andrew Parrish
Materials Management and Local Assistance
Division
California Department of Resources Recycling and
Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
FAX: (916) 319-7291
E-MAIL: SB1335@calrecycle.ca.gov

AUTHORITY AND REFERENCES

Public Resources Code Sections 40401, 40502, and 42370.2 provide authority for this regulation. The following is a list of references cited in this proposed regulation: Public Resources Code Sections 42370, 42370.1, 42370.2, 42370.3, 42370.4, 42370.5, 42370.6 and 42370.7.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The California Integrated Waste Management Act (Division 30 (commencing with section 40000) of the Public Resources Code) gives the department authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. Public Resources Code section 40502 requires the department to adopt rules and regulations to implement the California Integrated Waste Management Act. Packaging represents nearly one-fourth of materials landfilled in California and single-use food service packaging is a significant component of these discards. Implementation of the Act will assist in achieving the goal of 75 percent recycling, composting, or source reduction of solid waste as required by AB 341 (Chesbro, Chapter 476,

Statutes of 2011) due to the increased utilization of food service packaging that is reusable, recyclable, or compostable. In addition, the state will realize a reduction in greenhouse gas emissions as a result of fewer food service packaging items being sent to landfills.

Improperly discarded single-use food service packaging contributes to environmental pollution, adversely impacts wildlife, and poses potential health risks to communities across the state. Food service packaging that is littered contaminates the state's waterways and has the potential to release toxic ingredients into the environment, negatively impacting soil and water quality. The department estimates \$300,000 in annual litter cleanup costs may be saved as a result of reducing the amount of non-recyclable food service packaging used at state food service facilities. Additionally, non-recyclable or non-compostable food service packaging is a contaminant when it is placed in a recycling or composting container, which reduces the effectiveness of those programs. For example, non-recyclable food packaging that is placed in a recycling container may impact the physical properties of recyclable materials collected through the program and harm the overall economic and technical viability of the recycling program.

The Act will further the department's ability to meet its statewide recycling and diversion goals by establishing new food service packaging requirements on state food service facilities that will increase the distribution of food service packaging that is compatible with California's recycling and composting programs. Specifically, the Act requires the department to evaluate food service packaging items based on criteria unique to the state (such as existing infrastructure, material markets, material composition, and potential environmental impacts) to ensure that only reusable, recyclable, or compostable food service packaging is used by state facilities.

Specifically, the proposed regulation will:

1. Clarify definitions
2. Specify the information that will be published on the List of Approved Types of Food Service Packaging Items (List)
3. Establish criteria to evaluate the potential impact of food service packaging on litter, public health, and wildlife
4. Establish criteria for determining how food service packaging will be evaluated in order to be considered reusable
5. Establish criteria for determining how food service packaging will be evaluated in order to be considered recyclable
6. Establish criteria for determining how food service packaging will be evaluated in order to be considered compostable
7. Specify the administrative procedures to submit an application for a food service packaging item, or group of items, to be added to the List
8. Specify the conditions under which remaining inventories of noncompliant food service packaging items, or groups of items, may be used
9. Specify recordkeeping requirements

The statutory requirements, together with the clarification provided by the proposed regulation, will assist in the effective implementation of the Act by establishing administrative procedures for maintaining the List, submitting applications, and making records available. In addition, the criteria to determine if food service packaging is reusable, recyclable, or compostable will help protect the state's recycling and composting infrastructure as well as public health and the environment.

During informal rulemaking, staff organized numerous stakeholder meetings and held two workshops on April 10, 2019 and June 4, 2019, to solicit feedback on draft concepts and regulatory text. The comments and input received at these events, additional written correspondence, and feedback solicited from multiple state departments and other interested entities further aided the development of the content that was incorporated into the proposed regulation.

CONSISTENCY EVALUATION

After conducting an evaluation of existing state regulations, the department found that these are the only regulations dealing with determining types of food service packaging that are reusable, recyclable, or compostable. The department determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations and that the department is the only agency that can implement this proposed regulation.

PLAIN ENGLISH REQUIREMENTS

Department staff prepared the proposed regulation pursuant to the standard of clarity specified in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulation is considered non-technical and is written to be easily understood by those parties that will use them.

FORMS INCORPORATED BY REFERENCE

No documents or forms are incorporated by reference in the proposed regulation.

**MANDATED BY FEDERAL
LAW OR REGULATIONS**

Federal law or regulations do not contain comparable requirements.

OTHER STATUTORY REQUIREMENTS

The result of the external scientific peer review of the scientific basis of the proposed regulation pursuant to Health and Safety Code section 57004 will be posted on the department's website at: <https://www.calrecycle.ca.gov/laws/rulemaking/foodservice/>.

LOCAL MANDATE

The department has determined that the proposed regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

**COSTS TO ANY LOCAL AGENCY OR SCHOOL
DISTRICT REQUIRING REIMBURSEMENT**

The department has determined that the proposed regulations do not result in costs to any local agency or school district that must be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 of Division 4 of the Government Code Section 17500 et seq.

COSTS OR SAVINGS TO ANY STATE AGENCY

The total annual direct costs to the state are estimated to total \$2.3 million, which will be incurred by the department, the Department of General Services (DGS), and food service operations at certain state agencies as described below.

The department will incur approximately \$152,000 in costs, pursuant to an approved FY19–20 Budget Change Proposal to employ one permanent Senior Environmental Scientist (Specialist). This position, funded by the Integrated Waste Management Account, is developing the regulation and will oversee implementation of the department's responsibilities pursuant to the Act.

DGS anticipates it will incur costs related to updating and executing food service contracts; however, it did not provide an estimated amount of the fiscal impact. Because DGS will not be able to estimate its total annu-

al costs until the List is published,¹ the department accounted for an annual nominal cost to DGS of about \$38,000.

While many food service facilities will be able to pass their increased costs on to their customers, certain agencies (e.g., prisons, hospitals, military, fire protection, and conservation corps) do not sell their food and therefore will not be able to pass on these additional costs. The department estimates the cost impact to these state agencies will be approximately \$2.1 million. The department anticipates funding to cover these cost impacts may be requested in subsequent budgets by the impacted agencies beginning in Fiscal Year 2021–2022.

**NON-DISCRETIONARY COSTS OR
SAVINGS TO LOCAL AGENCIES**

The department has determined that the proposed regulation does not impose any non-discretionary costs or savings upon any local agencies.

**COSTS OR SAVINGS IN FEDERAL
FUNDING TO THE STATE**

The department has determined that that the proposed regulation will not impact federal funding to the state.

HOUSING COSTS

The department has determined that the proposed regulation will not have an effect on housing costs.

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

The department has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. While manufacturers of food service packaging will be responsible for bearing costs of approximately \$1 million in the first year of implementation, these costs represent an insignificant proportion of the profits made on these products. Food service facilities will bear most of the remainder of the costs of the regulation. These increased costs are not significant and are expected to largely be passed on to customers.

The department has estimated that approximately 20 food service packaging manufacturers will be impacted

¹ California Department of Finance. 2018. Bill Analysis, SB 1335 (Allen).

by these regulations and will bear approximately \$1 million in regulatory costs (\$50,000 per manufacturer) every 5 years. These costs include testing the performance of food service packaging items, data acquisition, and costs to prepare and submit an application. The department estimates that approximately 4,430 food service facilities will be impacted by these regulations and will bear approximately \$5 million in regulatory costs (approximately \$1,100 per food service facility) every year. These costs include increased costs to purchase compliant food service packaging items and administrative costs to review the approved List, maintain records, and ensure compliance.

The department anticipates that the financial impact on a food service facility or a food service packaging manufacturer as a result of the regulation will vary depending on its size and operations. The modest cost increase for food service packaging borne by food service facilities will be passed on to customers (on average \$1.50 per customer per year) and to state agencies that provide (not sell) meals (approximately \$2 million per year for all impacted state agencies). Food service packaging manufacturers are primarily large businesses but may also include some small businesses that manufacture niche products. All businesses will incur costs based on the number of food service packaging items they manufacture and sell to food service facilities. Large businesses that sell more food service packaging items will incur greater costs than small businesses that manufacture fewer food service packaging items. The result is that large manufacturers will pay a greater proportion of the regulatory costs than the smaller manufacturers.

The department estimates that the costs for food service packaging manufacturers to comply with these regulations is approximately \$1 million every 5 years compared to more than \$20 billion in annual revenues.

STATEMENT OF THE RESULTS OF THE
ECONOMIC IMPACT ASSESSMENT

CREATION OR ELIMINATION OF
JOBS WITHIN CALIFORNIA

One Senior Environmental Scientist (Specialist) job was created at the department beginning in Fiscal Year 2019–2020² to develop and implement the regulations. This position will conduct ongoing evaluations of food service packaging and establish and update the List. The statute requires DGS to update its website and en-

² California Department of Resources Recycling and Recovery. 2019. Budget Change Proposal

sure that any relevant contract or agreement is updated to conform to these regulations. DGS did not identify a fiscal impact associated with contracting for reusable, recyclable, or compostable food service packaging that is above and beyond its existing workload.³ The regulations require food service facilities to maintain records that are consistent with existing business practices, and to provide information to the department, upon request. The department anticipates the nominal work associated with these tasks will be performed by existing employees.

The department does not expect the loss or creation of industry jobs as a direct result of the regulation. However, the department used the Regional Economic Models, Inc. (REMI) economic model to estimate the indirect and induced impacts of the regulations to the California economy (Table 1). The results of the REMI economic model show a slight decrease in the forecasted GDP and employment growth due to (1) the increased administrative costs and testing by food service packaging manufacturers, (2) the increased costs of food service packaging being passed on to consumers, and (3) changes in consumer and government spending patterns. As a result of this change in employment growth, we anticipate a reduction in personal income growth. The decrease in employment and personal income growth is not specific to the impacted industries, but rather is spread out over the entire economy as a result of a decrease in state GDP growth.

Table 1: REMI Model Economic Output

Output Year: 2022 — Total State GDP: \$3,190,000 M — Decreased State GDP: \$4.0 M — Total Net Employment Decrease: 60 jobs — Total Personal Income Decrease: \$4 M

Output Year: 2023 — Total State GDP: \$3,270,000 M — Decreased State GDP: \$5.0 M — Total Net Employment Decrease: 68 jobs — Total Personal Income Decrease: \$5 M

Output Year: 2024 — Total State GDP: \$3,350,000 M — Decreased State GDP: \$5.0 M — Total Net Employment Decrease: 65 jobs — Total Personal Income Decrease: \$5 M

CREATION OF NEW BUSINESSES OR
ELIMINATION OF EXISTING
BUSINESSES WITHIN CALIFORNIA

The department does not anticipate the loss or creation of businesses as a direct result of the regulation.

³ California Department of Finance. 2018. Bill Analysis, SB 1335 (Allen).

However, the department elected to use the REMI economic model to estimate the indirect and induced impacts of the regulations to the California economy. The results of the REMI economic model show a slight decrease in the forecasted employment growth due to (1) the increased administrative and testing costs required for food service packaging manufacturers, (2) the increased costs of food service packaging being passed on to consumers, and (3) changes in consumer and government spending patterns. The REMI model shows a decrease of 60 jobs in 2022, 68 jobs in 2023, and 65 jobs in 2024. However, the decrease in employment is not specific to the impacted industries (food service facilities and food service packaging manufacturers), but rather is spread out over the entire economy as a result of a decrease in the state Gross Domestic Product growth.

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE

The department anticipates a small increased demand for compliant food service packaging items within the state. Food service packaging manufacturers that produce a portfolio of items may shift their production from those that are likely to be deemed noncompliant to those that may be deemed compliant.

BENEFITS OF THE REGULATION

The benefit of the proposed regulation is the protection of public health and the environment. The benefits associated with the regulation include the following:

1. Reduction of litter and cleanup costs, improved water quality, and reduced impacts to wildlife: Increasing the use of reusable, recyclable, or compostable food service packaging items in state facilities will result in less litter in the state's waterways and marine environments where it harms wildlife and destroys habitats. Reducing litter cleanup costs will help alleviate the burden on local communities. The department estimates \$300,000 in annual litter cleanup costs may be saved as a result of reducing the amount of non-recyclable food service packaging used at food service facilities.
2. Increased recovery and reuse: Materials that have robust recycling markets are more likely to be collected for recovery. Much of the food service packaging currently sold in the state, despite labeling claims of "recyclable" or "compostable," are not compatible with California's infrastructure and are often contaminants that negatively impact recycling and composting programs. The criteria required by the Act and the proposed regulation

will help harmonize recovery and reuse requirements throughout the state and will help the state in achieving its 75 percent source reduction, recycling, and composting goal.

3. Reduction in greenhouse gas emissions: Materials that can be composted and are accepted at compost facilities are more likely to be diverted from landfills. Diverting compostable food service packaging and the associated food waste to compost facilities will help the department achieve its organic waste diversion goals and reduce greenhouse gas emissions associated with landfilling organic materials, as required by SB 1383 (Lara, Chapter 395, Statutes of 2016).
4. Reducing toxic chemicals in food service packaging items: Certain chemicals, such as per- and polyfluoroalkyl substances can be harmful to humans and wildlife. The regulations will reduce the amount of these chemicals contained in food service packaging. The magnitude of the reduction in toxic chemicals is unknown, but the reduction will have positive environmental and public health benefits.

COST IMPACT ON REPRESENTATIVE PERSON OR BUSINESS

The regulations will have measurable impacts on two industries: food service facilities and food service packaging manufacturers. Food service facilities will incur costs to comply with this proposed regulation because compliant food service packaging items are often slightly more expensive than the noncompliant items and due to minor recordkeeping requirements imposed by the Act. Food service facilities that sell meals may pass these minor increased costs on to their customers. Individuals who are given (not sold) meals, such as at prisons, hospitals, and military facilities, will not experience a cost difference because they do not purchase these meals. Food service packaging manufacturers that seek to be included on the List will incur costs to prepare and submit documentation to the department, including product test results and other required information to demonstrate compliance with the criteria established by the regulation.

BUSINESS REPORT

The proposed regulation does not require businesses to submit routine reports; however, the proposed regulation does require a food service packaging manufacturer to submit documentation to prove that a type of food service packaging meets the criteria for reusable, recyclable, or compostable. The documentation must be included in an application that is submitted for a food

service packaging item, or group of items, to the department for evaluation. Food service packaging items that meet the applicable criteria will be added to the List of Approved Food Service Packaging. The documentation required by food service packaging manufacturers is necessary for the health, safety, and welfare of the people of the state and it is necessary that the proposed regulation apply to businesses that manufacture food service packaging.

EFFECT ON SMALL BUSINESS

The department estimates that 97%⁴ of the 4,450 food service facilities are small businesses with fewer than 100 employees.⁵ The remaining 3% of impacted food service facilities are institutional food service operations at prisons, hospitals, universities, and military facilities with more than 100 employees. The California Department of Rehabilitation Business Enterprise Program constitutes approximately 50 of the impacted food service facilities. The federal and state statutes governing the Department of Rehabilitation Business Enterprise Program provide a “priority” for blind vendors to operate food service facilities in federal and state government buildings.

The department estimates fewer than 20 food service packaging manufacturers will be impacted by the regulation. This estimate is based on the number of food service packaging manufacturers identified in data provided by the DGS^{6,7} and Sysco. The department staff conducted research and determined that approximately 25% of the impacted food service packaging manufacturers are small businesses with fewer than 100 employees. Business employment data was obtained from information published in corporate reports and on the business’s website. Third-party sites such as zoominfo.com and owler.com were used when information was not available directly from the business.⁸

CONSIDERATION OF ALTERNATIVES

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

⁴ Hansen, Katie. 2019. Senior Legislative Director, California Restaurant Association. September 24.

⁵ Subsection (1)(A) of Subdivision (d) of Section 14837 of the Government Code.

⁶ Department of General Services. 2017. Contract Pricing.

⁷ Department of General Services. 2018. Pricing Worksheet.

⁸ California Department of Resources Recycling and Recovery. 2019. “Packaging manufacturer research.”

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

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

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Andrew Parrish
Materials Management and Local Assistance
Division
California Department of Resources Recycling and
Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
PHONE: (916) 341-6458
FAX: (916) 319-7291
E-MAIL: Andrew.Parrish@calrecycle.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed to:

Daphne Molin
Materials Management and Local Assistance
Division
California Department of Resources Recycling and
Recovery
P.O. Box 4025
Sacramento, CA 95812-4025
PHONE: (916) 341-6221
FAX: (916) 319-7291
E-MAIL: Daphne.Molin@calrecycle.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The department will have the entire rulemaking file, and all information that provides the basis for the proposed regulation, available for inspection and copying throughout the rulemaking process. For more timely access to the proposed text of the regulation, and in the interest of waste prevention, interested parties are encouraged to access the department’s Internet webpage at: <https://www.calrecycle.ca.gov/laws/rulemaking/foodservice>.

Copies of the rulemaking file may also be obtained by contacting Andrew Parrish or Daphne Molin using the contact information above, or by submitting a request to: SB1335@calrecycle.ca.gov. As of the date this no-

Notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the economic and fiscal impact statement, the documents relied upon for the proposed action, and the initial statement of reasons (ISOR).

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

The department may adopt the proposed regulation substantially as described in this notice. If the department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available to the public for at least 15 days before the department adopts the regulation as revised. Requests for the modified text should be made to the contact person named above. The department will transmit any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; and all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. The department will accept written comments on the modified regulation for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be made available at the Internet webpage listed above or may be attained by contacting the individuals named above.

**TITLE 15. DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC), section 12838.5 and Penal Code (PC), section 5055, and the rulemaking authority granted by PC, section 5058, proposes to amend sections 3999.98, 3999.99, 3999.202, and 3999.203 and adopt sections 3999.204, 3999.204.1, 3999.204.2, 3999.204.3, 3999.204.4, 3999.204.5, and 3999.204.6 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Informed Consent, Capacity Determination for Informed Consent, and Selection of a Surrogate Decisionmaker.

PUBLIC HEARING

Date and Time:

April 27, 2020 — 10:00 a.m. to 11:00 a.m.

Place:

**8220 Longleaf Drive
Building B, Room 126
Elk Grove, CA 95758**

Purpose:

To receive comments about this action.

8220 Longleaf Drive, Building B, Room 126, is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

PUBLIC COMMENT PERIOD

The public comment period will close **April 28, 2020, at 5:00 p.m.** Any person may submit public comments in writing (by mail or by e-mail) regarding the proposed changes. To be considered, comments must be submitted to California Correctional Health Care Services (CCHCS), Health Care Regulations and Policy Section, P.O. Box 588500, Elk Grove, CA, 95758, or by e-mail to HealthCareRegulations@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**D. Gouldy
Associate Director
Risk Management Branch
California Correctional Health Care Services
P.O. Box 588500
Elk Grove, CA 95758
(916) 691-2921**

**A. Burrell
Staff Service Manager II (A)
Health Care Regulations and Policy Section
California Correctional Health Care Services
(916) 691-2922**

AUTHORITY AND REFERENCE

GC, section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations,

liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

PC, section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC, section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC, section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC, section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

References cited pursuant to this regulatory action are as follows: Sections 2604 and 5054, Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The CDCR and CCHCS propose to amend sections 3999.98, 3999.99, 3999.202, and 3999.203 and adopt sections 3999.204, 3999.204.1, 3999.204.2, 3999.204.3, 3999.204.4, 3999.204.5, and 3999.204.6 of the CCR, Title 15, Division 3, governing Informed Consent, Capacity Determination for Informed Consent, and Selection of a Surrogate Decisionmaker. Current law contains a fair amount of detail as to substantive elements for establishing a case; however, current law does not do the following:

- Incorporate new procedures into existing regulations.
- Specify the forms to be used.
- Delineate uniform procedures for institutions and Administrative Law Judges.
- Provide procedural due process to affected patients.

The proposed amendments and adoptions of the sections listed above will accomplish the four items indicated above and provide authority and direction to CDCR staff for proper identification of patients who meet the criteria for a determination of capacity for informed consent in a correctional setting.

This action provides the following:

- Specifies the provisions of PC, section 2604 and provides authority and direction to CDCR staff regarding the criteria for determination of capacity

for informed consent and selection of a surrogate decisionmaker.

- Establishes procedural due process for affected patients.
- Details the necessary forms to be used for informed consent, capacity determination and selection of a surrogate decisionmaker.

FORMS INCORPORATED BY REFERENCE

- CDCR 7701 (10/19), Penal Code 2604 Rights
- CDCR 7702 (10/19), Petition for Capacity Determination
- CDCR 7702-1 (10/19), Petition for Capacity Determination — Additional Page
- CDCR 7703 (10/19), Renewal Petition for Capacity Determination
- CDCR 7704 (10/19), Penal Code 2604 Reconsideration
- CDCR 7705 (10/19), Confidential Surrogate Decisionmaker Screening
- CDCR 7706 (10/19), Notice of Revocation or Termination of Penal Code 2604 Order

BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department anticipates the proposed regulatory action will protect public health and safety, worker safety, and benefit CDCR staff and patients by providing direction to CDCR staff for proper identification of patients who lack capacity to give informed consent. A standardized set of due process procedures regarding forms, patient rights, service of documents, hearing procedures, and documentation of a patient's lack of capacity to give informed consent will be implemented by all institutions. Appointment of a surrogate decisionmaker provides an ethically and legally appropriate method to ensure timely care is provided within the scope of the patient's known wishes.

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS

Pursuant to GC, section 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, the Department has determined these proposed regulations are not inconsistent or incompatible with any existing regulations within CCR, Title 15, Division 3.

LOCAL MANDATES

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which

requires reimbursement pursuant to GC, section 17500–17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any State agency: *None*.
- Cost to any local agency or school district that is required to be reimbursed: *None*.
- Other nondiscretionary cost or savings imposed on local agencies: *None*.
- Cost or savings in federal funding to the State: *None*.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs because the objective of the proposed action is to provide authority and direction to CDCR staff for proper identification of patients who meet the criteria for a determination of capacity for informed consent in a correctional setting which only affects CDCR staff and patients.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because the objective of the proposed action is to provide authority and direction to CDCR staff for proper identification of patients who meet the criteria for a determination of capacity for informed consent in a correctional setting which only affects CDCR staff and patients.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The proposed regulations will protect public health and safety, worker safety, and benefit CDCR staff and patients by providing direction to CDCR staff for proper identification of patients who lack capacity to give informed consent. A standardized set of due process procedures regarding forms, patient rights, service of documents, hearing procedures, and documentation of a patient's lack of capacity to give informed consent will be implemented by all CDCR facilities. Appointment of a surrogate decisionmaker provides an ethically and legally appropriate method to ensure timely care is provided within the scope of the patient's known wishes.

The proposed regulations will have no effect on the State's environment because the proposed regulations relate strictly to the internal management of CDCR facilities.

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California. The objective of the proposed action is to provide authority and direction to CDCR staff for proper identification of patients who meet the criteria for a determination of capacity for informed consent in a correctional setting, which only affects CDCR staff and patients.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The objective of the proposed action is to provide authority and direction to CDCR staff for proper identification of patients who meet the criteria for a determination of capacity for informed consent in a correctional setting which only affects CDCR staff and patients.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because the objective of the proposed action is to provide authority and direction to CDCR staff for proper identification of patients who meet the criteria for a determination of capacity for informed consent in a correctional setting which only affects CDCR staff and patients.

CONSIDERATION OF ALTERNATIVES

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

Alternatives Considered:
Use of PC, section 2602 Process

The Department considered whether affected patients could be adjudicated within the existing PC, sec-

tion 2602 administrative process and determined they cannot. PC 2602 is for involuntary psychiatric medication; whereas the class of patients who may fall under PC 2604 will be alleged to lack capacity for informed consent, who may not meet criteria for involuntary medication on the basis of being a danger to self, danger to others, or gravely disabled. For these reasons, the Department rejected this alternative.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulatory action. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the contact person listed in this Notice. The proposed text, ISOR, and Notice of Proposed Action will also be made available on CCHCS’s website <http://www.cchcs.ca.gov> and CDCR institution law libraries.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person listed in this Notice.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person listed in this Notice. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

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

**Sections 416 and 3060 — Substantial Relationship Criteria
Sections 418 and 3061 — Criteria for Rehabilitation**

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be received by the Board at its office no later than April 27, 2020, or must be received by the Board at the public hearing, if one is requested and scheduled. Oral comments will be accepted at the hearing, if one is requested and scheduled.

AVAILABILITY OF MODIFICATIONS

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 481, 482, 493, 6716, 7818, and 8710 of the Business and Profes-

sions Code (BPC), and to implement, interpret, or make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 492, 493, 6775, 6775.1, 6777, 6779, 7860, 7862, 7863, 7864, 8780, 8780.1, 8783, and 8784, the Board is considering amending Sections 416, 418, 3060, and 3061 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

The Board regulates professional engineers, land surveyors, geologists, and geophysicists. BPC sections 6716, 7818, and 8710 authorize the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Professional Engineers Act (Business and Professions Code section 6700, et seq.), the Geologist and Geophysicist Act (Business and Professions Code section 7800, et seq.), and the Professional Land Surveyors' Act (Business and Professions Code section 8700, et seq.).

BPC section 141 allows for the use of disciplinary action taken in other jurisdictions to be considered by the Board.

Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), amended BPC sections 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials, and decisions to suspend, revoke, or discipline licensees. The new provisions will go into effect July 1, 2020.

The primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials, and decisions to suspend, revoke, or discipline licensees. The Board is proposing the following changes:

Amend Sections 416 and 3060 of Article 1 of Division 5 and Article 5 of Division 29, respectively, of Title 16 of the California Code of Regulations (Substantial Relationship Criteria):

The proposed amendments, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the

substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practices of professional engineering, land surveying, geology, and geophysics.

Amend Sections 418 and 3061 of Article 1 of Division 5 and Article 5 of Division 29, respectively, of Title 16 of the California Code of Regulations (Criteria for Rehabilitation):

The proposed amendments would clarify that the Board, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Furthermore, by reducing barriers to licensure, the Board anticipates there may be benefits to consumers who may have greater access to licensed professionals.

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 these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies: The Board anticipates that there may be an increased cost to the state as a result of amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. The Board anticipates that any additional workload would be absorbable within existing resources. Should the workload be greater than anticipated, the Board will seek additional resources through the annual budget process.

Cost or 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, including the ability of California businesses to compete with businesses in other states.

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

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses in the state of California as the Board licenses individuals, not businesses, and the proposed amendments affect only individuals who are applying for licensure or who are already licensed and who have been convicted of a crime or had disciplinary action taken against them in another jurisdiction.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

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

Benefits of Regulation:

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health, safety, and welfare of California’s consumers. The regulatory proposal does not affect worker safety or the state’s environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which 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.

The following alternatives to this proposal were considered:

- **Option 1:** To pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an

exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator of whether individuals are rehabilitated and not a danger to the public’s health, safety, and welfare. For these reasons, the Board rejected this option.

- Option 2: Do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because, pursuant to AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations addressed to the individuals listed under “Contact Person” in this Notice.

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 upon request from the individuals listed under “Contact Person” in this Notice.

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

All of the information upon which the proposed regulatory action is based is contained in the rulemaking file which is available for public inspection by contacting the individuals listed under “Contact Person” in this Notice.

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:
Nancy Eissler, Assistant Executive Officer

Address:
Board for Professional Engineers, Land Surveyors,
and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833

Telephone Number:
916-263-2241

Fax Number:
916-263-2221

E-Mail Address:
Nancy.Eissler@dca.ca.gov
The backup contact person is:

Name:
Jeff Alameida, Administrative Services Manager

Address:
Board for Professional Engineers, Land Surveyors,
and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833

Telephone Number:
916-263-2269

Fax Number:
916-263-2221

E-Mail Address:
Kara.Williams@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bpelsg.ca.gov.

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (hereinafter “the 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 from 10:00 a.m.–12:00 p.m. on April 29, 2020, in the Sequoia Room at the Board’s offices at 2420 Del Paso Road, Sacramento, California, 95834. 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 offices not later than April 27, 2020, or must be received by the Board at the hearing. The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modi-

fied 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 Business and Professions Code (BPC) Sections 7312, 7402.5 and 7421 of the Business and Professions Code (BPC), and to implement, interpret and make specific those sections, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

BPC Section 7402.5 authorizes the Board to “issue a personal service permit to an individual who meets the criteria for a personal service permit set forth in regulation” and mandates that the Board “issue regulations” setting forth that criteria. The Board therefore is proposing to adopt Section 965.2 of the California Code of Regulations (CCR) detailing the conditions under which the Board will issue a Personal Service Permit (PSP) and specify those services that may be performed outside of a licensed establishment by barbers, cosmetologists, estheticians, and manicurists. In keeping with the Legislature’s intent to allow PSP holders to work outside of licensed establishments, the Board is also proposing to adopt Section 900 to clarify that the definition of “establishment” under BPC Section 7346 excludes offsite locations where PSP holders perform services.

BPC Section 7312 authorizes the Board to set fees in the amounts necessary to cover the expenses of the Board. The Board is therefore proposing to amend Section 998 of the CCR to adopt fees that cover the cost of issuing the PSP, pursuant to Section 7421 of the BPC.

B. Policy Statement Overview/Anticipated Benefits of Proposal

During the 2015–2016 session, the Legislature passed AB 181, which was signed by the Governor and chaptered on October 2, 2015. The bill required the Board to determine whether to issue a personal service permit and set forth in regulation the conditions under which the permit would be issued. Currently in California, all Board–regulated beautification services are required to be performed within a Board–licensed establishment. BCP Section 7317 specifically states that it is unlawful for any person, firm, or corporation to engage in barbering, cosmetology or electrolysis practices, for compensation, in an establishment or mobile unit which is not licensed by the Board. Legally, Board–licensed

professionals can only give services in Board–licensed establishments or mobile units. However, current trends in the beauty industry show consumers are beginning to seek services outside the walls of licensed establishments, and that a number of Board licensees are illegally offering such services in private homes, hotels, businesses, and other non–traditional locations. The creation of a PSP will give these licensees the opportunity to participate legally in the workforce as “freelancers” in the beauty industry while giving the Board oversight over their activities.

Consistency and Compatibility with Existing State Regulations

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and found it is not inconsistent or incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: There is no expected savings or costs in federal funding to the State. The initial PSP fee of \$25 and renewal fee of \$10 proposed by the Board for Section 998 have been set by the Board to cover the cost of issuing PSPs by the Board.

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 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; however, the Board estimates it will cost a first-time applicant \$95 to acquire a PSP, and \$10 every two years to renew.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation will not have an adverse impact on brick–and–mortar small businesses’ ability to attract employees,

because the number of establishments has grown despite the increasing popularity of so-called “on-demand” services outside of licensed establishments, which are now being performed illegally by Board licensees.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will have little or no 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 the proposed regulation almost exclusively affects individuals who are already providing the services in question illegally.

Benefits of Regulation:

The Board has determined that this regulatory proposal will help protect the health and safety of consumers because the PSP will give the Board some ability to oversee barbering and cosmetology activities outside of brick-and-mortar establishments.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which 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 orally or in writing relevant to the above determinations at the above-mentioned hearing.

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 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 at the hearing or prior to the hearing upon request from the Contact Person named below.

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 Web site listed below.

CONTACT PERSON

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

Name:

Allison Lee

Address:

2420 Del Paso Road, Suite 100
Sacramento, CA 95834

Telephone Number:

(916) 575-7100

Fax No.:

(916) 928-6810

E-Mail Address:

Kevin.Flanagan@dca.ca.gov

The backup contact person is:

Name:

Patricia Garcia

Address:

2420 Del Paso Road, Suite 100
Sacramento, CA 95834

Telephone Number:

(916) 575-7100

Fax Number:

(916) 928-6810

E-Mail Address:

Patricia.Garcia@dca.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.barbercosmo.ca.gov/laws_regs/prop_regs.shtml.

TITLE 16. BOARD OF PHARMACY

1769 and 1770 of Division 17 of Title 16 of the California Code of Regulations (CCR).

**Substantial Relationship Criteria, § 1770
Criteria for Rehabilitation, § 1769**

INFORMATIVE DIGEST

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Person" in this Notice.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be received by the Board at its office no later than April 27, 2020, or must be received by the Board at the hearing. Oral comments should be made at the hearing, if any.

AVAILABILITY OF MODIFICATIONS

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 481, 482, 493, and 4005 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493, the Board is considering amending sections

BPC section 4005 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of Pharmacy Law. Additionally, as required under Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria.

Changes to substantial relationship criteria: In accordance with the statutory amendments implemented by AB 2138, beginning July 1, 2020, BPC sections 481 and 493 will require the Board, when considering the denial, suspension, or revocation of a license based on a crime, to determine whether the crime is substantially related to the qualifications, functions, or duties of a licensee by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a licensee.

Changes to rehabilitation criteria: BPC section 482 requires the Board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. Beginning July 1, 2020, BPC section 482 will require the Board, when considering the denial, suspension, or revocation of a license based on a crime, professional misconduct, or act, to consider whether the applicant or licensee is rehabilitated based on either (1) having completed their criminal sentence without violating parole or probation, or (2) the Board's standard criteria for evaluating the rehabilitation of applicants and licensees. (BPC § 482, as added by AB 2138, § 9.)

Existing regulations: Currently, 16 CCR section 1770 establishes the criteria for determining when a crime or act is substantially related to the qualifications, functions, and duties of a licensee, and 16 CCR section 1769 establishes the criteria for evaluating the rehabilitation of an applicant or licensee when considering the denial, suspension, or revocation of a license.

Problem statement: The passage of AB 2138 requires 16 CCR sections 1769 and 1770 to be updated to clearly specify the criteria the Board uses when (1) making a substantial relationship determination regarding an applicant's or licensee's criminal conviction, professional misconduct, or act, or (2) evaluating the rehabilitation of an applicant or licensee when considering denial, suspension, or revocation of a license.

The Board is proposing the following changes:

Amend 16 CCR section 1770 (Substantial Relationship Criteria):

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and disciplinary actions taken by another state, by any agency of the federal government, or by another country as described in BPC section 141 as grounds requiring the Board to consider the substantial relationship criteria in 16 CCR section 1769, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also clarify that substantially related crimes, professional misconduct, or acts include those which violate or attempt to violate, directly or indirectly, or aid, abet, or conspire to violate various specified state or federal laws. The list would further include crimes, professional misconduct, or acts that involve various specified elements.

Amend 16 CCR section 1769 (Criteria for Rehabilitation):

The proposed regulation would clarify that the Board, when considering a license denial, suspension, or revocation on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or, in the case of denial proceedings, when the denial proceedings are based on something other than a criminal conviction.

POLICY STATEMENT
OVERVIEW/ANTICIPATED
BENEFITS OF PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for applicants and licensees with criminal convictions or disciplinary histories or who have committed other acts that may be grounds for denial, suspension, or revocation of a license, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal convictions, disciplinary histories, or other past conduct in its denial, suspension, and revocation proceedings.

CONSISTENCY AND COMPATIBILITY WITH
EXISTING STATE REGULATIONS

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

The Board anticipates that there may be an increased cost to the state as a result of amending and adopting the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved.

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, including the ability of

California businesses to compete with businesses in other states.

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

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 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 initial determination is based on the absence of testimony to that effect during the development of the proposed regulation, which occurred over a few months. This proposal may impact available qualified potential employees; however, it should not have a significant fiscal impact on small businesses. Furthermore, the regulatory action will not impact small business because the intent of AB 2138 is to reduce barriers to licensure for applicants and licensees with a criminal history or licensure discipline.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

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

Benefits of Regulation:

The Board has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of Californians. The

regulatory proposal does not affect worker safety or the state’s environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which 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.

To date, the following alternatives were considered:

Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant or licensee did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator of whether individuals are rehabilitated and not a danger to the public’s health, safety, and welfare. For these reasons, the Board rejected this option.

Option 2: To do nothing, meaning the Board would not adopt the regulations. The Board opted not to pursue this option because per AB 2138, the Board is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2720 Gateway Oaks, Suite 100, Sacramento, California 95833.

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 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 at 2720 Gateway Oaks, Suite 100, Sacramento, California 95833.

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:

California State Board of Pharmacy
2720 Gateway Oaks, Suite 100
Sacramento, CA 95833

Telephone Number:

916-518-3078

Fax Number:

916-574-8617

E-Mail Address:

lori.martinez@dca.ca.gov

The backup contact person is:

Name:

Debbie Damoth

Address:

California State Board of Pharmacy
2720 Gateway Oaks, Suite 100
Sacramento, CA 95833

Telephone 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 www.pharmacy.ca.gov.

**TITLE 16. CONTRACTORS STATE
LICENSE BOARD**

NOTICE IS HEREBY GIVEN that the Contractors State License Board (CSLB) is proposing to take the action described in the Informative Digest. Any person in-

terested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held in the John C. Hall Hearing Room at the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, at 10:00 a.m. on April 28, 2020.

Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by CSLB at its office not later than 5:00 p.m. on April 28, 2020 or must be received by CSLB at the April 28, 2020 hearing. CSLB, 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 modification is 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.

A. Authority and Reference Citations

Pursuant to the authority vested by Section 7008 of the Business and Professions Code, and to implement, interpret, or make specific Sections 7137, 7140, and 7141 of said Code, CSLB is considering changes to Division 8 of Title 16 of the California Code of Regulations as follows:

B. Informative Digest

Amend § 853. Renewal Application Form

Business and Professions Code section 7008 authorizes CSLB to adopt rules and regulations in accordance with the Administrative Procedure Act that are reasonably necessary to carry out the provisions of the Contractors' State License Law. Section 7137 establishes the various fees to be collected by CSLB, including the license renewal and delinquency fees. Section 7140 sets forth provisions for the timely biennial renewal of an unexpired contractor's license and states that to renew a license, the licensee "shall, before the time at which the license would otherwise expire, apply for renewal on a form prescribed by the registrar and pay the renewal fee prescribed by this chapter." Section 7141 relates to the delinquent renewal of an expired contractor's license and provides that a delinquency fee is due "if the license is renewed after the expiration date. . . ."

The existing language of Title 16, Division 8, California Code of Regulations (T16CCR) section 853 mandates that the Registrar of Contractors mail a renewal application form with instructions to each licensee prior to the license expiration. It also addresses submission requirements for the renewal of a contractor's license,

including the processing of incomplete renewal applications and when a renewal application is considered delinquent.

This proposal would amend the regulation to reword and clarify provisions relating to timely and delinquent license renewals and their related submission deadlines consistent with Business and Professions Code sections 7137, 7140, and 7141. The proposed specific provisions of T16CCR section 853 are as described below.

- Existing subsection (b) provides that a renewal application is delinquent if not “postmarked” by the expiration date of the license, but it does not specifically indicate that the license renewal fee must accompany the renewal application. In addition, the existing regulation fails to discuss other possible submission methods (e.g., hand delivery to CSLB headquarters) or due date timelines. The proposed changes would:
 - Add criteria that a renewal includes both a complete renewal application and the applicable fee that must be mailed or hand-delivered to CSLB headquarters on or before the license expiration date to be a timely submission, and
 - Add a provision that failure to comply with these requirements shall result in the renewal application being deemed delinquent.
- Existing subsection (c) discusses when corrections to an incomplete renewal application must be submitted to be considered a timely renewal, but it does not mention methods of submission (mail or hand delivery) and the fact that the corrected documentation can be submitted *on* the expiration date in addition to *before* the expiration date. The proposed changes would:
 - Amend subsection (c) to indicate that a timely license renewal occurs with the submission of a completed license renewal (application and fee) postmarked or hand-delivered to CSLB’s headquarters “on or before” the license expiration date, and
 - Add a provision that failure to comply with these requirements shall result in the expiration of the license as set forth in Business and Professions Code section 7140.
- Since these proposed changes would interpret statutory provisions related to expiration and renewal of licenses and their related fees, the Reference Note at the end of the section is proposed to be amended to add Sections 7137 and 7141.

C. Policy Statement Overview/Anticipated Benefits of Proposal

CSLB has determined that this regulatory proposal will have the following benefits on the health and welfare of California residents, consumers, and contractor licensees:

§ 853. Renewal Application Form

The amendments to T16CCR section 853 are being proposed to clarify license renewal procedures and specify deadlines for renewing contractors’ licenses consistent with Business and Professions Code sections 7137, 7140, and 7141.

These regulatory changes will benefit licensees by providing a better understanding of how and when they must submit their license renewal application and fee(s), as well as any license renewal application corrections that may be required to complete the renewal process. In addition, these changes will benefit the welfare of California residents who hire contractors by helping ensure that contractors remain compliant with statutory requirements to keep their licenses actively renewed.

Regulatory action is needed because without the regulatory language there could be confusion about license renewal procedures, both timely and delinquent, resulting in more licensees becoming unlicensed due to non-compliance with renewal requirements.

D. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, CSLB 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. This proposal does not conflict with any existing state regulations; it simply clarifies existing state law.

E. Fiscal Impact on Public Agencies / Std. 399

The proposed regulatory action will not result in costs or savings to any state agency, costs or savings to any local agency or school district that is required to be reimbursed under Part 7 of Division 4 (commencing with Section 17500 of the Government Code), other nondiscretionary costs or savings on local agencies, or costs or savings in federal funding to the state. The specific fiscal impacts of the regulatory proposal are described below.

- Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Little or none — the proposed regulatory actions will affect CSLB, but since they are simply clarifying existing regulatory language, they will have little or no

fiscal impact on CSLB. Any necessary changes to the text of the license renewal applications will be incorporated as part of ongoing form updates and will be printed as the forms are printed each month for the license renewals that occur in that month.

- Nondiscretionary Costs/Savings to Local Agencies: None.

F. Local Mandate

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

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

G. Business Impact

CSLB 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. The following studies/relevant data were relied upon in making the above determination:

Pursuant to the proposed changes to T16CCR section 853, licensees may voluntarily decide to hand deliver their license renewal applications to CSLB headquarters in lieu of mailing them, which may result in a minor and absorbable cost to the licensee who chooses to drive in lieu of mailing the renewal application to CSLB. For example, if someone were to drive from San Diego to CSLB headquarters, it would be approximately 513 miles; and if they got 25 miles to the gallon and gasoline was \$3.90 per gallon, the final cost of the drive would be just about \$80. Since this would be a voluntary decision by the contractor, the individual contractor will have made their own calculation and decision that it is in their best interest to drive the renewal application to CSLB in lieu of mailing it. However, CSLB has been accepting both mailed and hand-delivered renewal applications for many years, and licensees may choose to continue to submit license renewal applications via the mail, which would result in no additional cost to licensees except postage (averaging \$0.50 to \$6.55 [priority mail]). Based on years of experience, CSLB anticipates that the vast majority of licensees will continue to mail their renewal applications.

H. Cost Impact on Affected Private Persons or Businesses

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to CSLB are minor and absorbable. The proposed regulatory amendments will not affect the creation or elimination of jobs or businesses or the expansion of businesses in California because the proposed amendments will

have only minor and absorbable cost impacts on licensees.

Pursuant to the proposed changes to T16CCR section 853, licensees may voluntarily decide to hand deliver their license renewal applications to CSLB headquarters in lieu of mailing them, which may result in a minor and absorbable cost to the licensee who chooses to drive in lieu of mailing the renewal application to CSLB. For example, if someone were to drive from San Diego to CSLB headquarters, it would be approximately 513 miles; and if they got 25 miles to the gallon and gasoline was \$3.90 per gallon, the final cost of the drive would be just about \$80. Since this would be a voluntary decision by the contractor, the individual contractor will have made their own calculation and decision that it is in their best interest to drive the renewal application to CSLB in lieu of mailing it. However, CSLB has been accepting both mailed and hand-delivered renewal applications for many years, and licensees may choose to continue to submit license renewal applications via the mail, which would result in no additional cost to licensees except postage (averaging \$0.50 to \$6.55 [priority mail]). Based on years of experience, CSLB anticipates that the vast majority of licensees will continue to mail their renewal applications.

I. Housing Costs

The proposed regulatory action will not have an effect on housing costs.

J. Effect on Small Business

CSLB has determined that the proposed regulatory action will have only minor and absorbable effects on small businesses because it simply amends existing regulatory language by clarifying ambiguous or incomplete text. The proposed amendments will have only minor and absorbable cost impacts on licensees, some of which are small businesses. Approximately 67% of all contractors currently licensed by CSLB are sole ownerships (more than 236,000 out of approximately 350,000 licenses), some of whom may be impacted by the proposed regulatory changes.

Pursuant to the proposed changes to T16CCR section 853, licensees may voluntarily decide to hand deliver their license renewal applications to CSLB headquarters in lieu of mailing them, which may result in a minor and absorbable cost to the licensee who chooses to drive in lieu of mailing the renewal application to CSLB. For example, if someone were to drive from San Diego to CSLB headquarters, it would be approximately 513 miles; and if they got 25 miles to the gallon and gasoline was \$3.90 per gallon, the final cost of the drive would be just about \$80. Since this would be a voluntary decision by the contractor, the individual contractor will have made their own calculation and decision that it is in their best interest to drive the renewal application to CSLB in

lieu of mailing it. However, CSLB has been accepting both mailed and hand-delivered renewal applications for many years, and licensees may choose to continue to submit license renewal applications via the mail, which would result in no additional cost to licensees except postage (averaging \$0.50 to \$6.55 [priority mail]). Based on years of experience, CSLB anticipates that the majority of licensees will continue to mail their renewal applications.

K. Results of the Economic Impact Assessment/Analysis

Impact on Jobs/Businesses

CSLB 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. The proposed amendments will have only minor and absorbable cost impacts on licensees.

Pursuant to the proposed changes to T16CCR section 853, licensees may voluntarily decide to hand deliver their license renewal applications to CSLB headquarters in lieu of mailing them, which may result in a minor and absorbable cost to the licensee who chooses to drive in lieu of mailing the renewal application to CSLB. For example, if someone were to drive from San Diego to CSLB headquarters, it would be approximately 513 miles; and if they got 25 miles to the gallon and gasoline was \$3.90 per gallon, the final cost of the drive would be just about \$80. Since this would be a voluntary decision by the contractor, the individual contractor will have made their own calculation and decision that it is in their best interest to drive the renewal application to CSLB in lieu of mailing it. However, CSLB has been accepting both mailed and hand-delivered renewal applications for many years, and licensees may choose to continue to submit license renewal applications via the mail, which would result in no additional cost to licensees except postage (averaging \$0.50 to \$6.55 [priority mail]). Based on years of experience, CSLB anticipates that the vast majority of licensees will continue to mail their renewal applications.

Benefits of Regulation

CSLB has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the state's environment:

- Will provide licensees a better understanding of how and when they must submit their license renewal application and fee(s), as well as any license renewal application corrections that may be required to complete the renewal process. In addition, these changes will benefit the health and welfare of California residents who hire

contractors by helping ensure that contractors remain compliant with statutory requirements to keep their licenses actively renewed.

- Will not affect worker safety because the proposed amendments do not relate to worker safety. The regulatory proposal simply amends existing language relating to contractor licensing requirements by clarifying ambiguous or incomplete text, none of which relates to worker safety.
- Should not affect the State's environment. The proposed amendments do not relate to environmental issues specifically, but they would allow licensees to voluntarily decide to hand deliver their license renewal applications to CSLB headquarters in lieu of mailing them, which could increase driving and possibly pollution. For example, if someone were to drive from San Diego to CSLB headquarters, it would be approximately 513 miles; and if they got 25 miles to the gallon, the final gasoline usage for the drive would be just about 20.5 gallons. Since this would be a voluntary decision by the contractor, the individual contractor will have made their own calculation and decision that it is in their best interest to drive the renewal application to CSLB in lieu of mailing it. However, CSLB has been accepting both mailed and hand-delivered renewal applications for many years, and licensees may choose to continue to submit license renewal applications via the mail, which would result in no additional effect on the State's environment. Based on years of experience, CSLB anticipates that the vast majority of licensees will continue to mail their renewal applications.

L. Reference to Text and Initial Statement of Reasons

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

Copies of the exact language of the proposed regulations and any document incorporated by reference therein, the Initial Statement of Reasons, and the information upon which the proposal is based may be obtained at the hearing or prior to the hearing upon request from CSLB at 9821 Business Park Drive, Sacramento, CA 95827.

M. Federal Mandate

The proposed regulatory action is not mandated by federal law and is not identical to any previously adopted or amended federal regulation. The licensing and regulation of contractors is conducted at the state level, not federal.

N. Consideration of Alternatives

CSLB must determine that no reasonable alternative it considered to the regulation or that has been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, would be as effective as 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 orally or in writing relevant to the above determinations at the above-mentioned hearing.

O. Availability of Final Statement of Reasons and Rulemaking File

All the information upon which the proposed regulatory action is based is contained in the rulemaking file which is available for public inspection by contacting the person named below. Interested parties 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.

P. Website Access

Materials regarding the proposed regulatory action can be found at www.cslb.ca.gov.

Q. Contact Person

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

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Attn: Betsy Figueira
(916) 255-3369
(916) 364-0130 (FAX)
Betsy.Figueira@cslb.ca.gov

The backup contact person is:

Michael Jamnetski
(916) 255-2798
(916) 364-0130 (FAX)
Michael.Jamnetski@cslb.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Betsy Figueira at (916) 255-3369.

TITLE 16. CONTRACTORS STATE LICENSE BOARD

NOTICE IS HEREBY GIVEN that the Contractors State License Board (CSLB or 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 in the John C. Hall Hearing Room at the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827, at 11:00 a.m. on April 28, 2020.

Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by CSLB at its office not later than 5:00 p.m. on April 28, 2020, or must be received by CSLB at the April 28, 2020 hearing. CSLB, 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 modification is 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.

A. Authority and Reference Citations

Pursuant to the authority vested by Sections 480, 481, 482, 493, 7008, and 7073 of the Business and Professions Code, and to implement, interpret, or make specific Sections 7.5, 141, 480, 481, 482, 485, 486, 488, 490, 493, 496, 7066, 7069, 7073, 7090, 7102, 7123, and 7124 of said Code and Sections 530.55, 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425 of the Penal Code, CSLB is considering changes to Division 8 of Title 16 of the California Code of Regulations, as follows:

B. Informative Digest

Business and Professions Code section 7008 authorizes CSLB to adopt rules and regulations in accordance with the Administrative Procedure Act that are reasonably necessary to carry out the provisions of the Contractors State License Law.

Business and Professions Code section 480 presently authorizes boards in the Department of Consumer Affairs, including CSLB, to deny an application for licensure based on a conviction of a crime or act substantially related to the qualifications, functions, or duties of the business or profession for which application is made. Likewise, Business and Professions Code section 490 authorizes a board to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the regulated business or profession. In addition, Business and Professions Code section 481 requires boards to develop criteria to help evaluate whether a crime or act is substantially related to the qualifications, functions, or duties of the regulated business or profession.

Business and Professions Code section 482 requires boards to develop criteria to evaluate the rehabilitation

of a person when considering the denial, suspension, or revocation of a license. Business and Professions Code section 493 establishes that the record of conviction of a crime by an applicant or licensee shall be conclusive evidence of the fact that the conviction occurred and authorizes a board to inquire into the circumstances surrounding the commission of a crime to fix the degree of discipline and for determining substantial relationship. Business and Professions Code section 7073 authorizes CSLB's Registrar to deny a license, including on the ground that the applicant committed a crime, and requires the Board to develop criteria, similar to the rehabilitation criteria, to establish the earliest date on which a denied applicant may reapply.

Consistent with the aforementioned authority, CSLB adopted regulations that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to the qualifications, functions, and/or duties of a contractor licensee; criteria for inquiring into criminal convictions; and criteria for setting the earliest date on which a denied applicant may reapply for licensure (Title 16, California Code of Regulations sections 868–869.9).

Assembly Bill 2138 (Chapter 995, Statutes of 2018) ("AB 2138") will become fully operative on July 1, 2020. The bill amends the provisions of the Business and Professions Code that relate to a board's ability to deny a license or registration or to take disciplinary action against a licensee based on a substantially related criminal conviction and will add new authority to deny a license based upon a professional misconduct finding by another licensing board.

This proposal generally seeks to update CSLB's current regulations consistent with this recently enacted legislation and to more accurately reflect CSLB's and its Registrar's (executive officer's) authority to consider denials, disciplinary action, and petitions for reinstatement and to process inquiries into the circumstances surrounding a criminal conviction. CSLB is proposing the following:

Amend Section 868. — Criteria to Aid in Determining if Crimes or Acts Are Substantially Related to Contracting Business.

The existing language of 16 CCR section 868 sets forth the criteria under which a crime is considered to be substantially related to the qualifications, functions, or duties of a licensee.

This proposal will amend the regulation, as described below.

Amendments to Section Title:

- Add "Professional Misconduct" to the list of grounds for denial and to which the substantial relationship criteria applies.

- Change "Contracting Business" to the "Qualifications, Functions, or Duties of a Licensee or Registrant" to clearly identify the elements to which the substantial relationship criteria specifically relate.
- Add "registration" and "registrant" throughout the section where "license" and "licensee" are referenced to reflect the fact that CSLB regulates both contractor licenses and home improvement salesperson registrations.

Amendments Throughout the Section:

- Change "code" to "Code" throughout the section in reference to the Business and Professions Code.
- Add "professional misconduct" throughout the section where crimes and acts are referenced.

Amendments to Existing Introductory Paragraph:

- Add "(a)" in front of the first sentence to make it a designated subsection.
- Add "Section 141" in reference to the sections of law that are subject to the provisions of this substantial relationship criteria regulation.
- Delete "as defined in Section 480 of the code" to accurately reflect the authority for the regulation.
- Delete "The crimes or acts shall include, but not be limited to, the following:" at the end of the first paragraph.

Addition of New Subsection (b):

- Add a new introductory sentence and three new specific criteria that CSLB must consider when making the substantial relationship determination for a crime as required by Business and Professions Code sections 481 and 493, as follows:
 1. The nature and gravity of the offense,
 2. The number of years elapsed since the date of the offense, and
 3. The nature and duties of a contractor or home improvement salesperson.

Amendments to Existing Text and Addition of New Subsection (c):

- Add a new introductory sentence that precedes the listing of what may be included as a substantially related crime, professional misconduct, or act.
- Renumber existing subsection (a) to new subsection (c)(1) and add a phrase that would expand the provisions under this subsection to include violations of "other state or federal laws governing contractors or home improvement salespersons."
- Renumber existing subsection (b) to new subsection (c)(2) and correct the reference citation

to “California Code of Regulations, Title 16, Division 8.”

- Renumber existing subsection (c) to new subsection (c)(3) and add “professional misconduct” where crimes and acts are referenced to reflect the fact that the substantial relationship criteria relate to crimes, acts, and professional misconduct.
- Renumber existing subsection (d) to new subsection (c)(4) and add “professional misconduct” where crimes and acts are referenced to reflect the fact that the substantial relationship criteria relate to crimes, acts, and professional misconduct.
- Renumber existing subsection (e) to new subsection (c)(5) and add “professional misconduct” where crimes and acts are referenced to reflect the fact that the substantial relationship criteria relate to crimes, acts, and professional misconduct.

Amendments to Note Portion:

- Add a new reference to the Authority citation for Business and Professions Code section 493 regarding the substantial relationship criteria that relates to the denial, suspension, or revocation of a license.
- Add a new reference to the Reference citation for Business and Professions Code section 141 regarding disciplinary action of a licensee based on the substantially related acts that led to disciplinary action by another agency or jurisdiction of a license based on acts, as well as a new reference for Business and Professions Code section 493 regarding substantial relationship criteria that relates to the denial, suspension, or revocation of a license.

Adoption of Section 868.1. — Criteria to Aid in Determining if Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Licensee or Registrant for the Purpose of Considering Denials of Applications.

Revisions to Business and Professions Code section 480 create a new category of crime that can be grounds for denial of a license or registration — a felony financial crime that is “directly and adversely related to the fiduciary qualifications, functions, or duties” of the regulated business or profession. There is no existing regulatory language specifying whether a felony financial crime is “directly and adversely related” to the “fiduciary qualifications, functions, or duties” of a licensee or registrant.

This proposal would adopt the regulation, as described below.

Addition of New Introductory Paragraph:

- Add a new section, title, and introductory paragraph establishing that a financial crime currently classified as a felony shall be considered “directly and adversely related” to the profession(s) if the crime involves dishonesty, fraud, deceit, or theft and results in direct financial benefit or harm, or an attempted benefit or harm.
- Add a sentence introducing the more detailed listing of felony financial crimes.

Addition of New Subsection (a):

- Add a new subsection to identify a specific type of crime that shall be included as one that is directly and adversely related, including a crime that involves “false, altered, forged, counterfeit, or fraudulent document(s), or the acquisition or provision of fraudulent statement(s).”

Addition of New Subsection (b):

- Add a new subsection to identify a specific type of crime that shall be included as one that is directly and adversely related, including crimes that involve “use of personal identifying information for an unlawful purpose, including for the purpose of illegally obtaining money, credit, goods, services, real property, or medical information of another person (also known as identity theft).”

Addition of New Subsection (c):

- Add a new subsection to identify a specific type of crime that shall be included as one that is directly and adversely related, including a crime that involves “stolen property, embezzlement, grand theft, larceny, burglary, monetary transactions in property derived from a specified unlawful activity (also known as money laundering), or crimes related to obtaining money, labor, or property under false or fraudulent pretenses.”

Addition of New Subsection (d):

- Add a new subsection to identify a specific type of crime that shall be included as one that is directly and adversely related, including a crime that involves “an attempt or conspiracy to commit such crimes listed in subsections (a), (b), or (c).”

Addition of New Subsection (e):

- Add a reference that specifies the meaning of “personal identifying information” in the regulation, to include a reference to Section 530.55 of the Penal Code for the definition of “personal identifying information.”

Addition of New Note Portion:

- Add new references as the Authority citation for Business and Professions Code sections 480 and 7008 relating to grounds for denial of a license and

authorization to adopt rules and regulations in accordance with the Administrative Procedure Act, respectively.

- Add new references as the Reference citation for Sections 7.5, 480, 7069, 7073, 7090, and 7124 of the Business and Professions Code and Section 530.55 of the Penal Code relating to the definition of conviction, grounds for denial of a license, fingerprints of applicants, rehabilitation and reapplication, suspension and revocation of a license, what constitutes a conviction, and definition of personal identifying information, respectively.

Amend Section 869. — Criteria for Rehabilitation.

The existing language of 16 CCR section 869 sets forth the criteria under which an applicant or licensee is considered to be rehabilitated.

This proposal would adopt the regulation, as described below.

Amendments Throughout the Section:

- Change “registrar” to “Registrar” to be consistent with terminology used in other regulations in this package.
- Add “registration” and “registrant” where “license” and “licensee” are referenced to reflect the fact that CSLB regulates both contractor licenses and home improvement salesperson registrations.
- Add descriptive titles over multiple subsections within the regulation to help identify the different categories of criteria and different circumstances under which rehabilitation must be evaluated.

Amendments to Subsection (a):

- Change “code” to “Code” in reference to the Business and Professions Code.
- Add “on the ground that the individual was convicted of a crime” to focus subsection (a) specifically on situations where the applicant, licensee, or registrant was convicted of a crime.
- Add authority for the Registrar (who, in addition to the Board, may make these determinations under the Contractors State License Law) to consider the rehabilitation criteria for the purposes of denial, suspension, or revocation of a license or registration.
- Add language pursuant to Business and Professions Code section 482(b)(1) that the Board or Registrar shall consider “whether the applicant, licensee, or registrant made a showing of rehabilitation” if the individual “completed the criminal sentence at issue without a violation of parole or probation.”

- Add five specific criteria that the Board or Registrar will consider in making the determination that an individual has made a showing of rehabilitation when considering denial or discipline based on a criminal conviction, as follows:

1. The nature and gravity of the crime(s);
2. The length(s) of the applicable parole or probation period(s);
3. The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified;
4. The terms or conditions of parole or probation, and the extent to which they bear on the applicant’s rehabilitation; and
5. The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

Addition of New Subsection (b):

- Add new subsection (b) as an introductory paragraph to new criteria under which the Board or Registrar will evaluate an individual’s rehabilitation when the applicant did not make a showing of rehabilitation for a crime under subsection (a) or when subsection (a) is inapplicable.
- Add new subsection (b)(1) as the specific introduction of the criteria that an applicant, licensee, or registrant has made a showing of rehabilitation and is presently eligible or fit for a license or registration if they are rehabilitated under the three (3) criteria that follow.
- Add new subsection (b)(1)(A) to establish rehabilitation criteria for individuals who may be considered for denial of a license or registration based on a substantially related felony conviction (excluding serious felonies, registerable sex offenses, and felony financial crimes) within seven (7) years before submission of an application, stating that such applicants may be considered rehabilitated if five (5) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially related grounds for denial (i.e., criminal activity, professional misconduct, acts, or omissions). This timeline would not apply to any crimes listed in proposed subsection (b)(1)(B).
- Add new subsection (b)(1)(B) to establish rehabilitation criteria for individuals who may be considered for denial of a license or registration based on convictions for a substantially related serious felony, felony requiring sex offender

registration under Penal Code section 290(d)(2) or (d)(3), or a felony financial crime as defined in Section 868.1, stating that such applicants may be considered rehabilitated if seven (7) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially related grounds for denial.

- Renumber existing subsection (a)(1)(A) to (b)(1)(C) and amend the language to focus the subsection on the establishment of rehabilitation criteria for individuals for whom the Board or Registrar may be considering suspension or revocation (discipline) of the license or registration based on a substantially related felony conviction, stating that such licensees or registrants may be considered rehabilitated if seven (7) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially related grounds for discipline.
- Renumber existing subsection (a)(1)(B) to (b)(1)(D) and amend the language to focus the subsection on the establishment of rehabilitation criteria for individuals for whom the Board or Registrar may be considering denial, suspension, or revocation of the license or registration based on a substantially related misdemeanor conviction, stating that such applicants, licensees, or registrants may be considered rehabilitated if three (3) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially related grounds for denial or discipline.
- Renumber existing subsection (a)(1)(C) to (b)(1)(E) and amend the language to focus the subsection on the establishment of rehabilitation criteria for individuals for whom the Board or Registrar is considering denial, suspension, or revocation of the license or registration based on substantially related professional misconduct, acts, or omissions, stating that such applicants, licensees, or registrants may be considered rehabilitated if three (3) years have passed from the time of the commission of the professional misconduct, act, or omission, without the occurrence of additional substantially related grounds for denial or discipline.
- Update reference in existing subsection (a)(2) (proposed to be newly-renumbered subsection (b)(2)) by changing (a)(1) to (b)(1) because that subsection is renumbered.
- Amend subsections (b)(2)(A) through (C), (E), (F), and (H) with the addition of “professional

misconduct” and “or omission(s)” because, in addition to the existing conviction of a crime or an act, the rehabilitation criteria also applies to individuals who have occurrences of professional misconduct and omissions.

- Update language in existing subsection (G), striking “expungement proceedings” to more accurately reflect the actions that a court might take to dismiss, set aside, or seal records in proceedings under Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code. In addition, add language to accurately represent the outcomes of the identified Penal Code sections and add references to two additional Penal Code sections pursuant to subsections (a)(2) and (c) of Business and Professions Code section 480.
- Amend subsection (H) with the addition of “or diversion” to existing text that refers to “a drug and/or alcohol aversion program” when the offense involved drug and/or alcohol use.
- Renumber existing subsection (b) to (c) relating to factors used when considering a petition for reinstatement and amend the language to include an additional reference to the newly-created subsection (b) where existing language refers only to subsection (a).

Amendments to Note Portion:

- Add new references to the Reference citation for indicated Business and Professions Code sections, as follows: 7.5 for the “conviction” definition, 141 regarding disciplinary action of a licensee based on the substantially related acts that lead to disciplinary action by another agency or jurisdiction of a license based on acts, 481 relating to the substantial relationship criteria, 488 regarding hearing requests, 493 regarding the evidentiary effect of a record of conviction, and 7090 relating to investigations and disciplinary action, as well as Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425 relating to convictions that have been withdrawn, set aside, or dismissed.

Repeal Section 869.5. — Inquiry into Criminal Convictions.

The existing language of 16 CCR section 869.5 sets parameters under which the Board may conduct an inquiry into criminal convictions.

This proposal would repeal the regulation, as described below.

Repeal Entire Regulation:

- Repeal this regulation in its entirety, including the title and the Note at the end of the section, to recognize the amendments to Business and Professions Code section 493(a) and the addition

of new prohibitions against mandating collection of this information from applicants in Business and Professions Code section 480(f)(2), effective July 1, 2020.

Amend Section 869.9. — Criteria to Aid in Determining Earliest Date a Denied Applicant May Reapply for Licensure.

The existing language of 16 CCR section 869.9 sets forth the criteria to establish the earliest date on which a denied applicant may reapply for a license.

This proposal would amend the regulation, as described below:

Amendments Throughout the Section:

- Change “registrar” to “Registrar” to be consistent with terminology used in other regulations in this package.
- Add “registration” and “registrant” where “license” and “licensee” are referenced to reflect the fact that CSLB issues both contractor licenses and home improvement salesperson registrations.
- Add “professional misconduct” and “or omission(s)” because, in addition to the existing language regarding conviction of a crime or an act, the reapplication date criteria also applies to individuals who have occurrences of professional misconduct and omissions, which are grounds for denial under Business and Professions Code sections 480 and 7090.
- Relocate “substantially-related” and add “that also could be grounds for denial” under existing and newly renumbered subsections (a)(1), (a)(3), and (a)(4) and new subsection (a)(2) to clarify that any additional occurrence listed be substantially related and also could be grounds for denial, as well as add “that were grounds for denial” under newly-renumbered subsections (a)(8) through (11) to clarify that the rehabilitation evidence described relates to grounds for the denial that were part of the previous action against the applicant.

Amendments to Subsection (a):

- Change “subdivision” to “subsection” in reference to a subsection of Business and Professions Code section 480 and make other grammatical “clean-up” or other nonsubstantive changes to the regulation.
- Add “of denial” to clarify the type of notice under Business and Professions Code section 485(b) that is being referenced.
- Add “listed in Section 869(b)(1)(B)” under subsection (a)(1) to identify the felony convictions to which the seven-year criteria in this subsection

apply, specifically serious felonies, crimes that require registration as a sex offender per Penal Code section 290(d)(2) and (d)(3), and felony financial crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties of a licensee or registrant.

- Add new subsection (a)(2) to address the reapplication date for applicants who have been convicted of a felony that is not covered under subsection (a)(1), above, mirroring the criteria in subsection (a)(1) except that the reapplication date for subsection (a)(2) is set at five (5) years.
- Renumber existing subsection (a)(2) to (a)(3) relating to misdemeanor convictions; amend the language to add references to “registrant,” “professional misconduct,” and “omission(s);” and relocate “substantially related,” as discussed above under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(3) to (a)(4) relating to professional misconduct; relocate “acts”; and amend the language to add “registrant,” “professional misconduct,” and “omission(s),” as discussed above under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(4) to (a)(5) relating to the nature and severity of the crime and amend the language to add “professional misconduct” and “omission(s),” as discussed above under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(5) to (a)(6) relating to subsequently committed crime(s) or act(s) and amend the language to add “professional misconduct” and “omission(s),” as discussed above under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(6) to (a)(7) relating to the time that has elapsed since commission of the crime(s) or act(s) and amend the language to add “professional misconduct” and “or omission(s),” as discussed above under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(7) to (a)(8) relating to an applicant’s compliance with terms of parole or probation, amend the language to delete “or licensee” because this section only applies to applicants, and add language to clarify that the subsection applies to parole or probation terms that were imposed “in connection with the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.”
- Renumber existing subsection (a)(8) to (a)(9) relating to applicant’s consistent work history

after the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial. This proposal would amend the regulation to change “time of commission” of the offense to “date of commission” and add language to clarify that the subsection applies to “crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.”

- Renumber existing subsection (a)(9) to (a)(10) relating to documents or testimony about the applicant (character references). This proposal would amend the regulation to change “time of commission” of the offense to “date of commission,” add “professional misconduct,” and add language to clarify that the subsection applies to “crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.”
- Repeal existing subsection (a)(10) based on provisions of Business and Professions Code section 480(c), as amended on July 1, 2020, under AB 2138, which removes the Board’s ability to deny a license that involves a conviction that was expunged pursuant to Penal Code section 1203.4.
- Amend subsection (a)(11) relating to other relevant evidence by deleting “or licensee” because this section only applies to applicants. This proposal would also add language to clarify that the subsection applies to “crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial” and amend the language to add “professional misconduct” and “or omission(s),” as discussed above under the “Amendments Throughout the Section” portion. To more accurately describe the types of rehabilitation programs that applicants may use to make a showing of rehabilitation, CSLB proposes to add the words “or diversion” before the word “program.”

Amendments to Subsection (b):

- Amend subsection (b) by revising the language to add “or registration,” as discussed above under the “Amendments Throughout the Section” portion.

Amendment to Note Portion:

- Add a new reference to the Reference citation for Business and Professions Code section 485 relating to procedures upon denial of a license, including the notice to the applicant.

C. Policy Statement Overview/Anticipated Benefits of Proposal

CSLB has determined that this regulatory proposal will have the following benefits on the health and wel-

fare of California residents, consumers, and contractor licensees:

The proposed amendments would place applicants, licensees, and registrants on notice that the Board is statutorily authorized to deny, suspend, or revoke a license or registration based on a criminal conviction, professional misconduct, acts, or omissions that are substantially related to the qualifications, functions, or duties of a licensee or registrant. The proposal would also make relevant parties (e.g., the Deputy Attorneys General, Administrative Law Judges, respondents, and respondents’ counsels) aware that when considering denial or discipline, the Board uses the listed criteria to determine whether a crime, professional misconduct, act, or omission is substantially related to the qualifications, functions, or duties of a contractor or home improvement salesperson and determine whether a felony financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a contractor or home improvement salesperson.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments would further that goal by adopting criteria that would emphasize an applicant’s, licensee’s, or registrant’s rehabilitative efforts and what will be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed contractors and registered home improvement salespersons in the marketplace, thereby allowing California consumers access to more licensed and registered construction professionals.

In addition, these changes will benefit the welfare of California residents who hire contractors by helping ensure that individuals who are licensed as contractors or registered as home improvement salespersons have undergone a criminal background review based on established criteria.

Regulatory action is needed because, without this regulatory language, there could be confusion about the criteria CSLB uses for determining whether: (1) a crime, act, or professional misconduct is substantially related to the license or registration at issue; (2) a felony financial crime is considered directly or adversely related to the contracting or home improvement salesperson profession; (3) the applicant or licensee has made a showing of rehabilitation; or (4) what factors the Registrar considers when setting the earliest reapplication date for a denied applicant.

D. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, CSLB 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.

E. Fiscal Impact on Public Agencies

The proposed regulatory action will result in costs or savings to any state agency, costs or savings to any local agency or school district that is required to be reimbursed under Part 7 of Division 4 (commencing with Section 17500 of the Government Code), other nondiscretionary costs or savings on local agencies, or costs or savings in federal funding to the state. The specific fiscal impacts of the regulatory proposal are described below:

- Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:

CSLB estimates that the cost of implementing AB 2138, the legislation upon which this regulatory proposal is based, will include the following anticipated workload and staffing costs in the forthcoming budget years (BY):

- Total Costs in BY 2020–21 is: **\$548,000**
- Total Costs in BY 2021–22 and ongoing is: **\$457,000**

CSLB anticipates that there may be some additional costs resulting from the amendment and adoption of the sections identified in this regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, CSLB staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. However, the budget year costs, identified above, would result primarily from the implementation of the law itself, regardless of whether regulations are adopted. As a result, these proposed regulations are not anticipated to have a significant fiscal impact on CSLB.

- Nondiscretionary Costs/Savings to Local Agencies: None.
- Cost or Savings in Federal Funding to the State: None.

F. Local Mandate

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

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

G. Business Impact

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

The Board has more than 349,000 contractor licenses (active, inactive, and expired but renewable) and approximately 31,000 home improvement salesperson registrations (active and expired but renewable), as of April 2, 2019. In the most recent five-year period, CSLB fingerprinted approximately 147,454 individuals. Of those, approximately 20% (30,007) had at least one conviction of some kind. Of those, only 262 individuals were denied a license or registration — that is less than one-fifth of one percent (0.0018 or 0.18%) of all of the applicants who fingerprinted for CSLB during that time period and less than one percent (0.0087 or 0.87%) of applicants with a criminal conviction of some kind during that time period. If there was an economic impact of the denial of those applications that was measurable, it would be negligible given the small number of individuals impacted compared to the whole.

Since the Board has denied significantly less than one percent of all applicants and since these changes to the law will result in ostensibly even fewer denials than before, this proposal will not have a significant, statewide adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime, or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or whose conviction was dismissed or expunged.

These amendments will further assist in that effort through adoption of standards designed to implement new substantial relationship criteria, adversely and directly related criteria, rehabilitation criteria, and reapplication date criteria. In addition, one of the author’s stated purposes of AB 2138 was to reverse any “chilling” effect on applicants who may never apply due to apprehension about their criminal background. As a result, it is anticipated that there may be fewer denials or disciplinary actions based upon criminal convictions and possibly even an increase in the number of acceptable applications and, therefore, no significant, statewide adverse economic impacts.

H. Cost Impact on Affected Private Persons or Businesses

The Board estimates that there will be no significant increased costs for businesses or individuals to comply with the proposed regulations because there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

This proposal implements AB 2138, which is legislation designed to reduce licensing and employment barriers for people who have been convicted of a crime who have obtained a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or whose conviction was dismissed or expunged. This

proposal will amend regulations to add new substantial relationship criteria, adversely and directly related criteria, rehabilitation criteria, and reapplication date criteria that emphasize an applicant's, licensee's, or registrant's rehabilitative efforts, which may result in having fewer license or registration denials or disciplinary actions based on substantially related crimes, professional misconduct, acts, or omissions. It may also increase the number of applications by reversing a potential "chilling" effect on an unknown number of applicants. Historically, similar regulations adopted by the Board have resulted in significantly less than one percent (1%) of all applicants being denied a license or registration. Even assuming that the number of denials or discipline will decrease as a result of these amendments, the Board believes that this data demonstrates that these amendments will not be significant enough to create or eliminate a significant number of contracting businesses or businesses that hire home improvement salespersons.

CSLB estimates approximately 19 additional applicants will be granted licensure per year as a result of the proposed regulations and will be required to pay the \$200 initial license fee and the ongoing biennial renewal fee of \$450 for an active license.

I. Housing Costs

The proposed regulatory action will not have an effect on housing costs, except a possible decrease in the cost of housing caused by the existence of more licensed contractors and home improvement salespersons in the construction industry that would potentially lower the cost of these services.

J. Effect on Small Business

CSLB has determined that the proposed regulatory action may affect small businesses. Approximately 67% of all contractors currently licensed by CSLB are sole ownerships (nearly 234,000 out of more than 349,000 licenses), some of whom may be impacted by the proposed regulatory changes that would allow an influx of new professionals into the building trades.

CSLB has determined that this regulatory proposal may result in the creation of new jobs within the state of California because it implements AB 2138, which is legislation designed to reduce licensing and employment barriers for people who have been convicted of a crime who have obtained a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or whose conviction was dismissed or expunged. This proposal will amend regulations to add new substantial relationship criteria, adversely and directly related criteria, rehabilitation criteria, and reapplication date criteria that emphasize an applicant's, licensee's, or registrant's rehabilitative efforts, which may result in having fewer license or registration denials or disciplinary actions based on substantially related crimes,

professional misconduct, acts, or omissions. It may also increase the number of applications by reversing a potential chilling effect on an unknown number of applicants. However, the Board does not have data to project the number of jobs that may be created as a result of these efforts, some of which may be in small businesses.

In addition, the proposed regulations may have an impact on businesses within California, specifically licensed contractors and registered home improvement salespersons, to the extent that more individual applicants may be able to be licensed or registered under the proposal. The proposal may create new businesses within the State of California, but the number would be insignificant because the proposal is not of sufficient magnitude and does not affect a large enough population to create a significant number of businesses. Historically, similar regulations adopted by the Board resulted in significantly less than one percent of all applicants being denied a license or registration. Even assuming that the number of denials or discipline would decrease as a result of these amendments, the Board believes that this data demonstrates that these amendments would not be significant enough to create or eliminate a significant number of contracting businesses or businesses that hire home improvement salespersons.

CSLB estimates approximately 19 additional applicants will be granted licensure per year as a result of the proposed regulations and will be required to pay the \$200 initial license fee and the ongoing biennial renewal fee of \$450 for an active license.

K. Results of the Economic Impact Assessment/Analysis

Creation of Jobs/Businesses

CSLB has determined that this regulatory proposal may result in the creation of new jobs within the state of California because it implements AB 2138, which is legislation designed to reduce licensing and employment barriers for people who have been convicted of a crime who have obtained a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or whose conviction was dismissed or expunged. This proposal will amend regulations to add new substantial relationship criteria, adversely and directly related criteria, rehabilitation criteria, and reapplication date criteria that emphasize an applicant's, licensee's, or registrant's rehabilitative efforts, which may result in having fewer license or registration denials or disciplinary actions based on substantially related crimes, professional misconduct, acts, or omissions. It may also increase the number of applications by reversing a potential chilling effect on an unknown number of applicants. However, the Board does not have data to project the number of jobs that may be created as a result of these efforts.

In addition, the proposed regulations may have an impact on businesses within California, specifically licensed contractors and registered home improvement salespersons, to the extent that more individual applicants may be able to be licensed or registered under the proposal. The proposal may create new businesses within the State of California, but the number would be insignificant because the proposal is not of sufficient magnitude and does not affect a large enough population to create a significant number of businesses. Historically, similar regulations adopted by the Board have resulted in significantly less than one percent of all applicants being denied a license or registration. Even assuming that the number of denials or discipline will decrease as a result of these amendments, the Board believes that this data demonstrates that these amendments will not be significant enough to create or eliminate a significant number of contracting businesses or businesses that hire home improvement salespersons.

CSLB estimates approximately 19 additional applicants will be granted licensure per year as a result of the proposed regulations and will be required to pay the \$200 initial license fee and the ongoing biennial renewal fee of \$450 for an active license.

Elimination of Jobs or Businesses and Effect on the Expansion of Businesses

This proposal will not have a significant impact on the elimination of jobs or existing businesses or the expansion of businesses in the State of California because the proposal is not of sufficient magnitude and does not affect a large enough population to eliminate jobs or eliminate or expand businesses. Historically, similar regulations adopted by the Board have resulted in significantly less than one percent of all applicants being denied a license or registration. Even assuming that the number of denials or discipline will decrease as a result of these amendments, the Board believes that this data demonstrates that it will not be significant enough to expand or eliminate contracting businesses or businesses that hire home improvement salespersons.

CSLB estimates approximately 19 additional applicants will be granted licensure per year as a result of the proposed regulations and will be required to pay the \$200 initial license fee and the ongoing biennial renewal fee of \$450 for an active license.

Benefits of Regulation

CSLB has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the state’s environment:

- It will benefit the health and welfare of California residents because, by implementing criteria that emphasize rehabilitative efforts, it will create an opportunity for employment for people who have

been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in licensed contractors and registered home improvement salespersons in the marketplace, thereby allowing California consumers access to more licensed and registered construction professionals.

- It will not affect worker safety because the proposal does not relate to worker safety.
- It will not affect the State’s environment because the proposal does not relate to environmental issues.

L. Reference to Text and Initial Statement of Reasons

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

Copies of the exact language of the proposed regulations and any document incorporated by reference therein, the Initial Statement of Reasons, and the information upon which the proposal is based may be obtained at the hearing or prior to the hearing, upon request, from CSLB at 9821 Business Park Drive, Sacramento, CA 95827.

M. Federal Mandate

The proposed regulatory action is not mandated by federal law and is not identical to any previously adopted or amended federal regulation. The licensing and regulation of contractors is conducted at the state level, not federal.

N. Consideration of Alternatives

CSLB must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, would be as effective as 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, orally or in writing, relevant to the above determinations at the above-mentioned hearing.

O. Availability of Final Statement of Reasons and Rulemaking File

This Notice, the proposed text of the regulations, the Initial Statement of Reasons, and all the information upon which the proposed regulatory action is based are contained in the rulemaking file, which is available for public inspection by contacting the person named below. Interested parties 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.

P. Website Access

Materials regarding the proposed regulatory action can be found at www.cslb.ca.gov.

Q. Contact Person

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

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Attn: Betsy Figueira
(916) 255-3369
(916) 364-0130 (FAX)
Betsy.Figueira@cslb.ca.gov

The backup contact person is:

Michael Jamnetski
(916) 255-2798
(916) 364-0130 (FAX)
Michael.Jamnetski@cslb.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Betsy Figueira at (916) 255-3369.

**TITLE 16. DENTAL
BOARD OF CALIFORNIA**

NOTICE IS HEREBY GIVEN that the Dental Board of California (Board) is proposing to take the action described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Person" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or his/her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 263-2140 or by e-mail to Gabriel.Nevin@dca.ca.gov. The written comment period closes at **5:00 p.m. on**

Tuesday, April 28, 2020. The Board will consider only comments received at the Board's office by that time. Submit comments to:

Name:

Gabriel Nevin, Legislative & Regulatory Analyst
Dental Board of California

Address:

2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

Telephone Number:

(916) 263-2027

Fax Number:

(916) 263-2140

E-Mail Address:

Gabriel.Nevin@dca.ca.gov

AUTHORITY AND REFERENCE

Business and Professions Code Sections 141, 480, 481, 482, 490, 493, 1614, and 1670.1, authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific Sections 7.5, 141, 480, 481, 482, 488, 490, 493, 1614, and 1670.1 of the Business and Professions Code.

INFORMATIVE DIGEST

A. Informative Digest

The Board regulates approximately 82,000 licensees; consisting of 35,000 dentists (DDS), 30,000 registered dental assistants (RDA), and 1,700 registered dental assistants in extended functions (RDAEF), and other various license and permit types. In addition, the Board has the responsibility for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violations of the Dental Practice Act; monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

B. Policy Statement Overview/Anticipated Benefits of Proposal

Existing law (Business and Professions Code Sections 480 and 490) presently authorizes the Board to deny an application for licensure or discipline a licensee based on a conviction for a crime or act substantially related to the licensed business or profession. Business and Professions Code Section 481 authorizes the Board

to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the dental profession. Business and Professions Code Section 482 requires the board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial or discipline of a license. Consistent with that authority, the board has adopted regulations that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, under the provisions of Assembly Bill (AB) 2138 (Statutes 2018, Chapter 995), the Board's existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. This proposal seeks to update the Board's current regulations consistent with this recently enacted legislation and to more accurately reflect the Board's authority to consider denials, discipline or petitions for reinstatement or modification of penalty.

Effective July 1, 2020, Business and Professions Code Section 481, subsection (b) will require the Board's existing substantial relationship criteria regulations to include all the following:

- the nature and gravity of the offense,
- the number of years elapsed since the date of the offense, and
- the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

Further amendments to the Board's regulations will be needed to address other changes to law enacted by AB 2138. These proposed amendments include the addition of references to "professional misconduct" as this will be considered a legal basis for denial under Business and Professions Code Section 480. The proposed language will also add references to discipline under Business and Professions Code Section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. Also, the board proposes to add new rehabilitation criteria to help the board consider whether an applicant or licensee made a "showing of rehabilitation" as required by AB 2138. This proposal will also implement changes to how the board considers rehabilitation evidence when considering denials, discipline or a petition for reinstatement of a license or modification of a disciplinary penalty (e.g., petition for early termination of probation).

ANTICIPATED BENEFITS

The proposed amendments would place applicants and licensees on notice that the board is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal would also make relevant parties (e.g., Deputy Attorneys General, Administrative Law Judges, respondents, and respondents' legal counsel) aware that when considering denial or discipline of applicants or licensees, the Board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of dentistry. AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments would further that goal by adopting criteria that would emphasize an applicant's or licensee's rehabilitative efforts and what would be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensees in the marketplace.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and it is not inconsistent or incompatible with existing state regulations. The Board is the only state entity that regulates the practice of dentistry and is the only authority that can amend regulations pertaining to the licensing process.

FISCAL IMPACT ESTIMATES:

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.

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 the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States because

the regulations pertain to the Board's enforcement of the Dental Practice Act and its regulations. This determination is based on the fact that the proposal only affects persons that have previous criminal offenses on their record. For example, a person with a prior conviction or criminal record's application for licensure may be denied.

A business owned by a licensee that will potentially employ persons with a prior conviction or criminal record may be impacted, as these applications will no longer be disqualified because of AB 2138. This may open the pool of applicants, allowing businesses a greater selection of candidates to hire. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence that support this determination.

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 regulatory change.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. Although small businesses owned by licensees of the Board and small businesses that employ licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other states, because the regulations pertain to the Board's process for licensure and renewal.

The Board has determined that this regulatory proposal may have impacts on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the state of California. Specifically, the proposal may create jobs, new businesses, and expand businesses to the extent that potential licensees were not able to apply previously because of license barriers and now can.

Benefits of Regulation:

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

The proposal helps the Board fulfill its highest priority: protection of the public when exercising its licensing, regulatory, and disciplinary functions. This proposal will continue to ensure that applicants have the continued competency and the minimum requirements necessary to protect the public from inexperienced or unqualified practitioners.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which 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 orally or in writing relevant to the above determinations at the above-mentioned hearing.

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, which may be obtained from the contact person identified in this notice.

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 at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 1550,

Sacramento, California 95815 or by accessing the Board's website at <http://www.dbc.ca.gov/laws/regs/index.shtml>.

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

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

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

CONTACT PERSON

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

Name:

Gabriel Nevin, Legislative & Regulatory Analyst
Dental Board of California

Address:

2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

Telephone Number:

(916) 263-2027

Fax Number:

(916) 263-2140

E-Mail Address:

Gabriel.Nevin@dca.ca.gov

The backup contact person is:

Name:

Wilbert Rumbaoa, Staff Services Manager I
Administrative Services Unit
Dental Board of California

Address:

2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

Telephone Number:

(916) 263-2215

Fax Number:

(916) 263-2140

E-Mail Address:

Wilbert.Rumbaoa@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at the Board's website at <http://www.dbc.ca.gov/lawsregs/index.shtml>.

**TITLE 16. NATUROPATHIC
MEDICINE COMMITTEE**

The Naturopathic Medicine Committee (Committee) proposes to take action to amend sections 4256 and 4258 and adopt new section 4259 of Article 9 of Division 40 of Title 16 of the California Code of Regulations (CCR) regarding substantial relationship criteria, rehabilitation criteria for denials and reinstatements, and for suspensions and revocations as described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Committee has not scheduled a public hearing on this proposed action. However, the Committee will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Committee. Please submit written comments, including those sent by mail, facsimile, or email to the addresses listed under "Contact Persons" in this Notice. The written comment period closes at **5:00 p.m. on Tuesday, April 28, 2020**. The Committee will consider only comments received at the Committee's office by that time. Written or oral comments also may be received by the Committee at a hearing, if any is scheduled.

AVAILABILITY OF MODIFICATIONS

The Committee, 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 adop-

tion from the person designated in the Notice as the “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.

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) sections 482 and 3622 authorize the Committee to make the proposed amendments, which implement, interpret, and make specific BPC sections 141, 475, 480, 481, 482, 488, 490, 493, 726, 3660, and 3662.

INFORMATIVE DIGEST

The Committee licenses naturopathic medicine doctors who are health care practitioners that provide health care services. (BPC sections 3630, 3640, 3643, and 3645.) Existing law (BPC sections 480 and 490) authorizes the Committee to deny an application for licensure or discipline a licensee based on a conviction for a crime or act substantially related to the licensed business or profession. BPC section 481 authorizes the Committee to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of naturopathic doctors. BPC section 482 requires the Committee to develop criteria to evaluate an applicant’s or licensee’s rehabilitation when considering the denial of a license or discipline of a licensee. The Committee has adopted regulations (16 CCR 4256, 4258, and 4259) that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, pursuant to the provisions of Assembly Bill 2138 (Stats. 2018, ch. 995) (hereafter, AB 2138), the Committee’s existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. This proposal seeks to adopt regulations consistent with this recently enacted legislation and to more accurately reflect the Committee’s authority to consider denials and discipline.

Effective July 1, 2020, BPC section 481, subsection (b) will require the Committee’s substantial relationship criteria regulations to include all of the following:

- The nature and gravity of the offense.
- The number of years elapsed since the date of the offense.
- The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

The amended regulations will also address other changes to law enacted by AB 2138. The proposed regulations include references to “professional misconduct,” as this will be considered a legal basis for denial under BPC section 480. The proposed language will also add references to discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. The proposal would also add substantially related crimes, professional misconduct, and acts that would include violating other state laws governing the practice of naturopathic medicine.

The Committee proposes to add new rehabilitation criteria to help the Committee consider whether an applicant or licensee made a “showing of rehabilitation” as required by AB 2138. (BPC sections 480, 482, as added by AB 2138, sections 4, 9.) This proposal will also implement changes to how the Committee considers rehabilitation evidence when considering denials, discipline, and petitions for reinstatement.

Anticipated Benefits of the Proposed Regulation:

The proposed regulatory action would place applicants and licensees on notice that the Committee is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing body or jurisdiction. The proposal would also make relevant parties (e.g., the Office of the Attorney General, Office of Administrative Hearings, respondents, and respondent’s counsels) aware that when considering denial or discipline of applicants or licensees, the Committee uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of naturopathic medicine.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated, which may reduce recidivism and provide economic opportunity to California’s residents. The proposed regulatory action furthers that goal by adopting criteria that emphasizes an applicant’s or licensee’s rehabilitative efforts and what is necessary to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed naturopathic doctors in the marketplace. Additional licensees may allow for more health care providers to treat increasing numbers of California consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

DISCLOSURES REGARDING THE
PROPOSED ACTION

The Committee has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Costs or savings to any state agencies: The Committee anticipates that there may be an increased cost to the state as a result of amending and adopting these sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, committee staff may see an increased workload to research convictions to substantiate that rehabilitation has been achieved. Given the small number of applicants and licensees involved, these costs are predicted to be minor and absorbable.
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
4. Other nondiscretionary costs or savings imposed on local agencies: None.
5. Costs or savings in federal funding to the state: None.
6. Cost impacts on representative private person or business: The Committee is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
7. Statewide adverse economic impact directly affecting businesses and individuals: None.
8. Significant effect on housing costs: None.

Business Impact:

This regulation will not have a significant statewide adverse economic impact directly affecting businesses. This initial determination is based on the following facts:

The Committee has approximately 968 licensees for the current fiscal year. During the 2016/2017 fiscal year the Committee issued 102 licenses and denied 0 licenses; in fiscal year 2017/2018 the Committee issued 94 licenses and denied 0 licenses; and in the first half of fiscal year 2018/2019 the Committee has issued 78 licenses and denied 1 license. The single denial was unrelated to a criminal conviction. Therefore, the Committee has denied fewer than 0.0036 % of all applicants. The Committee is unaware of how many potential applicants may have never applied due to their criminal histories.

Since the Committee has denied fewer than 0.0036 % of all applicants this proposal will not have an adverse

economic impact. AB 2138 was enacted to reduce licensing and employment barriers for those convicted of a crime or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. These proposed amendments will further assist in that effort through adoption of standards designed to implement new substantial relationship and rehabilitation criteria. As a result, the Committee anticipates that there may be fewer denials or disciplinary actions based upon criminal convictions and, therefore, no significant or statewide adverse economic impacts.

Effect on Small Business:

This regulation will not have a significant statewide effect on small businesses because the proposal is not of enough magnitude to expand businesses. This initial determination is based on the following facts:

The Committee has approximately 968 licensees for the current fiscal year. During the 2016/2017 fiscal year the Committee issued 102 licenses and denied 0 licenses; in fiscal year 2017/2018 the Committee issued 94 licenses and denied 0 licenses; and in the first half of fiscal year 2018/2019 the Committee has issued 78 licenses and denied 1. The single denial was unrelated to criminal convictions. Since the Committee has denied fewer than 0.0036 % of all applicants for reasons unrelated to criminal convictions this proposal is unlikely to decrease the number of denials. Even assuming the number of denials or disciplinary actions would decrease because of these proposed amendments, the Committee believes that this data demonstrates that the decrease would not be significant enough to expand businesses who hire naturopathic doctors.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

The proposed regulatory action will not create new businesses or jobs or eliminate existing businesses and will not affect the expansion of businesses currently doing business within the State of California because the proposal is not of enough magnitude to create or eliminate businesses. Historically, fewer than 1% of all applicants are denied and for reasons unrelated to criminal convictions. Even assuming the number of denials or disciplinary actions would decrease because of the proposed regulatory action, the Committee believes that this data demonstrates that these regulations would not be significant enough to create or eliminate businesses or naturopathic doctors jobs.

This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, the proposal will create an opportunity for employment for

people who have been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in naturopathic doctors in the marketplace and allow for more health care providers to treat increasing numbers of California consumers.

This regulatory proposal will not affect worker safety because the proposal does not involve worker safety. The proposal will amend and add regulations related to substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

This regulatory proposal will not affect the State's environment because the proposal does not involve environmental issues. The proposal will amend and add regulations related to substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

CONSIDERATION OF ALTERNATIVES

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

The Committee invites interested persons to submit written comments to the Committee at 1300 National Drive, Suite 150, Sacramento, California 95834 during the written comment period. The Committee further invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at hearing, if any is scheduled.

CONTACT PERSONS

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

Name:
Rebecca Mitchell, Executive Officer

Address:
Naturopathic Medicine Committee
1300 National Drive, Suite 150
Sacramento, CA 95834

Telephone Number:
(916) 928-4785

Fax Number:
(916) 928-4787

E-mail Address:
Rebecca.Mitchell@dca.ca.gov

The backup contact person is:

Name:
Raquel Oden, Program Analyst

Address:
Naturopathic Medicine Committee
1300 National Drive, Suite 150
Sacramento, CA 95834

Telephone Number:
(916) 928-4785

Fax Number:
(916) 928-4787

E-mail Address:
Raquel.Oden@dca.ca.gov

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

The Committee will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Action, the proposed text of the regulations, the Initial Statement of Reasons, and other information upon which the rulemaking is based, including:

1. Committee's March 5, 2019 meeting agenda,
2. Committee's relevant meeting materials (Tab 7) from the March 5, 2019 Committee meeting,
3. Committee's approved meeting minutes from the March 5, 2019 Committee meeting,
4. Assembly Bill 2138 (as amended in Assembly April 2, 2018),
5. Assembly Bill 2138 (as amended in Senate June 20, 2018),
6. Assembly Bill 2138 (chapter 995, Statutes of 2018),

7. Senate Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018, and
8. Assembly Floor Analysis, dated August 24, 2018.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Committee may adopt the proposed regulations substantially as described in this Notice.

If the Committee makes modifications which are sufficiently related to the originally proposed text, the Committee will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Committee adopts the regulation as revised.

Please send requests for copies of any modified regulations addressed to the individuals listed under “Contact Persons” in this Notice. The Committee will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be made available upon request. Please send requests addressed to the individuals listed under “Contact Persons” in this Notice.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed regulations in underline and strikethrough can be accessed through our website at: www.naturopathic.ca.gov.

TITLE 16. OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

The Osteopathic Medical Board of California (Board) proposes to take action to amend sections 1654, 1655, and 1657 of Article 12 of Division 16 of Title 16 of the California Code of Regulations (CCR) regarding substantial relationship and rehabilitation criteria, as described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Persons” in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or his/her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Please submit written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Persons” in this Notice. The written comment period closes at **5:00 p.m. on Tuesday, April 28**. The Board will consider only comments received at the Board’s office by that time. Written or oral comments also may be received by the Board at a hearing, if any is scheduled.

AVAILABILITY OF MODIFICATIONS

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 persons designated in this Notice as the 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.

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) sections 481, 482, 2018, and 3600–1 authorize the Board to make the proposed amendments, which implement, interpret, and make specific BPC sections 141, 475, 480, 481, 482, 488, 490, and 493.

INFORMATIVE DIGEST

The Board licenses osteopathic physicians and surgeons who are health care practitioners that provide health care services. (BPC section 3600–5). Existing law (BPC sections 480 and 490) presently authorizes the Board to deny an application for licensure or discipline a licensee based on a conviction for a crime or act

substantially related to the licensed business or profession. BPC section 481 authorizes the Board to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the osteopathic profession. BPC section 482 requires the Board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial of a license or discipline of a licensee. The Board has adopted regulations (16 CCR 1654, 1655, 1657) that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, pursuant to the provisions of Assembly Bill 2138 (Stats. 2018, ch. 995) (hereafter, AB 2138), the Board's existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. This proposal seeks to adopt regulations consistent with this recently enacted legislation and to more accurately reflect the Board's authority to consider denials and discipline.

Effective July 1, 2020, BPC section 481, subsection (b) will require the Board's substantial relationship criteria regulations to include all of the following:

- The nature and gravity of the offense.
- The number of years elapsed since the date of the offense.
- The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

The amended regulations will also address other changes to law enacted by AB 2138. These proposed regulations include references to "professional misconduct" as this will be considered a legal basis for denial under BPC section 480. The proposed language will also add references to discipline under BPC section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practice of osteopathic medicine.

In addition, the Board proposes to add new rehabilitation criteria to help the Board consider whether an applicant or licensee made a "showing of rehabilitation" as required by AB 2138. (BPC sections 480, 482, as added by AB 2138, sections 4, 9.) This proposal will also implement changes to how the Board considers rehabilitation evidence when considering denials or discipline.

Finally, the proposed regulation would make the rehabilitation criteria for reinstatement or modification of

penalty consistent with the rehabilitation criteria for denials or discipline and makes other minor revisions.

Anticipated Benefits of the Proposed Regulation:

The proposed regulatory action would place applicants and licensees on notice that the Board is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal would also make relevant parties (e.g., the Office of the Attorney General, Office of Administrative Hearings, respondents, and respondent's counsels) aware that when considering denial or discipline of applicants or licensees, the Board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of osteopathic medicine.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. The proposed regulatory action would further that goal by adopting criteria that would emphasize an applicant's or licensee's rehabilitative efforts and what would be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed osteopathic physicians and surgeons in the marketplace. Additional licensees may allow for more health care providers to treat increasing numbers of California consumers.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Costs or savings to any state agencies: None.
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
4. Other nondiscretionary costs or savings imposed on local agencies: None.
5. Costs or savings in federal funding to the state: None.
6. Cost impacts 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.

7. Statewide adverse economic impact directly affecting businesses and individuals: None.
8. Significant effect on housing costs: None.

Business Impact:

This regulation will not have a significant statewide adverse economic impact directly affecting businesses. This initial determination is based on the following facts:

The Board has approximately 11,234 licensees as of November 2019. During the 2016/2017 fiscal year the Board issued 910 licenses and denied 0; in fiscal year 2017/2018 the Board issued 891 licenses and denied 2; and in fiscal year 2018/2019 the Board issued 773 licenses and denied 0. Therefore, the Board has denied fewer than 1% of all applicants. The Board is unaware of how many potential applicants may have never applied due to their criminal histories.

Since the Board has denied fewer than 1% of all applicants this proposal will not have an adverse economic impact. AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime or due to acts underlying the conviction, who have a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. These proposed amendments will further assist in that effort through adoption of standards designed to implement new substantial relationship and rehabilitation criteria. As a result, the Board anticipates that there may be fewer denials or disciplinary actions based upon criminal convictions and, therefore, no significant or statewide adverse economic impacts.

Effect on Small Business:

This regulation will not have a significant statewide effect on small businesses because the proposal is not of sufficient magnitude to expand businesses. This initial determination is based on the following facts:

Historically, the Board denied fewer than 1% of all applications. Even assuming the number of denials or discipline would decrease because of these proposed amendments, the Board believes that this data demonstrates that the decrease would not be significant enough to expand businesses who hire osteopathic physicians and surgeons.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

The proposed regulatory action will not create new business or eliminate existing businesses and will not

affect the expansion of businesses currently doing business within the State of California because the proposal is not of sufficient magnitude to create or eliminate businesses. Historically, similar regulations adopted by the Board resulted in fewer than 1% of all applicants being denied. Even assuming the number of denials or discipline would decrease because of the proposed regulatory action, the Board believes that, while some jobs may be created for additional licensees, this data demonstrates that these regulations would not be significant enough to create or eliminate businesses who hire osteopathic physicians and surgeons.

This regulatory proposal will benefit the health and welfare of California residents because by implementing criteria that emphasize rehabilitative efforts, the proposal will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in osteopathic physicians and surgeons in the marketplace and, therefore, allow for more health care providers to treat increasing numbers of California consumers.

This regulatory proposal will not affect worker safety because the proposal does not involve worker safety. The proposal will amend existing regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

This regulatory proposal will not affect the State's environment because the proposal does not involve environmental issues. The proposal will amend existing regulations to add substantial relationship criteria and rehabilitation criteria that emphasize an applicant's or licensee's rehabilitative efforts, which may result in having fewer license denials or disciplinary actions based on substantially related crimes, acts, or professional misconduct.

CONSIDERATION OF ALTERNATIVES

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

The Board invites interested persons to submit written comments to the Board at 1300 National Drive,

Suite 150, Sacramento, California 95834 during the written comment period. The Board further invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at hearing, if any is scheduled.

CONTACT PERSONS

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

Name:

Mark Ito, Executive Director

Address:

Osteopathic Medical Board of California
1300 National Drive, Suite 150
Sacramento, CA 95834

Telephone Number:

916-928-8390

Fax Number:

916-928-8392

E-Mail Address:

Mark.Ito@dca.ca.gov

The backup contact person is:

Name:

Terri Thorfinnson, Assistant Executive Director

Address:

Osteopathic Medical Board of California
1300 National Drive, Suite 150
Sacramento, CA 95834

Telephone Number:

916-928-8390

Fax Number:

916-928-8392

E-Mail Address:

Terri.Thorfinnson@dca.ca.gov

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rule-making process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Action, the proposed Text of the regulations, the Initial Statement of Reasons, and other information upon which the rulemaking is based, including:

1. Board's May 16, 2019 meeting agenda,
2. Board's relevant meeting materials (Tab 6) from May 2019 Board meeting,

3. Board's May 16, 2019 approved meeting minutes,
4. Assembly Bill 2138 (as amended in Assembly April 2, 2018),
5. Assembly Bill 2138 (as amended in Senate June 20, 2018),
6. Assembly Bill 2138 (chapter 995, Statutes of 2018),
7. Senate Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018, and
8. Assembly Floor Analysis, dated August 24, 2018.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice.

If the Board makes modifications which are sufficiently related to the originally proposed text, the Board will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised.

Please send requests for copies of any modified regulations addressed to the individuals listed under "Contact Persons" in this Notice. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be made available upon request. Please send requests addressed to the individuals listed under "Contact Persons" in this Notice.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at: www.ombc.ca.gov/bd_activity/laws_regs/proposed_regs.

TITLE 16. STRUCTURAL PEST CONTROL BOARD

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board (SPCB) is proposing to take action as 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:

**Department of Consumer Affairs
Lake Tahoe Conference Room
2005 Evergreen Street
Sacramento, CA 95747
April 29, 2020, 10:00 a.m.**

Any interested person, or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the SPCB. Comments may also be submitted by facsimile to the SPCB at (916) 263-2469 or by email to pestboard@dca.ca.gov. The written comment period closes on April 27, 2020. The SPCB will only consider comments received at the SPCB Office by that day. Submit comments to:

**David Skelton, Administrative Analyst
Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815**

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority granted by Business and Professions Code (BPC) section 8525 and to implement, interpret, or make specific BPC sections 8518 and 8674, the SPCB is proposing to amend California Code of Regulations (CCR), Title 16, section 1997.

INFORMATIVE DIGEST

On August 22, 2019, the fee in 16 CCR 1997 (for pest control companies of \$3.00 per property address reported to SPCB where a Wood Destroying Organism (WDO) inspection has been performed) was raised by emergency regulation to \$4.00. This certificate of compliance action would make the emergency fee increase permanent.

POLICY STATEMENT/OVERVIEW

The Structural Pest Control Board (SPCB) has determined that it is necessary to increase the WDO fee in order to avoid the risk of insolvency and the serious risk to public safety that would result if the SPCB becomes insolvent. The SPCB's expenses rose considerably and unexpectedly starting in the 2017-2018 fiscal year. The SPCB tried to address the revenue shortfall with a regu-

latory increase to the WDO fee, because this fee provides immediate revenue to the SPCB and is the least impactful to applicants and licensees. Thus, the SPCB actively pursued a regular rulemaking to increase the WDO fee to \$3.00, which at the time was the statutory maximum, and the fee increase just took effect July 1, 2019. But even with the recent WDO fee increase, the SPCB's projected budget still shows that the SPCB is on the verge of insolvency. And the budget projections do not account for the sharp rise in legal fees that the Attorney General's Office recently and unexpectedly announced. The SPCB needs additional revenue to ensure that it can maintain its operations and protect the public. Fortunately, the Legislature recently increased the statutory maximum WDO fee to \$5.00, providing the SPCB an avenue to address the revenue shortfall via regulation.

The SPCB's highest priority is public protection. (BPC section 8520.1.) Boards and bureaus within the Department of Consumer Affairs (DCA) typically maintain a reserve fund balance of approximately six months to be able to respond to unanticipated revenue fluctuations and costs, such as decreases in licensing populations (and the associated revenue drop), litigation expenses, and increases in enforcement costs. (See BPC sections 3145 [Optometry Board maintains up to a six-month reserve]; 3775, subd. (d) [Respiratory Care Board maintains six-month reserve]; 7138.1 [Contractors State License Board maintains six-month reserve].) The SPCB began its 2019-2020 fiscal year with a dangerously-low reserve balance of \$246,000. This equates to less than one month in reserve. Under the current budget projections, without a fee increase, the SPCB is projected to have a negative reserve balance by the 2020-2021 fiscal year.

The SPCB's expenditures increased more substantially starting in the 2017-2018 fiscal year. As reflected in the 2019 Governor's Budget fund condition statement, the SPCB's expenditures in the 2015-2016 and 2016-2017 fiscal years were greater than its revenues but to a lesser degree than 2017-18. It maintained a relatively stable reserve balance of 5.3 months in the 2015-2016 fiscal year and 5.0 months in the 2016-2017 fiscal year. But in the 2017-2018 fiscal year, the SPCB's expenditures began to significantly outpace its revenues and the SPCB ended the last fiscal year with less than one month in reserve.

The SPCB voted in April 2018 to raise the WDO fee from \$2.50 to the statutory maximum (at the time) of \$3.00 per property address reported to try to address the rise in costs and rapidly depleting fund reserve. The rulemaking action was approved by the Office of Administrative Law (OAL) on May 7, 2019, with an effective date of July 1, 2019. While the recent increase stopped the fund reserve's quickening decline and is

now projected to bring revenue closer to the level of expenditures, it is ultimately insufficient and the SPCB remains projected to nearly exhaust its budget reserves in this fiscal year.

Based upon an average of 1,376,406 filings per year over the past five years, there were approximately 114,700 activity forms filed each month during the last five fiscal years. Increasing the WDO Inspection Reporting Fee by just one dollar — from \$3.00 per property address reported to \$4.00 per property address reported — is projected to produce a monthly revenue increase of \$114,700 per month, or an annual revenue increase of approximately \$1,376,000. This action will provide an influx of cash and increase SPCB's long-term revenue projections so that all expenditures will be covered and the SPCB can rebuild its reserve fund balance.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulation the SPCB conducted a search for any similar regulations relating to this topic. The SPCB determined that the proposed regulatory action is not inconsistent or incompatible with existing regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs / Savings in Federal Funding to the State: In taking this action, the SPCB projects an annual revenue increase of approximately \$1,376,000.

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 STATEMENT

The Board has determined that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

The Board has determined that the following types of businesses may experience a minimal adverse economic impact — Businesses that perform WDO inspections.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact that a representative private person or business would incur to be in reasonable compliance with the proposed regulation is as follows:

► Impact on Businesses That Perform WDO Inspections

Currently, there are 1,544 companies registered with the SPCB with the proper license to perform WDO inspections. Over 2014–15, 2015–16, 2016–17, 2017–18, and 2018–19 these companies reported an annual average total of approximately 1,376,000 WDO inspections per year. This translates to an average of 891 annual WDO inspections per registered company. The proposed regulation would increase the fee registered companies pay to report a WDO inspection by \$1.00. Therefore, the average cost impact of the proposed regulation on a representative business is \$891 per year.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The SPCB has determined that the proposed regulation will affect small businesses in the following ways:

Small businesses that perform WDO inspections will incur an increase of \$1.00 in the fee that they are required to pay to the SPCB when they report a WDO inspection. While the SPCB does not keep statistics on how many small businesses it registers, the average annual cost increase for a company that performs WDO inspections is expected to be \$891.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SPCB has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the state. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect job creation.

The SPCB has determined that the proposed regulatory action will not affect the creation of new businesses or the elimination of existing businesses within the state. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect the creation of new businesses or the elimination of existing businesses.

The SPCB has determined that the proposed regulatory action will not affect the expansion of businesses currently doing business within the state. The SPCB made this determination because the economic impact

of the proposed regulation is expected to be minor and therefore would not affect the expansion of businesses currently operating within the state.

The SPCB has determined that the proposed regulatory action will benefit the health and welfare of California's residents, worker safety, and the state's environment in the following way:

- The health and welfare of California residents will benefit from the proposed regulation because it will enable the SPCB to address the concerns about its fund condition and therefore ensure that the SPCB can continue to fulfill its primary function of protecting the public.

EFFECT ON HOUSING COSTS

The SPCB has determined that the proposed regulation will have no effect on housing costs. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect the cost of housing.

BUSINESS REPORTING REQUIREMENT STATEMENT

The SPCB has determined that the proposed regulation will not create a reporting requirement for businesses.

CONSIDERATION OF ALTERNATIVES

The SPCB must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which 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 orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SPCB 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 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 at the hearing or prior to the hearing upon request from the Board's office located at 2005 Evergreen Street, Suite 1500, Sacramento, California, 95815, or by visiting the Board's website at <http://www.pestboard.ca.gov/forms/index.shtml>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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.

WEBSITE ACCESS

Materials regarding this proposal can be found at the Board's website at: <http://www.pestboard.ca.gov/forms/index.shtml>

CONTACT PERSON

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

Name:
David Skelton

Address:

Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815

Telephone Number:

916-561-8722

Fax Number:

916-263-2469

Email Address:

david.skelton@dca.ca.gov

BACKUP CONTACT PERSON

Name:

Ronni O’Flaherty

Address:

Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815

Telephone Number:

916-561-8700

Fax Number:

916-263-2469

Email Address:

ronni.oflaherty@dca.ca.gov

TITLE 16. VETERINARY MEDICAL BOARD

Animal Physical Rehabilitation, § 2038.5

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request, addressed to the individuals listed under “Contact Person” in this notice, 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.

WRITTEN COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be received by the Board at

its office no later than April 27, 2020, or must be received by the Board at the hearing, should one be scheduled.

AVAILABILITY OF MODIFICATIONS

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 4808 and 4836 of the Business and Professions Code (BPC), and to implement, interpret, or make specific sections 4825, 4826, 4836, and 4883 of the BPC, the Board is considering adopting section 2038.5 of article 4 of division 20 of title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

BPC section 4808 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry into effect the Veterinary Medicine Practice Act (Act). BPC section 4836, subdivision (a) requires the Board to adopt regulations establishing animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed only by a registered veterinary technician (RVT) or a licensed veterinarian. BPC section 4836, subdivision (b) authorizes the Board to establish animal health care tasks that may be performed by a veterinary assistant (VA), and requires the Board to establish an appropriate degree of supervision by an RVT or a licensed veterinarian over a VA for any tasks established by regulation and the degree of supervision for any of those tasks must be higher than, or equal to, the degree of supervision required when an RVT performs the task.

Animal physical rehabilitation (APR) has become a rapidly expanding veterinary specialty, with some individuals who may or may not be licensed to practice physical therapy on humans, expanding their practice to animals. However, the Act requires a person who practices veterinary medicine or any branch thereof on ani-

imals to hold a valid, unexpired, and unrevoked license issued by the Board (BPC § 4825). The Act defines the practice of veterinary medicine to include the administration of a drug, medicine, application, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals, except where the medicine, appliance, application, or treatment is administered by an RVT or VA at the direction of and under the direct supervision of a licensed veterinarian (BPC § 4826). As each animal family and breed has different physicalities, the provision of APR must be performed in accordance with those physicalities, taking into consideration each animal’s medical needs.

To protect the health, safety, and welfare of consumers and their animals, the proposal would define the practice of APR and provide the circumstances under which a person may perform APR on animals.

The Board is proposing the following changes:

Adopt CCR, Title 16, Section 2038.5 — Animal Physical Rehabilitation Subsection (a)

The proposed regulation would set out APR as the proper term for corrective physical treatment on an animal.

Subsection (a)(1)

The proposed regulation would define APR to mean the treatment of injury or illness to address pain and improve function by means of corrective treatment.

Subsection (a)(2)

The proposed regulation would provide that APR does not include relaxation, recreational or wellness modalities, including but not limited to, massage, athletic training, or exercise.

Subsection (b)

The proposed regulation would require a veterinarian to establish a valid veterinarian–client–patient relationship (VCPR), as defined, before performing or authorizing APR.

Subsection (c)

The proposed regulation would authorize RVTs to perform APR under the degree of supervision to be determined by the veterinarian who has established the VCPR.

Subsection (d)

The proposed regulation would authorize VAs to perform APR under the direct supervision of a veterinarian. The proposed regulation would also specify that if a VA is performing APR on an animal patient in a range setting, the supervising veterinarian would be required to be in the general vicinity of the treatment area.

Subsection (e)

The proposed regulation would specify that it does not restrict or amend the existing regulation regarding the performance of musculoskeletal manipulation (MSM) on an animal patient.

POLICY STATEMENT OVERVIEW

The policy behind the proposed regulatory adoption is consistent with the Board’s mission of protecting the public and their animals. The proposal is intended to address the growing practice of APR performed by individuals who are not licensed by the Board. Currently, licensed physical therapists and unlicensed individuals are practicing APR on animals. However, licensed physical therapists are only licensed by the Physical Therapy Board of California to perform physical therapy on humans, not animals, and persons not licensed by the Board to perform veterinary medicine on animals are considered veterinary assistants, who are not licensed or registered with the Board. The proposal would establish a clear definition of APR in the Board’s regulations, clarify who may perform APR, and clarify the circumstances under which a person may perform APR.

ANTICIPATED BENEFITS OF PROPOSED REGULATORY ACTION

The Board anticipates that consumers and their animals would benefit from the proposal as they would have information as to who is authorized to perform APR on their animals and which state agency oversees and enforces laws regarding APR treatment on animals. The Board also anticipates that veterinarians, RVTs, VAs, and licensed physical therapists will benefit from clarified terms regarding APR.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies: The Board currently enforces the unlicensed and/or unsupervised practice of veterinary medicine on animals, so the Board does not

expect a significant increase in investigative or prosecution expenses as a result of the regulation.

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 business, including the ability of California businesses to compete with businesses in other states, because APR treatment is currently regulated and enforced by the Board pursuant to the Act, and any businesses that provide APR treatment are currently subject to the requirements of that Act.

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, as the provision of APR treatment on animals by representative private persons or businesses is currently regulated and enforced by the Board pursuant to the Act.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that this regulatory proposal would not affect small businesses; small businesses that offer APR treatment must currently comply with the Act and the licensure and/or veterinarian supervision requirements for providing veterinary medicine services, and this regulation does not change those licensure requirements.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has made an initial determination that the proposed regulatory action may have an impact on the creation of jobs or new businesses if such jobs or new businesses intended to offer APR treatment on animals without Board licensure or veterinarian supervision; however, those jobs or new businesses are currently subject to the licensure and/or supervision requirements of the Act. The Board has made an initial determination that the proposed regulatory action will not

have any impact on the elimination of jobs or existing businesses that offer APR treatment or the expansion of businesses in the State of California unless those businesses are currently offering APR treatment, or intend to expand to offer APR without Board licensure or veterinarian supervision as required under the Act.

Benefits of Regulation:

The Board has determined that this regulatory proposal would:

- The Board anticipates that consumers and their animals would benefit from the proposal as they would have information as to who is authorized to practice APR on their animals and which state agency oversees and enforces laws regarding APR treatment. The Board also anticipates that veterinarians, RVTs, VAs, and licensed physical therapists will benefit from clarified terms regarding APR.
- The proposal would not have a significant impact on worker safety because the proposal does not concern worker safety, but instead clarifies existing law regarding the provision of APR by veterinarians, RVTs, and VAs.
- The proposal would not have an impact on the state's environment because the proposal does not concern the environment, but instead clarifies existing law regarding the provision of APR by veterinarians, RVTs, and VAs.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which 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.

To date, the following options were considered by the Board and rejected:

1. Defining APR to include therapeutic massage and active, passive, and resistive exercise. The Board initially included these actions in its 2015 animal rehabilitation rulemaking, but struck these terms from the definition of APR following opposition in public comment that massage and exercise are not the practice of veterinary medicine. Opposition to the inclusion of "manual therapy" in the definition was also raised as it might conflict with the Board's existing regulation authorizing chiropractic treatment. Accordingly, "manual

therapy” was stricken from the definition, and the Board added a provision clarifying that this proposal would not affect the existing chiropractic regulation, CCR, title 16, section 2038.

2. Providing a list all of the actions to be performed by a veterinarian prior to performing APR. The list of actions was stricken as it was determined to be duplicative since the veterinarian is required by regulation to establish a VCPR that lists the same actions.
3. Authorizing a California licensed physical therapist to perform APR under direct supervision of a veterinarian. In its 2015 animal rehabilitation rulemaking, the Board provided authority for a physical therapist to perform APR under the direct supervision of a veterinarian; subsequently, the term “physical therapist” was removed and replaced with “veterinary assistant,” to be consistent with the use of terms for unlicensed/unregistered individuals under the Act.
4. Requiring RVTs and VAs to receive specialized training and education in APR; this was rejected as unnecessary since the proposal requires RVTs and VAs providing APR to have direct veterinarian supervision.
5. Authorizing physical therapists to perform APR with indirect veterinarian supervision; this was rejected because only licensed veterinarians and RVTs possess the knowledge and training to plan and supervise APR for animal patients and ensure proper animal handling, recognize pain and discomfort, and provide emergency care and assistance as needed in the particular field of APR.

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 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 ob-

tained upon request from the Board at 1747 North Market Blvd., Suite 230, Sacramento, California 95834.

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:

Justin Sotelo, Lead Administrative & Policy Analyst

Address:

Veterinary Medical Board
1747 North Market Blvd., Suite 230
Sacramento, CA 95834

Telephone Number:

916-515-5238

Fax Number:

916-928-6849

E-Mail Address:

Justin.Sotelo@dca.ca.gov

The backup contact person is:

Name:

Timothy Rodda, Administration/Licensing Manager

Address:

Veterinary Medical Board
1747 North Market Blvd., Suite 230
Sacramento, CA 95834

Telephone Number:

916-515-5227

Fax Number:

916-928-6849

E-Mail Address:

Timothy.Rodda@dca.ca.gov

WEBSITE ACCESS: Materials regarding this proposal can be found at www.vmb.ca.gov.

GENERAL PUBLIC INTEREST

CALIFORNIA ACUPUNCTURE BOARD

**NOTICE OF CHANGE OF DATE OF
REGULATORY HEARING AND EXTENSION
OF WRITTEN COMMENT PERIOD**

NOTICE IS HEREBY GIVEN that the California Acupuncture Board has **rescheduled the regulatory hearing** originally scheduled for March 16, 2020 at the Department of Consumer Affairs Headquarters, 1747 N. Market Blvd, Hearing Room #2, Sacramento, CA 95834 regarding proposed amendments to California Code of Regulations, Title 16, Division 13.7, Sections 1399.469.4 — Substantial Relationship Criteria, 1399.469.5 — Criteria for Rehabilitation (Denial of License), and 1399.469.6 — Criteria for Rehabilitation (Suspensions and Revocations.) The Notice was originally published on January 31, 2020 in Notice Register 2020, Number 5-Z.

The new date and location of the regulatory hearing is as follows:

Date of Hearing:
April 30, 2020

Address:
Hearing Room #2, DCA HQ2
1747 N. Market Blvd.
Sacramento, CA 95834

Time:
10:00 a.m.–12:00 p.m. PST

The written comment period has also been extended. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under the Contact Person in this Notice, must be received by the Board at its office no later than 5:00pm on April 30, 2020, or must be received by the Board at the hearing. Attached are the Notice of Proposed Changes in the Regulations and the Proposed Language for your reference.

CONTACT PERSON

If you have any questions or comments, you may direct them to:

Alex Dodge, Policy, Legislative, and Regulatory
Affairs Analyst
California Acupuncture Board
1747 N. Market Blvd, Suite 180
Sacramento, CA 95834
Telephone: (916) 515-5209
Fax: (916) 928-2204
Email: Alex.Dodge@dca.ca.gov

**DEPARTMENT OF
FISH AND WILDLIFE**

**PROPOSED RESEARCH ON
FULLY PROTECTED SPECIES
Monitoring and Research at California
Least Tern Nesting Colonies**

The Department of Fish and Wildlife (“Department”) received a proposal on April 5, 2019, from Ben Pearl of the San Francisco Bay Bird Observatory, Milpitas, California, requesting authorization to take California Least Terns (*Sternula antillarum browni*; tern), for research purposes, consistent with the protection and recovery of the species. The tern is a Fully Protected bird, and is also listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Mr. Pearl is planning to conduct research on the tern in Alameda County, though other counties may include Santa Clara, San Mateo, Sonoma, Marin, Monterey, and Napa, in accordance with the methods approved by the Department and the U.S. Fish and Wildlife Service (under Recovery Permit TE34570A-3, or later amendments).

The following research activities are proposed: Survey for, and locate and monitor nests using binoculars, spotting scopes, and walking transects; erect and use cameras to monitor nests and nesting sites, and mark nests with low profile nest markers; mark, measure, and float a subset of eggs to estimate hatch date and to obtain information about egg health or egg quality; erect chick shelters; use tern decoys and acoustic playback of tern calls to attract terns to restored habitat and potential nesting sites, and place, maintain, and remove decoys; capture, handle, measure, and band chicks and adults (including with color bands) in coordination with collaborators Tom Ryan (Ryan Consulting) and Travis Wooten (San Diego Zoo Global); transport sick or injured terns to qualified rehabilitation facilities, and salvage abandoned eggs, and carcasses of chicks or adults, including for educational purposes; and salvage molted feathers for DNA analyses or other research purposes, and for archiving at an approved facility. Research also includes the collection of dropped fish in the tern colony to gather information on tern food habits.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) to authorize qualified professional wildlife researchers, with Mr. Pearl as the Principal Investigator, to carry out the proposed activities. The applicant has a current federal recovery permit, and if banding occurs, any potential collaborators are also required to have a valid federal recovery permit and federal bird banding lab permit for the tern, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Birds after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after April 12, 2020, for an initial and renewable term of up to 5 years. Contact: Esther Burkett, Esther.Burkett@wildlife.ca.gov, Phone (916) 531-1594.

**DEPARTMENT OF
FISH AND WILDLIFE**

**PROPOSED RESEARCH ON
FULLY PROTECTED SPECIES
Research on California Ridgway's Rail**

The Department of Fish and Wildlife (Department) received a proposal from Jesse L. Reeb, requesting authorization to take California Ridgway's rail (*Rallus obsoletus obsoletus*), formerly California clapper rail ('rail'), a Fully Protected bird, for scientific research purposes, consistent with conservation and recovery of the species. The rail is listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Mr. Reeb is planning to conduct surveys throughout the range of the rail in California, in accordance with a standard protocol approved by the Department and the U.S. Fish and Wildlife Service (Service). The proposed research activities consist of searching for vocalizing individuals of the rails, and employing broadcasts of recorded, species-specific vocalizations to determine distribution and status of local populations. Mr. Reeb and any others deemed qualified for this purpose would collect data by interpreting calls received from marsh birds responding to the tape and by observing individual rails. If any rails are found dead, they will be salvaged and donated to a scientific institution open to the public, as designated by the Department and the Service. No

adverse effects on individual rails or rail populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize qualified professional wildlife researchers, with Mr. Reeb as the Principal Investigator, to carry out the proposed activities. The applicants are also required to have a valid federal recovery permit for the rail, and a scientific collecting permit (SCP) to incidentally take other bird species in California.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after April 13, 2020, for an initial and renewable term of up to, but not to exceed five years. Contact: Esther Burkett, Esther.Burkett@wildlife.ca.gov, 916-531-1594.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Clara Hunt's Milkvetch
(*Astragalus claranus*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission (Commission), at its February 21, 2020 meeting in Sacramento, California, found that there is sufficient information to indicate that a change in the status of Clara Hunt's milkvetch from threatened to endangered may be warranted based on the information in the record before the Commission.

The California Department of Fish and Wildlife (Department), pursuant to the provisions of Section 2077 of the Fish and Game Code, completed a five-year status review of Clara Hunt's milkvetch. At its December 2019 meeting, the Commission received the Department's five-year status review report; based on its review, the Department recommends a change in this species' status from threatened to endangered. This Department report is the equivalent of a listing petition with a Department recommendation for the Commission to accept and consider under Fish and Game Code Section 2073.5 (Fish and Game Code sections 2072.7 and 2077(e)).

Pursuant to subdivision (e)(2) of Section 2074.2 of the Fish and Game Code, the Commission determined that the amount of information contained in the Depart-

ment’s five–year status review report, and the remainder of the administrative record, would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur. Based on that finding, the Commission is also providing notice that Clara Hunt’s milkvetch is a candidate species as defined by Section 2068 of the Fish and Game Code.

The Department must submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the action is warranted. Copies of the Department’s five–year status review report, as well as minutes of the February 21, 2020 Commission meeting, are on file and available for public review from Melissa Miller–Henson, Executive Director, California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, California 95814, phone (916) 653–4899.

Written comments or data related to the potential change in status should be directed to the California Department of Fish and Wildlife, P.O. Box 944209, Sacramento, CA 94244–2090, Attn: Jeb Bjerke, or email nativeplants@wildlife.ca.gov (include “Clara Hunt’s milkvetch” in the subject line). Submission of information via email is preferred.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENTS**

**ANNOUNCEMENT OF EXTENSION OF THE
PUBLIC COMMENT PERIOD FOR
PROPOSED PUBLIC HEALTH GOALS FOR
HALOACETIC ACIDS IN DRINKING WATER
AND AVAILABILITY OF THE PUBLIC
WORKSHOP AGENDA**

On January 31, 2020, the California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) announced the availability of a draft technical support document for proposed public health goals for haloacetic acids in drinking water.

The January 31 notice announced a 60–day public comment period, ending on April 1, 2020. OEHHA has received a request for an extension of the public comment period from the Chlorine Chemistry Division of the American Chemistry Council. **OEHHA hereby extends the submission period for public comments relating to the haloacetic acids until May 1, 2020.**

OEHHA will also hold a public workshop on the draft document on March 26, 2020 at the California Environmental Protection Agency Headquarters Building, 1001 I Street, Sacramento, California, 95814, Sierra Hearing Room, from 1:00 p.m. to 3:00 p.m., or until business is concluded. The workshop will be webcast,

which can be accessed on the day of the workshop at <https://video.calepa.ca.gov>, and the agenda is now available on OEHHA’s website (<https://oehha.ca.gov/water>).

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

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

If you have any questions, please contact Ms. Hermelinda Jimenez at (916) 324–7572 or email PHG.Program@oehha.ca.gov.

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**NOTICE OF AUGMENTATION OF RECORD
AND EXTENSION OF THE PUBLIC
COMMENT PERIOD FOR PROPOSED
REGULATION**

**PROPOSED AMENDMENTS TO ARTICLE 6
CLEAR AND REASONABLE WARNINGS**

**AMENDMENTS TO SECTIONS
25602, 25607, 25607.1, AND 25607.3**

The Office of Environmental Health Hazard Assessment (OEHHA) is augmenting the record for the proposal to amend Title 27, California Code of Regulations, sections 25602, 25607, 25607.1, and 25607.3 by adding a copy of the [Proposed] Consent Judgment in *People v. 1800Flowers.com et al.*, San Diego County Superior Court case No. 37–2020–00009417–CU–TT–CTL, regarding warnings for exposures to alcoholic beverages. OEHHA considers this a document relied on for purposes of the proposed amendments. A copy of the document is available on the OEHHA website and upon request to the contact listed below.

As required by Government Code section 11347.1(b), OEHHA is giving notice of this augmentation of the record and hereby extending the comment

period by 15 days. OEHHA published the Notice of Proposed Rulemaking for the proposed amendments on January 31, 2020, in the California Regulatory Notice Register (Z-2020-0117-01), which initiated a public comment period that was to close on March 16, 2020. OEHHA will now accept written comments on the proposed amendments and this augmentation of the record through **March 31, 2020**.

The public is encouraged to submit written information through our website at <https://oehha.ca.gov/comments>. In the alternative, comments can be mailed, emailed, or delivered in person to the address below.

Monet Vela
 Office of Environmental Health Hazard Assessment
 1001 I Street, 23rd Floor
 P. O. Box 4010
 Sacramento, California 95812-4010
 Telephone: 916-323-2517
Monet.vela@oehha.ca.gov

Please direct inquiries concerning this notice of augmentation to monet.vela@oehha.ca.gov or by calling (916) 323-2517. Carl DeNigris is a back-up contact person and is available at carl.denigris@oehha.ca.gov or by telephone at (916) 322-5624.

**RULEMAKING PETITION
 DECISION**

**DEPARTMENT OF
 CORRECTIONS AND REHABILITATION**

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

Pursuant to Government Code 11340.7

Petitioner

Stephen Zyszkiewicz

Department Contact Person

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

Availability of Petition

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

Authority

Penal Code Sections 5054 and 5058

Provisions of California Code Of Regulations Affected:

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

Summary of Petition and Department Decision:

Section 3054 or 3054.1

Petitioner's Request: Amend Section 3054, Religious Diet Program, or 3054.1, Vegetarian Diet Program, to adopt new provisions establishing that inmates may request plant-based diets, in accordance with Penal Code Section 2084, as amended by Senate Bill 1138 (2018).

Department's Response: The Department denies the petitioner's request in its entirety. The Department is currently in the process of developing regulations to comply with Penal Code Section 2084. Pursuant to the Administrative Procedure Act, once the proposed regulations are complete, notice of the proposed regulations will be published in the California Regulatory Notice Register, a public hearing will be scheduled, and the Department will accept public comment for at least 45 days.

**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# 2020-0124-03

BOARD OF FORESTRY AND FIRE PROTECTION
 Registered Professional Forester and Certified Specialty Amendments

In this resubmitted rulemaking action, the Board amends the regulations to add the term "certified specialists," which conforms to existing statutory language and reiterates that the regulations apply to both registered professional foresters and certified specialists. The amendments also add requirements for specialty certification. Further, the Board adopts a regulation to address professional standards and responsibilities.

Title 14
AMEND: 1600, 1601, 1602, 1610, 1612, 1612.1,
1612.2, 1613, 1614, 1620, 1650, 1651
Filed 02/28/2020
Effective 04/01/2020
Agency Contact: Eric Hedge (916) 653-9633

File# 2020-0206-01
BOARD OF FORESTRY AND FIRE PROTECTION
Licensing Fee Amendments, 2020

This action by the Board of Forestry and Fire Protection amends the licensing fees for professional foresters.

Title 14
AMEND: 1605
Filed 02/26/2020
Effective 04/01/2020
Agency Contact: Eric Hedge (916) 653-9633

File# 2020-0220-02
BOARD OF JUVENILE HEARINGS
Transition from Title 15 to Title 9

In this action without regulatory effect, the Board of Juvenile Hearings (Board) transfers regulations from Title 15 to Title 9 as part of the process to transfer the Board to the Health and Human Services Agency pursuant to Government Code section 12820. In addition, this action updates cross-references.

Title 09, 15
AMEND: 4900 [renumbered to 30800],4950 [renumbered to 30805],4950.5 [renumbered to 30806],4951 [renumbered to 30807],4952 [renumbered to 30808],4953 [renumbered to 30809],4954 [renumbered to 30810],4955 [renumbered to 30811],4656 [renumbered to 30812],4957 [renumbered to 30813],4945 [renumbered to 30815],4945.5 [renumbered to 30816],4961 [renumbered to 30825],4963 [renumbered to 30826],4935 [renumbered to 30835],4936 [renumbered to 30836],4937 [renumbered to 30837],4938 [renumbered to 30838],4939 [renumbered to 30839],4940 [renumbered to 30840],4941 [renumbered to 30845],4944 [renumbered to 30846],4925 [renumbered to 30847],4926 [renumbered to 30848],4927 [renumbered to 30849],4928 [renumbered to 30850],4929 [renumbered to 30851],4966 [renumbered to 30865],4967 [renumbered to 30866],4968 [renumbered to 30867],4969 [renumbered to 30868],4986 [renumbered to 30885],4989 [renumbered to 30887],4990 [renumbered to 30888],4995 [renumbered to 30893],4996 [renumbered to 30894],4997 [renumbered to 30897]

Filed 03/02/2020
Agency Contact: Shelly Jones (916) 683-7473

File# 2020-0214-02
CALIFORNIA HIGH SPEED RAIL AUTHORITY
Conflict-of-Interest Code

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

Title 2
AMEND: 57400
Filed 02/26/2020
Effective 03/27/2020
Agency Contact: Karen Saeteurn (916) 403-6928

File# 2020-0123-01
CALIFORNIA HIGHWAY PATROL
CVSA NAS Out-of-Service Criteria

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

Title 13
AMEND: 1239
Filed 02/27/2020
Agency Contact: David Kelly (916) 843-3400

File# 2020-0203-02
CALIFORNIA HORSE RACING BOARD
Horsemen's Welfare Fund Board of Directors
Size/Term/Composition

This action enlarges the board of directors and lengthens the term of directors of the nonprofit corporation which administers the welfare fund for the benefit of horsemen. The action also eliminates the restriction on the board of directors that at least forty percent of the board of directors have no financial interest in horse racing as a licensed horse owner, trainer, or assistant trainer, and are not a current member of the horsemen's organization.

Title 4
AMEND: 2049
Filed 02/27/2020
Effective 04/01/2020
Agency Contact: Rick Pimentel (916) 274-6043

File# 2020-0219-07
CALIFORNIA HORSE RACING BOARD
Medication, Drugs, and Other Substances/Authorized Medication

The California Horse Racing Board submitted this emergency action to amend two regulations to signifi-

cantly limit the medications, drugs, and other substances that are authorized to be given to a racehorse after entry into a race.

Title 4
 AMEND: 1843.5, 1844
 Filed 02/26/2020
 Effective 02/26/2020
 Agency Contact: Zachary Voss (916) 263-6036

File# 2020-0115-04
 COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
 Requirements for Course Certification

In this rulemaking action, the Commission amends subdivision (h) of section 1055 to replace an incorrect reference to section 1053, which addresses self-paced training courses. The correct reference is section 1052, which addresses instructor-led training courses.

Title 11
 AMEND: 1055
 Filed 02/28/2020
 Effective 04/01/2020
 Agency Contact: Melanie Dunn (916) 227-4866

File# 2020-0210-02
 DEPARTMENT OF CORRECTIONS AND REHABILITATION
 Limited Term Light Duty Assignments/Temporary Modified Work Assignments

In this emergency of operational necessity rulemaking by the Department of Corrections and Rehabilitation (the "Department") pursuant to Penal Code section 5058.3, the Department is amending regulations pertaining to a Limited Term Light Duty Assignment (an "LTLDA") and adopting regulations pertaining to a Temporary Modified Work Assignment (a "TMWA"). Both an LTLDA and a TMWA permit an employee with documented temporary medical limitation(s) or restriction(s), that affect the employee's ability to perform one or more of the essential functions and requires the waiver of one or more essential functions of the employee's current classification and position, to remain working or return to work after an injury or illness.

Title 15
 ADOPT: 3436.1
 AMEND: 3436
 Filed 03/02/2020
 Effective 04/01/2020
 Agency Contact: Sarah Pollock (916) 445-2308

File# 2020-0123-02
 DEPARTMENT OF SOCIAL SERVICES
 Adult Protective Services Program Regulation Amendments (Definitions)

In this regular rulemaking, the Department of Social Services is amending definitions for the Adult Protective Services program.

Title MPP
 AMEND: 33-130
 Filed 03/04/2020
 Effective 07/01/2020
 Agency Contact: Everardo Vaca (916) 657-2363

File# 2020-0114-01
 FISH AND GAME COMMISSION
 Possession of Nongame Animals: Nutria

This regular rulemaking by the Fish and Game Commission bans the possession of live nutria (*Myocastor coypus*) and prevents the issuance of any permit authorizing possession of any live nutria.

Title 14
 AMEND: 473
 Filed 02/27/2020
 Effective 04/01/2020
 Agency Contact: Jon Snellstrom (916) 654-9868

File# 2020-0114-02
 FISH AND GAME COMMISSION
 California Pacific Herring FMP Implementing Regulations

In this regular rulemaking action, the Fish and Game Commission adopts and amends 11 sections and 4 forms to implement the California Pacific Herring Fishery Management Plan.

Title 14
 ADOPT: 28.62, 55.00, 55.01, 55.02
 AMEND: 27.60, 28.60, 163, 163.1, 163.5, 164, 705
 Filed 02/27/2020
 Effective 03/01/2020
 Agency Contact: Jon Snellstrom (916) 654-9868

File# 2020-0116-01
 NEW MOTOR VEHICLE BOARD
 Case Management

This change without regulatory effect deletes all references to the appeal process for which all statutory authority was removed as of January 1, 2020.

Title 13
AMEND: 550, 551, 551.8, 551.14, 551.15, 551.16,
551.17, 551.25, 553.30, 553.40, 553.75, 554, 555,
555.1, 557, 561, 562, 564, 584, 591, 592, 593.3, 595,
597
REPEAL: 566, 567, 568, 569, 570, 571, 572, 573,
574, 575, 576, 577
Filed 02/26/2020
Agency Contact: Robin Parker (916) 323-1536

File# 2020-0121-04
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
GISO Section 3203

The Occupational Safety and Health Standards Board (Board) is mandating that employees have access to their employer's injury and illness prevention program (IIPP). The Board is also establishing who may request a copy of the IIPP and what information must be provided in what timeframe.

Title 8
AMEND: 3203
Filed 03/03/2020
Effective 07/01/2020
Agency Contact: Christina Shupe (916) 274-5721

File# 2020-0121-05
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Single-User Toilet Facilities

The Occupational Safety and Health Standards Board is amending single-user toilet facility requirements to align with Assembly Bill, 1732, Chasptger 818 (2016) and the changes also allow for more employers to satisfy title 8 toilet facility requirements by means of single-user toilet facilities that are compliant with gender-neutral designation requirements.

Title 8
AMEND: 1504, 1526, 3361, 3364, 3437, 3457,
5192
Filed 03/03/2020
Effective 07/01/2020
Agency Contact: Christina Shupe (916) 274-5721

File# 2020-0114-03
OFFICE OF STATEWIDE HEALTH PLANNING
AND DEVELOPMENT
LTC Facility Financial Reporting — Related Parties

This rulemaking action amends reporting procedures and software specifications to enable and instruct skilled nursing facilities on how to report information in

accordance with Health and Safety Code section 128734.

Title 22
AMEND: 97019, 97041
Filed 02/26/2020
Effective 04/01/2020
Agency Contact: Starla Ledbetter (916) 326-3984

File# 2020-0115-01
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Member Appeals Process

This action by the California Public Employees' Retirement System amends provisions relating to requests for administrative hearings and administrative review in connection with member health appeals processes.

Title 2
AMEND: 599.518
Filed 02/27/2020
Effective 04/01/2020
Agency Contact: Hoang Tran (888) 225-7377

File# 2020-0115-02
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
PEMHCA Regulations: Various Technical Revisions

This rulemaking action by the California Public Employees' Retirement System amends six sections regarding the Public Employees' Medical Hospital Care Act to align with current statutory requirements, delete outdated terms and references, and update internal cross references.

Title 2
AMEND: 599.500, 599.501, 599.502, 599.503,
599.506, 599.516
Filed 02/28/2020
Effective 04/01/2020
Agency Contact: Hoang Tran (888) 225-7377

File# 2020-0121-02
SAN FRANCISCO BAY CONSERVATION AND
DEVELOPMENT COMMISSION
San Francisco Bay Plan — Update of Bay Plan Map 5

This action by the San Francisco Bay Conservation and Development Commission amends the San Francisco Bay plan to revise Bay Play Map No. 5 and San Francisco Waterfront Special Area Plan Map 7 to modify the waterfront park Priority Use Area designation at India Basin.

Title 14
AMEND: 11900
Filed 03/04/2020
Effective 03/04/2020
Agency Contact:
Lawrence J. Goldzband (415) 352-3653

File# 2020-0124-04
 SECRETARY OF STATE
 Adoption of Regulatory Provisions

This resubmittal action adopts regulations implementing the Safe at Home program, as expanded by recent statutory changes to include victims of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent abuse.

Title 2
 ADOPT: 22100.5, 22100.6, 22100.7, 22100.8, 22100.9, 22101.1, 22101.2, 22101.3, 22101.4, 22101.5
 AMEND: 22100, 22100.1, 22100.2, 22100.3, 22100.4
 Filed 03/03/2020
 Effective 03/03/2020
 Agency Contact: Alicia Wilkerson (916) 695-1404

File# 2020-0121-01
 STATE PERSONNEL BOARD
 Applications, Transfers, and Special Assignments

This action adopts, amends, and repeals regulations related to civil service applications, transfers and special assignments. These regulations are exempt from the Administrative Procedure Act. (Govt. Code, § 18211.)

Title 2
 ADOPT: 249.1.1, 249.1.2., 249.1.3., 249.8., 280.1., 425., 426., 427., 428., 429., 430., 432., 434., 435., (Article 19.1) 437., 438., 438.1., 438.2., 438.3., 438.4., 438.5., 438.6., 438.7., 4339., 439.1., 439.2., 439.3., 439.4., 440., 440.1., 440.2., 440.3., 440.4., 441., 441.1., 441.2., 442.
 AMEND: 151.5, 170, 174., 249., 249.1., 250.2, 548.95.
 REPEAL: 249.8, 425., 426., 427., 430, 432., 433.1, 434., 435., 438., 439., 440., 441., 442., 443. 444
 Filed 03/04/2020
 Effective 07/01/2020
 Agency Contact: Lori Gillihan (916) 651-1043

File# 2020-0122-01
 STATE WATER RESOURCES CONTROL BOARD
 Lahontan RWQCB Basin Plan Update

This action by the State Water Resources Control Board amends the Water Quality Control Plan (Basin Plan) for the Lahontan Region by modifying the beneficial uses for the Mojave River and its tributaries and making other revisions to the Basin Plan. The State Water Resources Control Board approved the amendment under Resolution No. 2019-0053 on October 3, 2019.

Title 23
 ADOPT: 3959.9
 Filed 03/03/2020
 Effective 03/03/2020
 Agency Contact: Daniel Sussman (916) 542-5466

**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.