



California Regulatory Notice Register

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

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**PROPOSED ACTION ON
REGULATIONS**

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TITLE 2. SECRETARY OF STATE

CAL-ACCESS Software Vendor Certification

NOTICE IS HEREBY GIVEN that the California Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail or e-mail to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than August 3, 2020.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be provided to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: June 19, 2020 through August 3, 2020.

AUTHORITY AND REFERENCE

Government Code section 84602(b)(1) requires the SOS to develop an online filing and disclosure system that, among other criteria, ensures the security of data entered and stored in the system. Government Code section 84602(b)(2) requires the SOS to accept test files from software vendors and others wishing to file reports

electronically. These regulations implement those statutory requirements.

Authority cited: Section 84602, Government Code.

References cited: Sections 11020, 81004, 82026, 84605, and 91000.5, Government Code; Section 1633.11, Civil Code.

INFORMATIVE DIGEST

As required by Government Code section 84602, in 1999 the SOS created CAL-ACCESS, a database and filing system used to make much of the lobbying and campaign finance information required by the Political Reform Act of 1974 (PRA) available online to the public at no cost to users. The system functioned well for years, but is now 20 years old, components of it are no longer supported by the vendor, and as a result the system has periodically crashed and denied public access. Senate Bill (SB) 1349 (Chapter 845, Statutes of 2016) modified Government Code section 84602 to require the SOS to replace CAL-ACCESS with a new system that uses a data-driven means or method that allows filers to submit required filings free of charge in a manner that facilitates public searches of the data.

Pursuant to Government Code section 84602(b), the SOS has drafted these proposed regulations to address the requirement for the system replacing the current CAL-ACCESS, the CAL-ACCESS Replacement System (CARS), that software vendors be able to file reports electronically. The SOS consulted with software vendors in drafting these regulations.

The SOS is proposing to add Chapter 16 to the California Code of Regulations to establish a certification process for software vendors who wish to file electronically with the CARS through an Application Programming Interface (API) that the SOS is creating to achieve this electronic filing. The software vendors requested that the SOS include the option of filing through an API in the CARS system and the SOS agreed to make sure the system retained that feature. Filing through an API enables software vendors to file statements and reports rapidly for multiple clients near the filing deadlines. These regulations only apply to software vendors who file through the API, and do not apply to filers who file in the CARS by other means, such as by bulk upload or filing individually with the system.

Policy Statement Overview/Anticipated Benefits of Proposal

With the move to exclusive electronic filing, it is critical that the SOS ensures the information a filer attests to is what they had intended to file. This is especially important with CARS given that filers will submit statements and reports that comply electronically with the requirement to sign under penalty of perjury, but without original signatures. Under the PRA, candidates,

treasurers and other filers are required to verify and sign under penalty of perjury that to the best of their knowledge the information they submit is true, complete and correct. It is necessary that the SOS ensure reports or statements filed through the API comply with this requirement. These regulations allow the SOS to specifically delineate how this shall be done. These regulations provide for a certification process for software vendors that protects the security of the data transmitted into CAL-ACCESS and delineates expectations on software vendors for providing data compliant and consistent with the PRA, including future amendments to that law. These regulations clarify the application and certification procedures for software vendors to use the API. This protects the software vendors because it spells out the certification and decertification process as well as how issues can be resolved. A regulation that requires software vendors to make changes to their software when necessary prevents them from holding up changes the SOS makes to CAL-ACCESS, including changes needed due to changes in the law.

In addition, Government Code section 84602(b)(2)(A) requires the Secretary of State to publish and make available to the public a list of software vendors who have submitted acceptable test files for the CARS system. Vendors who have completed the certification process will be published on this list. Further, vendors may be certified to submit information for some campaign or lobbying forms, but not the full suite of forms. Through the certification process, vendors can clearly designate which forms they are seeking approval to be able to file through the API.

The proposed regulations accomplish the mandate of Government Code section 84602. The benefit of these proposed regulations is that they will provide guidance to the SOS and software vendors on the procedure for being certified to use the API to transmit data electronically to the CARS. These regulations protect software vendors by preventing them from being unreasonably decertified as the law or CAL-ACCESS changes and furthers the purposes of the PRA by ensuring only accurate data is transmitted over the API.¹

For further discussion of the benefit analysis, please see “Results of the Economic Impact Assessment”.

¹ Software vendors transmitting accurate data over the API refers to sending data in the proper format that fills the right fields, and matches what the filer submitted to the vendor, among other things. (It does not refer to the correctness of the underlying dollar amounts and totals which the filer is responsible for reporting and verifying.)

Consistency/Compatibility with Existing State Regulations

After conducting an evaluation for regulations in this area, the SOS has determined that these are the only regulations dealing with certifying software vendors to use the API. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing the Regulations: None.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Numerous software vendors already electronically file with the existing CAL-ACCESS system. These regulations provide clarity for how they will continue those activities with the CARS. The new certification process is necessary to ensure compliance with the new data-driven method for filers to submit required filings but does not significantly change the relationship between CAL-ACCESS and software vendors.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The SOS has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The SOS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

Effect on Small Business: The SOS recognizes that these regulations apply to small businesses insofar as current software vendors who file with the existing CAL-ACCESS are small businesses. However, the SOS has determined that these regulations will not im-

pact those small businesses in any significant manner. The certification process provided for by these regulations is necessary to ensure the accurate transmission of data into the CARS, but does not significantly change the relationship between CAL-ACCESS and software vendors.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulations accomplish the mandate of Government Code section 84602. The proposed regulations also further the SOS's dedication to making government more transparent and accessible in the areas of elections, business, political campaigning, legislative advocacy, and historical treasures. Lastly, these regulations protect the integrity of information to the public seeking government information electronically, as well as providing filers with a sound electronic filing process. As a result, this indirectly benefits the general welfare of California.

These proposed regulations will provide guidance to the SOS and software vendors on the procedure for being certified to use the API to transmit data electronically to the CARS. These regulations protect software vendors by preventing them from being unreasonably decertified as the law or CAL-ACCESS changes and furthers the purposes of the PRA by ensuring only accurate data is transmitted over the API.

These regulations are not anticipated to create or eliminate jobs within the State of California, create or eliminate existing businesses within the State of California, or expand or eliminate existing businesses within the State of California. The benefits of these regulations are to comply with the legislative mandate for the SOS to allow software vendors to file reports electronically in the CARS.

The full Economic Impact Statement is presented in the Initial Statement of Reasons.

CONSIDERATION OF ALTERNATIVES

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

The SOS considered the following alternatives:

- Allowing open access to the CARS API so that any party could use it to transmit data electronically to the system.
- Allowing software vendors to obtain access to the CARS API without being certified.
- Allowing for the electronic transmission of data into the CARS through an API or other methods but requiring filers to log into the CAL-ACCESS system to verify the content of their submission before it can be submitted.

The SOS determined that a certification process for software vendors is the best option relative to those stated alternatives. Allowing open access to the API creates an unreasonably high risk that inaccurate data will be posted to CAL-ACCESS. This also creates an unreasonable risk of compromise to the information security of the CARS. Approving vendors without a regulatory certification process creates a less transparent process for software vendors to obtain access to the API. A regulatory process describes software vendors' responsibilities to the SOS and CAL-ACCESS, but more importantly delineates a neutral and non-arbitrary process for approval to use the API and procedures for de-certification. Requiring filers to log into CAL-ACCESS to verify their data before submission does not conform to past practice under the law of software vendors filing rapidly for multiple clients with CAL-ACCESS through a means external to logging in to CAL-ACCESS. The SOS will, however, offer an alternative means to submit data to the CARS that does not require software vendor certification. This is the bulk upload process, where filers will transmit the data in bulk and then log in to CAL-ACCESS to certify it. This option will be available to software vendors who choose not to make use of the API and related certification process for whatever reason.

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

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

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

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

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

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

CONTACT PERSONS

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

Taylor Kayatta
California Secretary of State
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Sacramento, CA 95814
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tkayatta@sos.ca.gov

The backup contact person is:

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

**TITLE 4. CALIFORNIA GAMBLING
CONTROL COMMISSION**

**Licensing
CGCC-GCA-2020-01-R**

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest after consideration of all relevant public comments, objections, and recommendations received concerning the proposed action. Comments, objections, and recommendations may be submitted as follows:

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any

time during the 45-day public comment period, which closes on **August 4, 2020**. Written comments relevant to the proposed regulatory action may be sent by mail, facsimile, or e-mail, directed to one of the individuals designated in this notice as a contact person. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than midnight on August 5, 2020**. Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.

PUBLIC HEARING

The Commission has not scheduled a public hearing on this matter. Any interested person, or his or her authorized representative, may request a hearing pursuant to Government Code section 11346.8. A request for a hearing should be directed to the person(s) listed under Contact Persons no later than 15 days prior to the close of the written comment period.

ADOPTION OF PROPOSED ACTION

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19800, 19801, 19811, 19816, 19823, 19824, 19825, 19826, 19827, 19840, 19841, 19844, 19850, 19851, 19852, 19853, 19854, 19860, 19862, 19864, 19869, 19870, 19876, 19883, 19893, 19912, 19914, 19920, 19924, 19951, 19955, 19963, 19982, and 19984 of the Business and Professions Code; and to implement, interpret or make specific sections 7.5, 10, 19800, 19801, 19805, 19811, 19816, 19823, 19824, 19825, 19826, 19827, 19840, 19841, 19844, 19845, 19846, 19850, 19851, 19852, 19853, 19854, 19855, 19856, 19857, 19858, 19859, 19860, 19861, 19862, 19864, 19865, 19866,

19867, 19868, 19869, 19870, 19871, 19873, 19876, 19877, 19880, 19881, 19883, 19890, 19891, 19893, 19910, 19911, 19912, 19914, 19920, 19924, 19930, 19931, 19940, 19943, 19951, 19954, 19955, 19960, 19963, 19982, and 19984 of the Business and Professions Code, the Commission is proposing to adopt the following changes to Chapters 1, 2, 2.1, 2.2, 3, 4, 5, 6, 7, 8, 10 and 11 of Division 18 of Title 4 of the California Code of Regulations.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

The California Gambling Control Commission (Commission) is the state agency charged with the administration and implementation of the California Gambling Control Act (Act or GCA).¹ Under the Act, the Commission is tasked with assuring that licenses, registrations, approvals, and permits (including work permits) are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.² These regulations implement various aspects of the Act and provide guidance to the procedures required to determine the suitability to individuals for licensure and other requirements of the Act. These regulations would replace the Commission's five current registration and licensing processes with a single unified process across all license categories.

A majority of the proposed changes consist of a general reorganization of the regulations and the combination of similar but separate processes. Additionally, clarity and specificity are provided in the licensing process. Finally, the program for licensing gambling businesses and gambling business employees is repealed.

EXISTING LAW:

Business and Professions Code section 19811, subdivision (b), vests the Commission with jurisdiction over all persons or things having to do with the operations of gambling establishments in this state.

Business and Professions Code section 19824, provides the Commission with "*all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of*" the Act.

Business and Professions Code section 19825 of the Business and Professions Code provides authority for the Commission to elect to utilize the administrative procedures act in place of a hearing or meeting of an adjudicative nature under the GCA.

Business and Professions Code section 19826, in pertinent part, assigns the Bureau with the responsibility to investigate suspected violations of the Act; to investigate complaints against licensees; to initiate appropriate disciplinary actions; and, to approve the play of any controlled game, as specified.

Business and Professions Code section 19840 allows the Commission to adopt regulations for the administration and enforcement of the Act.

Business and Professions Code section 19841, subdivision (c), provides the Commission the authority to adopt regulations that implement the provisions of the Act relating to licensing and other approvals.

Business and Professions Code section 19841, subdivision (h), mandates that the Commission's regulations shall "[p]rescribe minimum procedures for adoption by owner licensees to exercise effective control over their internal fiscal and gambling affairs," as specified. Subdivision (i) provides that the Commission's regulations shall "[r]estrict limit or otherwise regulate any activity that is related to the conduct of controlled gambling, consistent with the purposes of" the Act.

Business and Professions Code section 19841, subdivision (o) provides authority for the Commission to restrict, limit, or otherwise regulate any activity that is related to the conduct of controlled gambling.

Business and Professions Code section 19861 provides criteria and conditions for the issuance of a gambling license for a gambling establishment that may not be open to the general public, as specified.

Business and Professions Code section 19870, subdivision (a) provides authority for holding evidentiary hearings, and states that "*the Commission, after considering the recommendation of the chief and any other testimony and written comments as may be presented at the meeting, or as may have been submitted in writing to the commission prior to the meeting, may either deny the application or grant a license to an applicant who it determines to be qualified to hold the license.*"

Business and Professions Code section 19871, subdivision (a) provides authority for promulgating regulations pertaining to the evidentiary hearing process, and provides a list of items that must be part of the process by stating that "*[t]he Commission meeting described in section 19870 shall be conducted in accordance with regulations of the Commission . . .*"

Business and Professions Code section 19984, subdivision (b), provides the Commission the authority to establish reasonable criteria for any person or entity that provides proposition player services to gambling

¹ Business and Professions Code, Division 8, Chapter 4, section 19800 et seq.

² Business and Professions Code section 19823, subdivision (a), paragraph (1).

establishments. Under this section, the Commission may impose disclosures, approvals, conditions, or limitations as it deems necessary to protect the integrity of controlled gambling.

Business and Professions Code section 19984, subdivision (c), provides the Department of Justice³ the authority to perform background checks, financial audits, and other investigatory services as needed, pursuant to Commission regulations, to assist the Commission in regulating Third-Party Providers of Proposition Player Services (TPPPS).

EFFECT OF REGULATORY ACTION:

This proposed action amends the Commission’s licensing regulations to better implement various aspects of the Act in order to provide a consistent, streamlined licensing process. These regulations provide clear direction by ensuring clarity and uniformity for optimal oversight and compliance.

ANTICIPATED BENEFITS OF PROPOSED REGULATION:

These proposed regulations will have the benefit of providing specific procedures to the entire application process, from applying to the Commission for a license or work permit through review by the Bureau and Commission. This streamlining and making consistent of all processes will have the benefit of making the application process faster while strengthening the protection to the public by ensuring that only people of good character, honesty, and integrity are allowed to work in controlled gaming.

Additional aspects of the regulations have been updated to provide clarity and consistency. These include: expanding the ability to appoint someone to assist an applicant or license to all licensing categories; expanding the defined terms to provide further clarity to the Commission’s regulations; reorganizing Commission forms to reduce both the number of forms and the removal of unnecessary questions; and, updating Commission regulations for other technical changes that will clarify and improve the functions of the Bureau and Commission.

SPECIFIC PROPOSAL:

This proposed action will make changes within Division 18 of Title 4 of the California Code of Regulations, as follows:

A general change has been made in the proposal to replace the word “shall” with other words less subject to interpretation.

³ In the Act, “department” refers to the Department of Justice. While the Act assigns certain powers and authority to the department, in actual practice the responsibility for fulfilling the obligations imposed upon the department is delegated to the Bureau of Gambling Control, pursuant to Business and Professions Code section 19810.

CHAPTER 1. GENERAL PROVISIONS
ARTICLE 1. DEFINITIONS AND
GENERAL PROCEDURES

Amend Section 12002. General Definitions.

This section provides general definitions for overall use in this division. As part of this proposal, new definitions are proposed, definitions are moved from other sections, and one definition is repealed. Additional changes have been proposed to other definitions, including a general renumbering to reflect the new and repealed definitions.

Amend Section 12003. General Requirements.

This section provides general requirements related to the storage of records. To be consistent with other changes in this proposed action, the reference to gambling businesses in subsection (b) is removed. Additionally, this section is updated to be consistent with definitions in Section 12002.

Subsection (c) is revised to change the requirement for changing an approved location from “within five days after” to “prior to.”

Amend Section 12004. Notification of Contact Information Change.

This section provides instructions to licensees and holders of work permits on how to notify the Bureau of any changes to their contact information. This section and attached form are updated to be consistent with definitions in Section 12002.

Adopt Section 12005. Prohibited Player-Dealer Participation.

This section provides prohibited activities that an individual may not engage in without have a TPPPS business license and TPPPS contract, either as an owner or an employee, in any group or entity that provides proposition player services without having a TPPPS business license and TPPPS contract.

Amend Section 12006. Service of Notices, Orders, and Communications.

This section provides standards for notices that are required by Commission regulation. This provision is modified to clarify that they apply to notices sent to holders of a work permit.

Repeal Section 12008. Registration and License Application Fees.

Section 12008 provides for all of the application fees associated with each license type broken down by regular, temporary, and renewal licenses.

Amend Section 12014. Subpoenas.

This section provides instructions and processes for parties to issue subpoenas under the Commission’s statutory authority. This section is revised to provide a name to the attached form and reformat the form to

better match other forms. Additionally, the form is renumbered to CGCC-CH1-02 (New 05/20).

Amend Section 12015. Withdrawal of Applications.

New subsection (g) provides that a temporary or interim license is not automatically cancelled but is instead cancelled if the Commission grants the withdrawal request.

Amend Section 12017. Abandonment of Applications.

New subsection (f) provides that when abandonment is determined, any associated temporary or interim license is automatically cancelled as well.

Amend Section 12035. Issuance of Interim Renewal Licenses.

This section provides standards and conditions for issuing an interim renewal license.

Paragraph (4) of subsection (b) is amended to a replace regular license with initial or renewal license.

Adopt Section 12040. Mandatory and Discretionary Grounds for Denial

This section provides minimum criteria for the denial of a license. Currently, three sections (12105, 12346, and 12355) provide these standards for work permits, gambling licensees and key employee licenses. In addition, TPPPS licenses are subject to Sections 12204 and 12218.11 for ineligibility for registration and licensure. These five sections are combined to provide a single section. Additionally, this section is updated to be consistent with definitions in Section 12002.

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS

Amend Section 12052. Commission Meetings; General Procedures; Scope; Rescheduling of Meeting.

This section provides information on how the Commission issues notices for the consideration of applications. This section is revised to reformat the form to better match other forms. Additionally, the form is renumbered to CGCC-CH1-03 (New 05/20).

Amend Section 12056. Evidentiary Hearings.

This section provides direction and guidelines for the election of either an Administrative Procedures Act (APA) or GCA hearing.

Subsection (e) is added to this section to provide clarity that an APA or GCA hearing is sufficient to meet the statutory hearing requirement listed in a B&P Code section 19914. B&P Code section 19914, subdivisions (a) and (b), provides that the Commission may revoke a work permit that was issued by a local authority.

ARTICLE 3. DESIGNATED AGENT

Adopt Section 12080. Requirements.

Section 12080 provides regulations regarding the appointment of designated agents. A designated agent is a person who is authorized to assist an applicant or licensee on a specified set of issues and may appear before the Commission on behalf of an applicant or licensee if so designated.

Adopt Section 12082. Standards of Representation.

Section 12082 provides the minimum standards and responsibilities of a designated agent while they remain appointed.

CHAPTER 2. LICENSES AND WORK PERMITS

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Amend Section 12100. Definitions.

This section provides definitions for use by this Chapter. The definitions of this chapter have been moved to the general definitions of Section 12002.

Repeal Section 12101. Forms.

This section provides for the incorporation of forms. For better clarity, the incorporation of each form has been placed in the section where the form is mentioned; and, this section is repealed.

Adopt Section 12102. General Provisions.

This section provides general provisions related to each license. Where these provisions have been moved from existing provisions, terms have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12200.1. Certificate. (Section 12104. TPPPS Certificate.)

Section 12200.1 is renumbered to Section 12104 and renamed to TPPPS Certificate. This provision is further modified, with non-substantive changes and to make terms match those revised in Section 12002.

Amend Section 12353. License Content; License Display and Presentation. (Section 12106. Badges.)

Section 12353 is renumbered to Section 12106 and renamed Badges. This section provides the content of the badge and how the holder of the badge must display, maintain, and return their badge. Currently, in addition to Section 12353 [key employee license], Section 12200.3 provides the badge requirements for TPPPS licensees. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. Work permit badges are added to these requirements. This proposal would also

require that a gambling licensee be issued and wear a badge while on duty in the gambling establishment.

Adopt Section 12108. Replacement of a Badge.

Section 12108 provides procedures for a licensee or a holder of a work permit to request a replacement badge. Currently, program specific provisions already provide for this function. Section 12140 provides for replacement work permit badges, Section 12200.5 provides for the replacement of TPPPS badges and subsection (b) of Section 12352 provides for the replacement for key employee licenses. As badges are currently not provided to owners of a cardroom, there are no provisions for providing a replacement badge. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Adopt Section 12110. Change in Employment Status.

Section 12110 provides a process for an employee or owner to inform the Bureau of a change in employment status. Existing Section 12130 [work permits] has been combined with Section 12352 [key employee license] and expanded to provide a single consistent process. This section provides the specifics of the process for notifying the Bureau of a change in employment status, including the submittal of a Notification of Employment Change, CGCC-CH2-02 (New 05/20) or Notification of Employee Separation, CGCC-CH2-03 (New 05/20), as specified. The amendments to this section will expand portability to all employee licenses.

ARTICLE 2. INITIAL AND RENEWAL
LICENSES AND WORK PERMITS

Repeal Section 12104. Term of Work Permit.

Currently Section 12104 provides that a Commission work permit is valid for two years, and that if a temporary work permit had been issued, any issued Commission work permit shall be considered to have been issued when the temporary work permit was issued.

Repeal Section 12105. Mandatory and Discretionary Grounds for Denial of a Work Permit.

Section 12015 provides grounds for mandatory and discretionary denials of a Commission work permit. This section is repealed and incorporated into proposed Sections 12040, 12108, and 12118.

Amend Section 12342. Initial Gambling License Applications; Required Forms; Processing Times. (Section 12112. Initial License Applications; Required Forms.)

Section 12342 is renumbered to Section 12112 and renamed Initial License Applications; Required Forms. The sections combined with Section 12342 are Section 12350 [key employee license], Sections 12202 and

12203 [TPPPS registration], and 12218.7 [TPPPS licenses]. This section provides the specifics of the application process including what is considered a complete application. This section provides that an Application for Employee Category License, CGCC-CH2-04 (New 05/20) or Application for Owner Category License, CGCC-CH2-05 (New 05/20), along with any relevant supplemental or additional forms must be provided.

Subsection (a) provides the actual application forms:

- Application for Employee Category License, CGCC-CH2-04 (New 05/20) requires that information be submitted related to each individual that is applying for a key employee license, Commission work permit, TPPPS supervisor license, TPPPS worker license. This form represents a combination of BGC-APP-001 (Rev. 11/07) [various], BGC-021 (Rev. 07/17) [work permit], BGC-023 (Rev. 07/17) [work permit], BGC-031 (Rev. 04/13) [key employee], BGC-035 (Rev. 07/17) [interim key employee], BGC-434 (Rev. 04/13) [TPPPS supervisor, TPPPS player and TPPPS other employee] and BGC-435 (Rev. 04/13) [TPPPS supervisor, TPPPS player and TPPPS other employee]. The form requires information related to the applicant's personal, financial, contractual, and legal history for when this form is used as a renewal application.
- Application for Owner Category License, CGCC-CH2-05 (New 05/20) requires that information be submitted related to each individual or business that is applying for a gambling license or TPPPS owner license. This form represents a combination of BGC-APP-001 (Rev. 11/07) [various], BGC-030 (Rev. 4/13) [gambling license], BGC-433 (Rev. 04/13) [TPPPS owner] and BGC-435 (Rev. 04/13) [TPPPS owner]. The form requires information related to the applicant's personal, financial, contractual, and legal history for when this form is used as a renewal application.

Subsection (b) provides that for the supplemental forms:

- Business Entity: Supplemental Information, CGCC-CH2-06 (New 05/20) requires that information be submitted related to business entities that are also owners of a cardroom business license or TPPPS business license. This form represents a combination of BGC-APP-015B (Rev. 07/17) [gambling license], BGC-APP-015C (Rev. 07/17) [cardroom business license] and BGC-APP-034B (Rev. 07/17) [TPPPS license].

The form requires information related to the applicant's personal, financial, contractual, and legal history.

- Individual Owner/Principal: Supplemental Information, CGCC-CH2-07(New 05/20) requires that information be submitted related to each natural person that is also an owner of a cardroom business license or TPPPS business license. This form represents a combination of BGC-APP-015A (Rev. 07/17) [gambling license] and BGC-APP-034A (Rev. 07/17) [TPPPS license]. The form requires information related to the applicant's personal, financial, contractual, and legal history.
- Key Employee or TPPPS Supervisor: Supplemental Information, CGCC-CH2-08 (New 05/20) requires that information be submitted related to an applicant for a key employee license or TPPPS supervisor license. This form represents a combination of BGC-APP-016A (Rev. 08/09) [key employee] and BGC-APP-033 (Rev. 07/17) [TPPPS supervisor]. The form requires information related to the applicant's personal, financial, contractual, and legal history.
- Trust: Supplemental Information, CGCC-CH2-09 (New 05/20) requires that information be submitted related to each trust that is also an owner of a cardroom business license or TPPPS business license. Currently both a cardroom and TPPPS utilize the Trust Supplemental Background Investigation Information, BGC-APP-143 (Rev. 07/17). This proposed form would replace BGC-APP-143 but maintains much of its content. The form requires information related to the applicant's personal, financial, contractual, and legal history.
- Commission Work Permit or TPPPS Worker: Supplemental Information, CGCC-CH2-10 (New 05/20) requires that information be submitted related to an application for a work permit or TPPPS worker license. This form represents a combination of BGC-APP-032 (Rev. 07/17) [TPPPS Licensing] and BGC-436 (Rev. 07/17) [TPPPS Registration]. The form requires information related to the applicant's personal, financial, contractual, and legal history.
- Supplemental Information: Schedules, CGCC-CH2-11 (New 05/20) requires additional financial information from an applicant in conjunction with their specific supplemental form.
- Spousal Information, CGCC-CH2-12 (New 05/20) is required in paragraph (7), renumbered

from paragraph (5). This form requires that when applying for a cardroom owner type license, an applicant and their spouse provide the specific relationship the spouse will have with the cardroom, including any potential rights through inheritance or community property. Existing regulations provide six forms, depending on the specific status being declared. As part of this process these six forms are being repealed and combined into the proposed form. This form represents a combination of BGC-APP-009A (Rev. 07/17), BGC-APP-010 (Rev. 07/17), BGC-APP-011 (Rev. 11/07), BGC-APP-012 (Rev. 11/07), BGC-APP-013 (Rev. 11/07) and BGC-APP-014 (Rev. 11/07).

Currently, the TPPPS licensing process does not include a form consideration of spouses; however, on a case-by-case basis applicants have been allowed to submit that their spouse will not have a relationship with a TPPPS and therefore does not require licensure. The proposed form has been drafted to allow for its use with a TPPPS owner type license.

- Paragraphs (6) through (17), inclusive, are repealed.
- Trust Supplemental Background Investigation Information, BGC-APP-143 has been moved to paragraph (4).
- Declaration of Full Disclosure, BGC-APP-005 has been repealed.
- Authorization to Release Information, BGC-APP-006 has been moved to subsection (c).
- Applicant's Declaration, Acknowledgment and Agreement (Community Property Interest), BGC-APP-011 has been combined with the Spousal Instructions form provided in paragraph (7).
- Applicant's Declaration, Acknowledgment and Agreement (Sole and Separate Property), BGC-APP-012 has been combined with the Spousal Instructions form provided in paragraph (7).
- Spouse's Declaration, Acknowledgment and Agreement (Community Property Interest), BGC-APP-013 has been combined with the Spousal Instructions form provided in paragraph (7).
- Spouse's Declaration, Acknowledgment and Agreement (Sole and Separate Property), BGC-APP-014 has been combined with the Spousal Instructions form provided in paragraph (7).
- Appointment of Designated Agent, BGC-APP-008 has been moved to subsection (e).

- Key Employee Report, BGC–LIC–101 has been repealed.
- Instructions to Applicant’s Spouse, BGC–APP–010 has been combined with the Spousal Instructions form provided in paragraph (7).
- Notice to Applicants, BGC–APP–001 has been combined into the forms provided in subsection (a).
- Request for Live Scan Service (BCII 8016) has been moved to subsection (d).
- Paragraph (8), renumbered from paragraph (18), provides that the form Request for Copy of Personal Income Tax or Fiduciary Return, FTB–3516C1 (Rev. 02/09 side 1–PIT) is required.
- Paragraph (9), renumbered from paragraph (19), provides that the form Request for Copy of Corporation, Exempt Organization, Partnership, or Limited Liability Company Return, FTB–3516C1 (Rev. 11/03 side 2–CORP) is required.
- Existing subsection (b) is repealed.
- Paragraphs (1) and (2) are moved to Section 12116.
- Paragraph (3) is repealed. This provision provides that should the Bureau need longer than the prescribed period to review an application, it must inform the applicant.

Subsection (c) provides for the Authorization to Release Information form:

- Authorization to Release Information, CGCC–CH2–13 (New 05/20) requires that the applicant authorize the Bureau to request additional information directly from the source of the information. This is an existing form as BGC–APP–006 (Rev. 07/17) and most of the proposed changes are non–substantive changes. One change extends the release expiration from 12 months to 24 months.

Subsection (c) is repealed. This provision provides that the Bureau may exceed the proscribed timelines for specific reasons.

Subsection (d) provides for the background verification forms. If an applicant is a resident of California, then the standard Live Scan service is available. This program is currently used for all application types. This process is not available for out of State residents, and currently those applicants do not submit a Live Scan, though one is technically required. Instead, they submit an Applicant Fingerprint Card, FD–258. The regulations have been modified to correctly reference the forms that are required.

- Request for Live Scan Service, California Department of Justice Form BCIA 8016 (Rev. 05/18) is an updated form maintained by another agency.
- Applicant Fingerprint Card, FD–258 is a form maintained by the Federal Bureau of Investigation and need not be adopted formerly as part of this regulation process.

Subsection (e) provides for the Appointment of Designated Agent form, which was previously discussed.

Amend Section 12345. Gambling License Renewals; Processing Times. (Section 12114. Renewal License Applications; Required Forms.)

Section 12345 is renumbered to Section 12114 and renamed Renewal License Applications; Required Forms. This section initially only applied to gambling licenses. However, it has been expanded and combined with other existing similar sections to provide a single consistent application process for all license types. The sections combined and incorporated into Section 12345 are Sections 12351 [key employee license] and 12218.8 [TPPPS licenses]. This new section provides the application process specifics including what is considered a complete application and the time frame they will be processed in. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Current subsection (c) is moved to Section 12116.

Current subsection (d) is repealed. This provision provided specific reasons the Bureau could exceed the required timelines.

Current subsections (e) and (f) are moved to Section 12116.

Adopt Section 12116. Processing Timelines for Applications.

Section 12116 provides for the timelines for application review. This section is a combination of provisions from the many review processes; including, Sections 12342 [gambling license], 12203 [TPPPS registration], 12218.7 [TPPPS licensing] and Section 12350 [key employee license]. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Adopt Section 12118. Objection to Local Work Permits.

Section 12118 makes effective paragraphs (1) and (3) of subdivision (c) of B&P Code section 19912 and B&P Code section 19914 by providing clarity on how objections and revocations of local work permits will occur. Additionally, this section provides a process for an applicant to request a hearing before the Commission. This section also provides the parameters of the hearing to consider either or both the Bureau’s objection and the revocation of a local work permit due to that objection.

Adopt Section 12120. Findings of Suitability Associated with a Tribal Compact.

This section provides consistency with Tribal–State Compacts (Compacts) ratified by Government Code section 12012.25 and subsequent sections providing for newer or amended Compacts. These Compacts require Tribal key employees, gaming resource supplies, and financial sources to secure licenses from Tribal Gaming Agencies and findings of suitability from the Commission. These provisions delineate the standards the Commission will consider for the Tribal findings of suitability. Additionally, the exclusion of shareholders that own less than 10 percent of a corporation is consistent with B&P Code section 19852 in that intermediary and holding companies may be bypassed in the licensing process.

ARTICLE 3. TEMPORARY LICENSES AND WORK PERMITS

Repeal Section 12120. Temporary Work Permits.

This section provides provisions for the issuance of temporary work permits. This includes conditions placed on temporary work permits, how the temporary work permit is associated with the application for a Commission work permit, and how a temporary work permit is extended should it expire before the application has been considered by the Commission.

In addition, Subsection (f) provides that if an applicant withdraws their application, the temporary license is likewise rendered invalid. This provision has been incorporated as subsection (g) of Section 12015.

Adopt Section 12122. General Provisions.

This section provides provisions that apply to all temporary licenses; including, how a temporary work permit is issued, how a temporary license is associated with a regular license and how a temporary license differs from a regular license.

Amend Section 12122. Criteria for the Issuance of Temporary Work Permit. (Section 12124. Temporary Employee Category Licenses.)

Section 12122 is renumbered to Section 12124 and renamed Temporary Employee Category Licenses. The section provides how a temporary license is issued, conditions of holding a temporary license, situations where a temporary license cannot be issued, and the requirements for a temporary license to be issued. This section currently applies to work permits; however, it has been expanded and combined with other existing similar sections to provide a single consistent process. This section is combined with Section 12126 [work permit], Section 12203.2 [TPPPS registration] and Section 12349 [key employee license]. Additionally, these provisions are

being expanded to include TPPPS supervisor licenses and TPPPS worker licenses.

Repeal Section 12124. Effect of Denial or Cancellation of Temporary Work Permit.

The repeal of this section is a non–substantive change as the provision is incorporated as subsection (e) of Section 12122.

Repeal Section 12126. Processing Times for Temporary Work Permit.

This section provides timelines for the issuance of temporary work permits. This section is incorporated as subsection (b) of Section 12124.

Adopt Section 12126. Temporary Owner Category License.

This section provides a regulatory structure for the issuance of temporary licenses in conjunction with application requests for gambling business licenses should the applicant request it. The section provides conditions of holding a temporary license, situations where a temporary license cannot be issued, and the requirements for a temporary license to be issued.

Amend Section 12128. Cancellation of Temporary Work Permit. (Section 12128. Cancellation or Conditioning of Temporary Licenses.)

Section 12128 is renamed Cancellation or Conditioning of Temporary Licenses. This section provides the process for cancelling or conditioning an already issued temporary license. This section currently only applies to work permits; however, it has been expanded and combined with other existing similar sections to provide a consistent process for all license types. The process for cancelling temporary employee licenses is a combination of Section 12128 [work permit], Section 12203.5 [TPPPS registration] and subsection (e) of Section 12354 [key employee license]. This change is non–substantive, with the necessity for the new definition discussed in that section.

Amend Section 12201. Registration. (Section 12130. TPPPS Registration)

Section 12201 is renumbered to Section 12130 and renamed TPPPS registration. Currently this section provides the registration process for TPPPS applicants. This process, as provided in Chapter 2.1, is much different than the licensing scheme for a cardroom and its employees. The registration process was developed as a short term solution when the program was initially established. This allowed for TPPPS applicants to begin work while the background investigation was pending. This process provided a registration that was valid for either one or two years and included its own denial and renewal provisions. A registrant could remain in this process for any number of cycles until a license was issued.

With the consolidation of the licensing regulatory requirements, the registration process is being phased out and future TPPPS applicants will now request a temporary license. However, as the process transforms, there may be registrations that expire in a timeline that does not allow them to be smoothly transitioned to the new licensure and temporary licensure processes. For those applicants, a different transition process is necessary.

ARTICLE 4. INTERIM OWNER
CATEGORY LICENSE

Repeal Section 12130. Change in Place of Employment — Work Permit Transfer.

Section 12130 provides a process for holders of a work permit to transfer the association of their work permit from one cardroom to another.

Repeal Section 12132. Processing Times for Application to Change Place of Employment.

Section 12132 provides the timelines with which an application for a change in place of employment for a work permittee is processed. This section has been replaced by Section 12124, the necessity of which is discussed with that section.

Amend Section 12349. Interim Licenses for Continued Operation Following Qualifying Events; Criteria; Processing Time; Conditions. (Section 12132. Article Definitions.)

Section 12349 is divided and renumbered to Sections 12132, 12134, 12136, 12138, and 12140. Section 12349 initially only applied to gambling licenses; however, it has been expanded to include TPPPS owner licenses. The terms used in these divided sections have been updated to be consistent with other changes to definitions, as provided in Section 12002. After the separation, Section 12349 provides the definitions unique to the interim license process.

Adopt Section 12134. General Provisions.

Section 12134 renumbers subsections (a) and (g)–(i) of Section 12349. These provisions provide general controlling requirements to an interim gambling business license; such as the business may continue operating with specific conditions, any new owner may sell their ownership interest, no interim or regular license is necessary, that an interim gambling business license does not prevent the application for a temporary license and how an interim gambling business license canceled. Additionally, a new provision is proposed to clarify that the approval with conditions, cancellation or denial of an interim gambling business license is not eligible for an evidentiary hearing.

Adopt Section 12136. Applications and Required Forms.

Section 12136 renumbers subsection (c) of Section 12349. This provision is non-substantively changed to make it consistent with other proposed changes. Additionally, two new provisions are proposed allow for an interim gambling business license to be renewed and what happens when an interim gambling business license expires without a regular license having been issued.

Adopt Section 12138. Criteria.

Section 12138 renumbers subsections (d) and (e) of Section 12349. These provisions are amended to be consistent with other changes to the regulations such as amended terms and allowing TPPPS owners to apply for an interim gambling business license. Additionally, the review timeline is amended to provide clarity in how the total timeline is divided between Bureau and Commission review.

Adopt Section 12140. Conditions.

Section 12138 renumbers subsection (f) of Section 12349. These provisions are amended to be consistent with other changes to the regulations such as amended terms and allowing TPPPS owners to apply for an interim gambling business license. This section provides automatic conditions to interim gambling licenses.

ARTICLE 5. SURRENDER OR
ABANDONMENT OF CARDROOM
BUSINESS LICENSE

Repeal Section 12140. Replacement Work Permit Badges.

Section 12140 provided a process to replace a work permit badge. This process is being replaced by a general process available to all license types in Section 12108.

Repeal Section 12142. Processing Times for Application to Replace Work Permit Badge.

Section 12142 provided a process to replace a work permit badge. This process is being replaced by a general process available to all license types in Section 12108.

Amend Section 12347. State Gambling License; Surrender; Abandonment. (Section 12142. Cardroom Business License; Surrender; Abandonment.)

Section 12347 is renumbered to Section 12142 and retitled “cardroom business license; Surrender; Abandonment.” The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12348. State Gambling Licenses: Prior Surrender or Abandonment. (Section 12144. Cardroom Business License: Prior Surrender or Abandonment.)

Section 12348 is renumbered to Section 12144 and retitled “cardroom business license; Prior Surrender or Abandonment.” The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

CHAPTER 2.1. THIRD-PARTY PROVIDERS OF PROPOSITION PLAYER SERVICES: REGISTRATION; LICENSING

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Repeal Section 12200. Definitions.

Section 12200 provides definitions for Chapter 2.1. As part of the consolidation, these definitions have been removed from this chapter; either being repealed or moved to another chapter. Those definitions that are moved have conforming changes to reflect other proposed changes.

Repeal Section 12200.3. Badge.

Section 12200.3 provides the specifics of the badge that is required to be worn by every licensed or registered individual. This section is combined and merged with Section 12353 into Section 12106.

Repeal Section 12200.5. Replacement of Badge.

Section 12200.5 provides the specifics of replacing a badge. This section is combined and merged into Section 12108.

Repeal Section 12200.6. Transfer or Reinstatement of Player Registration or License; Issuance of Additional Badge.

Section 12200.6 provides processes for changing employment status. This process has been incorporated into Section 12124, and made consistent with the other licensing processes.

Repeal Section 12200.10C. Submission of Contract or Amendment to Commission.

Section 12200.10C provides that the Bureau must provide the Commission an opportunity to review a TPPPS contract or amendment to an existing contract. This section is repealed.

Repeal Section 12200.14. Organization Chart and Employee Report.

Section 12200.14 requires the production and submittal of charts that provide both the ownership struc-

ture of the TPPPS business licensee and the organization of employees. The ownership information assisted the Bureau and Commission in determining that all proper individuals and entities were licensed while the organization of employees assisted in verifying that the proper annual fees were provided.

Repeal Section 12200.18. Revocation.

Section 12200.18 provides provisions that the Commission with specific grounds for which a license or registration may be revoked following the same procedures of a gambling establishment license. Many of the provisions have been moved to Section 12560, which is a non-substantive change that consolidates disciplinary procedures.

ARTICLE 2. REGISTRATION

Repeal Section 12202. Application for Registration.

Section 12202 provides for the application process for requesting a TPPPS registration. This process is repealed.

Repeal Section 12203. Processing of Applications for Initial Registration.

Section 12203 provides for the application processing requirements for an initial TPPPS registration. This process is repealed.

Repeal Section 12203A. Processing of Applications for Renewal of Registration.

Section 12203A provides for the application process for requesting a renewal TPPPS registration. This process is repealed.

Repeal Section 12203.1. Temporary Player Registration.

Section 12203.1 provides for the application process for requesting a temporary TPPPS player registration. This process is repealed.

Repeal Section 12203.2. Temporary Player Registration: Application; Criteria.

Section 12203.2 provides for the application criteria for requesting a temporary TPPPS player registration. This process is repealed.

Repeal Section 12203.3. Processing Times for Temporary Player Registration.

Section 12203.3 provides for the application processing times for requesting a temporary TPPPS registration. This process is repealed.

Repeal Section 12203.5. Cancellation of Temporary Registration.

Section 12203.5 provides conditions for the cancellation of a temporary TPPPS registration. This process is repealed.

Repeal Section 12204. Ineligibility for Registration.

Section 12204 provides the ineligibility requirements for receiving a TPPPS registration. This process is repealed.

Repeal Section 12205. Cancellation of Regular Registration.

Section 12205 provides for the cancellation of a TPPPS registration. This process is repealed.

Repeal Section 12205.1. Transition to Licensing.

Section 12205.1 provides for transitioning a TPPPS registration to a TPPPS license. This process is repealed.

ARTICLE 3. LICENSING

Repeal Section 12218. Request to Convert Registration to License.

Section 12218 provides for converting a TPPPS registration to a TPPPS license. This process is repealed.

Repeal Section 12218.1. Subsequent Registrants.

Section 12218.1 provides for the licensing of subsequent TPPPS registrants after the primary owner has transitioned to a TPPPS license. This process is repealed.

Repeal Section 12218.7. Processing Times — Request to Convert Registration to License.

Section 12218.7 provides for the conversion of a TPPPS registration to a TPPPS license. This process is repealed.

Repeal Section 12218.8. License Renewals.

Section 12218.8 provides for renewals of a TPPPS license. This process has been incorporated into Section 12124 and made consistent with the other licensing processes.

Repeal Section 12218.9. Processing of Applications for Renewal License.

Section 12218.9 provides for renewals of a TPPPS license. This process has been incorporated into Section 12124 and made consistent with the other licensing processes.

Repeal Section 12218.11. Ineligibility for Licensing.

Section 12218.11 provides for ineligibility for a TPPPS license. These provisions have been incorporated into Section 12040 and made consistent with the other licensing processes.

Repeal Section 12218.13. Term of License.

Section 12218.13 provides that a license is issued for a two year period. This provision has been incorporated into Section 12102 and made consistent with the other licensing processes.

CHAPTER 2.2. GAMBLING BUSINESSES:
REGISTRATION; LICENSING

ARTICLE 1. DEFINITIONS AND
GENERAL PROVISIONS

This Chapter is proposed to be repealed. Prior to the adoption of B&P Code section 19984, individuals, or an organization of individuals, provided proposition player services to cardroom business licenses. With the adoption of B&P Code section 19984, the Legislature mandated that the Commission require the licensure of any person or entity that provided proposition player services, and the approval of their contracts with the cardroom business licensee. This requirement was reflected in the approval of Chapter 2.1. When the original regulations were contemplated, a need was seen to allow for and regulate entities that provided proposition player services for a cardroom business licensee without a contract, which are identified as gambling businesses pursuant to this chapter. This Chapter provides these requirements.

Due to the nature of the marketplace, the original presumed need to allow for and regulate gambling businesses has proven to be incorrect. At the sunset of the program, only a single gambling business is either registered or licensed. This limited participation does not provide sufficient participation for the Bureau and Commission maintain active programs and is therefore proposed to be repealed.

Repeal Section 12220. Definitions.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.1. Certificate.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.3. Badge.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.5. Replacement of Badge.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.6. Transfer or Reinstatement of Player Registration or License; Issuance of Additional Badge.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.14. Organization Chart and Employee Report.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.15. Transfers and Sales.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.17. Emergency Orders.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.18. Revocation.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.20. Annual Fee.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12220.20a. Annual Fee as Applied to those Registered or Licensed Under Chapter 2.1.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

ARTICLE 2. REGISTRATION

Repeal Section 12221. Registration.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12222. Application for Registration.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12223. Processing of Applications for Initial and Renewal Registration.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12224. Ineligibility for Registration.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12225. Cancellation of Registration.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12225.1. Transition to Licensing.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

ARTICLE 3. LICENSING

Repeal Section 12233. Request to Convert Registration to License.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12235. Processing Times — Request to Convert Registration to License.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12236. Ineligibility for Licensing.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12237. Term of License.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12238. License Renewals.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

Repeal Section 12239. Processing of Applications for Renewal License.

Consistent with the repeal of Chapter 2.2, this provision has been repealed.

CHAPTER 3. CONDITIONS OF OPERATION
FOR TPPPS BUSINESSES

ARTICLE 1. GENERAL PROVISIONS

Amend Section 12250. Definitions.

Section 12250 provides definitions for the chapter that specifies conditions of operation for TPPPS business licensees. This section is amended to reflect other changes to defined terms and the repeal of Chapter 2.2 related to gambling businesses. One definition is moved from Section 12200 and other provisions have been renumbered accordingly.

Amend Section 12200.20. Annual Fee. (Section 12252. TPPPS Annual Fee.)

Section 12200.20 is renumbered to Section 12252 and renamed TPPPS Annual Fee. This section provides for the annual fee that each TPPPS business licensee is required to pay to the Bureau every year. While maintaining the existing fee structure, this section has been modified to remove unnecessary language and to provide clarity. Finally, this section has been modified to be consistent with other proposed changes.

Amend Section 12200.17. Emergency Orders. (Section 12254. Emergency Orders.)

This section is renumbered to Section 12254. This section provides that registrants and licensees shall be subject to emergency orders from B&P Code section 19931. This section is revised to be consistent with other proposed changes.

Amend Section 12200.15. Transfers and Sales. (Section 12256. Transfers and Sales.)

This section is renumbered to Section 12256. This provides guidelines and requirements for the transfer or sale of ownership interest in a TPPPS business license. This section is revised to include a provision being moved from Section 12200.14 [new subsection (d)]. Additionally, this section is amended to reflect other changes made to the defined terms.

ARTICLE 2. PLAYING BOOK

Amend Section 12260. General Provisions.

Section 12260 provides general provisions and requirements related to the operation of a playing book. This section is amended to reflect other changes to defined terms and the repeal of Chapter 2.2 related to gambling businesses.

Amend Section 12261. Review of Playing Book Forms.

Section 12261 provides the review process for playing book approval. This section is amended to reflect other changes to defined terms and the repeal of Chapter 2.2 related to gambling businesses.

Amend Section 12263. Electronic Playing Book Database Requirements.

Section 12263 provides requirements for electronic playing book databases. This section is amended to reflect other changes to defined terms and the repeal of Chapter 2.2 related to gambling businesses.

Amend Section 12264. Review and Certification of Electronic Playing Book Systems.

Section 12264 provides the application and review process for Electronic Playing Book Systems. The terms used in this section and the attached form have been updated to be consistent with other changes to definitions, as provided in Section 12002. Additionally, the form has been renumbered to CGCC-CH3-01 (New. 05/20).

ARTICLE 3. TPPPS CONTRACTS

Amend Section 12200.7. Proposition Player Contract Criteria. (Section 12270. TPPPS Contract Criteria.)

This section is renumbered to Section 12270 and renamed to TPPPS Contract Criteria. This section provides for the contract criteria between a cardroom business licensee and a TPPPS business licensee to allow for the provision of third-party services. This section is amended to reflect other changes to defined terms.

Amend Section 12200.9. Review and Approval of Proposition Player Contracts. (Section 12272. Review and Approval of TPPPS Contracts.)

This section is renumbered to Section 12272 and is renamed to Review and Approval of TPPPS Contracts. This section provides for the review and approval process conducted by the Bureau. This section is amended to reflect other changes to defined terms. Additionally, the form has been renumbered to CGCC-CH3-02 (New. 05/20).

Amend Section 12200.10A. Expedited Review and Approval of Proposition Player Contracts. (Section 12274. Expedited Review and Approval of TPPPS Contracts.)

This section is renumbered to Section 12274 and renamed to Expedited Review and Approval of TPPPS Contracts. This section provides for the expedited review and approval process conducted by the Bureau. This section is amended to reflect other changes to defined terms.

Amend Section 12200.10B. Review and Approval of Amendments to Proposition Player Contracts. (Section 12276. Review and Approval of Amendments to TPPPS Contracts.)

This section is renumbered to Section 12276 and is renamed to Review and Approval of Amendments to TPPPS Contracts. This section provides for the review and approval process conducted by the Bureau to amend an already approved contract. This section is amended to reflect other changes to defined terms.

Amend Section 12200.11. Extension of Proposition Player Contracts. (Section 12278. Extension of TPPPS Contracts.)

This section is renumbered to Section 12278 and is renamed to Extension of TPPPS Contracts. This section provides that a contract may be extended. This section is amended to reflect other changes to defined terms.

ARTICLE 4. SECURITY AND USE OF PLAYER'S BANKS

Amend Section 12287. Loss Notification.

Section 12287 provides requirements for written procedures related to notifying the Bureau as specified. This section is amended to reflect the repeal of Chapter 2.2 related to gambling businesses.

ARTICLE 5. COMPLIANCE

Amend Section 12290. Compliance.

Section 12290 provides requirements a TPPPS business licensee and its employees must follow. This section is amended to reflect other changes to defined terms and the repeal of Chapter 2.2 related to gambling businesses.

CHAPTER 4. GAMBLING EQUIPMENT MANUFACTURERS OR DISTRIBUTORS

Amend Section 12301. Registration of Manufacturers or Distributors.

This section is revised to be consistent with other proposed changes.

Amend Section 12309. Forms. (Section 12309. Forms; Fees.)

This section is renamed Forms; Fees. This section is revised to be consistent with the repeal 12008. As previously discussed, the fees of Section 12008(f) have been moved to this section. In addition, the forms are moved to the appendix instead of incorporated by reference. This is done to be consistent with other chapters. The forms are not otherwise modified.

CHAPTER 5. ACCOUNTING AND TRANSACTION APPROVALS

ARTICLE 1. ACCOUNTING AND FINANCIAL REPORTING

Amend Section 12311. Definitions.

This section provides the definitions for use in Chapter 5. Included in these definitions is the creation of subgroups of licenses by reported gross revenue. These definitions are revised from referring to licensees to specifically addressing cardroom business licensees and TPPPS business licensees. The intent of the regulation is to provide a requirement to the operators but not to all licensees (which also includes Key Employees, TPPPS supervisor, TPPPS players, and TPPPS other employees). This amendment of the terms clarifies that the accounting requirements apply to only the operators and not other licensees.

Amend Section 12312. Record Retention and Maintenance; General Provisions.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12313. Financial Statements and Reporting Requirements.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12315. Records and Reports of Monetary Instrument Transactions for Gambling Enterprises. (Section 12315. Records and Reports of Monetary Instrument Transactions for Cardroom Business Licensees.)

This section is renamed to Records and Reports of Monetary Instrument Transactions for Cardroom Business Licensees. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12316. Unclaimed or Abandoned Property.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

CHAPTER 6. GAMBLING LICENSES AND APPROVALS FOR GAMBLING ESTABLISHMENTS AND OWNERS; PORTABLE PERSONAL KEY EMPLOYEE LICENSES

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

This Chapter is proposed to be repealed. Currently this chapter provides licensing processes for the owners of cardrooms and key employees. With the merger of all licensing processes into Chapter 2, the provisions of this chapter are no longer needed and are either moved, repealed, or incorporated into other provisions.

Repeal Section 12335. Definitions.

Section 12335 provides two definitions for Chapter 6. As part of the consolidation of licensing processes, this chapter has been repealed.

ARTICLE 2. GAMBLING LICENSES

Repeal Section 12340. Gambling Licenses.

Section 12340 provides general conditions of a gambling license. As part of the consolidation of licensing processes this chapter has been repealed, with the exception of subsection (b) which has been moved to Section 12102.

Repeal Section 12341. Fee for Initial State Gambling License.

Section 12341 provides a fee that is required for initial gambling licenses. This fee is moved to the Application for Gambling Business License form so that this section can be repealed as part of the general consolidation of licensing processes.

Repeal Section 12346. Mandatory and Discretionary Grounds for Denial of Application for a Gambling License.

Section 12346 provides for a completion of mandatory and discretionary grounds for denial. As part of the consolidation of licensing procedures, this section has been combined into Section 12040 with conforming changes to be consistent with other proposed changes.

ARTICLE 3. PORTABLE PERSONAL KEY EMPLOYEE LICENSE

Repeal Section 12350. Initial Licenses; Required Forms; Processing Times.

Section 12350 provides the licensure process for requesting an initial key employee license. This process

has been incorporated into Section 12120 and made consistent with the other licensing processes.

Repeal Section 12351. License Renewals; Required Forms; Processing Times.

Section 12351 provides for the licensure process for requesting a renewal key employee license. This process has been incorporated into Section 12124 and made consistent with the other licensing processes.

Repeal Section 12352. Employment Status Notification; Replacement License; Required Forms; Processing Times.

Section 12352 provides processes for changing employment status or requesting a new badge. This process has been incorporated into Sections 12108 and 12124, and made consistent with the other licensing processes.

Repeal Section 12354. Interim Key Employee Licenses; Processing Times.

Section 12354 provides for the licensure process for requesting an interim key employee license (renamed temporary key employee license). This process has been incorporated into Sections 12122 and 12126, and made consistent with the other licensing processes.

Repeal Section 12355. Mandatory and Discretionary Grounds for Denial of Application for a Key Employee License.

Section 12355 provides for mandatory and discretionary grounds for denial. As part of the consolidation of licensing procedures, this section has been combined into Section 12040 with conforming changes to be consistent with other proposed changes.

CHAPTER 7. CONDITIONS OF OPERATION
FOR GAMBLING ESTABLISHMENTS

ARTICLE 1. GENERAL PROVISIONS

Amend Section 12360. Chapter Definitions.

Section 12360 provides definitions to terms only used in Chapter 7. As explained in the descriptive text of Section 12002, the definition of gaming activity is being moved and the remaining references renumbered accordingly. Additionally, the unreferenced text is re-designated subsection (a) with the last sentence being designated subsection (b) and all definitions renumbered to paragraphs under subsection (b).

Amend Section 12362. Statewide Involuntary Exclusion List.

Section 12362 provides a process whereby individuals can be reported for inclusion on the statewide invol-

untary exclusion list. The terms used in this section and attached form [CGCC-CH7-01 (New 05/20)] have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12364. Relocation of Gambling Establishment.

Section 12364 provides a process whereby a cardroom can get approval to change physical locations. The terms used in this section and attached form [CGCC-CH7-02 (New 05/20)] have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12357. Annual Fee. (Section 12368. Cardroom Business License Annual Fee)

Section 12357 is renumbered to Section 12368 and renamed to Cardroom Business License Annual Fee. This section provides for the annual fee that must be paid by a cardroom every year, including a new installment payment process. This section and associated form [CGCC-CH7-03 (New 05/20)] provide for the payment of the annual fee required by B&P Code section 19951, subdivision (b), paragraph (2), subparagraph (B). The terms used in this section and attached form have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12220.23. Exclusion. (Section 12369. Prohibited Player-Dealer Participation; Exclusion.)

Section 12220.23 is renumbered to Section 12369 and renamed Prohibited Player-Dealer Participation. This section provides that a cardroom business licensee is required to notify the Bureau of any unlicensed or registered gambling businesses operating within the gambling establishment. This provision is revised to be consistent with other regulatory changes; specifically, the repeal of gambling businesses and new Section 12570.

ARTICLE 2. EMERGENCY PREPAREDNESS,
SECURITY AND SURVEILLANCE PLANS

Amend Section 12370. Emergency Planning and Preparedness.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12372. Security and Surveillance Plan.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

ARTICLE 3. MINIMUM INTERNAL CONTROL STANDARDS (MICS) FOR CARDROOM BUSINESS LICENSEES

Amend Section 12380. Minimum Internal Control Standards; General Terms, Conditions, Definitions.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12381. Policies and Procedures.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12384. Drop and Drop Collection.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12385. Count; Count Room Functions.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12386. Cage Operation and Functions.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12387. Security and use of Floor Banks; Security of Gambling Equipment and Confidential Documents.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12388. Extension of Credit, Check Cashing, and Automatic Teller Machines (ATMS).

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12391. Gambling Floor Operation.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12392. House Rules.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided

ed in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12395. Security.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

Amend Section 12396. Surveillance.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. This section has been revised to repeal an unnecessary sunrise provision.

ARTICLE 9. PROGRAM FOR RESPONSIBLE GAMBLING

Amend Section 12460. Article Definitions.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12461. Posting Referral Information.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12462. Training Requirements.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12463. Self-Restriction Program.

The terms used in this section and the attached form [CGCC-CH7-04 (New 05/20)] have been updated to be consistent with other changes to definitions, as provided in Section 12002. The form has been renumbered to match the new form number scheme.

Amend Section 12464. Self-Exclusion Program.

The terms used in this section and the attached form [CGCC-CH7-05 (New 05/20)] have been updated to be consistent with other changes to definitions, as provided in Section 12002. The form has been renumbered to match the new form number scheme.

Amend Section 12465. Removal from the List of Self-Excluded Persons.

The terms used in this section and the attached form [CGCC-CH7-06 (New 05/20)] have been updated to be consistent with other changes to definitions, as provided in Section 12002. The form has been renumbered to match the new form number scheme.

Amend Section 12466. Responsible Gambling Program Review.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

ARTICLE 10. GAMING TABLES

CHAPTER 8. BINGO

Amend Section 12358. Request for Additional Temporary Tables for Tournaments or Special Events. (Section 12470. Request for Additional Temporary Tables for Tournaments or Special Events.)

Section 12358 is renumbered to Section 12470. This section and the associated form provide for the temporary issuance of tables for special events and the associated fees. The terms used in this section and the attached form have been updated to be consistent with other changes to definitions, as provided in Section 12002. These changes are non-substantive, with the necessity for the new definitions discussed in that section.

The new form, Cardroom Business License: Gaming Tables, CGCC-CH7-07 (New 05/20), is a combination of forms BGC-024 (Rev. 04/13) [permanent tables] and BGC-027 (Rev. 07/17) [temporary tables]. This new form does not request any additional information that is not currently required on those two forms. The new form adds space for a cardroom to request a reduction of tables. Currently, the Commission has a policy that allows for a request for reduction in permanent tables.

Amend Section 12359. Request for Additional Permanent Tables. (Section 12472. Request for Additional Permanent Tables.)

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Adopt Section 12474. Reduction in Permanent Tables

Section 12474 provides for a method through which a cardroom business licensee is able to reduce its number of permanent tables, how the application process works, and how it interacts with other requirements of the cardroom business licensee. This process currently exists and is handled on a case-by-case basis. Formalizing the process provides for clarity and consistency amongst all licensees. The terms used in this section are updated to be consistent with other changes to definitions, as provided in Section 12002.

ARTICLE 2. MANUFACTURERS, DISTRIBUTORS, AND VENDORS OF BINGO EQUIPMENT, DEVICES, SUPPLIES, AND SERVICES

Amend Section 12492. Interim Licenses; Initial and Renewal; Conditions.

This section is revised to update the form used to request live scan service, as previously discussed.

ARTICLE 10. REMOTE CALLER BINGO INTERIM LICENSES AND INTERIM WORK PERMITS

Amend Section 12500. Interim Licenses; Initial and Renewal; Conditions.

This section is revised to update the form used to request live scan service, as previously discussed. This change is non-substantive with no regulatory effect.

Amend Section 12503. Interim Work Permits; Initial and Renewal; Conditions.

This section is revised to update the form used to request live scan service, as previously discussed.

CHAPTER 10. DISCIPLINE, HEARINGS, AND DECISIONS

Amend Section 12550. Purpose and Scope.

This section is revised to be consistent with other proposed changes.

Amend Section 12554. Formal Hearing Process.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. The Summary Chart of Disciplinary Guidelines, form CGCC-12554 is being repealed.

Amend Section 12556. Factors in Mitigation or Aggravation of Penalty.

This section is revised to be consistent with other proposed changes. Many of the changes are to be consistent with the removal of Chapter 2.2. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

- Subsection (l) provides that a violation by an employee of a TPPPS business licensee may be used as a mitigating or aggravating factor when considering the impact of any penalty. This provision is revised to include cardroom business licenses, in addition to TPPPS business licensees, and to include independent contractors in addition to employees. These revisions make the standards

applied to TPPPS business licensees and cardroom business licenses consistent with the existing standards applied to gambling businesses [existing subsection (n)].

Amend Section 12558. Disciplinary Guidelines for Holders of Work Permits.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12560. Disciplinary Guidelines for Third-Party Providers of Proposition Player Services Licensees or Registrants. (Section 12560. Disciplinary Guidelines for Third-Party Proposition Player Services Licensees.)

This section is renamed Disciplinary Guidelines for Third-Party Proposition Player Services Licensees. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002. Consistent with the repeal of Section 12200.18 and 12220.18 those provisions referencing those sections have been updated to provide the actual guideline.

Additionally, this section uses the term gambling establishment to refer to a licensed entity. The gambling establishment is the location where the controlled game is conducted and is not an entity that is able to act in any way. In these instances, the references to the gambling establishment acting in any way have been corrected to cardroom business licensee.

Repeal Section 12562. Disciplinary Guidelines for Gambling Business Licensees Or Registrants.

This section provides for disciplinary guidelines for licensees or registrants associated with a gambling business. As discussed in Chapter 2.2, the program associated with registering and licensing gambling businesses is repealed; and, therefore the associated disciplinary guidelines are unnecessary and also being repealed.

Amend Section 12564. Disciplinary Guidelines for Manufacturers or Distributors.

This section is revised to be consistent with other proposed changes.

Amend Section 12566. Disciplinary Guidelines for Gambling Establishments. (Section 12566. Disciplinary Guidelines for Cardroom Owner Type Licenses.)

Section 12566 is renamed to Disciplinary Guidelines for Cardroom Owner Type Licenses. The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

Amend Section 12568. Disciplinary Guidelines for Holders of Licenses, Findings of Suitability, or Approvals.

The terms used in this section have been updated to be consistent with other changes to definitions, as provided in Section 12002.

CHAPTER 11. CONFLICTS-OF-INTEREST

Appendix B

The terms used in this section are being updated to be consistent with other changes to definitions, as provided in Section 12002.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

The Commission is vested with jurisdiction and supervision over gambling establishments and over all persons or things having to do with the operations of gambling establishments in California. The scope and content of the Commission’s regulations is generally set forth in section 19841. While the Bureau [Department of Justice] has also been granted some authority to adopt regulations (section 19826), that authority is limited to the adoption of regulations reasonably related to its specified duties and responsibilities. These proposed regulations are not inconsistent or incompatible with any Bureau regulation (Title 11, CCR, Division 3), nor do they fall within the Bureau’s authority to adopt regulations.

Currently, the Bureau’s regulation in Title 11, CCR, Section 2010, subsection (e), provides the definition of designated agent; however, the Commission’s regulations do not provide a definition for designated agent. Notwithstanding, the term designated agent is used in the Commission’s regulations, with an understanding that the definition was consistent with the Bureau’s definition. Further review has determined that the Bureau’s definition is inconsistent with the intent of the Commission’s usage of the term and the proposed definition is necessary to provide clarification.

The Bureau’s definition limits a designated agent to representing an owner of a gambling establishment or primary owner of a TPPPS. In the Commission’s regulations, designated agent is intended to reference a person appointed to represent any applicant or licensee. Should the Commission actually use the Bureau’s definition, any applicant or licensee besides the owner of a

cardroom or TPPPS would be unable to benefit from some Commission provisions, such as Section 12006 (which allows notices to be sent to a designated agent). This limitation is counter to the intent of the Commission's regulations. While this proposed definition does create a different standard than is currently in the Bureau's regulations, this definition would include every person who would be considered a designated agent under Bureau regulations, and more importantly, is consistent with the practices of both the Commission and the Bureau.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

There would be no fiscal impact on the Commission or to any state agencies, including costs or savings, or costs/savings in Federal funding. While the Bureau will collect some additional fees, any associated work will be minimal and absorbable with current staffing.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES: None.

MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT: None.

EFFECT ON HOUSING COSTS: None.

IMPACT ON BUSINESS:

The Commission has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts or evidence/documents/testimony:

While this regulation does create some new requirements and costs to cardroom and TPPPS businesses, such as the requirement that owners and employees applying for a renewal license submit for fingerprint scanning. The new costs are not substantial and cut across the entire cardroom and TPPPS industry. This regulation will reduce the number of applications required, re-

ducing some costs for cardroom and TPPPS businesses. Additionally, the repeal of the current gambling business licensing structure will only impact a single business, which is also operating as a TPPPS. The specific estimated impact is as follows:

Section 12005. Prohibited Player–Dealer Participation.

The proposed action includes the repeal of Chapter 2.2 of the Commission's regulations. This chapter provides for a licensing structure for gambling businesses, which are businesses that hire employees to act as the player–dealer in controlled games when the business has no contract or other relationship with the cardroom. Alongside the repeal of Chapter 2.2, proposed Section 12005 would prohibit the hiring of employees or contractors for participating as the player–dealer without a TPPPS contract. Due to this prohibition, the existing gambling businesses will be unable to operate without obtaining cardroom contracts and becoming a TPPPS business.

Since 2014, there has only been one gambling business licensed or registered with the Commission. Utilizing information provided by this single gambling business over an average of the last four years, the Commission estimates the impact to the business would be an average of **\$206,603** in reduced income. Additionally, the business will average a savings of **\$12,666** in badge fees to the Commission that will no longer be required.

Section 12080. Requirements.

Existing regulations limit a designated agent to representing an owner of a cardroom, TPPPS, or gambling business. The proposed regulation would expand the use of a designated agent to all license types. While the use of a designated agent would come with costs, the use of a designated agent is not required and is therefore not a cost imposed by these regulations.

Section 12102. General Provisions.

Existing regulations have required that all employees of a cardroom be licensed as either a key employee or work permittee, but are ambiguous about the nature of employees employed by another company that are utilized by the cardroom through a contract. The proposed regulations would explicitly require these contract employees and their supervisors be equivalently licensed or work permitted to those employees acting in the similar capacities. The Commission conducted a survey of cardrooms to determine if any contracted employees would require licensure. Of the 17 cardrooms for whom the Commission is responsible for issuing work permits, two responded, reporting the use of zero contract employees. Additionally, of the cardrooms for whom the Commission does not issue work permits, three indicated the use of contract employees. Of those three, zero indicated that the contract employees reported to

someone who would now be required to be licensed. Therefore, the Commission anticipates that this proposed regulation will have no fiscal impact.

Section 12106. Badges

Current regulations do not require an owner of a cardroom to wear a badge. Under this proposed action, owners would be required to wear a badge in certain situations. Owners would therefore have the option of requesting a badge as part of their application for licensure. Under the proposed regulations those who work in a cardroom would be required to have a badge. The fee for a badge is \$25. The Commission conducted a survey of cardrooms to determine the impact. Of the 48 responses, nine were natural person cardroom owners. Of these nine respondents, six indicated that the proposed regulations would require them to request a badge. Based on this ratio, and the average 135 licensed natural person cardroom owner applications received each year, the Commission estimates that 90 additional individuals would be required to request a badge at a total annual cost of **\$2,250**.

Current regulations do not require a badge holder to return a badge that has expired, except for key employee licenses, which must only return their badge if requested to do so. The proposed regulations would require that all badges be returned within 30 days of expiring or otherwise becoming invalid. Using historical Commission workload, the Commission estimates that approximately 4,400 badges are issued in a year. It is reasonable to assume that badges are returned at a similar rate either due to individuals leaving their jobs or due to the licenses expiring. While the Commission does expect to see a slight decrease due to the new portability of Commission work permits and TPPPS employee licenses, this value is hard to quantify. When the Commission issues badges, these badges are sent by mail and require \$.50 in postage and it is reasonable to assume a similar cost on the badge holders when returning the badge. This would result in a total annual cost of **\$2,200**.

Section 12110. Change in Employment Status.

The additional cost comes from the new requirement for an owner to submit the form CGCC-CH2-03 (New 05/20) when an employee category licensee ceases to be employed by the cardroom or TPPPS. The calculations used in estimating these savings were determined from a survey of applicants. Of the 48 applicants who submitted information, eight respondents each provided the number of employees who separated in 2019 and the estimated cost to complete the required forms for those who separated in 2019. This created a cost per application amount, which averaged \$198 across the eight cardrooms. Using the historical information of the Commission, a five-year average total employee separation

value 2,031 employees was determined. Comparing the average industry wide separation value of 2,031 employees to the average per-form cost of \$198 would result in an annual cost of **\$402,138**.

Section 12200.14. Organization Chart and Employee Report

Currently third-party providers are required to submit an organizational chart with their initial application and each renewal of their registration. The repeal of this section removes that requirement. The Commission conducted a survey of applications. Of the 48 applicants who submitted information, three provided information related to the costs of submitting this report. An average of those indicated costs provides an average cost of \$100 to prepare and submit the report. Based upon historical submittal of applications, the Commission estimates that, on average, 19 applications are submitted to the Commission each year. This would result in an annual savings of **\$1,900**.

Section 12342. Initial Gambling License Applications; Required Forms; Processing Times. (Section 12112. Initial License Applications; Required Forms.)

Existing regulations require a person applying for a second license to submit a separate and distinct application. This means that if someone wishes to apply to own two different cardrooms, that person would be required to submit two complete applications. The proposed regulations would provide that a person applying for a second license does not need to provide duplicate information, where it was already provided on a previous application.

The Bureau has indicated that there will be additional cost to applicants who apply for a second license as this change would result in the Bureau having the additional work of comparing the new application to all prior applications. The Bureau estimates that 198 employee applications per year would require an additional three hours of work. Additionally, the Bureau estimates that 40 owner applications per year would require an additional five hours of work. The Bureau classifies the identified work as chargeable to an applicant's background deposit at a rate of \$76 per hour. This would result in an annual cost of **\$60,334**.

Section 12345. Gambling License Renewals; Processing Times. (Section 12114. Renewal License Applications; Required Forms.)

Existing regulations only require an applicant to submit a Live Scan form with an initial application. The proposed regulations would require a Live Scan to be submitted with a renewal application. The Commission conducted a survey of applicants. Of the 48 applicants who submitted cost information, 31 provided information related to their Live Scan operators, including costs. The average of those indicated live scan costs is

§63. Based upon historical submittal of renewal applications, the Commission estimates that on average of 3,449 renewal applications are submitted to the Commission each year. This would result in an annual cost of **\$217,256**.

Section 12126. Temporary Owner Category License.

Existing regulations do not provide owners of cardrooms the opportunity to apply for temporary licenses. The proposed regulations would allow for such an application. This would provide a prospective owner the opportunity to obtain a temporary license, which could result in an increase in some costs or income to the applicant and the person from whom they have purchased ownership. The request for a temporary license is optional and therefore any costs or income would not be required due to the proposed regulation.

Article 4. Interim Owner Category License

Existing regulations provide that cardrooms, which would otherwise be required to close due to a specified event, to apply for an interim license to allow the business to remain open. The proposed regulations would expand this process to TPPPS businesses. This proposal would provide an undefined savings to the business. Rather than ceasing operations, the business would instead be allowed to remain in operation, paying staff, etc. The interim license application process does not include any additional fees, though it is possible the Bureau may require additional background deposits under its own authority. However, as the specifics and benefits received by the business from this process are unique in every situation, the Commission is not able to estimate the savings associated with this proposal.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The Commission has determined that the proposed regulatory action will have an impact on a representative private person or business in the Impact on Business section.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action will have an impact on small businesses the same as non-small business as noted in the Impact on Business section.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the consolidated small

business definition provided in Government Code section 11346.3, subdivision (b), paragraph (4), was utilized.

While this regulation does create some new requirements and costs to cardroom and TPPPS businesses, such as the requirement that owners and employees applying for a renewal license submit for fingerprint scanning, the new costs are not substantial and cut across the entire cardroom and TPPPS industry.

The repeal of Chapter 2.2 and the registration and licensing of gambling businesses will result in the single gambling business no longer being able to operate. The gambling business has employed an average of two supervisors and four players over the last four years with an annual average wage of \$296,000. The owners of the gambling business also possess a TPPPS business license so it is possible that these individuals will find employment under the TPPPS business.

BENEFITS OF PROPOSED REGULATION:

These proposed regulations will have the benefit of providing specific procedures to the entire application process, from applying to the Commission for a license or work permit through review by the Bureau and Commission. This streamlining and making consistent of all processes will have the benefit of making the application process faster while strengthening the protection to the public by ensuring that only people of good character, honesty, and integrity are allowed to work in controlled gaming.

Additional aspects of the regulations have been updated to provide clarity and consistency. These include: expanding the ability to appoint someone to assist an applicant or license to all licensing categories; expanding the defined terms to provide further clarity to the Commission's regulations; reorganizing Commission forms to reduce both the number of forms and the removal of unnecessary questions; and, updating Commission regulations for other technical changes that will clarify and improve the functions of the Bureau and Commission.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission 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.

INITIAL STATEMENT OF REASONS,
INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

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

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the primary contact person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Website listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person:

Joshua Rosenstein, Legislative and Regulatory
Specialist
Legislation and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento,
CA 95833-4231
Telephone: (916) 274-5823
Fax: (916) 263-0499
E-mail: jrosenstein@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Alex Hunter, Legislative and Regulatory Specialist
Legislation and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento,
CA 95833-4231
Telephone: (916) 263-1301
Fax: (916) 263-0499
E-mail: ahunter@cgcc.ca.gov

WEBSITE ACCESS

Materials regarding this proposed action are also available on the Commission's Website at www.cgcc.ca.gov.

**TITLE 9. DEPARTMENT OF HEALTH
CARE SERVICES**

SUBJECT:

**Adult Residential Treatment Services (ARTS)
Provider Requirements, DHCS-15-009**

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to amend California Code of Regulations, title 9, section 1840.332 after considering all public comments, objections, and recommendations.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to **Adult Residential Treatment Service (ARTS) Provider Requirements, DHCS-15-009** and submit using any of the following methods:

Mail Delivery:

Department of Health Care Services
Office of Regulations, MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413

Hand Delivery:

Department of Health Care Services
Office of Regulations
1501 Capitol Avenue, Suite 5084
Sacramento, CA 95814

FAX:

(916) 440-5748

Email:

regulations@dhcs.ca.gov

The written comment period closes at **5:00 p.m. on August 5, 2020**, any written comments, regardless of

the method of transmittal must be received by the Office of Regulations by **5:00 p.m.** on this date for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

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

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Sections 10725, 14124.5, 14680 and 14700, Welfare and Institutions Code.

These regulations implement, interpret, or make specific the following:

Sections 5671, 5675, 14021.4, 14684 and 14718, Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's mission is to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care. In support of this mission, the Department is responsible for statewide oversight of community mental health programs and services in California. Within the scope of this oversight and responsibility, the Department has sole monitoring and licensing authority for Mental Health Rehabilitation Centers (MHRCs).

The Department's Licensing and Certification Division licenses MHRCs under sections 781.00 through 788.14 of title 9 of the California Code of Regulations. MHRCs provide community-based, intensive support and rehabilitation services designed to assist persons, 18 years or older, with mental disorders who would otherwise have been placed in a state hospital or other mental health facility to develop skills to become self-sufficient and capable of increasing levels of independent functioning. MHRC program services include, but are not limited to, clinical treatment such as psychiatric and psychological services, learning disability assess-

ment and educational services, pre-vocational and vocational counseling, development of independent living, self-help and social skills, and community outreach to develop linkages with local support systems.

Adult Residential Treatment Services (ARTS) are rehabilitative services that are provided in a non-institutional, residential setting for beneficiaries who would be at risk of hospitalization or other institutional placement if they were not in the residential treatment program. These services include assessment, plan development, therapy, rehabilitation and collateral. MHRCs may provide ARTS to beneficiaries.

Currently, programs that provide ARTS are required to obtain certification as a Social Rehabilitation Program (SRP) and are required to comply with SRP certification standards in order to be eligible to claim Federal Financial Participation (FFP). (Cal. Code Regs., tit. 9, §§ 1840.308, 1840.332.) The proposed regulations carve out an exception for MHRCs from having to obtain SRP certification. Because current MHRC licensing requirements are similar to, and in most instances, exceed SRP certification standards, the SRP certification requirement is duplicative and unnecessary for MHRCs.

Removing the certification requirement for MHRCs will streamline processes and increase efficiencies for both the Department and MHRC programs by eliminating redundant administrative requirements. If California Code of Regulations, title 9, section 1840.332 is amended, more MHRCs may choose to provide ARTS, which may increase Medi-Cal claims and FFP reimbursement requests. However, the anticipated increase is minimal because the Department does not expect a significant increase in the number of MHRCs providing ARTS. To date, only a small number of MHRCs have expressed an interest in providing ARTS.

RELATED EXISTING LAWS AND REGULATIONS

Welfare and Institutions Code section 14700 transferred State administrative functions and applicable functions for Medi-Cal related mental health services, which includes MHRCs, from the former Department of Mental Health to the Department, effective July 1, 2012. Welfare and Institutions Code section 14700 gives the Department authority to adopt, amend, and repeal regulations pertaining to Medi-Cal Specialty Mental Health Services. (Assembly Bill 102 (Chapter 29, Statutes of 2011).) In addition, Welfare and Institutions Code section 10725 authorizes the Director of the Department to adopt, amend, or repeal regulations as necessary to carry out the purposes and intent of the statutes governing the Medi-Cal program.

Welfare and Institutions Code section 14680 authorizes the Department to develop guidelines for mental health plans to ensure the efficient utilization of Medi-Cal mental health services. The Department's guidelines must comply with federal Medicaid requirements, the state plan, and waivers to ensure full and timely federal reimbursement of mental health services provided. In addition, Welfare and Institutions Code section 14718 outlines the scope of the Department's authority over specialty mental health services provided under the Medi-Cal state plan and the Specialty Mental Health Services Waiver. This includes, but is not limited to, reimbursement and claiming procedures, review and oversight, and appeal processes for mental health plans (MHPs) and MHP subcontractors. This regulatory action is proposed to amend California Code of Regulations, title 9, section 1840.332, under this statutory authority, to exclude MHRCs from having to obtain the additional SRP certification.

STATEMENT OF PURPOSE/PROBLEM TO BE ADDRESSED

This regulatory action will modify compliance requirements for MHRCs providing ARTS and will reduce administrative burdens for the Department and MHRC programs. Currently, MHRCs providing ARTS must obtain a license and certification from the Department to claim FFP. This dual licensing and certification requirement stretches the Department's resources and confuses MHRC providers, imposing undue financial, time and compliance burdens on providers. The existing regulations require the Department and MHRCs to follow duplicative regulatory schemes related to: (1) program and application review; (2) complaint response; (3) monitoring activities; and (4) enforcement activities. Currently, MHRCs providing ARTS must comply with MHRC licensing standards (Cal. Code Regs., tit. 9, § 781 et seq.), SRP certification standards (Cal. Code Regs., tit. 9, §§ 531-535.), and Medi-Cal certification standards (Cal. Code Regs., tit. 9, §§ 500 et seq., 1810.100 et seq.).

Currently, an MHRC providing ARTS is required to renew its MHRC license and SRP certification annually, and DHCS is required to conduct multiple initial and annual onsite reviews of these MHRCs to ensure compliance with applicable licensing and certification laws and regulations. This mandate results in an inefficient use of MHRC and Department resources. This proposed regulatory change would eliminate duplicative compliance activities, thereby reducing administrative burdens and increasing efficiencies for MHRCs and the Department. This proposed regulatory amendment also responds to multiple requests received from mental

health stakeholders requesting that the Department amend California Code of Regulations, title 9, section 1840.332 to exempt MHRCs from SRP certification requirements.

ANTICIPATED BENEFITS OR GOALS OF THE REGULATIONS

The amendments proposed through this regulatory action will specify that MHRCs providing ARTS do not have to obtain SRP certification since MHRC programmatic requirements meet or exceed all SRP programmatic requirements. The existing MHRC regulations are more comprehensive and subsume all SRP certification requirements as follows:

Both MHRCs and SRPs provide rehabilitation services and activity programs that meet the requirements of ARTS as defined under existing regulations. However, medical requirements for MHRC programs are broader and more extensive than SRP medical requirements. Moreover, while documentation requirements for admission, discharge, treatment and rehabilitation planning are similar for both programs, MHRC documentation requirements are more stringent. Staff training requirements for MHRCs are also more extensive, and the number and type of staff required to operate a MHRC exceeds SRP staffing requirements. Lastly, although SRP regulations specify limits on a client's length of stay and MHRC regulations do not, MHRC length of stay requirements are more robust and client-focused. Similar to SRPs, MHRC length of stay regulations involve clients in the development of their treatment and rehabilitation plans, however, MHRCs exceed SRP standards by requiring frequent reviews of client plans and regularly reassessing MHRC clients to determine appropriate placement.

Statewide, the Department currently licenses 6 MHRCs in operation, with 16 beds or fewer that are eligible to provide ARTS. Of these 6 MHRCs, 2 are currently certified as an SRP and claim FFP for ARTS services. Removing the SRP certification requirement would enable all currently licensed MHRCs with 16 beds or fewer to claim FFP, assuming the MHRCs are also Medi-Cal certified. (California Code of Regulations, title 9, sections 1840.308 and 1840.332.) The Department anticipates licensing 4 additional MHRCs with 16 beds or fewer in the near future. These 4 additional MHRCs would all be eligible to provide ARTS and claim FFP. Specifically, the Department anticipates licensing 4 new MHRCs in San Mateo County. The current requirement tying SRP certification to FFP reimbursement is found only under these regulations. (California Code of Regulations, title 9, sections 1840.308 and 1840.332.) There is no similar SRP certification requirement under federal law or in the state plan.

This proposed regulatory action ensures the proper and efficient administration of the Medi-Cal program in accordance with the federal and state laws that govern Medi-Cal's rules of participation, funding, and the authorized schedule of mental health services.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department has conducted an evaluation of the related existing state regulations under California Code of Regulations, Title 9, Division 1 and California Code of Regulations, Title 22, Division 3 and has determined that the proposed regulations are consistent with and compatible with those regulations. An automated search of these areas of California Code of Regulations, titles 9 and 22 using the following keywords "mental health rehabilitation center," "social rehabilitation program," "adult residential treatment services," "federal financial participation," and "FFP" was conducted via Westlaw and yielded no conflicting state regulations.

REGULATION SECTION

This proposed regulatory action amends California Code of Regulations, title 9, section 1840.332 to accomplish the following:

- Eliminate the existing requirement, which requires MHRCs that provide ARTS to obtain certification as an SRP.
- Make non-substantive amendments to correct punctuation, a cross-reference, and grammar (capitalizations) in an effort to achieve clear and consistent regulatory language.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

FISCAL IMPACT STATEMENT

- A. Costs to any Local Agency or School District that are required to be reimbursed Under Part 7 (commencing with section 17500), Division 4 of the Government Code: None.
- Costs to any Local Agency or School District that are not reimbursable by the State: Costs will be fully financed from the fees, revenue, etc. from Local Revenue Fund 2011, Costs would begin FY

2022-23. Authorized by 6 Article 13B/36 of Article 13 of the California Constitution.

- B. Costs or Savings to any State Agency: Other. There may be minor savings of \$6,000 for travel costs for onsite SRP certification reviews that would no longer be necessary.
- C. Costs or Savings in Federal Funding to the State: Other. \$2,786,000 FF, annually beginning FY 2022-23.
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Agencies: None.

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

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.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed regulations do not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (ANALYSIS)

In accordance with Government Code section 11346.3(b)(1), the Department has determined that the proposed regulations do not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation or elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

IMPACT ON JOBS AND BUSINESSES

This proposed regulatory action will impact only those providers who choose to participate in the Medi-Cal program as MHRCs that provide ARTS. The amendments proposed through this regulatory action eliminate the additional program certification standards that require an MHRC that provides ARTS to be certified as an SRP.

Through this proposed regulatory action, MHRCs will no longer have to obtain the SRP certification to claim FFP for ARTS services. MHRC providers will save administrative costs related to preparing and assisting state surveyors in conducting initial and annual onsite SRP certification reviews. The Department will also save administrative costs related to conducting initial and annual onsite SRP certification reviews. These administrative savings may lead MHRC providers to expand the provision of these mental health services. However, these savings are not anticipated to have an impact that would lead to a significant growth in program services so there is no anticipated impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California.

BENEFITS OF THE PROPOSED REGULATION

The Department has determined that the proposed regulations will not specifically affect worker safety or the state’s environment. However, the proposed regulations will benefit MHRCs that provide ARTS under the Medi-Cal program by removing this additional certification requirement, which imposes undue financial, time and compliance burdens on these providers. Removing this barrier will also benefit the health and welfare of Californians, specifically beneficiaries with mental illnesses, who will be able to receive these medically necessary and vital mental health services in an MHRC setting.

This regulatory proposal also ensures the proper and efficient administration of the Medi-Cal program, in accordance with federal and state laws and establishes licensing requirements that are clear and efficient for MHRC providers.

EFFECTS ON SMALL BUSINESSES

The Department has determined that the proposed amendments would only affect small businesses (MHRCs) that choose to provide ARTS to beneficiaries.

HOUSING COSTS DETERMINATION

The Department has made the determination that the proposed regulation would have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

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

Existing regulations related to MHRCs and the provision of ARTS, are located in California Code of Regulations, title 9. Using this regulatory proposal to make amendments to existing requirements is the most effective and convenient way to provide (updated) information directly to those impacted (MHRCs; beneficiaries). This regulatory action is consistent with Welfare and Institutions Code sections 14680 and 14718 related to the efficient utilization of Medi-Cal mental health services.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email — regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code section 11346.6.

CONTACT PERSONS

Inquiries regarding the proposed regulations described in this notice may be directed to Henry Omoregie of Licensing and Certification Division, at (916) 323-1864.

All other inquiries concerning the action described in this notice may be directed to David Kim of the Office of Regulations, at (916) 345-8399, or to the designated backup contact person, Jasmin Delacruz, at (916) 440-7695.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

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

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at: <http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or the Department), proposes to repeal Section 3767 of the California Code of Regulations, Title 15, Division 3, Subchapter 6, regarding Flash Incarcerations.

PUBLIC COMMENT PERIOD

The public comment period begins **June 19, 2020** and closes on **August 7, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, please call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

Josh Jugum
Telephone: (916) 445-2266
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

A. Sugapong
Telephone: (916) 324-9325
Division of Adult Parole
Operations

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to

the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of regulation on an emergency basis.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Department adopted regulations regarding Flash Incarcerations effective July 1, 2019, pursuant to Penal Code Section 3000.08. Flash incarceration is a period of detention, between one and ten consecutive days, in a city or a county jail due to a violation of a parolee’s conditions of parole.

This action will:

Repeal California Code of Regulations, Title 15, Section 3767, Flash Incarcerations. The Department conducted a thorough review of flash incarceration and determined there is a lack of evidence supporting a direct correlation between the use of flash incarceration as a remedial sanction and reduced recidivism. Therefore, the Department has elected to discontinue its use.

**DOCUMENTS INCORPORATED
BY REFERENCE**

None.

**SPECIFIC BENEFITS ANTICIPATED BY THE
PROPOSED REGULATIONS**

The repeal of these regulations is necessary to ensure that interventions are evidence-based, target the criminogenic needs of offenders, motivate a change in behavior, and subsequently reduce recidivism.

**EVALUATION OF
CONSISTENCY/COMPATIBILITY WITH
EXISTING LAWS AND REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the flash incarcerations of parolees.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500–17630.

FISCAL IMPACT STATEMENT

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

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

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

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

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESS**

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT

The Department has determined that the proposed regulations will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on worker safety or the state's environment. This rulemaking action repeals existing regulatory provisions and does not adopt or amend any provisions.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND
INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the Department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO
PROPOSED TEXT

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

**TITLE 16. BOARD OF
VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS**

NOTICE OF PROPOSED REGULATORY ACTION
CONCERNING SUBSTANTIAL RELATIONSHIP
AND REHABILITATION CRITERIA FOR
PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) proposes taking the action described in the Informative Digest. Any interested person may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail, to the addresses listed under Contact Person, in this Notice, must be received by the BVNPT, at its office on August 3, 2020.

The BVNPT does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, the interested party must make the request, in writing, to the Board. The request must be received in the Board office not later than 5:00 p.m. on July 24, 2020.

The BVNPT, upon its own motion or at the request of any interested party, may thereafter adopt the proposals, substantially as described below, or may modify such proposals, if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption

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

Authority and Reference: Pursuant to the authority vested by section 4504 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 141, 475, 480, 481, 482, 488, 490, 492 and 493, of said Code, the BVNPT is considering changes to Title 16, Division 25, Chapter 2, Article 4, Sections 2578 and 2579, of the California Code of Regulations (CCR), as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to BPC section 4501.1, the mission of the BVNPT is: “Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

The goals and objectives of this proposed regulation are to bring the BVNPT’s current regulations into compliance with the various provisions of Assembly Bill 2138 (AB 2138) (Chiu, Chapter 995, Statutes of 2018).

AB 2138 requires the Department of Consumer Affairs’ (DCA) various Boards and Bureaus to:

- develop criteria to determine whether a crime, professional misconduct, or act is substantially related to the qualification, functions, or duties of the business or profession;
- consider whether a person has made a showing of rehabilitation if certain conditions are met;
- follow certain procedures when requesting or acting on an applicant or licensee’s criminal history information; and
- annually submit a report to the legislature and post the report on its internet website containing specified deidentified information regarding actions taken by a Board based on an applicant or licensee’s criminal history information.

BPC, section 4504, authorizes the BVNPT to adopt rules and regulations to carry out the provisions of the Psychiatric Technicians Law (Law). In accordance with the statutory amendments implemented by AB 2138, beginning July 1, 2020, BPC sections 481 and 493 will require the BVNPT, when considering the denial, suspension, or revocation of an application or license based on a crime, professional misconduct, or act, to determine whether the crime, professional misconduct, or

act is substantially related to the qualifications, functions, or duties of an applicant or licensee by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a licensee.

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

Currently, 16 CCR 2578, establishes the criteria for determining when a crime or act is substantially related to the qualifications, functions, and duties of an applicant or licensee, and 16 CCR 2579 establishes the criteria for determining rehabilitation of an applicant or licensee when considering the denial, suspension, or revocation of an application or license, or a petition for reinstatement of a license.

AB 2138 requires that 16 CCR, sections 2578 and 2579, be updated to clearly specify the criteria the BVNPT uses when making a determination for an applicant or licensee’s criminal conviction, or formal discipline by another licensing Board, and evaluating the rehabilitation of an applicant or licensee when considering denial, suspension, or revocation of an application or license.

The BVNPT is proposing the following changes:

Amend 16 CCR 2578 (Substantial Relationship Criteria):

The proposed amendment to this regulation, for purposes of denial, suspension, or revocation of an application or license, will add professional misconduct and disciplinary actions taken by another state, by any agency of the federal government, or by another country as described in BPC section 141, as grounds requiring the BVNPT to consider the substantial relationship criteria, and require the BVNPT, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of a person holding the license. The proposal would also clarify that substantially related crimes, professional misconduct, or acts include violating other state laws (including laws

of other states) or federal laws governing the practice of psychiatric technicians.

Amend 16 CCR 2579 (Criteria for Rehabilitation):

The proposed amendment to this regulation will clarify that the BVNPT, when considering an application or license denial, suspension, or revocation on the ground that the applicant or licensee was convicted of a crime, professional misconduct, or act, will have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making this determination, the proposal will require the BVNPT to consider the nature and gravity of the crime, professional misconduct, or act, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal will require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial, suspension, or revocation was based on something other than a criminal conviction. Consistent with current CCR section 2578, subsection (c), the proposal will also require the BVNPT to consider the two sets of criteria, described above, when evaluating whether a petitioner for reinstatement of a license is rehabilitated.

ANTICIPATED BENEFITS OF PROPOSAL

California has among the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of their release. These circumstances play a significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address. One of the root causes of these high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry.

Nearly 30 percent of California jobs require licensure, certification, or clearance, by an oversight Board or agency, for approximately 1,773 different occupations. All too often, qualified people are denied occupational licenses or have licenses revoked or suspended based on prior arrests and/or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one-way California can reduce recidi-

visism and provide economic opportunity to all its residents.

For further discussion of the benefit analysis, see "Results of the Economic Impact Assessment" below.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The BVNPT has made an initial determination that the proposed regulations will not have a significant fiscal impact on public agencies, State agencies, or in federal funding to the State.

Nondiscretionary Costs/Savings to Local Agencies: The BVNPT has made an initial determination that the proposed regulations will not have a significant fiscal impact to local agencies.

Local Mandate: The BVNPT has made an initial determination that the proposed regulations will not have a significant impact on local mandates.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: The BVNPT has made an initial determination that the proposed regulations will not have a significant fiscal impact on any local agency or school district for which Government Code sections 17500–17600 require reimbursement.

Business Impact: The BVNPT has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the premise that these regulations may increase access to licensure, potentially increasing the number of psychiatric technicians, which would provide businesses a greater pool of employees from which to hire.

Business Reporting Requirements: The regulatory action does not require businesses to file a report with the Board.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Board estimates that there will be no increased costs for businesses or individuals to comply with the

proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

Results of the Economic Impact Assessment: The BVNPT has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

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

This proposal will allow individuals greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to psychiatric technicians, which will potentially benefit the overall health and welfare of Californians. Health care businesses will likely benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

Protection of the public is the BVNPT's highest priority in exercising its licensing, regulatory and disciplinary functions. Also, the BVNPT ensures that only qualified persons are psychiatric technicians by enforcing education requirements, standards of practice and by educating consumers of their rights. The proposed regulation change will, most likely, not endanger the public and will allow the BVNPT to continue carrying out these mandates.

EFFECT ON SMALL BUSINESS

The BVNPT has determined that the proposed regulations will not affect small businesses.

Historically, the Board has denied fewer than 1% of all applications. Of these applications, nearly all are denied due to the applicants having an egregious criminal conviction history, which may also be directly related to and/or impact job duties. As a result, the Board does not anticipate the proposed regulations to increase the number of initial license applications approved, per year, or be significant enough to expand businesses who hire psychiatric technicians.

EFFECT ON HOUSING

The BVNPT has determined that the proposed regulations will not affect housing in the State of California.

CONSIDERATION OF ALTERNATIVES

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The BVNPT has prepared an initial statement of the reasons for the proposed action and has available all the information on which the proposal is based, upon request from the contact person designated below.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained upon request from the person designated in the Notice under Contact Person, with the Board of Vocational Nursing and Psychiatric Technicians, at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.

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

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

CONTACT PERSON

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

Name:

Doris Pires, *Regulations Coordinator*
Board of Vocational Nursing and Psychiatric Technicians

Address:

2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833

Telephone:

(916) 263-7864

Fax Number:

(916) 263-7855

The backup contact person is:

Name:

Elaine Yamaguchi, *Executive Officer*
Board of Vocational Nursing and Psychiatric Technicians

Address:

2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833

Telephone:

(916) 263-7845

Fax Number:

(916) 263-7855

E-Mail: To submit any comments via email, please send to: BVNPT.Rulemaking@dca.ca.gov.

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

ment Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office by Monday, August 3, 2020.

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

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 7606, 7639.08, 7653, 7712.5, and 7740 of the Business and Professions Code (BPC), and to implement, interpret or make specific BPC sections 7639, 7639.04, 7639.06, 7639.08, 7639.10, 7653.35, 7712.11, and 7730.11, CFB is considering changes to Division 23 of Title 16 of the CCR as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The death care industry transacts business with consumers at a time when they are emotionally vulnerable. Protection of the public is mandated to be the highest priority for the CFB in exercising its licensing, regulatory, and disciplinary functions. CFB achieves its goal of consumer protection through the following primary methods: issuing and renewing licenses; overseeing funeral and cemetery trust funds; investigating complaints; conducting inspections; and disciplining licenses for violations of its laws and regulations.

CFB licenses, regulates, and investigates complaints against 13 different licensure categories in California, totaling approximately 13,500 licensees. These licensing categories include funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery broker branch, cemetery broker additional, cemetery salespersons, cremated remains dis-

TITLE 16. CEMETERY AND FUNERAL BUREAU

§ 2310, Regulatory Charge

§ 2311, Filing Fee

§ 2326.05, Application for Hydrolysis Facility License

§ 2326.1, Managers

§ 2329.1, Abandonment of Application for Hydrolysis Facility License

§ 2339, Form and Content of Crematory and Hydrolysis Contracts
§ 2370, Special Trusts

NOTICE IS HEREBY GIVEN that the Cemetery and Funeral Bureau (hereinafter “Bureau” or “CFB”) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy State-

posers, crematories, crematory managers, cemetery managers, and private, nonreligious cemeteries.

In 2017, the California State Legislature passed Assembly Bill (AB) 967 (Gloria, Chapter 846, Statutes of 2017), requiring CFB to license and regulate hydrolysis facilities, hydrolysis facility managers, and to enact requirements applicable to hydrolysis facilities substantially similar to those applicable to crematoria beginning July 1, 2020.

BPC section 7606 authorizes CFB to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Cemetery and Funeral Act (Act). Additionally, as required under AB 967, the primary purpose of this proposal is to implement, interpret, and make specific the provisions of Article 2.7 of the BPC relative to the licensure and regulation of alkaline hydrolysis facilities.

CFB proposes the following changes:

- **Amend CCR section 2310, Regulatory Charge**

Existing law prescribes an annual regulatory charge of \$400 to be paid by a cemetery authority under the Act, and a quarterly charge of \$8.50 for each burial, entombment, or inurnment made during the preceding quarter.

The Bureau proposes to amend the regulation to provide that the annual regulatory charge for a hydrolysis facility is \$900, and the quarterly charge is \$8.50 for each hydrolysis made during the preceding quarter. The Bureau also proposes to require each licensed hydrolysis facility to submit annual chamber maintenance records for the preceding year, along with the Department of Public Health evaluation (if applicable) for each annual renewal of its license. The Bureau proposes a provision stating that the license of any cemetery authority, crematory or hydrolysis facility shall not be renewed if the licensee fails to pay the quarterly regulatory charge prescribed under this section. The Bureau also proposes to add “and” before “eight dollars” and “fifty cents” in subdivisions (a) and (b) for consistency throughout the regulation.

- **Amend CCR section 2311, Filing Fee**

Existing law provides that an initial filing fee of \$400 applies to original applications for a certificate of authority to operate a cemetery and for a crematory license.

The Bureau proposes to amend the regulation to establish an initial filing fee of \$900 for an original application for a hydrolysis facility. The Bureau proposes to establish an excess investigation fee to be deposited with the Bureau in the amount of no more \$1,400 if investigation costs exceed \$100 per day. The Bureau also proposes to spell out “one hundred dollars” before \$100

in subdivision (a) for consistency throughout the regulation.

- **Adopt CCR section 2326.05, Application for Hydrolysis Facility License**

The Bureau proposes to adopt a regulation setting forth the required contents of and documents required to be submitted with an “Application for Hydrolysis Facility License,” and incorporating the form by reference.

- **Amend section 2326.1, Managers**

Existing law provides that each cemetery must be operated under the supervision of a cemetery manager qualified as such by the Bureau. The applicant for a new certificate of authority is required to designate a cemetery manager and the applicant must submit a written statement from the cemetery manager demonstrating that he or she has two (2) years’ experience in the cemetery business, or equivalent experience.

The Bureau proposes to amend the regulation to provide that each licensed hydrolysis facility must be operated under the supervision of a crematory manager designated by the applicant and certified by the Bureau. The Bureau will require a written statement from the hydrolysis chamber manufacturer demonstrating that the crematory manager has received the proper training for the operation of the hydrolysis chamber and the proposed activities of the licensed hydrolysis facility. The applicant will be able to designate an additional crematory manager who has been qualified and certified by the Bureau to succeed the crematory manager in the event the crematory manager is unable to perform duties as required.

- **Adopt Section 2329.1, Abandonment of Application for Hydrolysis Facility License**

The Bureau proposes to adopt a regulation providing that an application for a hydrolysis facility license will be deemed abandoned and all fees previously paid will be deemed forfeited if the applicant refuses or fails to comply with the provisions of sections 2326.05 (requiring an application) and 2326.1(c) (requiring the designation and certification of a crematory manager) within one year of written notification by the Bureau. In addition, this section provides that when the application is deemed abandoned, the applicant must re-submit a new application, fees, and documents.

- **Amend Section 2339, Form and Content of Crematory and Hydrolysis Contracts**

Existing law prescribes the contents of written crematory agreements between parties.

The Bureau proposes to strike outdated statutory citations in the regulation and replace them with current citations. The amendment provides that charges for hydrolysis must be provided in such agreements and pro-

vides that agreements for hydrolysis or hydrolysis services must provide the manner in which funds paid on account of such arrangements are to be handled in sufficient detail.

• **Amend Section 2370, Special Trusts**

Existing law provides that cemetery authorities may establish an endowment care fund. Section 2370 provides that trusts established for burial purposes include cremation or other commodities or services furnished at the time of and in connection with cremation or interment.

The Bureau proposes to amend the regulation to add that trusts established for burial purposes include hydrolysis services in addition to cremations.

ANTICIPATED BENEFITS OF
PROPOSED REGULATIONS

Hydrolysis provides consumers an alternative method of disposition of human remains to the traditional burial and cremation method. Hydrolysis promotes a more environmentally friendly approach to the method of disposition of human remains for California's residents. As provided in the legislative analyses of AB 967, this proposal seeks to license and regulate hydrolysis facilities and managers. The proposed regulations would implement requirements for hydrolysis facilities to obtain licensure and allow the CFB to continue protecting the public health, safety, and welfare of California's consumers. Hydrolysis promotes worker safety because the hydrolysis facility chamber is self-contained and does not expose the worker to the byproducts. In addition, this proposal seeks to improve clarity, transparency, and consistency for applicants and licensees within the industry.

DETERMINATION OF
INCONSISTENCY/INCOMPATIBILITY WITH
EXISTING REGULATION(S)

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

INCORPORATION BY REFERENCE

Application for Hydrolysis Facility License, form 23-HF (07/20)

DISCLOSURES REGARDING
PROPOSED ACTION

FISCAL IMPACT ESTIMATES

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

The Bureau expects to incur approximately \$50,000 to create a new license subtype in its system for hydrolysis facility licenses.

The Bureau does not know whether the Department of Public Health will incur any costs from performing evaluations of hydrolysis chambers.

The Bureau does not know how many applications it will receive for hydrolysis facility licenses. However, if 15 applicants apply for licensure in the first year of implementation, the costs of enforcement relating to such licenses will be minor and absorbable.

Cost or Savings in Federal Funding to the State:

None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

CFB has made an initial determination that the proposed regulatory action will not have an adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Business Reporting Requirement

The proposed regulations impose additional reporting, recordkeeping, or other compliance requirements:

The Bureau has determined that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses. Each licensee operating a hydrolysis facility shall be required to annually submit proof of the chamber maintenance records and the California Department of Public Health evaluation to demonstrate that the chamber continues to operate as originally approved. In addition, each hydrolysis facility shall report to the Bureau any change in the designated certified crematory manager. This proposal will benefit the public who will receive more accurate information, licensees who will understand what information is required without needing to contact Bureau staff, and ensures that only hydrolysis facilities that continue to meet regulatory standards operate lawfully in this state.

Cost Impact on Representative Private Person or Business:

CFB estimates that there will be a significant cost for businesses or individuals to comply with the proposed

regulations. The projected startup costs for getting a business ready to operate varies. However, CFB considers the purchase price of the hydrolysis chamber to be significant, approximately \$140,000 to \$350,000, but easily offset by the potential revenue that can be generated by a hydrolysis facility.

The CFB is unable to project the potential revenue that can be generated by a hydrolysis facility. However, the hydrolysis process creates a new “green” technology method of disposition of human remains in California that may be a large revenue generator. Hydrolysis presents consumers with an alternative to cremation or traditional burial. According to *The Cremationist of North America* magazine, (Vol. 55, No. 2, published 2019), California is ranked at 76.5 percent in cremations as of 2018, and it is projected to increase to 74.2 percent by 2023. CFB predicts hydrolysis will share a portion of cremation as the preferred method of disposition, as cemeteries are running out of space and burial costs continue to increase over time.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses, who do not possess the startup costs to operate a hydrolysis facility. The startup cost for a hydrolysis facility may be cost-prohibitive for a small business. While the cost of the hydrolysis chamber may vary by vendor, the cost to purchase the hydrolysis chamber ranges between \$140,000 to \$350,000. In addition, the cost of obtaining the approval of the hydrolysis chamber from the California Department of Public Health as required under the AB 967 statutory mandate may be burdensome for a small business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

CFB has made an initial determination that the adoption and amendment of this regulatory proposal will have a minimal adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

CFB estimates 15 applicants will apply for licensure within the first year of implementation and 2 applicants annually thereafter. These applicants will be required to submit the initial application to CFB and pay the initial license fee of \$900. CFB projects this should be easily offset by the revenue generated by a hydrolysis facility once licensure is obtained.

The Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs in the State of California because this proposed regulation applies to the cemetery industry, specifically licensed hydrolysis facilities. If any jobs are impacted, the types of jobs that may be impacted are those held by persons licensed by CFB to provide cemetery and funeral-related service.
- It will not eliminate existing but will create new businesses within the State of California because the proposed regulations would allow an applicant to file an application for a hydrolysis facility license in California. The proposed regulation does not negatively impact the existing cemetery or funeral industry.
- It will expand but not eliminate existing business because this regulation applies to the cemetery industry in California. CFB projects 15 applicants would apply for licensure the first year.
- The regulatory proposal furthers the goal of CFB which is to continue protecting the public health, safety, and welfare of California’s consumers because the regulations are aimed toward reducing hydrolysis that is performed by an unlicensed facility and aligns with the Bureau’s mandate of consumer protection. Additionally, hydrolysis promotes a more environmentally friendly approach to the disposition of human remains for California’s residents.
- This regulatory proposal will positively affect worker safety because it establishes licensure and hydrolysis facility criteria, based upon recent statutory mandates.
- This regulatory proposal will positively affect the state’s environment because hydrolysis is considered an environmentally friendly choice because there are no direct emissions of harmful greenhouse gasses or mercury released to the atmosphere.

CONSIDERATION OF ALTERNATIVES

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

Set forth below are the alternatives that were considered and the reason the alternative was rejected or adopted:

Alternative 1: Maintain the status quo. This alternative was rejected because it would make the CFB non-compliant with the statutory mandates of AB 967.

Alternative 2: Adopt new regulations and amend existing regulatory sections. This alternative was accepted as the most efficient option for CFB to license and regulate hydrolysis facilities, and hydrolysis facility managers in order to comply with AB 967, which mandates CFB to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to CFB in writing relevant to the above determinations at 1625 North Market Blvd., Suite S-208, Sacramento, California 95834.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from CFB at 1625 North Market Blvd., Suite S-208, Sacramento, California 95834.

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

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

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

CONTACT PERSON

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

Name:
Carolina Sammons

Address:
1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834

Telephone No.:
(916) 574-7876

Fax No.
(916) 928-7988

Email Address:
carolina.sammons@dca.ca.gov

The backup contact person is:

Name:
Cheryl Jenkins

Address:
1625 North Market Boulevard, Suite S-208
Sacramento, CA 95834

Telephone No.:
(916) 574-8203

Fax No.
(916) 928-7988

Email Address:
cheryl.jenkins@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Carolina Sammons at (916) 574-7876.

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

TITLE 16. MEDICAL BOARD OF CALIFORNIA

Sections 1320 and 1321

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

Public Hearing

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

Comment Period

Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, fac-

simile, or e-mail to the addresses listed under Contact Person in this notice, must be received by the Board at its office no later than August 3, 2020, or at the hearing, if applicable.

Availability of Modifications

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

Authority and Reference

Pursuant to the authority vested by section 2018 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2037, 2064.5, 2065, 2084, 2096, 2135, and 2428 of said code, the Board is considering changes to Title 16, Division 13, Chapter 1, Article 6, California Code of Regulations (CCR) sections 1320 and 1321 as follows:

INFORMATIVE DIGEST

BPC section 2018 authorizes the Board to adopt, amend, or repeal regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of medicine. Senate Bill (SB) 798 (Hill, Chapter 775, Statutes of 2017) made revisions to postgraduate training and licensing requirements for physicians and surgeons that became operative on January 1, 2020. The primary purpose of this proposal is to implement, interpret and make specific the provisions of BPC sections 2037, 2064.5, 2065, 2084, 2096, 2135, and 2428 relative to postgraduate training and requirements for a physician’s and surgeon’s license. Accordingly, the Board is proposing the following changes:

Amend 16 CCR section 1320. Postgraduate Training Exemption Period; Guest Rotations

Proposed Amendments to 16 CCR section 1320, subdivision (a)

Existing law under 16 CCR section 1320, subdivision (a), sets forth the licensing exemption period during which an individual can practice medicine in an approved postgraduate training program in California without a physician’s and surgeon’s license.

This rulemaking proposes to amend 16 CCR section 1320, subdivision (a), to specify that postgraduate training for which the applicant received credit counts to-

ward the exemption period. Additionally, this proposal strikes reference to the two-year and three-year exemption periods and amends 16 CCR section 1320, subdivision (a), to include a 39-month exemption period, pursuant to statutory changes made by SB 798. Reference to BPC section 2066 will be deleted, as this section was repealed as of January 1, 2020.

Additionally, this proposal clarifies that all postgraduate training meeting the requirement of the code is counted, regardless of whether the postgraduate training program was successfully completed.

Proposed Amendments to 16 CCR section 1320, subdivision (b)

Existing law under 16 CCR section 1320, subdivision (b), sets forth an exception to section 1320, subdivision (a), to permit an individual meeting certain requirements to participate in guest rotations in an approved postgraduate training program.

Under this proposed rulemaking, 16 CCR section 1320, subdivision (b), will be amended to fix the typo in the word “notwithstanding.” This section will be further amended to indicate that a person seeking to participate in a guest rotation must have graduated from an approved medical school pursuant to BPC section 2084. Additionally, this proposal deletes extraneous language from the section, which was no longer applicable as of January 1, 2020.

Amend 16 CCR section 1321. Approved Postgraduate Training

Proposed Amendments to 16 CCR section 1321, subdivision (a)

Existing law under 16 CCR section 1321, subdivision (a), sets forth what postgraduate training programs are approved to meet the requirements for licensure as a physician and surgeon.

This proposal strikes the phrase, “meeting the standards of” in reference to postgraduate training programs meeting the standards of specified accreditation entities, and clarifies that only accredited postgraduate training programs located in the United States and/or its territories or in Canada are approved by the Board to meet the postgraduate training requirement to be eligible for a California physician’s and surgeon’s license.

Further, this proposal will specify that family medicine postgraduate training programs in Canada accredited by the College of Family Physicians of Canada (CFPC) are approved to meet the postgraduate training requirement to be eligible for a California physician’s and surgeon’s license.

This proposal also makes a non-substantive correction to 16 CCR section 1321, subdivision (a), by changing the word “on” to “for” so that the language correctly reads: “Accreditation Council for Graduate Medical Education.” Additionally, this rulemaking strikes refer-

ences to BPC sections 2066, 2102, and 2103, as these sections were repealed as of January 1, 2020, and it will add a reference to section 2064.5, which became operative on January 1, 2020, and sets forth the requirements for a postgraduate training license.

Proposed Amendments to 16 CCR section 1321, subdivision (b)

Existing law under 16 CCR section 1321, subdivision (b), indicates that a current list of programs shall be maintained on file in the Sacramento office of the division.

This proposal strikes 16 CCR section 1321, subdivision (b), as it is unnecessary.

Proposed Amendments to 16 CCR section 1321, subdivision (c)

Existing law under 16 CCR section 1321, subdivision (c), provides that an applicant shall have been formally admitted to any postgraduate training program which is completed in order to qualify for a physician's and surgeon's license, and provides a definition for "formally admitted."

This proposal will re-letter this subdivision to "(b)" and clarify that an applicant shall have been formally admitted to any approved postgraduate training program to qualify for licensure, and strikes the requirement that the postgraduate training program be "completed," since this is not a requirement in law. This proposal also makes a grammatical correction by changing "programs" to "program" in the last line of this subdivision.

Proposed Amendments to 16 CCR section 1321, subdivision (d)

Existing law under 16 CCR section 1321, subdivision (d), requires applicants to have completed at least one continuous year of postgraduate training in a single program to qualify for licensure as a physician and surgeon. Under existing law, this requirement applies if the applicant graduated from a United States or Canadian medical school. This section further indicates that for those applicants who qualify for licensure by completing at least two years of approved postgraduate training, the second year shall be completed in one continuous year in a single program. Under existing law, this requirement applies if the applicant graduated from an international medical school.

Further, existing law under 16 CCR section 1321, subdivision (d), provides that the continuous year required to be completed in a single program for both domestic and international medical school graduates may be interrupted due to illness or hardship.

This rulemaking amends 16 CCR section 1321, subdivision (d), by re-lettering it to subdivision "(c)" and eliminating the distinction between graduates of domestic and international medical schools. Proposed

amendments to this subdivision will clarify that applicants are required to complete at least 24 continuous months out of the required 36 months of postgraduate training in a single program in order to qualify for a physician's and surgeon's license.

Additionally, this proposal deletes the reference to the one-year period that may be interrupted due to illness or hardship, and to indicate, instead, that the "period required for postgraduate training" may be interrupted due to illness or hardship.

This proposal also deletes unnecessary language from 16 CCR section 1321, subdivision (d), including the words "in cases," and the last two sentences specific to international medical school graduates required to complete at least two years of approved postgraduate training.

Policy Statement Overview/Anticipated Benefits of Proposal

This proposal will amend 16 CCR sections 1320 and 1321 to update these regulations for consistency with statutory changes that became operative on January 1, 2020, per SB 798. These amendments will avoid confusion regarding postgraduate training and licensing requirements for individuals seeking a physician's and surgeon's license in California. Additionally, this regulatory action furthers the goal of consumer protection through the proper licensing and regulation of physicians and surgeons.

Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

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

amendments to 16 CCR sections 1320 and 1321 will simply update the language in these sections for consistency with statutory changes that became operative on January 1, 2020, to avoid confusion regarding postgraduate training and licensing requirements for physicians and surgeons in California.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation will not affect small businesses, since the proposed amendments to 16 CCR sections 1320 and 1321 will simply update the language for consistency with statutory changes that became operative on January 1, 2020, to avoid confusion regarding postgraduate training and licensing requirements for physicians and surgeons in California.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This determination has been made based upon the fact that the proposed amendments will simply update the language for consistency with statutory changes that became operative on January 1, 2020, to avoid confusion regarding postgraduate training and licensing requirements for physicians and surgeons in California.

Benefits of Regulation:

This rulemaking will amend 16 CCR sections 1320 and 1321 for consistency with statutory changes that became operative on January 1, 2020, pursuant to SB 798. These amendments will provide clarity regarding postgraduate training and licensing requirements to individuals seeking a physician's and surgeon's license in California. This regulatory action furthers the goal of consumer protection through the proper licensing and regulation of physicians and surgeons. This regulatory

action will not benefit worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, if one is held, or upon request from the person designated in the Notice under Contact Person, below, or by accessing the Board's website at: http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

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

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

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

CONTACT PERSON

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

Name:

Kerrie Webb

Address:

Medical Board of California
2005 Evergreen Street, Ste. 1200
Sacramento, CA 95815

Telephone No.:

(916) 263-2389

Fax No.:

(916) 263-2387

E-Mail Address:

regulations@mbc.ca.gov

The backup contact person is:

Name:

Alexandria Schembra

Address:

Medical Board of California
2005 Evergreen Street, Ste. 1200
Sacramento, CA 95815

Telephone No.:

(916) 263-2389

Fax No.:

(916) 263-2387

E-Mail Address:

regulations@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

TITLE 16. VETERINARY MEDICAL BOARD

PROFESSIONAL AND VOCATIONAL REGULATIONS Duties of a Supervising Veterinarian, § 2035

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

PUBLIC HEARING

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

by making such request in writing addressed to the individuals listed under "Contact Person" in this notice.

WRITTEN COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be received by the Board at its office no later than August 3, 2020, or must be received by the Board at the hearing, should one be scheduled.

AVAILABILITY OF MODIFICATIONS

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

AUTHORITY AND REFERENCE CITATIONS

Pursuant to the authority vested by sections 4808 and 4836 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 4836, 4836.1, 4840, and 4840.9, the Board is considering amending section 2035 of article 4 of division 20 of title 16 of the California Code of Regulations (CCR)¹.

INFORMATIVE DIGEST

BPC section 4808 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Veterinary Medicine Practice Act (Act). BPC section 4836 requires the Board to adopt regulations establishing animal health care tasks and an appropriate degree of supervision required for those tasks that may be performed only by an RVT or licensed veterinarian. BPC section 4836.1 authorizes an RVT to administer a drug, including but not limited to, a drug that is a controlled substance, under the direct or indirect supervision of a licensed veterinarian when done pursuant to the order, control, and full professional responsibility of a licensed veterinarian. BPC section 4840 authorizes RVTs and VAs to perform animal

¹ All CCR references are to title 16 unless otherwise noted.

health care services under the supervision of a California licensed or authorized veterinarian. BCP section 4840.9 allows licensed and authorized veterinarians to employ RVTs and VAs.

CCR section 2035, subsection (a), makes the supervising veterinarian responsible for determining the competency of the RVT, permit holder, or VA to perform allowable animal health care tasks. CCR section 2035, subsection (b), makes the supervising veterinarian responsible for making all decisions relating to the diagnosis, treatment, management, and future disposition of the animal patient. CCR section 2035, subsection (c), requires the supervising veterinarian to examine the animal patient before delegating any animal health care task to an RVT, permit holder, or VA, and requires the examination to be conducted at such time as good veterinary medical practice requires consistent with the particular delegated animal health care task.

This regulatory proposal will amend CCR section 2035 regarding duties of a supervising veterinarian. Specifically, the Board is proposing the following:

Adopt Subsection (d) of Section 2035 of Article 4 of Division 20 of Title 16 of the CCR

The proposed regulation would amend CCR section 2035 to add new subsection (d), which would prohibit the supervising veterinarian from delegating any allowable animal health care task to an RVT, permit holder, or VA who does not have the necessary extensive clinical skill, requisite training, and demonstrated competency.

POLICY STATEMENT
OVERVIEW/ANTICIPATED
BENEFITS OF PROPOSAL

Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. The proposal would allow the Board to continue carrying out this mandate through its licensing and regulatory efforts by requiring the supervising veterinarian to consider the skill, training, and demonstrated competency of the RVT, permit holder, and VA before delegating animal health care tasks. As such, the proposal is intended to increase consumer and animal access to veterinary medical care by allowing an RVT, permit holder, or VA to perform additional animal health care tasks, while ensuring that animals receive competent care. The Board anticipates that consumers and their animals will be better protected through increased access to skillful, trained, and competent individuals. The Board also anticipates that veterinarians will benefit from clarified terms to consider when delegating health care tasks to RVTs, permit holders, and VAs.

Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

The Board will be required to ensure compliance with the proposed regulations. Any increased workload and costs are anticipated to be minor and absorbable within existing resources.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal would clarify how supervising veterinarians delegate tasks to RVTs, permit holders, and VAs based on their skill, training, and demonstrated competency.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposal would clarify how supervising veterinarians delegate tasks to RVTs, permit holders, and VAs based on their skill, training, and demonstrated competency.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or

new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. The proposal would clarify how supervising veterinarians delegate tasks to RVTs, permit holders, and VAs based on their skill, training, and demonstrated competency.

Benefits of Regulation:

The Board anticipates that consumers and their animals would benefit from increased access to skillful, trained, and competent individuals. The Board also anticipates that veterinarians will benefit from clarified terms to consider when delegating animal health care tasks to RVTs, permit holders, and VAs. This regulatory proposal does not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

Below are the alternatives considered by the Board and the reason each was rejected.

1. The initial question brought to the Board's Multidisciplinary Advisory Committee (MDC) was whether the Board's regulations needed to provide for extended animal health care duties that could be performed by RVTs or to restrict some animal health care duties to only be delegated to RVTs, and not to permit holders or VAs. The MDC discussed whether the regulations should provide a list of duties (e.g., only an RVT could perform a procedure involving placement of a needle or appliance in a blood vessel, body cavity, or epidural space, induce anesthesia, or perform casting and splinting) that a supervising veterinarian could only delegate to an RVT based on the degree of risk. The idea to create a list the specific duties that could only be delegated to an RVT was rejected because generating a list of all restricted duties would be difficult and impractical

and imply that any task omitted from the list may be interpreted as a task delegable to an RVT. Instead, the MDC determined that assessment of risk is necessarily based on the specific set of circumstances of the individual animal patient, and it was more prudent to focus on the supervising veterinarian's judgment and the competence of the individual to whom the task is delegated, as this proposal provides.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 1747 North Market Blvd., Suite 230, Sacramento, California 95834.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1747 North Market Blvd., Suite 230, Sacramento, California 95834.

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

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

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

CONTACT PERSON

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

Name:
Justin Sotelo

Address:
Veterinary Medical Board
1747 N. Market Blvd., Ste. 230
Sacramento, CA 95834

Telephone No.:
916-515-5238

Fax No.:
916-928-6849

Email address:
Justin.Sotelo@dca.ca.gov

The backup contact person is:

Name:
Timothy Rodda

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

Telephone No.:
916-515-5227

Fax No.:
916-928-6849

E-Mail Address:
Timothy.Rodda@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at:
<http://www.vmb.ca.gov>.

TITLE 17. AIR RESOURCES BOARD

**NOTICE OF INTENTION TO AMEND THE
CONFLICT-OF-INTEREST CODE OF THE
CALIFORNIA AIR RESOURCES BOARD**

NOTICE IS HEREBY GIVEN that the California Air Resources Board (CARB), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendments to its Conflict-of-Interest Code. A comment period has been established commencing on June 19, 2020, and closing on August 3, 2020. All inquiries should be directed to the contacts listed below.

CARB proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out

the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Sections Affected

CARB proposes to amend California Code of Regulations (CCR), title 17, section 95000 Appendix A, List of Designated Positions, as summarized below. The regulation may make other non-substantive changes and edits.

- **Clarify that voting Board members only must submit a Form 700 to CARB.** In 2017, Assembly Bill 197 (Stats. 2016, ch. 250) added two **nonvoting, ex officio** positions to the Board to be occupied by members of the Legislature who serve at the will of their appointing power. These two ex officio positions are held by members of the Legislature who submit their Form 700 through the office of the Legislature.
- **Update position titles.** Some staff positions at CARB have been re-classified although duties remained the same, requiring updates to the position titles in Appendix A.
- **Update division names.** Some CARB divisions names have been re-named due to internal reorganization, requiring updates to the division titles in Appendix A.

CARB has determined that the proposed amendments:

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

Information regarding the proposed amendment is available on CARB's internet site at <https://ww2.arb.ca.gov/rulemaking/2020/coi2020> and included with this Notice.

Written Comment Period and Submittal of Comments

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than August 3, 2020, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than July 19, 2020. Interested persons may also provide comments by postal mail.

Written comments must be **received no later than August 3, 2020**, and must be addressed to the following:

Postal mail:

Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to Bradley Bechtold, Regulations Coordinator at (916) 322-6533.

TITLE 22. DEPARTMENT OF CHILD SUPPORT SERVICES

NOTICE OF PROPOSED RULEMAKING TO REVISE, REPEAL, AND ADOPT REGULATIONS FOR COMPLAINT RESOLUTION AND STATE HEARINGS

NOTICE IS HEREBY GIVEN that the Department of Child Support Services (DCSS) proposes to amend sections 110160, 110242, 110250, 110251, 110252, 110602, 110778, 111542, 111543, 111544, 120100, 120101, 120102, 120103, 120105, 120106, 120108, 120201, 120202, 120203, 120204, 120205, 120206, 120207, 120210, 120211, 120213, 120216, 120217, 120218, 120220, and 120221, Title 22 California Code of Regulations (CCR); and adopt section 111544, 22 CCR.

AVAILABILITY OF DOCUMENTS

The proposed text for the revision, repeal, and adoption of regulations for the Complaint Resolution and State Hearings process in this rulemaking is posted to the DCSS public website at: <https://childsupport.ca.gov/regulations/>.

Any further revised version of the text and the Final Statement of Reasons will be posted to this webpage when they become available. DCSS has available all of the information upon which this rulemaking is based at the contact address listed below. If you do not have internet access, copies of the proposed text for the amend-

ment and adoption of regulations for the Complaint Resolution and State Hearings process to be adopted into CCR, and the Initial Statement of Reasons may be secured from the contact person listed below.

15-DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all relevant and timely comments received, DCSS may adopt the proposed regulations substantially as described in this notice. If DCSS makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before DCSS adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Andrew Enriquez at the address indicated below. DCSS will accept any 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 may be obtained by contacting Andrew Enriquez at the address below.

CONTACT PERSON

Any inquiries regarding this action to revise, repeal, and adopt regulations for the Complaint Resolution and State Hearings process may be directed to:

Name:

Andrew Enriquez

Telephone:

916-464-6689

Fax:

916-464-5772

Email Address:

andrew.enriquez@dcss.ca.gov

Postal Address:

Dept. of Child Support Services
Policy and Program Branch
MS-210

Attn: Andrew Enriquez

P.O. Box 419064

Rancho Cordova, CA 95741-9064

The backup contact person for inquiries is:

Name:
Zachary Reed

Telephone:
916-464-7572

Fax:
916-464-5772

Email Address:
zachary.reed@dcss.ca.gov

Postal Address:
Dept. of Child Support Services
Policy and Program Branch
MS-210
Attn: Zachary Reed
P.O. Box 419064
Rancho Cordova, CA 95741-9064

45- DAY WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DCSS. All comments should be submitted to the contact person named above at the addresses or phone number provided. The written comment period shall begin on June 19, 2020 and end on August 4, 2020 at midnight. DCSS shall consider only comments received by the contact person at the DCSS Policy and Program Branch by the deadline.

PUBLIC HEARING

DCSS has not scheduled a public hearing for this proposed action. Any interested person or his or her representative may request a public hearing. If DCSS receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period, DCSS will conduct a public hearing on this proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DCSS proposes to revise, repeal, and adopt regulations for the Complaint Resolution and State Hearings process to correct inconsistencies between statutes and regulations; to adopt as regulation, directives published by DCSS as child support service letters per Family Code Section 17306(e); to make substantive changes to improve the complaint resolution and state hearing processes; and to make non-substantive changes to improve regulation clarity.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The objective of the proposed rulemaking is to ensure that there is clear guidance in regulation regarding the actions that local child support agencies (LCSAs) take to manage the complaint resolution and state hearing process. The proposed changes will provide clarity to the public by making regulations consistent with authorizing statutes including eliminating references to the Franchise Tax Board (FTB) from regulations, correcting timeframes for specified state hearing processes, and adding the State Disbursement Unit (SDU) as the payee for child support collections. For further discussion of the benefit analysis, see "Results of the Economic Impact Assessment" below.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

After conducting a review for any regulations that relate to or affect this area, the DCSS has found that there are no other regulations that concern the complaint resolution and state hearing process. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

AUTHORITY AND REFERENCE

Authority: Sections 17306, 17310, and 17312, Family Code.

Reference: Section 17311, Family Code; Sections 303.72, 303.100, and 303.102, 45 Code of Federal Regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

Pursuant to Government Code Section 11346.5, DCSS has determined that the proposed revision, repeal, and adoption of regulations for the complaint resolution and state hearing process will not impose a cost or savings on any state agency, local agency, or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; will not have a significant impact on housing costs; and will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The DCSS is not aware of any cost impacts

that a representative private person or business will incur in reasonable compliance with the proposed action.

Small Business Determination: DCSS has determined that this rulemaking will not have any potential cost impact on small businesses as these regulations pertain to the enforcement of individual child support orders not small business regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), DCSS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DCSS 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

DCSS does not anticipate any impacts on 1) the creation or elimination of jobs within the State; 2) the creation or elimination of existing businesses in the State; 3) the expansion of businesses in the State. DCSS anticipates benefits to the health and welfare of California residents, specifically to LCSAs by amending regulations and adopting new regulations that accurately reflect current DCSS policy and are in line with state and federal authorities. This will result in more standard business practices among counties, less confusion regarding current child support policies, and better service to the public.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CHAPTER 3: NATURALLY OCCURRING LEAD IN CANDY SECTION 28500: NATURALLY OCCURRING LEVELS OF LEAD IN CANDY

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) is proposing to add a new chapter and section to Title 27 of the California Code of Regulations, Chapter 3: Naturally Occurring Lead in Candy, section 28500, Naturally

Occurring Levels of Lead in Candy.¹ If adopted, this proposed regulation would establish the naturally occurring level of lead in candies containing chili and/or tamarind as required by Health and Safety Code section 110552. This is a continuation of the rulemaking process that OEHHA initially began on March 15, 2019.

PUBLIC PROCEEDINGS

Written Comment Period

Any written comments concerning this proposed regulatory action, regardless of the form or method of transmission, must be received by OEHHA no later than **August 18 2020**, the designated close of the written comment period. Due to the COVID-19 emergency, OEHHA is providing a longer period than required under the Administrative Procedure Act. All written comments will be posted on the OEHHA website at the close of the public comment period.

Because of limited in-office staffing during the COVID-19 emergency, OEHHA strongly recommends that the public submit written information electronically, rather than in paper form. Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Comments submitted in paper form can be mailed, faxed, or delivered in person to the address below, but delays may occur if staff are unable to timely access them.

All submissions should be directed to:

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
P.O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-323-2517
Fax: 916-323-2610

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address and e-mail may be available to third parties.

PUBLIC HEARING

A public hearing on these proposed regulatory amendments will only be scheduled upon request. The hearing would be web-based due to the COVID-19 emergency². To request a hearing, send an e-mail to Monet Vela at monet.vela@oehha.ca.gov or to the ad-

¹ All further references are to sections of Title 27, Cal. Code of Regs., unless indicated otherwise.

² Executive Orders N-25-20 and N-29-20

dress listed above by no later than **August 3, 2020**. If such a request is made, OEHHA will mail a notice of the hearing to the requester and interested parties, and the notice will be posted on OEHHA's website at least ten days before the public hearing date. The notice will provide the date, time, and location of the hearing.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela at (916) 323-2517, or by e-mail to monet.vela@oehha.ca.gov. Mario Fernandez is a back-up contact person for inquiries concerning processing of this action and is available at (916) 323-2635 or mario.fernandez@oehha.ca.gov.

AUTHORITY

Health and Safety Code section 110552(c)(3).

REFERENCE

Health and Safety Code sections 110552(b) and 110552(c)(1).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code section 110552 requires OEHHA, in consultation with the California Department of Public Health (CDPH) and the Office of the Attorney General, to determine the "naturally occurring level" of lead in candy containing chili and tamarind. The proposed regulation establishes this naturally occurring level of 0.02 parts per million (ppm) based on a scientific approach summarized in the Initial Statement of Reasons and discussed in detail in the accompanying technical document titled *Naturally Occurring Lead in Certain Candies. Candies Flavored with Chili and/or Tamarind* (OEHHA 2020).

The purpose of this regulation is to establish a naturally occurring level of lead in candies containing chili and tamarind, as required by section 110552(c)(3). OEHHA initially proposed a naturally occurring level of lead in these candies on March 15, 2019 (hereafter, "the 2019 proposed rulemaking"), but was unable to complete the proposed rulemaking within the one-year statutory timeframe. While the proposed level has not changed, OEHHA has incorporated additional information received during the comment period for the 2019 proposed rulemaking into this Initial Statement of Reasons and the attached technical support document.

Anticipated Benefits of the Proposed Regulation

The proposed regulation will further the goals of the authorizing statute by establishing a naturally occurring level of lead in candies flavored with chili and/or tamarind. This level will be used by CDPH when testing for levels of lead in candy for the purpose of enforcing other provisions of the statute. The proposed regulation will therefore benefit the health and welfare of California residents by setting a science-based naturally occurring level that will be used to ensure that candy sold or distributed in California is not adulterated.

No Inconsistency or Incompatibility with Existing Regulations

OEHHA has determined that no other state regulations establish a naturally occurring level for lead in candies containing chili and/or tamarind. The proposed regulatory action is therefore neither inconsistent nor incompatible with any other existing state regulations because it sets a naturally occurring regulatory level as required by statute and does not address compliance with any other law or regulation.

LOCAL MANDATE/FISCAL IMPACT

OEHHA has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. OEHHA has also determined that the proposed regulation would not impose any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, that no other nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action, and that there will be no costs or savings to any state agency because of the proposed regulatory action. There are also no costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

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

OEHHA has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation establishes a naturally occurring level for lead in candies flavored with chili and/or tamarind

and OEHHA has determined this level is achievable by following good agricultural, manufacturing, and procurement practices, or by other currently feasible practices, at little to no additional costs to California businesses.

RESULTS OF ECONOMIC IMPACT ANALYSIS
(Gov. Code section 11346.3(b))

Creation or Elimination of Jobs within the State of California

This regulatory action will not significantly impact the creation or elimination of jobs within the State of California because OEHHA has determined this level is achievable by following good agricultural, manufacturing, and procurement practices, or by other currently feasible practices, at little to no additional costs to California businesses.

Most manufacturers of candies containing chili and/or tamarind are located outside of California, with many located in Mexico. OEHHA was able to evaluate the types of candies made by over 100 of the approximately 200 candy manufacturers based in California, and fewer than ten companies currently produce any candies containing chili and/or tamarind. Further, based on the evaluation of recent testing data for similar candies, OEHHA has determined that the few California manufacturers that produce this type of candy are likely already in compliance with the proposed level. And for any manufacturer that might be impacted, OEHHA has determined that the proposed naturally occurring level is achievable with minimal cost to the manufacturer. For example, the lead in chili powder can be significantly reduced by washing the chili peppers before processing and employing simple and relatively low-cost drying procedures or by using higher-grade chili peppers at an increased cost ranging from fractions of a cent per candy to no more than three cents per candy.

Additionally, California retailers and distributors are not likely to incur additional costs or face difficulty in obtaining candy products containing chili and/or tamarind that meet the proposed lead level requirements. OEHHA has reviewed test results for levels of lead present in candies containing chili and/or tamarind that were produced by multiple manufacturers in Mexico. Data from testing of candies produced by nine different manufacturers between 2012 and 2017 for sale into California indicate that fewer than 8% of the tested candies would have exceeded the proposed level of 0.02 ppm, and no candy was reported to contain more than 0.03 ppm lead. Additional data from testing conducted between 2017 and 2018 of candies containing chili and/or tamarind produced by one of the largest candy manufacturers in Mexico indicate that fewer than 6% of can-

dies would have exceeded the proposed level of 0.02 ppm, and only four candies were reported to contain more than 0.04 ppm lead. Given that the majority of Mexican candies flavored with chili and/or tamarind are already in compliance with the proposed level of 0.02 ppm, and that Mexico is a leading producer of such candies, most importers and distributors/retailers of these candies in California are already sourcing compliant candies from Mexican manufacturers. As the majority of candies flavored with chili and/or tamarind manufactured by both California and Mexican manufacturers for sale in California are already compliant with the proposed regulation, California retailers of these candies are unlikely to be significantly impacted.

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

For the reasons noted above, this proposed regulatory action will not impact the creation of new businesses or the elimination of existing businesses within the State of California because very few California manufacturers of this type of candy exist and the costs of compliance are likely to be minimal.

The Expansion of Businesses Currently Doing Business within the State

For the reasons noted above, this proposed regulatory action will not impact the expansion of businesses within the State of California because very few California manufacturers of this type of candy exist and the costs of compliance are likely to be minimal.

Benefits of the Proposed Regulation

The proposed regulation would establish a naturally occurring level of 0.02 ppm lead in candies containing chili and/or tamarind for the purpose of enforcing other provisions of the law related to the sale or distribution of candy within California. The proposed regulation will therefore benefit the health and welfare of California residents by setting a science-based naturally occurring level that will be used to ensure that candy sold or distributed in California is not adulterated.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

Some candy manufacturers — those that produce candies containing chili and/or tamarind — may incur costs in order to ensure their product does not exceed the proposed naturally occurring level of lead in candy flavored with chili and/or tamarind. However, based on the evaluation of recent testing data, OEHHA has determined that the few California manufacturers that produce this type of candy are likely already in compliance with the proposed level. Furthermore, for any manufacturer that might be impacted, OEHHA has determined that the proposed naturally occurring level is achievable

with minimal cost to the manufacturer by following good agricultural, manufacturing, and procurement practices, such as washing the chili peppers before processing and employing simple and relatively low-cost drying procedures, or using higher-grade chili peppers. Therefore, any compliance costs are likely to be minimal.

EFFECT ON SMALL BUSINESSES

The proposed regulatory action may adversely impact some small businesses in California. However, for the reasons discussed above, any costs are likely to be minimal.

CONSIDERATION OF ALTERNATIVES

Pursuant to Government Code section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, 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. A detailed discussion of alternatives proposed during the comment period for the 2019 proposed rulemaking can be found on pages 8 to 10 of the Initial Statement of Reasons.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulation, all the information upon which the regulation is based, and the text of the proposed regulation. These documents are available on OEHHA's website at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation that is changed or modified from the express terms of this proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Due to limited in-office staffing during the COVID-19 emergency, OEHHA strongly recommends that interested parties access these documents via its website at www.oehha.ca.gov. However, a notice

of the comment period on the revised proposed regulation and the full text will be provided to individuals whose comments were received by OEHHA during the public comment period or who testified or submitted written comments at the public hearing, if one is held, and anyone who requests notification from OEHHA of the availability of such change.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from Monet Vela at Monet.Vela@oehha.ca.gov or the telephone number indicated above. The Final Statement of Reasons will also be available on OEHHA's website at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

FISH AND GAME CODE
SECTION 1653 CONSISTENCY
DETERMINATION REQUEST FOR
Truckee River Fish Habitat Enhancement Project
(Tracking Number: 1653-2020-054-001-R2)
Nevada County

California Department of Fish and Wildlife (CDFW) received a Request to Approve on May 18, 2020, that the Trout Unlimited proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves constructing three boulder cross-vanes that will create riffle and pool complexes, reduce stream temperatures, increase dissolved oxygen, and increase salmonid habitat and cover. The proposed project will be carried out on the Truckee River within the Truckee River State Wildlife Area, located off Glenshire Dr., three miles east of the Visitor Center on Donner Pass Rd., near the township of Truckee, Nevada County, California.

On January 22, 2020, the Lahontan Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Truckee River Fish Habitat Enhancement Project. The Regional Water Board determined that the Project, as de-

scribed in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID No. 6A292002001) for coverage under the General 401 Order on May 7, 2020.

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

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

**DEPARTMENT OF
FISH AND WILDLIFE**

**FISH AND GAME CODE
SECTION 1653 CONSISTENCY
DETERMINATION REQUEST FOR**

**Upper Noyo River Fish Passage Improvement and
Sediment Reduction Project
(Tracking Number: 1653-2020-055-001-R1)
Mendocino County**

California Department of Fish and Wildlife (CDFW) received a Request to Approve on June 8, 2020, that Trout Unlimited proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves the removal of a culvert and installation of a river crossing. A water diversion system will also be set up to divert streamflow during the project. The proposed project will be carried out on the Noyo River located at approximately River Mile 32.39, Mendocino County, California.

On May 12, 2020, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the

terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Upper Noyo River Fish Passage Improvement and Sediment Reduction Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID No. 1B20080WNME, ECM PIN No. CW-866887) for coverage under the General 401 Order on June 3, 2020.

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

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

**OAL REGULATORY
DETERMINATION**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATIONS**

**(Pursuant to Government Code
Section 11340.5 and Title 1, section 270, of the
California Code of Regulations)**

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or margaret.molina@oal.ca.gov.

**2020 OAL DETERMINATION NUMBER 4
(OAL MATTER NUMBERS CTU2019-0923-01
AND CTU2019-1211-01)**

REQUESTED BY:

Joseph R. McCoy and David A. Perysian

CONCERNING:

**Non-Designated Programming Facilities;
Memoranda dated April 24, 2018, April 25, 2018,
and September 10, 2019, issued by the
Department of Corrections and Rehabilitation**

**DETERMINATION ISSUED PURSUANT TO
GOVERNMENT CODE SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation.”¹

CHALLENGED RULE

The challenged rules are contained in four memoranda issued by the California Department of Corrections and Rehabilitation (Department) concerning the implementation of Non-Designated Programming Facilities (NDPF).

The memoranda challenged by Joseph R. McCoy, attached hereto as Exhibit A, are (1) a letter from the Director of the Division of Adult Institutions, Kathleen Allison, that appears to be directed to Division of Adult Institutions Associate Directors and Wardens,² (2) the “Non-Designated Programming Facility Frequently

¹ As defined by California Code of Regulations, title 1, section 250(a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

² Mr. McCoy only provided page 2 of the letter for OAL review.

Asked Questions,” dated April 25, 2018, and (3) the “MSF Non-Designated Programming Facilities Conversion Schedule,” printed April 24, 2018.

The fourth memorandum, challenged by David A. Perysian and attached hereto as Exhibit B, is titled “Amended Non-Designated Programming Facility Expansions for 2018/19,” dated September 10, 2018, signed by Secretary Ralph M. Diaz, and addressed to all Wardens, Associate Directors, Division of Adult Institutions, Classification Staff Representatives, Classification and Parole Representatives, and Correctional Counselors III, Reception Centers.

Collectively, the challenged memoranda are referred to as the “Memoranda.”

DETERMINATION

OAL determines that the Memoranda concerning the implementation of NDPFs meet the definition of “regulation” that should have been adopted pursuant to the APA, but were not. The Memoranda are, therefore, underground regulations.

FACTUAL BACKGROUND

On September 23, 2019, OAL received the petition from Mr. McCoy. Mr. McCoy’s petition was incomplete for failure to certify that a copy of the petition and all attachments were sent to the Department. OAL notified Mr. McCoy that the petition was incomplete on November 22, 2019, and received the required certification on December 9, 2019.

On December 11, 2019, OAL received the petition from Mr. Perysian. The petitions of Mr. McCoy and Mr. Perysian (Petitioners) challenge the Memoranda attached as Exhibit A and Exhibit B, respectively, as underground regulations. Because both petitions concern NDPFs, OAL accepted both petitions for consideration on January 31, 2020, and notified petitioners that OAL would address them with one determination.

OAL published a summary of the petitions in the California Regulatory Notice Register on February 7, 2020, and solicited comments from the public until March 9, 2020. OAL did not receive any comments. A response to the petition from the Department was due no later than March 23, 2020. No response was received from the Department.

Exhibit A, the letter signed by the Director of the Division of Adult Institutions, Kathleen Allison, attached a copy of the Non-Designated Programming Facility Frequently Asked Questions (NDPF FAQ), stating that “the FAQs may be shared with staff and the inmate population.” The NDPF FAQ contains information regarding general NDPF policies, long-term plans for NDPFs, and procedures for placing inmates at NDPFs.

The MSF Non-Designated Programming Facilities Conversion Schedule, also a part of Exhibit A, provides a schedule for multiple facilities to transfer inmates into NDPFs throughout May, June, and July of 2018.

Exhibit B, the Amended Non-Designated Programming Facility Expansions for 2018/19 Memorandum, dated September 10, 2018, was sent to adult institutional staff to provide an updated schedule for thirteen facilities scheduled to transition into NDPFs in late 2018 and early 2019.

Collectively, the Memoranda concern the implementation of non-designated programming in facilities under the jurisdiction of the Department and indicate that the Department is converting multiple, existing facilities into NDPFs. As provided in the NDPF FAQ, NDPFs will “serve to provide greater access to programs for inmates that demonstrate positive programming, regardless of prior Sensitive Needs Yard (SNY) or General Population (GP) designation.” The September 10, 2018 memorandum states that “NDPFs (i.e., facilities that do not identify as [SNY] or [GP]) will allow for greater access to programming opportunities and enhanced privileges.”

According to the NDPF FAQ, “[a]s of February 2018, multiple facilities and health care programs have already converted to non-designated status.” The September 10, 2018 memorandum adds that “[i]t is CDCR’s goal to slowly transition all Level I, Level II, and select Level III housing facilities into NDPFs, as they currently house a large population of programming inmates.”

California Code of Regulations, title 15, section 3377 provides that there are four levels of facilities, called “security levels,” and that each facility is “designated at a security level based on its physical security and housing capability.” (Cal. Code Regs., tit. 15, § 3377.) Following a detailed classification process, each inmate is given a placement score that is used by the Department to determine the proper level of facility for inmate placement. (See, Cal. Code Regs., tit. 15, § 3375 et seq.) Pursuant to section 3375.1,

Except as provided in section 3375.2, each inmate shall be assigned to a facility with a security level which corresponds to the following placement score ranges:

- (1) An inmate with a placement score of 0 through 18 shall be placed in a Level I facility.
- (2) An inmate with a placement score of 19 through 35 shall be placed in a Level II facility.
- (3) An inmate with a placement score of 36 through 59 shall be placed in a Level III facility.
- (4) An inmate with a placement score of 60 and above shall be placed in a Level IV facility. (Cal. Code Regs., tit. 15, sec. 3375.1.)

According to the Memoranda, Level I, Level II, and select Level III facilities will convert into NDPFs and implement a new programming model that “serve[s] to provide greater access to programs for inmates that demonstrate positive programming.” In addition, the Memoranda establish NDPF placement for certain inmates pursuant to specific criteria and specify procedures for how and when to assign NDPF placement. California Code of Regulations, title 15, article 10 (“Classification”) governs procedures for classifying, placing, and transferring inmates, as well as establishes the four facility security levels. A search of title 15 of the California Code of Regulations did not reveal regulations establishing this new facility type or regulations detailing NDPF procedures as established in the Memoranda.

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5, the agency creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code, § 11340, subd. (b)). An OAL determination is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rule is a “regulation” subject to the APA. This analysis will determine (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure. (Gov. Code, § 11342, subd. (g).)³

As stated in *Tidewater*, the first element used to identify a "regulation" is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.⁴

The Memoranda affect inmates who may be transferred to NDPFs and those already housed in NDPFs, as well as those who might wish to be housed at an NDPF. By the express terms of the September 10, 2018 memorandum, "NDPFs (i.e., facilities that do not identify as Sensitive Needs Yard [SNY] or General Population) will allow for greater access to programming opportunities and enhanced privileges. It is CDCR's goal to slowly transition all Level I, Level II, and select Level III housing facilities into NDPFs." The Memoranda also specify criteria for placing inmates into NDPFs, as well as procedures for how Department staff are to notify inmates pending transfer to an NDPF. The Memoranda apply generally to all inmates at, in the process of transferring to, or who would like to be housed at NDPFs; therefore, the first element of *Tidewater* is met.

The second element used to identify a "regulation" as stated in *Tidewater* is that the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure.

³ Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

⁴ See also *Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

Penal Code section 5054 specifically provides that the care and custody of inmates, as well as the management and control of state prisons, is vested in the Secretary of the Department. It states:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

Penal Code section 5068 requires that the Secretary of the Department classify and assign inmates and states in relevant part:

... the Director of Corrections shall classify prisoners; and when reasonable, the director shall assign a prisoner to the institution of the appropriate security level and gender population nearest the prisoner's home, unless other classification factors make such a placement unreasonable.

The departmental policy establishing NDPFs and procedures for placing inmates at NDPFs directly affect the "care, custody, treatment, training, discipline and employment of persons" in correctional institutions that have converted into NDPFs. Therefore, the Memoranda implement, interpret, and make specific Penal Code sections 5054 and 5068.

In addition, by specifying that Level I, Level II, and select Level III facilities will convert into NDPFs, a new type of facility, and establishing programming expectations specific to NDPFs, the Memoranda further implement, interpret, and make specific the Department's existing housing and facility level regulations set forth in title 15 of the California Code of Regulations, including but not limited to, sections 3375, 3375.1, and 3377. Therefore, the second element in *Tidewater* is met.

The challenged Memoranda, therefore, meet the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the challenged rule fails within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*" (Emphasis added.)

The Department has not identified an express statutory exemption from the APA that would apply to the

challenged Memoranda, nor did OAL find such an exemption.

CONCLUSION

In accordance with the above analysis, OAL determines that the challenged rules concerning NDPFs meet the definition of “regulation” that should have been adopted pursuant to the APA.

Date: June 8, 2020

/s/
Nicole C. Carrillo
Attorney

/s/
Amy R. Gowan
Attorney

For:
Kenneth J. Pogue
Director

Copy:
Ralph Diaz, Secretary
Ying Sun, Associate Director

**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# 2020-0420-04
BOARD OF FORESTRY AND FIRE PROTECTION
Southern Subdistrict and Marin County Point Count Amendments

This rulemaking action by the Board of Forestry and Fire Protection amends the Forest Practice Rules by updating point count standards and deleting provisions regarding even-aged silvicultural management of Eucalyptus trees within the southern subdistrict of the coast forest district. This action also updates stocking standards for Marin County.

Title 14
AMEND: 913.8, 926.1, 926.8, 926.25, 927.9,
927.10, 927.16
Filed 06/04/2020
Effective 01/01/2021
Agency Contact: Eric Hedge (916) 653-9633

File# 2020-0603-01
CALIFORNIA DEBT LIMIT ALLOCATION
COMMITTEE
Qualified Residential Rental Project (QRRP) Program
Definitions Changes

This emergency rulemaking action by the California Debt Limit Allocation Committee amends definitions pertaining to the Qualified Residential Rental Project Program.

Title 4
AMEND: 5000, 5033, 5170
Filed 06/09/2020
Effective 06/09/2020
Agency Contact: Isaac Clark III (916) 651-8484

File# 2020-0429-03
CALIFORNIA HIGHWAY PATROL
Explosives Stops

This action updates the list of safe stopping places for commercial vehicles transporting explosives on California highways.

Title 13
AMEND: 1153
Filed 06/09/2020
Effective 06/09/2020
Agency Contact: Tian-Ting Shih (916) 843-3400

File# 2020-0424-01
CALIFORNIA HORSE RACING BOARD
Medication Penalties/Permitted/Authorized
Medication

The California Horse Racing Board (CHRB) in this timely Certificate of Compliance makes regulations permanent that significantly limit the medications, drugs, and other substances that are authorized to be given to a racehorse after entry into a race. Additionally, CHRB is removing certain penalties previously allowed for non-steroidal anti-inflammatory drug substances and adds Category “C” penalties for a fourth and subsequent violation within a 365-day period.

Title 4
AMEND: 1843.3, 1843.5, 1844
Filed 06/04/2020
Effective 06/04/2020
Agency Contact: Zachary Voss (916) 263-6036

File# 2020-0528-02
 DENTAL BOARD OF CALIFORNIA
 Criminal Conviction History

In this rulemaking, the California Dental Board, proposes to amend Title 16, California Code of Regulations, Section 1028 to remove the requirement that applicants for licensure disclose their criminal history. This proposed amendment complies with Business and Professions Code section 480 (Chiu, Chapter 995, Statutes of 2018 (AB2138)) with an effective date of July 1, 2020. This rulemaking will have an effective date of July 1, 2020.

Title 16
 AMEND: 1028
 Filed 06/10/2020
 Agency Contact: Gabriel Nevin (916) 263-2027

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# 2020-0428-01
 DEPARTMENT OF CORRECTIONS AND REHABILITATION
 Effective Communication

This action by the Department of Corrections and Rehabilitation amends the definition of effective communication and incorporates automated Classification Committee Chrono (05/19) and Administrative Segregation Unit Placement Notice (05/19) automated forms.

Title 15
 AMEND: 3000, 3335, 3336, 3338, 3340
 Filed 06/09/2020
 Effective 10/01/2020
 Agency Contact: Josh Jugum (916) 445-2266

File# 2020-0429-02
 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
 Income Limits

This regulatory action by the Department of Housing and Community Development (Department) is the annual update of income limits for households of varying sizes used to determine eligibility for Department programs. The Department transmitted this action to the Office of Administrative Law (OAL) for filing with the Secretary of State and publishing in the California Code of Regulations pursuant to Health and Safety Code section 50093. This filing is exempt from the rulemaking requirements of Articles 5 and 6 of Chapter 3.5 of the Administrative Procedure Act, and, therefore, is not subject to OAL's review. (Health and Saf. Code, sec. 50093.) This regulation is effective April 29, 2020, the date the regulations were filed with OAL, pursuant to Health and Safety Code section 50093.

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Title 25
 ADOPT: 6932
 REPEAL: 6932
 Filed 06/09/2020
 Effective 04/29/2020
 Agency Contact: Zach Olmstead (916) 263-5883

File# 2020-0306-04
 DEPARTMENT OF MOTOR VEHICLES
 Electronic Lien and Title

Vehicle Code section 4450.5 directs the Department of Motor Vehicles ("DMV") to develop an Electronic Lien and Title Program (the "Program"), in consultation with stakeholders, that would require lienholders' title information to be stored electronically if DMV determines that such a program is cost-effective compared to its paper system. In this regular rulemaking, DMV is adopting the forms a service-provider applicant and lienholder applicant must submit to DMV to apply to become a Program participant. DMV is also adopting Program definitions, application review criteria, withdrawal requirements, and other Program procedures.

Title 13
 ADOPT: 153.00, 153.02, 153.04, 153.06, 153.08, 153.10, 153.12, 153.14, 153.16, 153.18, 153.20, 153.22, 153.24, 153.26, 153.28
 Filed 06/10/2020
 Effective 10/01/2020
 Agency Contact: Tracy Brazil (916) 657-8919

File# 2020-0527-02
 DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
 Covered Electronic Waste Recovery and Recycle Payment Rates

This is a request, pursuant to Government Code section 11340.9(g), to file with the Secretary of State and print in the California Code of Regulation amendments to two recycling and recovery rates paid for two types of materials: Covered Electronic Waste (CEW) contain-

ing Cathode Ray Tube (CRT) (from \$.49 to \$.66 per pound) and CEW not containing CRT (from \$.60 to \$.87 per pound). The request also includes changing the rate paid by an approved recycler to an approved collector for all CEWs regardless of real or anticipated disposition of the CEWs (from \$.19 to \$.26 per pound).

Title 14

AMEND: 18660.24, 18660.25, 18660.33, 18660.34

Filed 06/05/2020

Effective 07/01/2020

Agency Contact: Irina Kaminer (916) 341-6396

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.