



California Regulatory Notice Register

REGISTER 2020, NUMBER 24-Z

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JUNE 12, 2020

PROPOSED ACTION ON REGULATIONS

TITLE 2. FAIR EMPLOYMENT AND HOUSING COUNCIL

Harassment Prevention Training — Notice File Number Z2020-0526-08 821

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Board Elections Regulations — Notice File Number Z2020-0527-01 826

TITLE 5. SUPERINTENDENT OF PUBLIC INSTRUCTION

12-Month Eligibility — Notice File Number Z2020-0515-02 828

Editor's Note: The following three Office of Environmental Health Hazard Assessment Notices were published in the May 22, 2020 Notice Register (Register 2020, Number 21-Z). Because these Notices all concern Proposition 65, they were placed under the PROPOSITION 65 heading. However, they are also Notices of Proposed Rulemaking Action amending the California Code of Regulations. For purposes of providing more accurate information and a cross-reference, we are listing these 3 Notices here under this PROPOSED ACTION ON REGULATIONS heading. To view the full text of these Notices, please see the May 22, 2020 Notice Register, under the PROPOSITION 65 heading.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

*Proposition 65 Dibromoacetic Acid No Significant Risk Level (NSRL) —
Notice File Number Z2020-0512-03*

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

*Proposition 65 Dichloroacetic Acid No Significant Risk Level (NSRL) —
Notice File Number Z2020-0512-04*

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

*Proposition 65 Trichloroacetic Acid No Significant Risk Level (NSRL) —
Notice File Number Z2020-0512-02*

(Continued on next page)

***Time-
Dated
Material***

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE
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Z2020-0601-01 831

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE
California Endangered Species Act Consistency Determination Number
2089-2020-0003-03, Kellogg Ranch, Sonoma County 843

DEPARTMENT OF FISH AND WILDLIFE
California Endangered Species Act Consistency Determination Number
2089-2020-0001-01, Lower Moffett Creek Scour — DES Brokered Project,
Siskiyou County 845

DEPARTMENT OF FISH AND WILDLIFE
Habitat Restoration and Enhancement Act Consistency Determination Number
1653-2020-053-101-R1, South Fork Ten Mile River Enhancement Project
Phase 1B, Mendocino County 849

SUMMARY OF REGULATORY ACTIONS

Regulations filed with Secretary of State 851

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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR EMPLOYMENT AND
HOUSING COUNCIL**

**EMPLOYMENT REGULATIONS REGARDING
HARASSMENT PREVENTION TRAINING**

The Fair Employment and Housing Council (Council) of the Department of Fair Employment and Housing (DFEH) proposes to amend sections 11023 and 11024 of Title 2 of the California Code of Regulations after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Council will hold a public hearing starting at **2:00 p.m. on July 27, 2020**, at the following location:

<https://us02web.zoom.us/j/89119395414>

and/or

1-669-900-6833 — Meeting ID: 89119395414

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 Council 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.

The meeting facilities are accessible to individuals with physical disabilities. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the meeting, should contact Brenda Valle-Balderrama, DFEH ADA Coordinator, at (844) 541-2877 (voice or via relay operator 711) or TTY (800) 700-2320 or via email: Brenda.Valle-Balderrama@dfeh.ca.gov or accommodations@dfeh.ca.gov as soon as possible or at least 72 hours before the meeting.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the pro-

posed regulatory action to the Council. The written comment period closes **on July 27, 2020**. The Council will consider only comments received by the end of that day. Written comments can be mailed to:

Fair Employment and Housing Council
c/o Brian Sperber, Legislative & Regulatory
Counsel
Department of Fair Employment and Housing
320 West 4th Street, 10th Floor
Los Angeles, CA 90013
Telephone: (213) 337-4495

Comments may also be submitted by e-mail to FEHCouncil@dfeh.ca.gov.

AUTHORITY AND REFERENCE

Government Code section 12935(a) authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 12900 et seq. of the Government Code.

**INFORMATIVE DIGEST/ POLICY
STATEMENT OVERVIEW**

This rulemaking action clarifies, makes specific, and supplements existing state regulations interpreting the Fair Employment and Housing Act (“FEHA”) set forth in Government Code section 12900 et seq. In compliance with the Administrative Procedure Act, the Council proposes to adopt these rules as duly noticed, vetted, and authorized regulations. The overall objective of the proposed regulations is to incorporate and clarify new harassment training requirements that come from three bills. This action has the specific benefit of clarifying potentially misunderstood areas of the law, in turn reducing litigation costs and court overcrowding. Ultimately, the proposed action furthers the mission of the DFEH by protecting Californians from employment discrimination and harassment.

As it relates to harassment prevention training, SB 1343 (Stats. 2018, ch. 956) amended the Fair Employment and Housing Act to require that all employers of 5 or more employees provide one hour of sexual harassment, harassment based on gender and abusive conduct prevention training to non-managerial employees and two hours of sexual harassment, harassment based on gender and abusive conduct prevention training to managerial employees once every two years. Previously, only supervisors of employers with 50 or more employees needed to be trained, which is what the regulations currently reflect. SB 778 (Stats. 2019, ch. 215) clarified when employees need to be trained and SB 530 (Stats. 2019, ch. 722) created an additional set of rules for workers subject to a multiemployer collective bargaining agreement in the construction industry.

The proposed amendments to the Council’s regulations specifically do the following: (1) add SB 1343’s mandate regarding who needs to be trained; (2) add SB 778’s mandate about when employees need to be trained; (3) clarify the rules as they relate to employees that are minors; (4) clarify the rules as they relate to seasonal or temporary employees; (5) clarify the rules as they relate to migrant and seasonal agricultural workers; and (6) clarify the rules as they relate to workers subject to a multiemployer collective bargaining agreement in the construction industry.

The Council has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Council has concluded that these are the only regulations that concern the Fair Employment and Housing Act.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Council has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: No additional costs or savings beyond those imposed by existing law.

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

Other nondiscretionary cost or savings imposed on local agencies: No additional costs or savings beyond those imposed by existing law.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or businesses: No additional costs or savings beyond those imposed by existing law. Therefore, 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.

Results of the economic impact assessment/analysis: The Council anticipates that the adoption of the regulations will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state. To the contrary, adoption of the proposed amendments is anticipated to benefit the health and welfare of California residents and businesses and improve worker safety by clarifying and stream-

lining the operation of the law, making it easier for employees and employers to understand their rights and obligations, and reducing litigation costs for businesses. These regulations would not affect the environment.

Statewide adverse economic impact directly affecting businesses and individuals: The Council has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

Small Business Determination: The Council anticipates that the regulations will not create additional costs or savings beyond those imposed by existing regulations. Similarly, the Council has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

Business Report: The Council has determined that the proposed regulations do not require a report to be made.

CONSIDERATION OF ALTERNATIVES

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

The Council has thus far not become aware of a better alternative and invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Brian Sperber, Legislative & Regulatory Counsel
 Department of Fair Employment and Housing
 320 West 4th Street, 10th Floor
 Los Angeles, CA 90013
 Telephone: (213) 337-4495
 E-mail: brian.sperber@dfeh.ca.gov

The backup contact person for these inquiries is:

Iva Townsel, Senior Legal Analyst
 Department of Fair Employment and Housing
 2218 Kausen Drive, Ste. 100
 Elk Grove, CA 95758
 Telephone: (916) 585-7104
 E-mail: iva.townsel@dfeh.ca.gov

Please direct requests for copies of the proposed text (express terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, should other sources be used in the future, to Brian Sperber at the above address.

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

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above Los Angeles address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Brian Sperber at the address or phone number listed above.

AVAILABILITY OF CHANGED OR
 MODIFIED TEXT

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

AVAILABILITY OF THE FINAL
 STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be available on the Council's Web page: <http://www.dfeh.ca.gov/fehccouncil/>.

Copies also may be obtained by contacting Brian Sperber at the above address.

AVAILABILITY OF
 DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations, and any modified texts and the Final Statement of Reasons can be accessed through the Council's Web page at <http://www.dfeh.ca.gov/fehccouncil/>.

**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 changes to its regulations at a public hearing on or after **July 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 July 14, 2020**.

BACKGROUND/OVERVIEW

Enacted in September 2019, Assembly Bill 902 (Stats. 2019, ch. 312; "AB 902") made temporary changes to processes associated with the Act's requirement that certain committees disclose their top 10 contributors to accommodate the pending completion of the Secretary of State's Cal-Access Replacement System Project and codified certain Commission Regulations relating to campaign disclosure.

Assembly Bill 903 (Stats. 2019, ch. 102; "AB 903") was enacted in July 2019 and clarified that any person required to file statements of economic interest must include each source of income's "street address" in those statements. Regulation 18421.2 defines "street address" for certain provisions of the Act but not others.

Regulation 18431 sets forth what types of expenditures by a committee's agent or independent contractor must be reported under Section 84303, including payments to vendors and subvendors. Regulation 18431(a)(2)(D) currently provides that subvendor payments for "surveys, polls, signature gathering and door-to-door solicitation of voters" must be reported

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.

under Section 84303, and can be read to require a committee reporting a subvendor payment to an individual signature gatherer, door-to-door solicitor, or canvasser to identify that individual if the individual is an independent contractor.

The proposed update of Commission Regulations would harmonize those regulations with changes to the campaign disclosure provisions of the Act resultant from the enactment of AB 902 and AB 903, amend Regulation 18431 to clarify that a subvendor is not required to report the name of an individual signature gatherer, door-to-door solicitor, or canvasser under Section 84303 or Regulation 18431(a)(2)(D), and make other technical and nonsubstantive changes.

REGULATORY ACTIONS

Add 2 Cal. Code Regs. Section 18250 — Street Address.

Amend 2 Cal. Code Regs. Sections 18422.5, 18426.1, 18427.1, 18428, 18431, 18438.5, 18450.1, 18450.3, 18530.4, 18530.45, 18531.62, 18616.4, 18700, 18729, 18754, 18941, 18943, 18992, and 18998.

Repeal 2 Cal. Code Regs. Sections 18116, 18117, 18215.1, 18229, 18421.2, and 18996.

Summary of the Proposed Update’s changes to Commission Regulations.

AB 902

In response to changes to the Act made by AB 902, the proposed update would:

- Amend Regulation 18422.5, relating to top contributor disclosure by committees primarily formed for state ballot measures or candidates, to add a \$5,000 threshold to the requirement that such a committee update its top-10 contributor list upon a new contributor qualifying for the list or an existing top contributor making an additional contribution, in accordance with changes to Section 84223.
- Amend Regulation 18426.1, regarding duties and liability of assistant treasurers, to update a cross-reference in light of amendment of Section 84100(a).
- Amend Regulation 18427.1, governing notifications of filing obligations to contributors, to strike subdivision (a) of that regulation, which was codified in new Section 84105, and to update cross-references.
- Amend Regulation 18428, which governs reporting of aggregated contributions and independent expenditures, to update cross-references in light of codification of

Regulation 18215.1 as new Section 82015.5, and to make other technical and nonsubstantive changes to the regulation.

- Amend Regulation 18438.5, governing aggregated contributions under Section 84308, to update a cross-reference in response to codification of Regulation 18215.1 as new Section 82015.5.
- Amend Regulation 18450.1, which provides defined terms for purposes of advertisement disclosure, to update a cross-reference in subdivision (c) of that regulation in light of codification of Regulation 18215.1 as new Section 82015.5.
- Amend Regulation 18450.3, regarding top contributor disclosure by affiliated entities, to update a cross-reference in response to codification of Regulation 18215.1 as new Section 82015.5.
- Amend Regulation 18530.4, which governs legal defense funds for state candidates and officers, to update a cross-reference in subdivision (c) of that regulation in light of codification of Regulation 18996 as new Section 90002.
- Amend Regulation 18530.45, governing legal defense funds for local candidates and officers, to update a cross-reference in subdivision (e) of that regulation due to codification of Regulation 18996 as new Section 90002.
- Amend Regulation 18531.62, relating to elected state officeholder bank accounts, to update a cross-reference in subdivision (c)(4) in response to codification of Regulation 18996 as new Section 90002.
- Amend Regulation 18616.4, relating to lobbying coalition reporting, to strike the definition of a “lobbying coalition” due to codification of that definition in new Section 84308.3, and to update a cross-reference in subdivision (b) due to addition of new Section 84308.3 and changes made to Section 86100.
- Amend Regulation 18700, which provides a guide to the Act’s conflict of interest regulations, to update a cross-reference in subdivision (c)(6)(E) of the regulation in response to codification of a portion of Regulation 18941 as new Section 89503.5 and to make other technical and nonsubstantive changes to the regulation.
- Amend Regulation 18729, regarding leasehold interest disclosure and valuation, by striking subdivision (a) of that regulation which was codified as new Section 87206.5.
- Amend Regulation 18941, relating to receipt, promise, acceptance, and return of a gift, by

deleting the portion of that regulation which was codified as new Section 89503.5 and updating related cross-references in the regulation.

- Amend Regulation 18943, governing a gift to an official through a family member, to update a cross-reference in subdivision (a)(1) of the regulation to Regulation 18229, which currently provides the definition of “spouse” for purposes the Act and was codified as new Section 82048.8.
- Amend Regulation 18992, which defines terms for purposes of Section 90001, to update cross-references in response to codification of Regulation 18996 as new Section 90002.
- Amend Regulation 18998, regarding Commission Audits and Investigations, to correct a cross-reference in subdivision (a) of that regulation in light of codification of Regulation 18996 as new Section 90002.
- Repeal Regulation 18116, governing filing dates for reports and statements, in response to codification of that provision as new Section 81005.
- Repeal Regulation 18117, regarding duties of filing officers and filing officials, because that provision was codified as new Section 81010.5.
- Repeal Regulation 18215.1, governing the aggregation of contributions, due to codification of that provision as new Section 82015.5.
- Repeal Regulation 18229, which provides the definition of “spouse” for purposes of the Act, in response to codification of that provision as new Section 82048.8.
- Repeal Regulation 18996, governing the scope of mandated audits and investigations of lobbying firms and lobbyist employers, due to codification of that provision as new Section 90002.

AB 903

AB 903 amended Section 87207, incorporating the term “street address” into that section. Existing Regulation 18421.2’s definition of “street address” only applies to Chapter 4 of the Act, and Section 87207 is in Chapter 7. The proposed update would repeal Regulation 18421.2 and add Regulation 18250 to expressly apply this definition throughout the Act.

Amendment of Regulation 18431

The proposed update would Amend Regulation 18431, governing reporting of expenditures by an agent or independent contractor, to clarify that a vendor or subvendor is not required to report the name of an individual signature gatherer, door-to-door solicitor, or canvasser under Section 84303 or Regulation 18431(a)(2)(D) and (d). This amendment would harmonize the regulation with recently issued formal writ-

ten advice (*Sutton* Advice Letter, Number I-19-190(a)).

Amendment of Regulation 18754

Finally, the proposed update would Amend Regulation 18754 to update an obsolete cross-reference in subdivision (a)(3)(D) of the regulation and make other technical and nonsubstantive changes to the regulation.

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 81004, 82005, 82013, 82015, 82015.5, 82028, 82033, 82038.3, 82048, 82048.8, 84100, 84101, 84104, 84105, 84203, 84204, 84211, 84213, 84222, 84223, 84308, 84501, 84502, 84503, 84504, 84504.1, 84504.2, 84504.3, 84504.4, 84504.5, 84505, 84506.5, 84509, 84510, 84511, 85301, 85302, 85303, 85304, 85304.5, 85305, 85306, 86100, 86115, 87100, 87101, 87103, 87206, 87207, 87302, 89503, 89503.5, 89519, 90000, 90001, 90002, 90003, 90004, 90005, 90006, and 90007.

CONTACT

Any inquiries should be made to Matthew F. Christy, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; email mchristy@fppc.ca.gov; 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-notice.html>.

TITLE 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM

NOTICE IS HEREBY GIVEN that the California Public Employees' Retirement System (CalPERS) Board of Administration (Board) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend sections 554.5, 554.6, 554.7, and 554.8 of Article 2 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR). By proposing these regulatory amendments in this Article, CalPERS intends to make technical amendments to clarify the existing Board election procedures. In addition, the proposed regulatory amendments would add four additional optional questions that candidates are encouraged to answer in their candidate statements.

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on **June 12, 2020** and closing on **July 27, 2020**. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; E-mail at Regulation_coordinator@calpers.ca.gov or mailed to the following address:

Anthony Martin, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, CA 94229-2702
Phone: (916) 795-9347

III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days prior to the close of the written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

V. AUTHORITY AND REFERENCE

The Board has authority to take regulatory action under Government Code (GC) section 20121.
Reference citation: GC section 20096

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The CalPERS Board consists of 13 members; six of the members are elected by their represented membership. Elected members serve four-year terms and elections are conducted on a four-year cycle, with the fourth year being an off-year.

During the Board election off-year, regulatory amendments are submitted to improve the next Board election cycle. The regulatory provisions subject to the proposed amendments were identified during the 2017-2020 Board election cycle as ambiguous, vague or obsolete.

The proposed regulatory amendments are intended to clarify existing Board election procedures as detailed in the Initial Statement of Reasons. In addition, regulatory provisions are added to request that candidates voluntarily provide voters with additional relevant information in their candidate statements including information regarding financial solvency, sexual harassment, conflicts of interest, and protection of confidentiality.

Anticipated Benefits of the Proposed Regulatory Amendments

CalPERS believes that the adoption of the proposed regulatory amendments will indirectly benefit the health and welfare of California residents because the proposed regulatory amendments modify the Board election procedures. The proposed regulatory amendments apply to CalPERS Board candidates and over 1.5 million voters. For further discussion of the anticipated benefit analysis, please see "Results of the Economic Impact Assessment" found below.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

CalPERS has evaluated and determined that the proposed regulatory amendments are not inconsistent, nor incompatible with existing State regulations. There is no other comparable existing State regulation pursuant to GC section 11346.5, subsection (a), paragraphs (3)(D).

There is no existing, comparable federal regulation or statute.

Pre-Notice Consultation with the Public

The proposed regulatory amendments clarify the current CalPERS Board election procedures and add four optional questions that candidates may respond to in their candidate statements. No pre-notice consultation was done with the public because the proposed regulatory amendments do not involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to CalPERS Board candidates and voters.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose any mandates on local agencies or school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will not result in any additional costs or savings to any State agency.
- C. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action does not impose any costs on any local agency or school district.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose any nondiscretionary costs or savings on local agencies.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action will not result in additional costs or savings in federal funding to the State.
- F. **SIGNIFICANT, STATEWIDE ADVERSE ECONOMIC IMPACT:** The proposed regulatory 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.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

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

- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; and (4) benefit the health and welfare of California residents, worker safety, or the State's environment.

CalPERS believes that the proposed regulatory changes will clarify current CalPERS Board election procedures. Also, adding optional questions for candidates to respond to regarding financial solvency, sexual harassment, conflicts of interest, and protection of confidentiality on the Board's candidate statement will help voters make informed decisions when they vote.

The proposed regulatory changes further the goals of the Board and indirectly benefit the health and welfare of California residents by clarifying the Board election procedures and encouraging candidates to provide voters with more information to help them make more informed decisions. CalPERS' voting population covers over 1.5 million active and retired state, local government, and school employees.

- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no effect on housing costs.
- J. **COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630:** There are no costs to any local agency or school district that must be reimbursed in accordance with GC sections 17500 through 17630.

IX. CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5, subsection (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as and less burdensome to affected private persons than the proposed action, or

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

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory amendments at the above-mentioned public hearing or during the written comment period.

X. CONTACT PERSON

Please direct inquiries concerning the proposed regulatory action to:

Anthony Martin, Regulation Coordinator
California Public Employees' Retirement System
P.O. Box 942702 Sacramento,
CA 94229-2702
Phone: (916) 795-9347

The backup contact for these inquiries is:

Raji Prasad, Board Election Coordinator
California Public Employees' Retirement System
P.O. Box 942702 Sacramento,
CA 94229-2702
Phone: (916) 795-0623

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons (ISOR), the modified text of the regulations, if any, or other information upon which the rulemaking is based to Anthony Martin, Regulation Coordinator, at the address provided.

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

The entire rulemaking file is available for public inspection by contacting the Regulation Coordinator at the address shown in Section II. To date, the file consists of this notice, the ISOR and the proposed text of the regulations. A copy of the proposed text and the ISOR is available at no charge by written request to the CalPERS Regulation Coordinator, at the address and phone number listed in Section II. The Final Statement of Reasons can be obtained once it has been prepared.

For immediate access, the regulatory material regarding this action can be accessed on CalPERS' website at www.calpers.ca.gov.

XII. AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board may, on its own motion or at the recommendation of any interested person, amend the proposed text of the regulation after the public comment period ends.

If the Board amends its regulatory action, a comparison of the original proposed text and the amendments will be prepared for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulations. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed of the results of this regulatory action.

XIII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the address shown in Section II.

TITLE 5. STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING 12-MONTH ELIGIBILITY

NOTICE IS HEREBY GIVEN that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

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

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 8:30 a.m. on July 27, 2020, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible.

Additionally, any interested person may participate in the public hearing via Zoom meeting by logging in per the following instructions:

- Click the following link or paste the link to the browser to join the webinar and enter the password:

<https://cdevideo.zoom.us/j/99666355008>
Password: 181568

- To connect with audio only and no video, call one of the following telephone numbers and enter the meeting ID and password:
669-900-6833
408-638-0968

Meeting ID: 996 6635 5008
Password: 181568

For persons intending to attend the Zoom meeting, those persons may check their computers by:

- Clicking on the test link: <https://zoom.us/test>.
- For any issues regarding connecting with Zoom, go to <https://support.zoom.us/hc/en-us> for assistance.

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 SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations may request assistance by contacting Danielle Sisneros, Early Learning and Care Division, 1430 N Street, Suite 3410, Sacramento, CA, 95814; telephone, 916-322-4883. It is recommended that assistance be requested at least two weeks prior to the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or that person's authorized representative, may submit written comments relevant to the proposed regulatory action to:

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on July 27, 2020. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of all modified regulations will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to the regulations, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Sections 8261, 8261.5, 8263, 8263.1, 8265 and 8269, Education Code.

References: Sections 8202, 8203, 8206, 8208, 8221.5, 8235, 8237, 8261, 8261.5, 8263, 8263.1, 8269, 8273, 8273.1, 8350, 8350.5, 8351, 8353, 8535.5, 8354 and 8358.5, Education Code; and Sections 11323.2, 16500.5 and 16506, Welfare and Institutions, 45 Federal Code of Regulations Section 98.21.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Child Care and Development Services Act (Act), requires families to meet specified requirements to be eligible for federal and state subsidized child development services. Assembly Bill (AB) 99, approved by the Governor on June 27, 2017 as the Education Omnibus Trailer Bill, amended Education Code sections 8263 and 8263.1. Some of the changes included:

- Updating the definition of a homeless child or youth.
- Providing that a family, upon establishing initial eligibility or ongoing eligibility for services under the Act, shall be considered to meet all eligibility and need requirements for those services for not less than 12 months, shall receive those services for not less than 12 months before having their eligibility or need recertified, and shall not be required to report changes to income or other changes for at least 12 months, except as provided.

- Requiring the department to initiate a rulemaking action to implement the 12-month eligibility provisions on or before December 31, 2018.
- Requiring the department to convene a workgroup of parents, advocates, department staff, child development program representatives, and other stakeholders to develop recommendations regarding implementing the provision.
- Revising the definition of “income eligible” for purposes of establishing initial income eligibility for services under the Act, and would add a definition of “ongoing income eligible” for purposes of establishing ongoing income eligibility for services under the Act.

AB 99 permitted the CDE to immediately implement the Education Code amendments through the issuance of informal guidance, which the CDE did in September of 2018 by issuing the “12-Month Eligibility Implementation Guidance.” AB 99 further required the CDE to initiate a formal rulemaking action to implement the changes to the Education Code on or before December 31, 2018, which the CDE did on December 28, 2018.

Prior to the adoption of AB 99, on June 24, 2015, the Governor signed AB 104, the Education Omnibus Trailer Bill, which required the CDE to convene, by September 2015, stakeholder groups to provide recommendations to streamline data and other reporting requirements for early learning and care providers that contract with the CDE with the purpose of identifying redundancies and efficiencies in program implementation and reducing the workload in program administration. As a result, finalized stakeholders’ recommendations were submitted to the Legislature, the Department of Finance, and the State Board of Education on April 1, 2016. The CDE also solicited on-going input from many sources, via online, from conferences and other stakeholder meetings, to provide statewide recommendations for the CDE’s consideration and response. Many of the recommendations from the stakeholders were considered in the development of the rulemaking package.

As set forth above, the CDE commenced a rulemaking action to implement AB 99 on December 28, 2018. As a result, the CDE received hundreds of comments from numerous stakeholders. Since proposed amended regulations must be adopted within one year of the commencement of rulemaking and given the broad reach of the rulemaking package and significant interest from stakeholders, the CDE opted to withdraw the rulemaking package to have additional time for further proposed changes to be vetted. Thus, the CDE is again commencing the rulemaking process with the proposed changes to the current regulations to implement AB 99. Until these amended regulations are implemented, the

12-Month Eligibility Implementation Guidance remains in effect.

The objectives of these proposed regulations include meeting the requirements of AB 99 and incorporating some of the recommendations of the AB 104 work group and other input sessions to ensure contractors are provided with clear direction and ensure implementation of the regulations is consistent throughout the state.

Anticipated Benefits of the Proposed Regulations

The benefit of enacting the proposed regulations will align the title 5 regulations with AB 99, Education Trailer Bill, amendments to Education Code section 8263(h) and (j) and section 8263.1, and incorporate several key recommendations made by the AB 104 stakeholder groups which were reiterated by the solicited input from the state at large: 1) for the best interest of the child, increase the duration and continuity of early learning and care services for the child; 2) reduce barriers to accessing early learning and care services by reducing the number of changes the parent is required to report for the continuation of services thereby increasing the family’s duration and continuity in early learning and care services; 3) align, clarify, and revise regulatory and monitoring requirements across funding streams to allow greater flexibility and decrease administrative burdens that support child and family well-being; and 4) implement regulations and policies to deliver equitable outcomes for all children, including children with exceptional needs.

Determination of Inconsistency/Incompatibility with Existing State Regulations

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D).

DISCLOSURES REGARDING THE PROPOSED ACTION/FISCAL IMPACT

The SSPI has made the following initial determinations:

Other statutory requirements: There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

Mandate on local agencies and school districts: None.

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None.

Cost or savings to any state agency: None.

Other non-discretionary costs or savings imposed on local agencies, including local educational agencies: None.

Costs or savings in federal funding to the state: None.

Effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

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

Report required: The proposed regulations do not require a report to be made.

Effect on small businesses: The proposed regulations would not have an effect on any small business because they are only relevant to the contractors of subsidized programs contracted through the CDE.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The SSPI concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulations will benefit children and families in California as they take advantage of high-quality early learning and care programs guided by these proposed regulations. With the right to continuity of care ensured by 12-month eligibility, families can work, participate in training or educational programs, seek permanent housing, and seek employment as they work towards being gainfully employed in the workforce.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Danielle Sisneros, Consultant
Early Learning and Care Division
California Department of Education
1430 N Street, Suite 3410
Sacramento, CA 95814
Telephone: 916-322-4883
Email: DSisneros@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Patricia Alverson, Regulations Coordinator or the backup contact person, Hillary Wirick, Regulations Analyst, at 916-319-0860.

TEXT OF PROPOSED REGULATIONS AND CORRESPONDING DOCUMENTS AND AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulations. This document and the text of the proposed regulations may also be viewed and downloaded from the CDE's website at <http://www.cde.ca.gov/re/lr/rr/>. All of the information upon which the proposed action is based may be obtained upon request from the Regulations Coordinator.

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

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

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 Regulations Coordinator.

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

SUBJECT: Timely Access to Non-Emergency Health Care Services and Annual Timely Access and Network Reporting Requirements. Proposed Amendment of Section 1300.67.2.2 and Proposed Adoption of Section 1300.67.2.3, in Title 28 of the California Code of Regulations. Control Number 2019-5239.

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (DMHC) proposes to adopt the proposed regulations under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene

Act) to ensure timely access to necessary health care by standardizing and codifying reporting methodologies for the timely access report and the annual network report. Changes to the text of the regulation during the first comment period are noted by underline and strike-out. Changes to the Manuals during the first comment period are noted by underline. Changes to the forms in the first comment period are noted by underline.

This rulemaking action proposes to amend existing section 1300.67.2.2 and adopt section 1300.67.2.3, in title 28, California Code of Regulations (the Regulations). Before undertaking this action, the Director of the DMHC (Director) will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested, person, or his or her duly authorized representative, may submit a written request for a public hearing pursuant to Government Code section 11346.8(a). The written request for a hearing must be received by the DMHC's contact person, designated below, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written statements, arguments or contentions (hereafter referred to as comments) relating to the proposed regulatory action by the DMHC. Comments must be received no later than the close of business on **July 27, 2020**, which is hereby designated as the close of the written comment period.

Please address all comments to the DMHC's, Office of Legal Services, Attention: Jennifer Willis, Senior Counsel. Comments may be transmitted by regular mail, fax, email or via the Department's website:

Website [http://www.dmhc.ca.gov/](http://www.dmhc.ca.gov/LawsRegulations.aspx#open)

[LawsRegulations.aspx#open](http://www.dmhc.ca.gov/LawsRegulations.aspx#open)

Email: regulations@dmhc.ca.gov

Mail:

Department of Managed Health Care
Office of Legal Services
Attn: Regulations Coordinator
980 9th Street, Suite 500
Sacramento, CA 95814

Fax: (916) 322-3968

Please note: if comments are sent via the website, email or fax, there is no need to send the same comments by mail delivery. All comments, including via the website, email, fax, or mail, should include the author's name and a U.S. Postal Service mailing address so the Department may provide commenters with notice of any additional proposed changes to the regulation text.

Please identify the action by using the DMHC's rulemaking title and control number, **Timely Access to Non-Emergency Health Care Services and Annual Timely Access and Network Reporting Requirements, Control Number 2019-5239** in any of the above inquiries.

CONTACTS

Inquiries concerning the proposed adoption of these regulations may be directed to:

Jennifer Willis

Attorney IV

Department of Managed Health Care

Office of Legal Services

980 9th Street, Suite 500

Sacramento, CA 95814

(916) 324-9014

(916) 322-3968 fax

jennifer.willis@dmhc.ca.gov

OR

Emilie Alvarez

Regulations Coordinator

Department of Managed Health Care

Office of Legal Services

980 9th Street, Suite 500

Sacramento, CA 95814

(916) 445-9960

(916) 322-3968 fax

emilie.alvarez@dmhc.ca.gov

AVAILABILITY OF DOCUMENTS

The DMHC has prepared and has available for public review the Initial Statement of Reasons, text of the proposed regulation and all information upon which the proposed regulation is based (rulemaking file). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Sacramento, CA 95814, Attention: Regulations Coordinator.

The Notice of Proposed Rulemaking Action, the proposed text of the regulation, and the Initial Statement of Reasons are also available on the Department's website at <http://www.dmhc.ca.gov/LawsRegulations.aspx#open>.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Regulation Coordinator named above.

AVAILABILITY OF MODIFIED TEXT

The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the DMHC adopts the regulation. A request for a copy of any modified regulation(s) should be addressed to the Regulations Coordinator. The Director will accept comments via the DMHC’s website, mail, fax, or email on the modified regulation(s) for 15 days after the date on which the modified text is made available. The DMHC may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

Pursuant to Health and Safety Code section 1341.9, the DMHC is vested with all duties, powers, purposes, responsibilities, and jurisdiction as they pertain to health care service plans (health plans) and health plan businesses.

Health and Safety Code section 1341, subdivision (a), authorizes the DMHC to regulate health plans. Health and Safety Code section 1345, subdivision (f)(1), defines a “health care service plan” (health plan) as “any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost of those services in return for a prepaid or periodic charge paid by or on behalf of subscribers or enrollees.”

Health and Safety Code section 1342, subdivision (g), states the Legislature’s intent to ensure that health plan subscribers and enrollees receive available and accessible health and medical services rendered in a manner providing continuity of care.

Health and Safety Code section 1344 grants the Director authority to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of the Knox-Keene Act.

Health and Safety Code section 1367 states requirements that each health plan must meet for compliance with the Knox-Keene Act. This section requires a health plan to furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice and to ensure it has the organizational and administrative capacity to fulfill its duties to enrollees. Health and Safety Code section 1367 also requires health plans to make all services readily

available at reasonable times to each enrollee consistent with good professional practice and, to the extent feasible, to make all services readily accessible to all enrollees consistent with Health and Safety Code section 1367.03 (regarding timely access to needed health care services). This section also requires the health plan to make all services accessible and appropriate consistent with Health and Safety Code section 1367.04 (requiring access to language assistance).

Health and Safety Code section 1367.03(f), requires health plans to report annually to the DMHC on compliance with timely access standards, in a manner specified by the DMHC. Health and Safety Code section 1367.03 authorizes the DMHC to develop standardized methodologies for reporting that shall be used by health plans to demonstrate compliance with this section and any regulations adopted pursuant to it. The DMHC shall consult with stakeholders in developing standardized methodologies for reporting pursuant to Health and Safety Code section 1367.03.

As part of the annual timely access report required by Health and Safety Code section 1367.03, Health and Safety Code section 1367.035 requires a health plan to also report data regarding the adequacy of the health plan’s networks, in a manner specified by the DMHC.

Health and Safety Code section 1371.31(a)(4), requires a health plan to include in its annual report to the DMHC pursuant to section 1367.035, the number of payments made to noncontracting individual health professionals for services under specified circumstances, as well as other data sufficient to determine the proportion of noncontracting to contracting individual health professionals at contracting health facilities, as defined. Further, Health and Safety Code section 1371.31(a)(5), references existing network adequacy laws and authorizes the DMHC to adopt additional necessary regulations to ensure health plans meet these network requirements.

Health and Safety Code section 1375.9 specifies minimum primary care physician-to-enrollee ratios.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, under the Knox-Keene Act, provides for the licensure and regulation of health plans by the DMHC. The Knox-Keene Act also requires a health plan’s provider network to be adequate enough to provide necessary care in a reasonable and timely manner to the health plan’s enrollees. Health plans must ensure health care services are provided in a readily accessible manner in accordance with good professional practice. Further, a health plan is responsible for providing health care services in a manner that provides and ensures continuity of care for enrollees and provides referrals of pa-

tients to other providers as necessary in accordance with good professional practice.

A health care service plan must employ and utilize allied manpower for the furnishing of health care services to the extent permitted by law and consistent with good professional practice. Existing law also requires a health plan to have sufficient organization and administrative capacity to assure the delivery of health care services to its enrollees.

Health plans report to the DMHC, on an annual basis, compliance with timely access to care standards and report to the DMHC the adequacy of the health plan’s provider network. In 2010, the DMHC adopted clarifying regulations for timely access to care compliance. Rule 1300.67.2.2¹ specified requirements for timely access (including maximum wait time for appointments), and the deadline of when health plans are required to submit annual compliance reports to the DMHC. In the years following implementation of the regulation, health plan timely access reports received by the DMHC were filled with errors and reflected inaccurate information that was often incomplete and unhelpful during the DMHC’s review. The disparate, incomplete, and poor quality information contained within the health plan reports made it impossible for the DMHC to determine timely access to care compliance.

Through Senate Bill (SB) 964², the legislature empowered the DMHC to develop standardized reporting methodologies for the health plans’ annual timely access reporting and annual network adequacy reporting. The authority for the DMHC to develop a standardized methodology for the annual timely access report and the annual network adequacy report is pursuant to an exemption from the Administrative Procedure Act (APA). The exemption expires on January 1, 2020.

This rulemaking action proposes to codify and implement the processes and methodologies developed during the APA exemption period. Pursuant to the statutory requirement contained in Health and Safety Code section 1367.03(f)(3), the DMHC has met extensively with stakeholders, including health plans and consumer advocates, over the past four years to ensure these proposed regulations address any concerns and issues regarding enrollee access to health care services in a timely manner. This includes the development of a uniform and comprehensive reporting criteria that enables health plans to report timely access to care compliance to the DMHC in a manner that allows for comparison and enables the DMHC to determine whether health plans are meeting the statutory and regulatory require-

ments under the Knox–Keene Act. The processes and methodologies involve the methods by which a health plan is required to gather and interpret provider network data and report the information back to the DMHC to allow the DMHC to determine health plan timely access to care compliance in a meaningful way.

During the APA exemption period described above, the DMHC published mandatory methodologies for health plans to use when annually reporting timely access to care and network adequacy data. In most respects, the amendments proposed in Rule 1300.67.2.2 codify the process set forth in the published 2019 methodology that health plans have already implemented.

This rulemaking action also proposes to preserve the current timely access to care reporting requirements that exist in Rule 1300.67.2.2 until the new proposed requirements become law.

BROAD OBJECTIVES AND SPECIFIC BENEFITS OF THE REGULATION

Introduction

Pursuant to Government Code section 11346.5(a)(3)(C), the broad objectives and benefits of this regulation are to clarify and make specific the timely access to care and annual network reporting requirements for health plans. This will benefit health plans because the proposed amendments to Rule 1300.67.2.2 include specifying the specific standards and methodologies health plans must use to assess their network compliance and report the gathered and analyzed information back to the DMHC in a streamlined and standardized manner. The DMHC is proposing to amend Rule 1300.67.2.2 to clarify and incorporate health plan reporting requirements for timely access to care by codifying the process health plans use to report data to the DMHC in a manner that enables the DMHC to evaluate health plan compliance with time–elapsed standards addressed in current law. This will benefit reporting health plans because it will clarify and make specific the reporting methods the health plan is required to use in submitting timely access data to the DMHC. Alternately, the DMHC will be able to receive meaningful data for comparison purposes, across its regulated health plans, and ensure health care compliance with timely access to care requirements.

The proposed regulatory action will benefit California residents and protect public health by ensuring California residents seeking needed health care services are able to access appropriate health care providers in a timely manner.

Broad Objectives and Specific Benefits Addressed

Proposed amendments to Rule 1300.67.2.2(a)(1) change current terms from singular to plural to improve

¹ Title 28, CCR section 1300.67.2.2, regarding Timely Access to Non–Emergency Health Care Services. Unless otherwise stated, references to “Rule” refer to the sections of the CCR.

² Senate Bill (SB) 964 (Hernandez, Chapter 573, Stats of 2014).

the readability of the section for health plans, stakeholders, and enrollees. This amendment also ensures consistency within the subdivision.

Amendments to Rule 1300.67.2.2(a)(2)–(4) add a modifier “specialized” to the terms dental, vision, chiropractic, and acupuncture to align with current terminology in Health and Safety Code section 1345. This is beneficial to the reader by providing clarity and consistency in the way dental, vision, chiropractic, and acupuncture are referred to in both the health care industry and other parts of the Knox–Keene Act. Other non–substantive changes are made to this subsection to conform with updated and proposed subsections appearing later in the text.

Proposed adoption of Rule 1300.67.2.2(a)(5) requires the health plan to ensure it is submitting its network reports on time and it reminds the health plan to ensure it is submitting accurate information to the DMHC. This addition benefits the health plans and the DMHC because it attempts to address the past history of erroneous and inaccurate health plan timely access reporting. Further, it reminds the health plan that data must be submitted by the timelines requested by the DMHC to allow the DMHC to assess compliance in a timely and efficient manner.

Proposed amendments to Rule 1300.67.2.2(b) benefit health plans and stakeholders by defining key terms that encapsulate the entirety of timely access and annual network reporting. The terms have been developed over the years during the APA exemption period and appear throughout the proposed text and incorporated documents. The terms assist health plans and stakeholders in understanding all the different definitional elements related to network reporting and ensure all parties subject to the regulation and benefiting from the regulation refer to timely access reporting concepts consistently. This will provide clarity for health plans and ensure reporting is consistent across all health plans when all parties use the same terms.

Proposed amendments to Rule 1300.67.2.2(b)(3) define “measurement year” which refers to the period of time that must be reflected in the timely access report and the annual network report. This definition is beneficial to health plans and stakeholders because it describes what time period the data submission must be based on. The description ensures all the health plans are measuring the same time period for accurate data reporting.

Proposed amendments to Rule 1300.67.2.2(b)(11) define “patterns of non–compliance” by introducing a standardized methodology that allows health plans to measure compliance with timely access to care standards for urgent appointments and non–urgent appointments. The standardized methodology is beneficial for health plans because it provides a clear threshold stan-

dard for data resulting from conducting the Provider Appointment Availability Survey. The standard enables the health plan to measure compliance.

Proposed amendments to Rule 1300.67.2.2(c) benefit health plans and stakeholders by addressing minor edits and updating outdated information to make the regulation consistent with other changes occurring throughout the text. This is beneficial in making the regulatory language clearer to the reader.

Proposed amendments to Rule 1300.67.2.2(d) benefit health plans and stakeholders by addressing the date by when a health plan must comply with the new requirements in the subsection. The subsection also incorporates by reference the Provider Appointment Availability Survey, used by the DMHC and health plans during the APA exemption period, into the existing methods of measuring timely access to care. Existing language references the enrollee experience survey and the provider survey. Proposed amendments incorporate the Provider Appointment Availability Survey as an additional means of measuring timely access to care in accordance with the DMHC’s methodology and provides additional requirements in administering the existing requirements. The incorporation of the Provider Appointment Availability Survey is beneficial to health plans and stakeholders because it is another means of accurately assessing health plan compliance with timely access to care and annual network reporting standards.

Proposed adoption of Rule 1300.67.2.2(f) is beneficial to health plans and stakeholders because it describes in detail when and how health plans are to conduct the Provider Appointment Availability Survey in order to determine timely access to care compliance. This proposed rule incorporates by reference the Provider Appointment Availability Survey Manual and the Timely Access and Annual Network Submission Instruction Manual. Both manuals consist of detailed and comprehensive instructions explaining exactly how a health plan is to report its compliance to the DMHC. The adoption of this proposed rule is necessary to provide as much detail as possible to health plans in order to assist them in reporting compliance to the DMHC and to assist the health plan in conducting the required provider surveys. The adoption of these manuals and other specific requirements a health plan must follow in conducting the Provider Appointment Availability Survey described in subsection (f) are beneficial to all parties by providing comprehensive instructions and are necessary to achieve consistency and accuracy of data reported by the health plans to the DMHC. A more detailed discussion regarding the benefit of the incorporated manuals is discussed below.

Proposed amendments to Rule 1300.67.2.2(g) benefit health plans and stakeholders by clarifying that a

health plan may submit a request to the DMHC for an alternative access standard to the threshold rate of compliance, established in proposed Rule 1300.67.2.2(b), if the health plan is unable to meet the proposed established threshold. Current law allows for a health plan to request alternative timely access standards as long as its request includes the elements described in existing Rule 1300.67.2.2(f).

Proposed amendments clarify that the alternative access standard request extends to the proposed rate of compliance as long as the request includes the elements described in the law.

Proposed amendments to Rule 1300.67.2.2(h), benefit health plans and stakeholders because the amendments clarify that the timely access reporting requirements implemented by the proposed regulation are effective in the year 2022. Meaning, health plan reporting under the new proposed amendments in Rule 1300.67.2.2 will not begin until January 1, 2022. (This effective date is different than the timely access and annual network reporting requirements proposed in the adoption of Rule 1300.67.2.3. Proposed adoption of Rule 1300.67.2.3 requires submission of data during the year 2021 in accordance with existing Rule 1300.67.2.2). The delayed implementation of the reporting requirements in proposed Rule 1300.67.2.2 will benefit health plans and stakeholders by allowing ample time to update and prepare data collection and reporting procedures pursuant to the new requirements.

Other proposed changes in Rule 1300.67.2.2(h) benefit health plans and stakeholders by addressing all of the different necessary components that make up the Timely Access Compliance Report and the Annual Network Report, including but not limited to, the forms the health plan must use to submit data, the policies and procedures the health plan uses to adhere to compliance, the different provider networks the health plan is reporting, and clarifying the exact dates the health plan must report the information to the DMHC. Health plans and stakeholders will know what exact information the health plan must submit as part of its annual filing with the DMHC. Further, since all health plans are required to submit the same standardized information articulated in the new proposed language, the DMHC, stakeholders, and enrollees will be able to compare and evaluate timely access to care information across health plans. The benefit of each specific form incorporated by reference in this subsection is discussed below.

Proposed amendments to Rule 1300.67.2.2(i) benefit health plans, stakeholders, and enrollees by articulating the different circumstances that may lead the DMHC to find a health plan's timely access and network adequacy submission to be non-compliant with the requirements of the Knox-Keene Act. The proposed amendments are beneficial in explaining to regulated health plans the

circumstances that may potentially lead to enforcement action.

Proposed Rule 1300.67.2.2(j) benefits health plans, stakeholders, and enrollees by clarifying the importance of submitting the annual timely access report and annual network reports on time and ensuring the reports are accurate and complete in nature. The proposed enforcement language provides a reminder to all parties that the DMHC may seek enforcement action for the failure of a health plan to provide meaningful reports.

In addition, the DMHC is proposing to adopt Rule 1300.67.2.3 in its entirety to preserve the timely access to care reporting requirements prior to the enactment of the amendments proposed in Rule 1300.67.2.2. Rule 1300.67.2.3 is beneficial because it accounts for the time period prior to the effective date of Rule 1300.67.2.2. Since the APA exemption for the reporting data required pursuant to Rule 1300.67.2.3 expires on January 1, 2020, there will be a lapse between the APA exemption expiration date and the new requirements proposed in 1300.67.2.2. Therefore, Rule 1300.67.2.3 requires health plans to continue reporting annual timely access and annual network reports during the interim period before the amendments to Rule 1300.67.2.2 become effective.

Specific Benefits of Manuals and Forms Incorporated by Reference

Manuals

As stated above, proposed Rule 1300.67.2.2(f)(1) incorporates by reference the Provider Appointment Availability Survey (PAAS) Manual and the Timely Access and Annual Network Submission Manual (Instruction Manual). The specific benefit of the PAAS Manual is that it provides the health plan with step-by-step instructions on how to conduct the PAAS survey for timely access reporting in accordance with the methodology the DMHC developed during the APA exemption period. The PAAS Manual is beneficial because it ensures health plans obtain consistent and non-repetitive data that accurately represents a health plan's rate of compliance with time-elapsing standards articulated in Rule 1300.67.2.2(c)(5). This manual benefits the DMHC because it allows the DMHC to assess health plan compliance with timely access to care standards in a uniform and standardized way. The incorporation of this document attempts to remedy past experiences with erroneous timely access to care reporting. Ultimately, enrollees are benefitted if a health plan is able to correctly perform the PAAS because if network deficiencies are identified by either the DMHC or the health plan, deficiencies can be addressed and corrected. The PAAS Manual ensures health plan reporting is done in an accurate way that correctly measures timely access to care.

The Instruction Manual benefits reporting health plans because it provides detailed and comprehensive step-by-step instructions on how to complete the health plan's provider network profile, required report forms, and instructions on how to submit timely access data to the DMHC for both timely access to care reporting and annual network reporting. Enrollees are benefitted if a health plan is able to correctly report network adequacy deficiencies when identified by either the DMHC or the health plan because deficiencies can be addressed and corrected. The Instruction Manual ensures reporting is done in an accurate way that enables the health plan to correctly measure timely access to care. Further, consumers and enrollees are able to compare results across health plans when seeking health care coverage.

Forms

Proposed Rule 1300.67.2.2(h)(6)(B)(i)a. incorporates by reference the Primary Care Providers Contact List Report Form (Form Number 40-254). This report form is beneficial because it enables the health plan to ensure it is contacting unique Primary Care Providers when conducting the PAAS survey. Ensuring a provider is only contacted once is beneficial in maintaining the integrity of the PAAS results.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)b. incorporates by reference the Non-Physician Mental Health Care Providers Contact List Report (Form Number 40-255). This report form is beneficial because it enables the health plan to ensure it is contacting unique Non-Physician Mental Health Providers when conducting the PAAS survey. Ensuring a provider is only contacted once is beneficial in maintaining the integrity of the PAAS results.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)c. incorporates by reference the Specialist Physicians Contact List Report Form (Form Number 40-256). This report form is beneficial because it enables the health plan to ensure it is contacting unique Specialist Physicians when conducting the PAAS survey. Ensuring a provider is only contacted once is beneficial in maintaining the integrity of the PAAS results.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)d. incorporates by reference the Psychiatrists Contact List Report Form (Form Number 40-257). This report form is beneficial because it enables the health plan to ensure it is contacting unique Psychiatrists when conducting the PAAS survey. Ensuring a provider is only contacted once is beneficial in maintaining the integrity of the PAAS results.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)e. incorporates by reference the Ancillary Service Providers Contact List Report Form (Form Number 40-258). This report form is beneficial because it enables the health plan

to ensure it is contacting unique Ancillary Service Providers when conducting the PAAS survey. Ensuring a provider is only contacted once is beneficial in maintaining the integrity of the PAAS results.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)f. incorporates by reference the Primary Care Providers Raw Data Report Form (Form Number 40-259). This report form is beneficial because it enables the health plan to summarize the results of the PAAS for the contacted Primary Care Providers in the health plan's network. The summarized information will assist in calculating compliance with timely access to care standards.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)g. incorporates by reference the Non-Physician Mental Health Care Providers Raw Data Report Form (Form Number 40-260). This report form is beneficial because it enables the health plan to summarize the results of the PAAS for the contacted Non-Physician Mental Health Care Providers in the health plan's network. The summarized information will assist in calculating compliance with timely access to care standards.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)h. incorporates by reference the Specialist Physicians Raw Data Report Form (Form Number 40-261). This report form is beneficial because it summarizes the results of the PAAS for the contacted Specialist Physicians in the health plan's network. The summarized information will assist in calculating compliance with timely access to care standards.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)i. incorporates by reference the Psychiatrists Raw Data Report Form (Form Number 40-262). This report form is beneficial because it summarizes the results of the PAAS for the contacted Psychiatrists in the health plan's network. The summarized information will assist in calculating compliance with timely access to care standards.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)j. incorporates by reference the Ancillary Service Providers Raw Data Report Form (Form Number 40-263). This report form is beneficial because it summarizes the results of the PAAS for the contacted Ancillary Providers in the health plan's network. The summarized information will assist in calculating compliance with timely access to care standards.

Proposed Rule 1300.67.2.2(h)(6)(B)(i)k. incorporates by reference the Results Report Form (Form Number 40-264). This form consists of specific tabs that show the results of the auto-calculation based on the Raw Data forms described above. The tabs are as follows: Primary Care Providers Result Tab, Non-Physician Mental Health Care Providers Results Tab, Specialist Physicians Results Tab, Psychiatrists Results Tab, Ancillary Service Providers Results Tab, Summary of Rates of Compliance Tab, and Network by

Provider Survey Type Tab. This Report Form and associated tabs is beneficial to health plans because it is used to auto-populate and auto-calculate the results or rate of compliance of the PAAS for each of the reported provider types in one single form. This will be beneficial to the health plan because it provides efficiency in reporting timely access to care information back to the DMHC. This allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B) incorporates by reference the Annual Network Report Forms that are required to be submitted to the DMHC as part of the health plan's annual network reporting. These forms are beneficial because they explain to the health plan what exact information must be reported back to the DMHC to enable the DMHC to determine whether the health plan has sufficient providers and facilities to provide health care services to the health plan's enrollees. This allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(i) incorporates by reference the PCP and PCP Non-Physician Medical Practitioner Report Form (Form Number 40-265). This report form is beneficial because it allows the health plan to report to the DMHC the number of PCP and PCP Non-Physician Medical providers that are available in the health plan's network and available to provide care to health plan enrollees. This allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(ii) incorporates by reference the Specialist and Specialist Non-Physician Medical Practitioner Report Form (Form Number 40-266). This report form is beneficial because it allows the health plan to report to the DMHC the number of Specialist and Specialist Non-Physician Medical Practitioners that are available in the health plan's network and available to provide care to health plan enrollees. This allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(iii) incorporates by reference the Hospital and Clinic Report Form (Form Number 40-267). This report form is beneficial because it allows the health plan to report to the DMHC the number of hospitals and clinics the health plan has available for health plan enrollees to utilize when needed. This allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(iv) incorporates by reference the Other Outpatient Provider Report Form (Form Number 40-268). This report form is beneficial because it allows the health plan to report to the DMHC the number of Other Outpatient Providers the health plan has available for health plan enrollees to utilize when needed. This allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(v) incorporates by reference the Mental Health Professional and Mental Health Facility Report Form (Form Number 40-269). This report form is beneficial because it allows the health plan to report to the DMHC the number of Mental Health Professionals and Mental Health Facilities the health plan has in its network for enrollees' use. The reporting of this information allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(vi) incorporates by reference the Network Service Area and Enrollment Report Form (Form Number 40-270). This form is beneficial because it allows health plans to report to the DMHC the geographic area served by the health plan and the number of enrollees within the geographic area the health plan services. The reporting of this information allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(vii) incorporates by reference the Telehealth Report Form (Form Number 40-271). This form is beneficial because it allows a health plan that provides services via telehealth to report the information to the DMHC as part of its network adequacy reporting. The reporting of this information allows the DMHC to determine network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(B)(viii) incorporates by reference the Timely Access and Network Adequacy Grievance Report Form (Form Number 40-272). This form is beneficial because it allows a health plan to report to the DMHC its compliance with Health and Safety Code section 1367.035 requiring the plan to submit grievances related to network adequacy. This form provides a uniform reporting method for all health plans and allows the DMHC to assess network adequacy compliance.

Proposed Rule 1300.67.2.2(h)(7)(C) incorporates by reference the Out-of-Network Payment Report Form (Form Number 40-273). This form is beneficial because it provides a uniform method of health plan reporting for compliance with Health and Safety Code section 1371.31(a)(4) which requires a health plan to include information regarding payments to out-of-network providers within its annual network report. This will assist the DMHC in determining whether a health plan's network sufficiently contains in-network providers to service the health plan's enrollees.

ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), a rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency (1) would be more effective in

carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to affected private persons than the proposed action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. As described in the Initial Statement of Reasons for this rulemaking action, the Department has not determined that any known alternatives meet standards (1)–(3), described above.

As described in more detail in the Initial Statement of Reasons for this rulemaking action, the DMHC did consider two separate alternatives to the requirements of the proposed rule. The DMHC considered auditing provider records rather than conducting the Provider Appointment Availability Survey described in proposed Rule 1300.67.2.2(f), and also considered surveying providers at the provider group, rather than at the county and network level. After consulting with the health plans and stakeholders, the DMHC determined these alternatives did not meet the requirements of Government Code section 11346.5(a)(13).

The DMHC invites interested persons to present statements or arguments with respect to alternatives to the requirements of the proposed regulations during the written comment period.

PURPOSE OF THE REGULATION

The purpose of this rulemaking action is to clarify and make specific the standardized methodology developed by the DMHC pursuant to Health and Safety Code section 1367.03(f)(3) regarding how health plans report timely access to care requirements and annual network requirements to the DMHC. Health and Safety Code section 1367.03(f)(3) allows the DMHC to develop a standardized methodology for health plan reporting of timely access to care requirements and provider network requirements.

During the APA exemption period described above, the DMHC worked extensively with health plans and stakeholders to develop a standardized method of reporting data to the DMHC. For the past four years, the health plans have submitted data to the DMHC according to the developed methodology, and the DMHC has analyzed the data to ensure health plans are able to provide enrollees with timely access to care as described in the Knox–Keene Act and regulations.

The DMHC is proposing this rulemaking action to amend existing regulations to implement the current method health plans are using to report compliance with timely access to care and to clarify the methodology

health plans are required to use. This rulemaking action codifies the timely access to care reporting methodology developed during the APA exemption period. Further, the DMHC is adopting a new regulation to implement, interpret, and make specific the current timely access to care and network requirements. The purpose of adopting Rule 1300.67.2.3 is to ensure health plans continue to comply with the existing requirements in Rule 1300.67.2.2 before the implementation of the proposed changes to Rule 1300.67.2.2.

A major component of the proposed regulation is the incorporation by reference of the Timely Access and Annual Network Submission Instruction Manual, the Provider Appointment Availability Survey Manual, and the accompanying reporting forms (Form Nos. 40–254 through Form Nos. 40–273) described above. The purpose of the Timely Access and Annual Network Submission Instruction Manual is to provide detailed step-by-step instructions on how a health plan is to use the required report forms to submit timely access to care and network adequacy information to the DMHC. The purpose of the detailed instructions are to guide the health plans in reporting accurate and meaningful information to the DMHC to assist the DMHC in assessing compliance with Health and Safety Code sections 1367.03(f) and 1367.035(a). The purpose of the Provider Appointment Availability Manual is to provide comprehensive instructions on the methodology a health plan is to use when conducting its provider surveys and what forms the health plan is to use when compiling data. The purpose of the manuals is to specify how a health plan is to submit the required forms to the DMHC to ensure complete and consistent reporting across health plans. The manuals and the forms work together to illustrate health plan performance with timely access to care standards.

The DMHC believes the adoption of these proposed regulations will have significant benefits for health plan enrollees in accessing appropriate health care services. The purpose of the proposed regulation and its health plan reporting requirements is to protect consumers from the potential inability to access needed health care services. The comprehensive timely access to care reporting standards ensure the health plan's provider network has the necessary providers ready to provide health care services to the health plan's enrollee population. Further, the standardized reporting requirements proposed by the regulation allow enrollees and consumers the ability to compare timely access to care data across health plans when choosing health care coverage. The reporting requirements hold health plans accountable to consumers and enrollees.

**EVALUATION OF CONSISTENCY/
COMPATIBILITY WITH EXISTING
STATE REGULATIONS**

The DMHC evaluated regulations in title 28, including existing sections 1300.67, 1300.67.2 and 1300.67.2.1, and has found that these proposed regulations are consistent and compatible with other areas of the Knox–Keene Act that address more specific health plan responsibilities. Therefore, these regulations are neither inconsistent nor incompatible with existing state regulations the DMHC reviewed.

FORMS INCORPORATED BY REFERENCE

Pursuant to Title 1, California Code of Regulations, section 20(c)(3), and as cited to in the proposed regulations, the DMHC is incorporating by reference the following manuals and forms: Timely Access and Annual Network Review Submission Instruction Manual, and the Provider Appointment Availability Survey [PAAS] Manual.

The following types of forms are also incorporated by reference: Provider Appointment Availability Survey Report Forms, numbered 40–254 through 40–264, and the Annual Network Review Report Forms, numbered 40–265 through 40–272, as described below.

The Provider Appointment Availability Survey Report Forms consist of the following eleven report forms:

1. Primary Care Providers Contact List Report Form (Form Number 40–254);
2. Non–Physician Mental Health Care Providers Contact List Report Form (Form Number 40–255);
3. Specialist Physicians Contact List Report Form (Form Number 40–256);
4. Psychiatrists Contact List Report Form (Form Number 40–257);
5. Ancillary Service Providers Contact List Report Form (Form Number 40–258);
6. Primary Care Providers Raw Data Report Form (Form Number 40–259);
7. Non–Physician Mental Health Care Providers Raw Data Report Form (Form Number 40–260);
8. Specialist Physicians Raw Data Report Form (Form Number 40–261);
9. Psychiatrists Raw Data Report Form (Form Number 40–262);
10. Ancillary Service Providers Raw Data Report Form (Form Number 40–263); and,
11. Results Report Form (Form Number 40–264), including the following information:
 - a. Primary Care Providers Results Tab;

- b. Non–Physician Mental Health Care Providers Results Tab;
- c. Specialist Physicians Results Tab;
- d. Psychiatrists Results Tab;
- e. Ancillary Service Providers Results Tab;
- f. Summary of Rates of Compliance Tab; and
- g. Network by Provider Survey Type Tab.

The Annual Network Review Report Forms consist of the following nine report forms:

1. Network Service Area and Enrollment Report Form (Form Number 40–265);
2. PCP and PCP Non–Physician Medical Practitioner Report Form (Form Number 40–266);
3. Specialist and Specialist Non–Physician Medical Practitioner Report Form (Form Number 40–267);
4. Mental Health Professional and Mental Health Facility Report Form (Form Number 40–268);
5. Other Outpatient Provider Report Form (Form Number 40–269);
6. Hospital and Clinic Report Form (Form Number 40–270);
7. Telehealth Report Form (Form Number 40–271); and,
8. Timely Access and Network Adequacy Grievance Report Form (Form Number 40–272).

In addition, the Out-of–Network Payment Report Form (Form Number 40–273) is also incorporated by reference.

SUMMARY OF FISCAL IMPACT

- Mandate on local agencies and school districts: None.
- Cost or Savings to any State Agency: As described in the Economic Impact Assessment in the Initial Statement of Reasons, for this rulemaking action, there will be costs incurred by the Department of Health Care Services related to the implementation of the requirements proposed in this regulation for health plans offering Medi–Cal products without any commercial business. The DMHC estimated the fiscal impact for implementation costs to be approximately \$1.2 million. The DMHC estimated the fiscal impact for ongoing costs to be approximately \$1.2 million. Both of these costs are absorbable by existing budgets.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Other non–discretionary costs or savings imposed upon local agencies: As described in the Economic

Impact Assessment in the Initial Statement of Reasons, for this rulemaking action, the DMHC estimated one health care plan offering the County Organized Health System (COHS) would be fiscally impacted by the requirements of the proposed regulation. The affected COHS offers the In-home Supportive Services program with a total of 636 enrollees. The DMHC estimated the yearly costs to be between \$960.36 and \$254.40 dollars. These estimates include costs for implementation of the new requirements proposed in the rulemaking action as well as ongoing costs. Costs associated with the proposed Rule are administrative, and will be incurred by the state General Fund, when available, pursuant to Welfare and Institutions Code section 12306.16.

- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Costs to private persons or businesses directly affected: The DMHC has determined that this proposed regulatory action will have cost impacts that a business would necessarily incur in complying with the proposed requirements. As described in the Economic Impact Assessment in the Initial Statement of Reasons, for this rulemaking action, the fiscal impact to all affected businesses for initial implementation are estimated to be between \$5 million and \$6 million. The DMHC estimated the fiscal impact for ongoing implementation to be between \$3.4 million and \$4.6 million per year.
- Effect on Housing Costs: None.

DETERMINATIONS

The DMHC has made the following initial determinations:

- The DMHC has determined the regulation will not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The DMHC has determined the regulation will have no significant effect on housing costs.
- The DMHC has determined the regulation minimally affects small business organizations. Health care service plans are not considered a small business under Government Code Section 11342.610(b) and (c). However, some provider groups impacted by the reporting requirements of the proposed regulation do meet the small business definition. Using the DMHC's cost analysis

methodology, the DMHC determined the small business costs to be 13% of total costs incurred. Please see the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action for more specific information.

- The DMHC has determined the 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. Please see the Economic Impact Assessment in the initial Statement of Reasons for this rulemaking action for more specific information.
- The DMHC has determined the regulation will have costs to a local government offering health care coverage through the COHS, as described above. The DMHC identified one local health plan offering health care services through the COHS that will incur implementation costs and ongoing costs. Please see the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action for more specific information.
- The DMHC has determined the regulation will have no cost or savings in federal funding to the state.
- The DMHC has determined the approach proposed by the DMHC for this rulemaking action balances the needs of all parties, while protecting health plan enrollees.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

(Government Code section 11346.3, subdivision (b))

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

The proposed amendments to Rule 1300.67.2.2 will neither create new businesses nor eliminate existing businesses. The proposed amendments affect only existing business subject to the DMHC's jurisdiction, and do not require the creation of any new businesses. During the APA exemption period, health plans implemented operational changes to accommodate the mandatory timely access to care and network adequacy reporting to the DMHC according to the methodology developed under the APA exemption. The DMHC is unaware of any existing businesses that will be created or eliminated as a result of these requirements.

Creation or Elimination of Jobs Within the State of California:

The DMHC does not believe that health plan employers will create additional positions in order to comply with the requirements of the proposed rule. During the

APA exemption period, health plans implemented operational changes to accommodate the mandatory timely access to care and network adequacy reporting to the DMHC according to the methodology developed under the APA exemption; therefore, implementing the changes proposed in the proposed rule will not impact the creation of new jobs within the State of California.

Additionally, the proposed Rule will not eliminate any existing jobs in California. As discussed, existing statutes and regulations require health plans to provide timely access to care for enrollees. This proposed Rule standardizes reporting requirements and codifies the published Measurement Year 2019 methodology. Although the proposed rule affects health plan procedures for collecting and reporting data, it does not eliminate any particular job functions within a health plan.

Expansion of Businesses Currently Doing Business Within the State of California:

The proposed regulation is unlikely to cause a significant increase in workload on existing health plan personnel. The DMHC has not observed an expansion in health plan businesses as a result of the APA-exempt methodologies. The DMHC determined the indirect impact on providers that the proposed amendments impose only require a small amount of annual staff time per inquiry. The DMHC believes that this relatively minimal requirement will not result in the expansion of provider businesses.

The DMHC does not believe that vendors contracting with health plans to conduct activities required by the proposed regulation will expand as a result of implementation. The DMHC estimates a relatively low increase in contracting costs for those health plans who choose to use a vendor to conduct the required activities proposed by the regulation.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed amendments and adoption benefit the health and welfare of California residents by ensuring that enrollees and patients across the state receive needed health care services at the appropriate time. Enrollees in DMHC-regulated coverage have a right to access health care services within certain timeframes. The proposed amendments and adoption enable the DMHC to provide better oversight over health plan practices,

ensuring that patients are receiving requested health care services in a timely manner.

By standardizing reporting requirements, the proposed amendments and adoption will allow the DMHC to collect data in a useful way and draw helpful conclusions about access to care. For instance, as a result of SB 964, the DMHC has been able to improve its ability to compare results among health plans and publically report more accurate data regarding timely access to health care. Codifying existing standardized methodologies will enable the DMHC to continue to draw useful conclusions about timely access to health care and use these conclusions to better protect enrollees' health care rights.

REPORTING REQUIREMENT

Pursuant to Government Code section 11346.3(d), the DMHC has determined that the reporting requirements contained in this regulation are necessary for the health, safety or welfare of the people of the State of California. The proposed regulation is a benefit to the health plans because it provides a standardized, cohesive reporting methodology that enables health plans to report meaningful timely access to care and network adequacy data to the DMHC. The health plans are required by existing law to provide the DMHC with timely access to care and annual network reports on an annual basis. The proposed regulation codifies the methodologies the health plans have been using for the past four years to report this data. Health plans benefit because uniform standards allow for ease of report submission. Submission of this statutorily required information allows the DMHC to ensure health plans are complying with appointment time-elapsd standards and that health plans have adequate provider networks to meet the needs of the enrollee population they serve.

BUSINESS REPORT

This rulemaking package clarifies and updates the requirements of health plans to provide timely access to health care services and provide an adequate network of providers by clarifying definitions, timely access to care and annual network reporting requirements, and timely access to care and network adequacy standards. The amendments to this regulation are necessary for the

health, safety or welfare of the people of the State of California.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF
FISH AND WILDLIFE**

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NUMBER
2089-2020-003-03**

Project: Kellogg Ranch

Location: Sonoma County

Applicant: Barbara R. Banke, Trustee, Barbara R. Banke Revocable Trust

Background

Barbara R. Banke, Trustee, Barbara R. Banke Revocable Trust (Applicant) is voluntarily undertaking a broad plan and supporting several actions anticipated to enhance habitat for coho salmon (*Oncorhynchus kisutch*) and steelhead (*Oncorhynchus mykiss*) for the purpose of managing Kellogg Ranch, including wine grape growing, agricultural processing and supporting uses, grazing, residential recreation, and open space as outlined in Section 8 of the federal safe harbor agreement (federal SHA). The Kellogg Ranch Project (Project) includes 1,352-acres of Kellogg Ranch located in Knights Valley in eastern Sonoma County (Enrolled Property), including the following Sonoma County Assessor Parcel Numbers (APNs): 120-040-004, 120-040-007, 120-040-008, 120-040-011, 120-090-023, 120-090-047 (federal SHA Figure 1).

Because the management of the land on the Enrolled Property may result in take of a species designated as threatened under the federal Endangered Species Act (ESA), the National Marine Fisheries Service (NMFS) issued a federal SHA, and a federal 10(a)(1)(A) enhancement of survival permit (Permit Number 22228) for the Project. The federal SHA describes the Project and requires the Applicant to comply with terms of the federal SHA and the federal 10(a)(1)(A) enhancement of survival permit and sets forth measures to avoid and minimize impacts to coho salmon south of Punta Gorda.

The Applicant is voluntarily conducting the following activities:

- Dedicating portions of their pre-1914 and riparian water rights to instream flow in Yellowjacket Creek, as described in Section 10.4 of the federal

SHA. The applicant will implement the Kellogg Ranch Water Diversion Terms included in the federal SHA as Attachment 1: Terms Sheet. Implementation of the Terms Sheet in Attachment 1 ensures minimum bypass flows that meet the needs of coho salmon prior to water diversions in Yellowjacket Creek to meet passage, spawning, and rearing needs.

- Addressing the fish passage barrier at the diversion weir facility allowing coho salmon to access 1.9 miles of high-quality habitat that support all life stages. The federal SHA includes fish passage through the Enrolled Property through the life of the federal SHA and the federal 10(a)(1)(A) enhancement of survival permit.
- Enhancing habitat in Yellowjacket Creek by placing 44 large woody debris (LWD) structures. These structures will improve the shelter rating, number of pools, LWD frequency, and quantity and distribution of spawning gravels within the Enrolled Property.
- Participating in the Russian River Coho Salmon Captive Broodstock Program (CCSCBP) initiated at Warm Springs Hatchery to prevent extirpation of coho salmon in the Russian River basin. This includes releasing juvenile coho salmon in Yellowjacket Creek.
- Improving the riparian forest conditions by protecting and enhancing sections of the riparian buffer that are within 150 feet of Yellowjacket Creek. Protecting and enhancing the riparian area in the Enrolled Property will minimize and avoid adverse effects from managing the Enrolled Property, promote future LWD recruitment, and increase shading. The buffer will protect aquatic habit from adverse effects of sediment runoff, pesticide/herbicide use, temperature increase, and others.

The Project activities described above and within the federal SHA Section 8 are expected to incidentally take¹ coho salmon where those activities take place within Kellogg Creek, Yellowjacket Creek, Unnamed Tributary, and No Name Creek. In particular, coho salmon could be incidentally taken as a result of the in-channel construction, maintenance of structures for agriculture and forest and rangeland activities, maintenance of the existing and new water diversion structure,

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

dewatering and Project-related habitat loss. Coho salmon is designated as a threatened species pursuant to the ESA (16 U.S.C. section 1531 et seq.) and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, section 2050 et seq.). (See Cal. Code Regs., tit. 14, section 670.5, subd. (a)(2)(N).)

Coho salmon individuals are documented as present within the Russian River and were documented in Redwood Creek downstream of the Enrolled Property. There is suitable coho salmon habitat within and adjacent to the Enrolled Property. Because of the proximity of the nearest documented coho salmon, and the presence of suitable coho salmon habitat within the Enrolled Property, NOAA determined that coho salmon is reasonably certain to occur within the Enrolled Property and that Project activities are expected to result in the incidental take of coho salmon.

The federal SHA, including the federal 10(a)(1)(A) enhancement of survival permit, also requires the Applicant to implement and adhere to measures contained within the federal SHA and the federal 10(a)(1)(A) enhancement of survival permit.

On April 14, 2020, the Director of the Department of Fish and Wildlife (CDFW) received a notice from Barbara R. Banke, Trustee representing the Barbara R. Banke Revocable Trust requesting a determination pursuant to Fish and Game Code section 2080.1 that the federal SHA, including the federal 10(a)(1)(A) enhancement of survival permit, are consistent with CESA for purposes of the Project. (Cal. Reg. Notice Register 2019, Number 10-Z, p. 363.)

Determination

CDFW has determined that the federal SHA, including the federal 10(a)(1)(A) enhancement of survival permit, is consistent with CESA as to the Project and Coho Salmon because the mitigation measures contained in federal SHA, including the federal 10(a)(1)(A) enhancement of survival permit, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of Coho Salmon will be incidental to an otherwise lawful activity; (2) implementation of the federal SHA is reasonably expected to provide a net conservation benefit to Coho Salmon; (3) the Project will not jeopardize the continued existence of Coho Salmon; (4) the Landowner has agreed, to the maximum extent practicable, to avoid or minimize any incidental take authorized by the SHA, including returning to baseline conditions; (5) CDFW has established or approved a monitoring program; (6) CDFW has determined that there is sufficient funding to carry out management actions and for monitoring for the duration of

the SHA; and (7) implementation of the SHA is not in conflict with a CDFW-approved conservation or recovery program for Coho Salmon.

Fish and Game Code section 2089.4(e) defines Landowner to include any entity that lawfully holds any interest in land or water to which they are committing to implement the requirements of the California State Safe Harbor Agreement Program Act. As noted in the federal SHA, the Applicant has leased the Enrolled Property to Jackson Family Wines. Thus, for purposes of this determination, the term Landowner includes both the Applicant and Jackson Family Wines.

Avoidance, Minimization, and Mitigation Measures

The avoidance and minimization measures in the federal SHA include, but are not limited to, the following:

- Perform dewatering and construction related activities in accordance with the attached Best Management Practices (BMPs) for Construction/Maintenance of Barrier Remediation, Bank Stabilization, and Large Woody Debris Placement (federal SHA: Attachment 2).
- Perform routine maintenance of in-channel improvements including the Barrier Remediation project, Diversion Facility project, and other water diversion and use facilities in accordance with the attached Routine Maintenance of Reservoirs Diversion Canals/Pipelines on Yellowjacket, No Name Creek and Unnamed Tributary (federal SHA: Attachment 3).
- Conduct Agricultural Activities and other Land Use Activities (where applicable) in accordance with the attached Farm Plan (federal SHA: Attachment 4).
- Landowner shall utilize best management practices to prevent livestock used to graze the property from entering and damaging riparian areas and stream channels. Repair livestock exclusion fencing and remove livestock from riparian areas and stream channels within 48 hours of discovery.

Monitoring and Reporting Measures

The Landowner will be responsible for monitoring and reporting measures related to implementation of the federal SHA and fulfilment of its provisions including, but not limited to, the following:

- The Landowner will monitor the Baseline Conditions in Section 6 of the federal SHA within the Enrolled Property, using protocols submitted to and approved by NMFS and CDFW. When possible, NMFS and CDFW will assist in these surveys; however, NMFS's and CDFW's

assistance may be limited by their authorities, other obligations, and appropriated funds.

- The Landowner will monitor the implementation and progress of the beneficial Management Activities described in Section 10 of the Agreement.
- The Landowner will monitor dissolved oxygen in Reaches 1 and 2 of Yellowjacket Creek when flow is less than 0.5 cubic feet per second at the point of diversion on Yellowjacket Creek and water is being diverted pursuant to Term 13 of the Kellogg Ranch Water Diversion Terms (federal SHA: Attachment 1). The Landowner will provide this data to NMFS and CDFW on a weekly basis for their use in determining whether fish may need to be relocated.
- Monitoring surveys will be conducted in that first year and thereafter every two years during the same period for the remainder of the federal SHA.
- The Landowner will provide the NMFS and CDFW with an annual report by January 31 each year for the duration of this Agreement. The report will include the following information:
 - The results of monitoring conducted pursuant to Sections 16.1.1 and 16.1.2 of the federal SHA.
 - The status of beneficial Management Activities (Section 10) being undertaken on the Enrolled Property in the preceding year and whether or not the beneficial Management Activity met the intended goals of that activity.
 - A discussion regarding trends, successes, or failures of properly implemented beneficial Management Activities with the intent of benefitting the Covered Species.
 - Any take of listed species has occurred.
 - Verify the maintenance and improvement of the Baseline Conditions (federal SHA: Section 6) for the Enrolled Property.
 - Verify implementation of avoidance and minimization measures (federal SHA: Section 13) during the previous year.
 - The Landowner will also provide NMFS and CDFW with the Reports of Permittee and Licensee filed with the State Water Resources Control Board pursuant to the Landowner’s water rights.

Financial Assurances

Funding for this Project will be provided by the Landowner. The federal SHA Section 2.1.2: Recitals requires Jackson Family Wines, Inc., the lessee of the

Enrolled Property, to manage and control the property including implementation of all actions in the federal SHA on behalf of the Landowner. Per a letter from the lessee dated August 31, 2015, outlining the federal SHA actions, the lessee is committed to carry out, and as necessary, provide funding of the management actions and monitoring required in the federal SHA and the federal 10(a)(1)(A) enhancement of survival permit.

Incidental Take Authorization

Pursuant to Fish and Game Code section 2089.22, if a federal SHA is approved pursuant to applicable provisions of federal law and the SHA includes species that are both federal and State listed, no further approval under the State SHA Program Act (Fish & G. Code, section 2089.2 et seq.) is required for incidental take of those species provided the Landowner implements the Project and future land use and management practices as described in the approved federal SHA; the Landowner and CDFW follow specified procedures; and CDFW determines the federal SHA is consistent with applicable criteria. Additionally, the Landowner must adhere to all measures contained in the approved federal SHA and comply with other conditions described in the federal 10(a)(1)(A) enhancement of survival permit.

If there are any substantive changes to the federal SHA or if USFWS amends or replaces the federal 10(a)(1)(A) enhancement of survival permit, the Landowner shall be required to obtain a new consistency determination from CDFW (see generally Fish & G. Code, sections 2081.1, 2081, subs. (b) and (c)).

**DEPARTMENT OF
FISH AND WILDLIFE**

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NUMBER
2080-2020-001-01**

Project: Lower Moffett Creek Scour-DES Brokered Project

Location: Siskiyou County

Applicant: California Department of Transportation

Background

California Department of Transportation (Applicant) proposes to replace the bridge over Moffett Creek on State Route 3 (SR 3), approximately 6 miles north of Fort Jones, and 11.6 miles south of Yreka, in Siskiyou County. The Lower Moffett Creek Scour — DES Brokered Project (Project) includes the demolition of the existing bridge and replacement with a new bridge that completely spans the creek within the same alignment

as the existing bridge. The existing bridge is deteriorating in the structural steel of the deck and supporting pillars. The new bridge will provide widened shoulders, reduced long-term maintenance, and will be a full span over Moffett Creek, thus eliminating a pier that is situated in Moffett Creek supporting the current bridge. The work is planned for a single work season and an alternate routing of SR 3 traffic will occur over the bridge on Peach Tree lane which parallels SR 3.

The Applicant's contractor will construct access roads to Moffett Creek and temporarily divert the creek into a culvert in order to have road access across the creek. The bridge will be demolished, and catchment devices will be installed to prevent any debris from entering the creek or being left anywhere on site. The existing pier within Moffett Creek will be removed. A temporary coffer dam will be created to dewater the creek and remove the pier. The new bridge will be reconstructed in the same alignment and will fully span Moffett Creek. The abutments will be well outside the floodplain. No pile driving will be used in the construction of the new bridge. The Project is currently scheduled to be constructed during the spring and summer of 2021.

The Project activities described above are expected to incidentally take¹ coho salmon (*Oncorhynchus kisutch*), of the Southern Oregon–Northern California Coast evolutionary significant unit (SONCC coho salmon) where those activities take place within lower Moffett Creek. In particular, SONCC coho salmon could be incidentally taken as a result of the capture and relocation of fish from the work area associated with dewatering. The relocation of fish will involve the installation of block nets upstream and downstream of the Project to prevent fish movement into the Project site, then all fish will be captured between the block nets and relocated outside the Project limits. Take may occur due to the installation of block nets, electro-fishing, or transport. SONCC coho salmon are designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. section 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & G. Code, section 2050 et seq.). (See Cal. Code Regs., tit. 14, section 670.5, subd. (b)(2)(D).)

SONCC coho salmon individuals have been periodically documented as present, in the past 20 years, near or within the Project site and there is suitable coho salmon habitat within the creek immediately upstream

and downstream of the Project site. Only juvenile SONCC coho salmon have been encountered in the last 20 years. SONCC coho use of the site is likely limited due to the heavy agricultural diversions occurring along Moffett Creek and also due to the loss of riparian vegetation upstream and downstream of the Project site. In years with below average rainfall or snowfall, Moffett Creek is frequently disconnected from the Scott River due to excessive sediment at the junction and has only subsurface flow through much of the reach downstream of the Project site and the junction with the Scott River. Although flows are typically perennial at the Project site in most years, adjacent groundwater pumping has exacerbated the problem of little or no surface flows in Moffett Creek in the reach downstream of the Project site. Records of possible SONCC coho salmon are sporadic and uncertain during the past 20 years and these are cited in the Applicants' Category 3 Notification Form. Because of the possible occurrences of all life stages of SONCC coho salmon at the Project site, the known dispersal patterns of SONCC coho salmon, and the presence of suitable SONCC coho salmon habitat within the Project site during the Project's work period, the National Marine Fisheries Service (Service) has determined that up to 12 juvenile SONCC coho salmon may be captured/handled during dewatering activities, and up to one may die due to capture and/or handling. Thus, Project activities may result in the incidental take of SONCC coho salmon.

According to the Service, the Project will result in the temporary loss of 0.131 acre of riparian SONCC coho salmon habitat, and 0.061 acre of open water SONCC coho salmon habitat, totaling 0.192 acre of temporary habitat loss. Construction of the Project will also result in the permanent loss of 0.013 acre of riparian SONCC coho salmon habitat outside of the stream channel, totaling 0.013 acre of permanent riparian habitat loss. Construction of the Project will also result in the gain of 0.0012 acre of open water SONCC coho salmon habitat in the stream channel through the removal of an existing in-channel pier.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, the Applicant, as a Federal Highway Administration (FHWA) agent, consulted with the Service as required by the ESA. On January 7, 2019, the Service sent an e-mail to the Applicant with the determination that the National Oceanic and Atmospheric Administration National Marine Fisheries Service Programmatic Biological Opinion, Caltrans' Routine Maintenance and Repair Activities Programmatic Biological Opinion (Programmatic BO), and issued to the Applicant as biological opinion (Service file Number 2013-9731) is applicable to this Project. The Programmatic BO requires the Applicant to comply with terms of the Programmatic

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

BO and its incidental take statement (ITS) and combined with the Category 3 Notification Form (Cat. 3 Form) which incorporates additional measures, covering all aspects of the Project. The Programmatic BO, ITS, and Cat. 3 Form require the Applicant to implement and adhere to measures to ensure all impacts on state-listed species are fully mitigated under CESA. On April 15, 2020 the Service sent an e-mail to the Applicant approving the Cat. 3 Form for the Lower Moffett Creek Scour — DES Brokered Project as complete and adequate to append to the Applicant’s Programmatic BO. The Cat. 3 Form itemizes all specific actions that will be undertaken as part of the Project Actions and associated Additional Best Management Practices, on pages 5–6.

The Cat. 3 Form requires the Applicant to implement and adhere to measures to fully mitigate the impacts to SONCC coho salmon, and includes financial assurances that mitigation measures will be carried out and the Applicant shall implement and adhere to measures contained within the Programmatic BO and ITS.

On April 29, 2020, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the Programmatic BO, including the ITS, and appended Cat. 3 Form as submitted to the Service is consistent with CESA for purposes of the Project and SONCC coho salmon for the Project. (Cal. Reg. Notice Register 2020, Number 20–Z, p. 757.)

Determination

CDFW has determined that the Programmatic BO, including the ITS and the appended Cat. 3 Form, is consistent with CESA as to the Project and SONCC coho salmon because the mitigation measures contained in the Programmatic BO, ITS, and Cat. 3 Form meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of SONCC coho salmon will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the Programmatic BO, ITS, and Cat. 3 Form will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of SONCC coho salmon. The mitigation measures in the Programmatic BO, ITS, and Cat. 3 Form include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Prior to initiation of construction activities, the Applicant shall fund the Scott River Watershed

Council with \$50,000 to develop, implement and manage the Klamath River Basin Passive Integrated Transponder (KRBPIT) Tagging Database, to contribute to fully mitigating the impact of the authorized incidental take of SONCC coho salmon, as well as the removal of riparian vegetation to accommodate the new bridge’s wider abutment. The KRBPIT Tagging Database will take existing databases from the United States Geological Survey and Karuk and Yurok Tribes and merge them into a single database into which data from the CDFW, United States Fish and Wildlife Service, Humboldt State University and others, will be added in order to create a Klamath River Basin-wide database for tracking the movement of fish within the basin and among the sub-watersheds.

- Prior to initiation of construction activities, the Applicant shall fund the Scott River Watershed Council (SRWC), with \$15,000, to implement and manage onsite habitat improvement to benefit the SONCC coho salmon within the right-of-way. The onsite habitat improvement shall consist of planting up to 16 individual native willows as pole plantings or rooted plants. Several poles or plants will be planted per cage, and each pole planting site will be individually caged to protect the willows from grazing and browsing animals.
- The Applicant shall not initiate any ground-breaking construction activities until the Applicant has transferred the \$65,000 to the Scott River Watershed Council which will fund the mitigation actions that have been agreed to with the submission of the Cat. 3 Form as part of operations under the Programmatic BO and ITS.
- If it is determined after construction that there is insufficient space to achieve the goal of up to 16 plantings on-site, then the Applicant will ensure additional willow poles or rooted plants will be planted offsite at the Scott River Watershed Council restoration project on Moffett Creek titled, “Moffett Creek Water Quality Improvement Project” to make up the difference not available on-site.
- The Applicant shall conduct in-water work activities during the period of June 15–October 15, when Moffett Creek is in low-flow conditions.
- The Applicant shall use block nets to exclude fish from the work area prior to and during the placement of diversion structures. The Applicant will use hand-labor to drive t-posts into the ground and attach exclusion fencing.
- The Applicant or Applicant’s contractor shall retain a qualified biologist with expertise in the

areas of anadromous salmonid biology, including handling, collecting and relocating salmonids, salmonid habitat relationships and biological monitoring of salmonids. The Applicant shall ensure that all biologists working on the Project will be qualified to conduct fish collections and relocations in a manner which minimizes all potential risks to the SONCC coho salmon.

- The Applicant shall implement water-drafting specifications to prevent injury to fish and to prevent significant changes to flow conditions of their habitat, including limiting the diversion rate and reduction in pool volume to no more than 10 percent, using an appropriate screen mesh as defined by the Service. The Applicant shall cease pumping if the screen becomes more than 10 percent obstructed by debris.
- The Applicant shall limit disturbance or removal of vegetation to the minimum necessary to complete construction activities. The Applicant will replant disturbed areas using native riparian plant species.
- The Applicant shall maintain fuel storage and refueling sites and will service equipment in an upland location at least 50 feet from surface water. The Applicant will not operate construction equipment in anadromous waters unless the channel is dewatered or otherwise dry.
- The Applicant will ensure that access roads and a temporary stream crossing including temporary fills, cofferdams, and diversion cofferdams that are left in stream channels will be composed of washed, rounded, spawning-sized gravel between 0.4 inch to 4 inches in diameter; gravel in contact with flowing water will be left in place, modified (i.e., manually spread out using hand tools if necessary) to ensure adequate fish passage for all life stages, and then allowed to disperse naturally by high winter flows; materials placed above the ordinary high water mark must be clean washed rock or contained to prevent material conveyance to the stream or mixing with clean gravel.
- The Applicant will only remove the minimum amount of wood, sediment and gravel, and other natural debris using hand tools, where feasible, only as necessary to maintain and protect culvert function, and ensure that suitable fish passage conditions are maintained, with minimal disturbance of the streambed.
- The Applicant will ensure that cofferdams and diversion cofferdams will affect no more of the stream channel than is necessary to support completion of the maintenance or construction activity.

- Immediately upon completion of in-channel work, Applicant will remove temporary fills, cofferdams, diversion cofferdams, and other in-channel structures that will not remain in the stream (i.e., excess clean, spawning-sized gravel), in a manner that minimizes disturbance to downstream flows and water quality.
- The Applicant will remove all structures and imported materials placed in the stream channel or on the banks during construction that are not designed to withstand high flows by October 15 of any year in which construction is taking place.
- The Applicant shall notify CDFW and the Service in advance of the dates of block net installation and fish relocation activities. Applicant will immediately report the capture or incidental take of SONCC coho salmon to CDFW and the Service by telephone at the earliest opportunity, given conditions of limited telephone accessibility on site.

Monitoring and Reporting Measures

- The Applicant shall fund the SRWC to conduct a three-year vegetation-monitoring plan on-site or off-site or both as conditions on-site allow. The Applicant shall forward annual reports, completed by the SRWC, on the progress of the plantings on-site, off-site, or both. The Applicant shall provide CDFW and the Service with a final monitoring report no later than four years following construction.
- The Applicant shall document fish capture and relocation activities. Although not a condition of the Programmatic BO, CDFW requests a copy of the report.
- The Applicant will submit a Category 3 Post-Project Reporting Form to the Service within 10 business days of the Project Completion. Although not a condition of the Programmatic BO, CDFW requests a copy of the Category 3 Post-Project Reporting Form that is sent to the Service.
- The Applicant will provide monitoring reports to the Service and CDFW for the restoration of the Project site. The reports shall include all success criteria, data, data analysis, and photo documentation as required to document progress towards successful restoration of the Project site.
- The Applicant shall provide CDFW and the Service with the completed KRBPIT Tagging Database report (which will describe the database and data) as conducted by the Scott River Watershed Council, no later than four years following the completion of construction activities.

Financial Assurances

- The Applicant shall not initiate any ground-breaking construction activities until the Applicant has transferred the \$65,000 to the SRWC which will fund the mitigation actions that have been agreed to with the submission of the Cat. 3 Form as part of operations under the Programmatic BO and ITS.
- The Applicant shall submit written evidence of the transfer of \$65,000 to the SRWC and acknowledgment by the SRWC of receipt of those funds. Evidence of these transactions must be submitted to CDFW prior to the initiation of any ground disturbing activities.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of SONCC coho salmon, provided the Applicant implements the Project as described in the Cat. 3 Form, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the Programmatic BO, ITS, and Cat. 3 Form. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the Programmatic BO, ITS, or Cat. 3 Form, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, sections 2080.1, 2081, subs. (b) and (c).) This determination is limited to consistency of the Programmatic BO, including the ITS, as applied specifically to the Project and does not cover other activities that might be appended to the Programmatic BO in the future. Separate determination(s) or take authorization(s) must be obtained for future activities that may result in take of CESA-listed species.

**DEPARTMENT OF
FISH AND WILDLIFE**

**HABITAT RESTORATION AND
ENHANCEMENT ACT
CONSISTENCY DETERMINATION NUMBER
1653-2020-053-101-R1**

Project: South Fork Ten Mile River Enhancement Project Phase 1B

Location: Mendocino County

Applicant: Ethan Inlander, The Nature Conservancy

Notifier: Peter van de Burgt, Prunuske Chatham Inc.

Background

Project Location: The South Fork Ten Mile River Enhancement Project Phase 1B (Project) is located at 28761 N. Highway 1, Fort Bragg, California, 95437, at a property owned by Margaret Perry, Assessor Parcel Numbers (APNs) 069-070-11, 069-070-12, and 069-070-13, and affects the South Fork Ten Mile River. The South Fork Ten Mile River supports populations of Coho Salmon, Chinook Salmon, steelhead, Western Pond Turtle, Northern Red-legged Frog, and Foothill Yellow-legged Frog.

Project Description: The Nature Conservancy (Applicant) proposes to enhance or restore habitat within the South Fork Ten Mile River to provide a net conservation benefit for CCC Coho Salmon (*Oncorhynchus kisutch*), CC Chinook Salmon (*Oncorhynchus tshawytscha*), and NC steelhead (*Oncorhynchus mykiss*). Conservation benefits are proposed by installing or excavating various features to enhance channel complexity and providing in and off-channel salmonid winter habitat.

At the downstream end of the Project reach (SF10/11) the Applicant will enhance in- and off-channel summer and winter salmonid habitat by installing five large wood structures and excavating a 0.44 acre seasonally flooded wetland and alcove. A channel spanning racking jam will be located at the downstream most portion of the Project area to capture large and small wood transported by winter storm events.

Two large wood structures will be placed on either side of the entrance of the seasonal wetland to provide complex in-stream structure and maintain the meander bend at the alcove. Two additional structures will be located upstream a short distance on opposing banks of the stream to enhance in-stream structure and direct additional winter flow into an existing side channel.

At Site SF12 the Applicant will install three large wood structures to enhance channel complexity and capture large and small wood transported by winter

flows. At the upstream end of the Project reach (SF18) the Applicant will partially excavate a 480-foot-long side channel and enhance the side channel with several large wood structures to act as a bar apex jam or maintain meanders in the side channel. A large channel spanning jam will be installed at the head of the side channel to redirect winter flows into the side channel.

Detailed Project plans, discussion of proposed work, species protection measures, site photos and maps are on file with California Department of Fish and Wildlife's (CDFW) Habitat Conservation Planning Branch (HCPB).

Project Size: The total area of ground disturbance associated with the Project is approximately 4.6 acres and 499 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, section 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project includes those associated with the following: (1) Redwood logs and root wads, (2) erosion control materials, and (3) dewatering materials.

Project Timeframes:

Start date: June 2020
 Completion date: October 2020
 Work window: June 1–October 31

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve in- and off-channel salmonid rearing habitat, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order), Waste Discharge Identification (WDID) Number 1B20019WNME, Electronic Content Management Identification (ECM PIN) Number CW-864879 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Coho Salmon, Chinook Salmon, steelhead, Western Pond Turtle, Northern Red-legged Frog, Foothill Yellow-legged Frog, Red-bellied Newts, nesting birds, and roosting bats.

Receiving Water: South Fork Ten Mile River.

Filled or Excavated Area:

Permanent area impacted: none
 Temporary area impacted: 0.60 acres maximum
 Length temporarily impacted: 420 linear feet
 Length permanently impacted: 0 linear feet

Discharge Volume: Approximately forty-eight 18-inch diameter redwood logs, eleven 24-inch diameter redwood logs, 17 redwood root wads, and materials associated with dewatering activities and erosion control measures.

Project Location: Latitude 39.313993 N. and Longitude 123.443216 W. (NAD 83); APN: 069-070-11, 069-070-12, and 069-070-13.

Regional Water Board staff determined that the Project may proceed under the Order. Additionally, Regional Water Board staff determined that the Project, as described in the Notice of Intent (NOI) complies with the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.).

On May 6, 2020, the Director of the CDFW received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on May 11, 2020, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number [Z-2020-0511-01]) on May 22, 2020. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attach-

ment to the NOI, which contains the following categories: (1) Construction-period Water Quality Protection and Erosion and Sedimentation Control Measures; (2) Post-construction and Sediment Control and Water Quality Protection Requirements; (3) General Program Conditions for Vegetation Management; and (4) General Measures to Avoid impacts on Biological Resources. The specific avoidance and minimization requirements are found in attachment 6 to the NOI, South Fork Ten Mile River Habitat Enhancement Project Measures to Protect Fish, Wildlife, Water, and Cultural Resources.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant’s Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in attachment 7 to the NOI, Supplemental Monitoring Plan South Fork Ten Mile River Enhancement Phase 1B.

Notice of Completion

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Applicant to submit a Notice of Completion (NOC) no later than 30 days after the Project has been completed. A complete NOC includes at a minimum:

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

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

Project Authorization

Pursuant to Fish and Game Code section 1654, CDFW’s approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not

limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

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

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# 2020-0414-01
 AIR RESOURCES BOARD
 Low Carbon Fuel Standard Regulation

In this rulemaking action, the Board amends its Low Carbon Fuel Standards (LCFS). The amendments add definitions and establish new requirements related to base credits, advanced credits, compliance plan reporting, and clearance market credit prices. The regulations also ensure a significant portion of LCFS revenue from base residential charging is directed to benefit disadvantaged and low-income communities.

Title 17
 AMEND: 95481, 95483, 95485, 95486.1, 95487, 95491, 95495
 Filed 05/27/2020
 Effective 07/01/2020
 Agency Contact: Chris Hopkins (916) 445-9564

File# 2020-0415-04
 AIR RESOURCES BOARD
 Electric Vehicle Supply Equipment Standards

This proposed regulatory action will establish standards for plug-in electric vehicle (PEV) fueling infrastructure.

Title 13
ADOPT: 2360, 2360.1, 2360.2, 2360.3, 2360.4,
2360.5
Filed 05/29/2020
Effective 07/01/2020
Agency Contact: Chris Hopkins (916) 445-9564

File# 2020-0417-01
BOARD OF STATE AND COMMUNITY
CORRECTIONS
Minimum Standards for Training

In this regular rulemaking action the Board of State and Community Corrections amends regulations regarding the required number of training course hours for juvenile and adult corrections and probation officers and adopts new sections regarding required hours for transfer courses.

Title 15
ADOPT: 173.1, 173.2, 176.1, 176.2, 179.1, 179.2
AMEND: 171, 173, 176, 179, 180
Filed 05/28/2020
Effective 07/01/2020
Agency Contact: Ginger Wolfe (916) 621-2886

File# 2020-0518-04
DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL
Administrative Emergency Decisions

The Department of Alcoholic Beverage Control (Department) filed this emergency action to adopt a regulation authorizing the Department to issue emergency decisions, pursuant to Government Code section 11460.10 et seq., for the temporary suspension of a license, temporary suspension of specific license privileges, or temporary imposition of conditions on a license in situations where licensee activity involves an immediate threat to the public health, safety, or welfare, as specified, that requires immediate action.

Title 4
ADOPT: 147
Filed 05/28/2020
Effective 05/28/2020
Agency Contact: Robert de Ruyter (916) 419-8958

File# 2020-0527-03
DEPARTMENT OF ALCOHOLIC BEVERAGE
CONTROL
Requirements for Delivery — Minor Decoys

In this emergency action, the Department of Alcoholic Beverage Control adopts a regulation governing the use of minor decoys in the internet, telephonic, or other electronic purchase of alcoholic beverages for delivery by a licensee or employee or agent of a licensee.

Title 4
ADOPT: 141.1
Filed 06/03/2020
Effective 06/03/2020
Agency Contact: Robert de Ruyter (916) 419-8958

File# 2020-0511-01
DEPARTMENT OF CORRECTIONS AND
REHABILITATION
Limited Term Light Duty Assignments/Temporary
Modified Work Assignment

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 05/27/2020
Effective 06/01/2020
Agency Contact: Sarah Pollock (916) 445-2308

File# 2020-0416-01
DEPARTMENT OF MOTOR VEHICLES
Entry Level Driver's Training for CDL Applicants

In this regular rulemaking action the Department of Motor Vehicles adopts requirements for commercial driver's license entry-level driver training pursuant to Vehicle Code section 15250.1.

Title 13
ADOPT: 26.03
Filed 05/27/2020
Effective 07/01/2020
Agency Contact: Randi Calkins (916) 657-8898

File# 2020-0512-01
DEPARTMENT OF PESTICIDE REGULATION
Field Fumigation Posting

In this action, the Department of Pesticide Regulation amends regulations concerning pesticide worker safety. Specifically, the action increases the clarity, enforceability, and consistency with federal standards of the Department's regulations and aligns field soil fumigation posting requirements with pesticide product labeling.

Title 3
AMEND: 6000, 6470, 6776, 6784
Filed 05/29/2020
Effective 07/01/2020
Agency Contact: Lauren Otani (916) 445-5781

File# 2020-0520-03
EDUCATION AUDIT APPEALS PANEL
Audits of K-12 LEAs — FY 2020-21

In this emergency rulemaking action, the Education Audit Appeals Panel amends the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting, incorporated by reference at Title 5 California Code of Regulations section 19810, for the 2020-2021 fiscal year.

Title 5
AMEND: 19810
Filed 06/03/2020
Effective 06/03/2020
Agency Contact:
Timothy E. Morgan (916) 445-7745

File# 2020-0221-02
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Outdoor Agricultural Operations During Hours of
Darkness

This action by the Occupational Safety and Health Standards Board amends and adopts standards relating to illumination levels for the operation of agricultural equipment and outdoor agricultural operations during the hours between sunset and sunrise.

Title 8
ADOPT: 3449, 3449 Appendix A
AMEND: 3441
Filed 06/03/2020
Effective 07/01/2020
Agency Contact: Christina Shupe (916) 274-5721

**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.