



California Regulatory Notice Register

REGISTER 2020, NUMBER 37-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

SEPTEMBER 11, 2020

PROPOSED ACTION ON REGULATIONS

TITLE 2. CALIFORNIA WORKFORCE DEVELOPMENT BOARD	
<i>Conflict-of-Interest Code — Notice File Number Z2020-0826-02</i>	1223
TITLE 2. FAIR POLITICAL PRACTICES COMMISSION	
<i>Enforcement Proceedings — Notice File Number Z2020-0901-05</i>	1223
TITLE 2. FAIR POLITICAL PRACTICES COMMISSION	
<i>Enforcement Streamline Program — Notice File Number Z2020-0901-01</i>	1226
TITLE 4. CALIFORNIA HORSE RACING BOARD	
<i>Penalties for Multiple Medication Violations — Notice File Number Z2020-0901-04</i>	1227
TITLE 10. DEPARTMENT OF BUSINESS OVERSIGHT	
<i>Implementation of Disclosures for Commercial Financing —</i>	
<i>Notice File Number Z2020-0901-06</i>	1230
TITLE 11. DEPARTMENT OF JUSTICE	
<i>Data Broker Registration Regulations — Notice File Number Z2020-0831-03</i>	1233
TITLE 11. DEPARTMENT OF JUSTICE	
<i>Electronic Recording Delivery System (ERDS) — Notice File Number Z2020-0831-02</i>	1236
TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION	
<i>Content of Law Libraries — Notice File Number Z2020-0826-01</i>	1238

(Continued on next page)

*Time-
Dated
Material*

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE
Habitat Restoration and Enhancement Act Consistency Determination
Number 1653–2020–057–001–R1, Howland Hill Road Metcalf Grove
Creek Fish Passage Improvement Culvert Replacement Project, Del Norte..... 1241

DEPARTMENT OF FISH AND WILDLIFE
Habitat Restoration and Enhancement Act Consistency Determination
Number 1653–2020–059–001–R1, Ryan Creek Floodplain and
Sediment Reduction Project, Mendocino County..... 1243

DEPARTMENT OF FISH AND WILDLIFE
Research on the San Francisco Garter Snake, Carin Apperson with the
San Francisco Public Utilities Commission..... 1245

DEPARTMENT OF MANAGED HEALTH CARE
Notice of 2nd Comment Period of 15 Days for Amendments to
Department of Managed Health Care Conflict-of-Interest Code 1246

SUMMARY OF REGULATORY ACTIONS
Regulations filed with Secretary of State 1247

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

CALIFORNIA REGULATORY NOTICE REGISTER is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 328–4880. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

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

TITLE 2. CALIFORNIA WORKFORCE DEVELOPMENT BOARD

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE CALIFORNIA WORKFORCE DEVELOPMENT BOARD

NOTICE IS HEREBY GIVEN that the California Workforce Development Board (CWDB), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on September 11, 2020 and closing on October 26, 2020. All inquiries should be directed to the contact listed below.

The CWDB 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.

Changes to the conflict-of-interest code include:

- Eliminating one designated position which is no longer used by the department.
- Modifying the title of three designated positions.
- Adding four designated positions which are now being used by the department.

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

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than October 26, 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 October 11, 2020.

The CWDB 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.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Jeff Jacobstein, Human Resources and Communications Manager, 916-657-1444, jeffrey.jacobstein@cwdb.ca.gov.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulations at a public hearing on or after **October 15, 2020**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately 10:00 a.m. Written comments should be received at the Commission offices no later than **5:00 p.m. on October 13, 2020**.

BACKGROUND/OVERVIEW

Sections 83115, 83115.5 and 83116 address the Commission's authority to generally investigate alleged violations of the Act, find probable cause that a violation of the Act has occurred, and hold an administrative hearing to determine if a violation of the Act has occurred, respectively. Under Section 83116, the APA is applicable to the enforcement proceedings, including the authority of the Commission to seek a default finding where no timely notice of defense is submitted. Moreover, pursuant to Section 84214, committees

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

must terminate their filing obligation as required by Commission regulations. Finally, Section 83111 states that “[t]he Commission has primary responsibility for the impartial, effective administration and implementation of this title.”

Section 83112 provides that “[t]he commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of this title, and to govern procedures of the Commission.”

The Commission has identified several areas of improvement to multiple regulations governing enforcement matters including revised procedures and requirements for probable cause proceedings, administrative hearings, briefing procedures associated with proposed decisions, and administrative terminations. These recommended improvements would modify existing regulations in accordance with governing statutes to promote and facilitate compliance with, and enforcement of, the Act, while ensuring fairness and due process for persons subject to enforcement proceedings. In addition to proposed substantive amendments to Regulations 18360, 18361.1, 18361.4, 18361.5, 18361.9, 18361.11 and 18404.2, the Commission also proposes numerous non-substantive changes intended to clarify existing regulations.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18360 — Enforcement Complaints

The Commission will consider the adoption of proposed Regulation 18360 to reflect the application of its new Electronic Complaint System (“ECS”), as well as several technical changes to clarify and improve the existing provisions. At a minimum, the Commission may consider:

- A provision to post information available to the public with respect to complaints and referrals on the Commission website; and
- A provision allowing for the rejection of complaints without notice to the respondents where duplicate complaints or referrals are submitted by the same complainant or filing officer, or where the Chief of Enforcement determines nonsworn or anonymous complaints fail to allege facts that could result in a violation of the Act.

Repeal 2 Cal. Code Regs. Section 18360 — Enforcement Complaints

The Commission will consider repealing current Regulation 18360.

Amend 2 Cal. Code Regs. Section 18361.1 — Administrative Subpoenas

The Commission will consider amending Regulation 18361.1 to add a provision requiring the subject of an administrative subpoena issued by the Commission

to provide a privilege log, containing specified information, to accompany any objection to the production of responsive records in their possession.

Amend 2 Cal. Code Regs. Section 18361.4 — Probable Cause Proceedings

The Commission will consider amending Regulation 18361.4 to rearrange the regulatory provisions to correspond with the sequence of events that occur in a probable cause proceeding; rephrase the existing probable cause standard; clarify and simplify filing deadlines, service requirements and scheduling procedures; and eliminate existing regulatory procedures and requirements that, in practice, provide little or no benefit to the parties and make the process less efficient. At a minimum, the Commission may consider:

- A provision amending the probable cause standard to a simpler more straightforward standard conspicuously located in new subdivision (a);
- A provision requiring the Enforcement Division to send respondent a checklist form that explains all of the possible actions and associated deadlines available at the probable cause stage, and requests specified information from the respondent;
- A provision authorizing a hearing officer to grant a respondent’s late request for a probable cause conference based on good cause unless an order to file an accusation against the respondent has already been issued;
- A provision requiring the Enforcement Division, upon request by a respondent, to produce all records in the possession of the Enforcement Division obtained for purposes of the investigation, except records that it claims are confidential, were received in response to an administrative subpoena, or otherwise contain protected information;
- A provision that requires the Enforcement Division to provide a respondent with a privilege log, containing specified information, to accompany any objection to the production of responsive records related to respondent’s request pursuant to Regulation 18361.4(d)(3);
- A provision imposing a 75-day deadline, to begin when the Commission Assistant receives a request for a probable cause conference, or on the date the Enforcement Division serves discovery if respondent made such request, for the conference to proceed subject to extension for good cause; and
- A provision that requires any respondent seeking witness testimony to submit a request to the Commission Assistant at least 7 days before the conference.

Amend 2 Cal. Code Regs. Section 18361.5 — Administrative Hearings

The Commission will consider amending Regulation 18361.5 to update, clarify and rearrange the regulatory provisions implementing the Commission's authority under Section 83116 to hold a hearing once it determines there is probable cause to believe a violation of the Act has occurred. At a minimum, the Commission may consider:

- A provision requiring that the Commission must vote to have a hearing before the Commission itself rather than an administrative law judge alone;
- A provision adding factors to be considered by an administrative law judge and Commission in an order following the finding of a violation of the Act or a stipulated order following a negotiated settlement to include "comparable cases" and "sophistication of the respondent" while amending the existing factor in subdivision (d)(1) to eliminate the term "seriousness," replacing it with a factor that takes into account the public harm or the type of violation.

Amend 2 Cal. Code Regs. Section 18361.9 — Briefing Procedure of Proposed Decision by an Administrative Law Judge; Reconsideration

The Commission will consider amending Regulation 18361.9 to rearrange and clarify the existing provisions concerning briefing procedures by the parties prior to the Commission's consideration of an administrative law judge's proposed decision. At a minimum, the Commission may consider:

- A provision eliminating the factor to be considered by the Enforcement Division in its opening brief concerning additional material evidence that could not, with reasonable diligence, have been discovered during the administrative hearing (subdivision (b)(1)(c)) as it is duplicative of the factor used in Petitions for Reconsideration in subdivision (c)(2)(A).
- A provision requiring the Executive Director to submit the briefs to the Commissioners "no later than 14 days after the Enforcement Division's deadline to file a reply brief" rather than "in a timely fashion."
- A provision expressly prohibiting oral argument by the parties and/or public comment concerning the Administrative Law Judge's (ALJ's) proposed decision to be considered by the Commission in closed session.

Amend 2 Cal. Code Regs. Section 18361.11 — Default Proceedings

The Commission will consider changing the method in which default orders are served on respondents from certified mail to personal service.

Amend 2 Cal. Code Regs. Section 18404.2 — Administrative Termination

The Commission will consider amending Regulation 18404.2 to authorize the Chief of Enforcement to administratively terminate a recipient committee based on two additional grounds: (1) The committee filed a Statement of Organization in error; and (2) The Chief of the Enforcement Division obtains sufficient evidence to show the individual responsible for the committee is deceased or incapacitated.

SCOPE

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

FISCAL IMPACT STATEMENT

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

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

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

AUTHORITY

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

REFERENCE

Sections 82103, 83108, 83110, 83111, 83112, 83115, 83115.5, 83116, 84212.

CONTACT

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

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **October 15, 2020**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m.** on **October 13, 2020**.

BACKGROUND/OVERVIEW

The Commission's Streamline Settlement Program ("streamline program") was established for the Enforcement Division's prosecution of those violations with a lesser degree of public harm. A large percentage of cases before the Commission are resolved through the existing streamline program. Since the streamline program regulations were adopted in January 2019, 66% of all cases presented to the Commission were resolved through the program.

Violation types that can qualify for the streamline program currently include:

- Statement of Economic Interests Non-Filer
- Statement of Economic Interests Non-Reporter
- Campaign Statement/Report Non-Filer
- Campaign Statement/Report Non-Reporter
- Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer
- Unreported Lobbying Activity
- Cash Contributions or Expenditures of \$100 or more
- Campaign Bank Account
- Committee Naming
- Advertising and Mass Mailing Disclosures
- Recordkeeping
- Gift Limit
- Slate Mailer Organization Filing Issues

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

- Proper Recusal of a Conflict of Interest
- Major Donor Notification

The Enforcement Division has discretion to include or exclude any case from the program based upon mitigating and aggravating circumstances. If mitigating circumstances exist, a case will result in a warning letter rather than a fine. If aggravating circumstances exist, the case is handled through the standard administrative process (i.e. Mainline). Penalties in streamline cases start at \$100–\$200 and can increase based on the amount of activity not properly reported in the case, and the efforts required to gain compliance and resolve a case.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Sections 18360.1 and 18360.2.

Proposed amendments to Regulations 18360.1 and 18360.2 would:

- Add two categories of violations to the streamline program, namely major donor campaign statement and report filing violations and behested payment report filing violations.
- Establish a second tier for the streamline program with higher base fines for certain violations that do not qualify for the existing streamline program and therefore are currently addressed through the Enforcement Division mainline settlement process.
- Raise the fundraising limit for candidate committees in smaller jurisdictions to qualify for the streamline program for campaign violations.
- Create a default fundraising limit for candidates in special districts to qualify for the streamline program for campaign violations where the special district does not know, or does not provide, the district population to the FPPC.
- Increase the base penalty for lobbying entities that fail to timely file lobbying reports where the activity during the reporting period exceeds \$50,000.
- Delete a provision excluding a committee from qualifying for a streamline penalty for failure to report campaign activity when the unreported activity was 20% or more of the total contributions or expenditures during the reporting period.
- Eliminate stepped increases in the percentage multipliers for penalties currently determined based on when in the administrative process the case is resolved.
- Establish a penalty structure for violations qualifying for the proposed second tier of the streamline program.

Further, in considering Regulations 18360.1 and 18360.2, the Commission may consider any issues pertaining to the revision of the Streamline Settlement Program including, but not limited to, the following:

- Types of violations included in the program.
- Factors for participation in the programs such as mitigating or aggravating circumstances.
- Penalty amount and structure.

Adopt 2 Cal. Code Regs. Section 18360.3.

Proposed Regulation 18360.3 would identify qualifying violations and establish eligibility requirements for the second tier of the streamline program.

SCOPE

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

FISCAL IMPACT STATEMENT

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

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

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

AUTHORITY

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

REFERENCE

Section 83116.5, Government Code.

CONTACT

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

TITLE 4. CALIFORNIA HORSE RACING BOARD

RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS; RULE 1843.4. MULTIPLE MEDICATION VIOLATIONS (MMV)

The California Horse Racing Board (Board) proposes to amend and add the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Board Rule 1843.3, Penalties for Medication Violations, to provide for separate, enhanced penalties for multiple medication violations. The Board also proposes to add Board Rule 1843.4, Multiple Medication Violations (MMV), to specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, November 19, 2020**, or as soon after that as business before the Board will permit, **via teleconference**. In accordance with the guidance from Executive Order N-29-20, a physical location will not be provided. Members of the public are strongly encouraged to participate using the teleconference phone number provided below so as to minimize the spread of COVID-19 and reduce the risk of infection during this current state of emergency. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

To participate in the teleconference, dial (888) 392-4562 and enter 6896291# when prompted.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **October 26, 2020**. The Board must receive all comments by that time. However, written comments may still be submitted at the public hearing. Submit comments to:

Rick Pimentel, Associate Governmental Program Analyst
Policy, Regulations, and Administrative Hearings
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Fax: (916) 263-6022
Email: repimentel@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19461, and 19580, Business and Professions Code (BPC). Reference: Sections 19461, 19580, 19581, and 19582, BPC; and section 11425.50, Government Code (GC).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually its responsibilities, including the administration and enforcement of all laws, rules, and regulations affecting horse racing and pari-mutuel wagering. BPC section 19461 provides that all licenses are subject to suspension or revocation if the Board has reason to believe that any condition regarding it has not been complied with, or any law or Board rule or regulation regarding it has been broken or violated. BPC section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in California.

Board Rule 1843.3 sets forth the penalty guidelines for medication violations and is modeled after the Association of Racing Commissioners International (ARCI) Penalty Guidelines. The proposed amendment to Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for MMV that will run consecutive to any imposed suspension, consistent with the ARCI Penalty Guidelines. The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed, mirroring the ARCI's Multiple Medication Violation Model Rule with the ARCI Penalty Guidelines. The proposed addition will establish a point system whereby the number of points assigned to a trainer for a violation depends on the class of violation and number of violations committed. It will also specify the number of days of the enhanced suspension to be imposed on the trainer based on the number of points accumulated. Finally, it will specify the length of time after which the points shall expire.

The proposed regulatory action will help maintain consistency between the Board rules and the ARCI Penalty Guidelines after which Board Rule 1843.3 is modeled, as the ARCI Penalty Guidelines utilize MMV, while the Board rules do not. The proposed regulatory action will also help preserve and enhance the integrity of horse racing in California with respect to equine medication, which will benefit the health and safety of race horses and the safety of their riders.

ANTICIPATED BENEFIT OF THE PROPOSED REGULATION

The proposed regulation will increase safety for horses and their riders. By providing for separate, enhanced penalties for MMV, the proposed regulation will help deter individuals from committing intentional medication violations. This will contribute to the overall health of the horse, thereby helping to prevent injury to the horse and its rider.

The proposed regulation will also provide for consistency between the Board rules and the ARCI Model Rules. Board Rule 1843.3 is modeled after ARCI Penalty Guidelines. However, the Board rules do not utilize MMV penalties, while the ARCI Penalty Guidelines do. Therefore, the regulatory action to establish enhanced penalties for MMV will help provide consistency across multiple jurisdictions.

CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the regulations, the Board conducted a search for any similar regulations on these topics and has concluded that Board Rule 1843.3 is the only regulation that sets forth penalty guidelines for medication violations. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

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

Other non-discretionary costs or savings imposed upon local agencies: none.

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

The Board has made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly

affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

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

Significant effect on housing costs: none.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The adoption of the proposed regulations will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) result in the expansion of businesses currently doing business with the state; or (4) benefit the state's environment. The proposed amendment of Board Rule 1843.3 will allow the Board to establish separate, enhanced penalties for MMV that run consecutive to any imposed suspension. The proposed addition of Board Rule 1843.4 will specify enhanced penalties for MMV. It will establish a point system whereby the number of points assigned to a trainer for a violation depends on the class of violation and number of violations committed; specify the number of days of the enhanced suspension to be imposed on the trainer based on the number of points accumulated; and specify the length of time after which the points shall expire, which will benefit the health and welfare of California residents as well as worker safety.

Effects on small businesses: none. The proposal to amend Board Rule 1843.3 and add Board Rule 1843.4 does not affect small businesses because horse racing is not a small business under GC section 11432.610.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Rick Pimentel, Associate Governmental Program
Analyst
Policy, Regulations, and Administrative Hearings
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Fax: (916) 263-6022
E-mail: repimentel@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Amanda Drummond, Manager
Policy, Regulations, and Administrative Hearings
California Horse Racing Board
Telephone: (916) 263-6033
Email: amdummond@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based, may be obtained by contacting Rick Pimentel or the alternative contact person at the address, phone number, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Rick Pimentel at the address

stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Rick Pimentel at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

TITLE 10. DEPARTMENT OF BUSINESS OVERSIGHT

NOTICE IS HEREBY GIVEN that the Department of Business Oversight is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under *Contact Person* in this Notice, must be received by the Department of Business Oversight at its office not later than 5:00 p.m. on October 28, 2020.

PUBLIC HEARING

A public hearing is not scheduled. However, 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 person 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 Department of Business Oversight, 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 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.

Public Comment Period: September 11, 2020 through October 28, 2020.

AUTHORITY AND REFERENCE

Authority cited: Section 22804, Financial Code.

Reference cited: Sections 22802 and 22803, Financial Code.

INFORMATIVE DIGEST

A. Informative Digest

Financial Code sections 22800–22805 were enacted in 2019 by the passing of SB 1235 (Chapter 1011, Statutes of 2018) which require a “provider” — a person who extends a specific offer of “commercial financing” (as defined in Financial Code section 22800, subdivision (d)) to a recipient — to give the recipient certain disclosures at the time the provider extends the offer. SB 1235 mandates the Department to draft regulations implementing the specific requirements of the disclosures to be provided to recipients, including: definitions, methods of calculation for certain disclosure items, the method of expressing the annualized rate disclosure, the time, manner and format of the disclosures, and many other details. The Department seeks to add new California Code of Regulations sections to comply with the legislature’s mandate.

Pursuant to its authority to promulgate rules and regulations under Section 22804 of the Financial Code, the Department proposes to add sections 2057, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2070, 2071, 2089, 2090, 2091, 2092, 3000, 3001, 3002, 3003, 3010, 3020, 3021, 3022, 3023, 3024, 3025 and 3026 to the California Code of Regulations.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The Department anticipates the proposed regulations will help protect the welfare of California commercial financing recipients. The specific nonmonetary benefits include: enhanced awareness about the costs of financing a variety of available commercial financing products, the ability for businesses seeking commercial financing to more effectively comparison shop commercial financing products, the prevention of businesses seeking commercial financing borrowing more than they can afford to pay, and increased effectiveness of the Department’s examinations and regulatory oversight with respect to licensees that offer commercial financing products covered by the regulations.

The Department anticipates the proposed regulations will have nonmonetary benefits to providers of commercial financing as well. Specifically, providers

of commercial financing products will have certainty with respect to what information must be disclosed to those seeking the provider's affected commercial financing products, when and how to disclose that information, enhanced confidence that a particular commercial financing product meets the customer's specific needs thereby increasing the likelihood of timely payments, and the opportunity to participate in adopting balanced regulations and comment on the rulemaking the Department is proposing, including the practicality of the proposed disclosures and associated requirements.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation for any regulations relating to this area, the Department of Business Oversight has found that these are the only regulations dealing with the disclosures by commercial financing companies. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. This regulatory proposal creates new regulations relating to Financial Code sections 22802–22803.

D. Documents Incorporated by Reference: None.

E. Documents Relied Upon in Preparing the Regulations: Economic Impact Assessment.

FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate on Local Agencies or School Districts: None.

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

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The proposed rulemaking 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 Department has determined that this regulatory action will not make existing businesses more competitive. The proposed regulations will require providers of commercial financing to disclose information to businesses seeking their commercial financing products. The Department anticipates the costs to comply with the proposed regulations to be minimal because the information necessary to be disclosed should be readily available or able to be calcu-

lated from the provider's own records and underwriting data. While some of the disclosures may include information a provider has not chosen to calculate or disclose in the past, the mechanisms for doing so are well established and can be conducted using freely available spreadsheet software. While there may be some new costs to the providers associated with these proposed regulations to train staff on the new required procedures, these costs are likely to be minimal and offset by the benefits of the regulations.

Impact on Jobs/New Businesses: The Department has assessed whether this rulemaking action will create or eliminate jobs in California. The Department has determined that this regulatory proposal will not have an impact on job creation. The Department has determined that this regulatory proposal may have an impact on job elimination if certain affected commercial financiers eliminate certain product offerings rather than come into compliance with the regulations. The Department has assessed whether this rulemaking action will create new businesses or eliminate existing businesses. This rulemaking action will not result in the creation of new businesses. This rulemaking action could result in the elimination of businesses if a business is unwilling or unable to comply with the provisions of the rulemaking action. Failure to comply with the provisions of this rulemaking action could subject a business to litigation, making doing business in California unprofitable or risky. However, this rulemaking action balances the regulatory requirements against the benefits of public protection and based on the Department's assessment the action does not burden business to the extent of eliminating businesses. The Department has assessed whether this rulemaking action will result in the expansion of business currently doing business within the state. The Department has determined that this rulemaking action may result in the expansion of business currently doing business within the state. The regulatory requirements on commercial financing companies will initially require the minor reallocation of resources for a business to achieve compliance with the new regulatory requirements. In the long term, this rulemaking action may positively impact the commercial financing marketplace by increasing public confidence in the market, decreasing the likelihood of borrowers obtaining financing they are unable to afford, and increasing consumer protection from predatory practices. Consequently, future expansion of business in the State is possible.

The new proposed regulations are required pursuant to Financial Code section 22804.

While the proposed regulations reflect current business practices, the Department anticipates the proposed regulations will help protect the welfare of California commercial financing consumers. The specific

nonmonetary benefits include: enhanced awareness about the costs of financing a variety of available commercial financing products, the ability for commercial financing consumers to more effectively comparison shop commercial financing products, the prevention of commercial financing consumers borrowing more than they can afford to pay, and increased effectiveness of the Department's examinations and regulatory oversight with respect to licensees that offer commercial financing products covered by the regulations.

The Department anticipates the proposed regulations will have nonmonetary benefits to providers of commercial financing as well. Specifically, providers of commercial financing products will have certainty with respect to what information must be disclosed to those seeking the provider's affected commercial financing products, when and how to disclose that information, enhanced confidence that a particular commercial financing product meets the customer's specific needs thereby increasing the likelihood of timely payments, and the opportunity to participate in adopting balanced regulations and comment on the rulemaking the Department is proposing, including the practicality of the proposed disclosures and associated requirements.

However, there are no direct benefits of the regulation to the health of California residents, worker safety, and the state's environment.

Cost Impact on Representative Private Person or Business: A representative business will incur costs complying with this regulatory action. A representative business will incur costs above those incurred solely because of the requirements set forth in statute, for the following new requirements:

- Requiring disclosures.
- Associated training costs for employees.
- Associated costs of preparing and distributing disclosures.

Effect on Housing Costs: None.

Effect on Small Business: This regulatory action may impact small business.

Economic Impact Assessment/Analysis Summary Comments: This proposed regulation is not a "major regulation"; therefore there are no economic impact assessment comments from the Department of Finance or response.

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 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 relevant to the above determinations.

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

The Department of Business Oversight 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 Department of Business Oversight's website: www.dbo.ca.gov.

To receive notice of activity on this rulemaking action, such as revised text, from the Department's homepage (dbo.ca.gov), select "Contact Us" from to top banner. Select "Subscribe to DBO emails" and provide the requested information. When requested, indicate your request to receive notices related to rulemaking, and submit your request.

The initial statement of reasons and proposed text may also be obtained at the front counter of any of the Department's locations, below, by requesting Document PRO 01/18. The documents are also available from the contact person designated at the end of this notice.

Los Angeles Office:
320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Sacramento Office:
1515 K Street, Suite 200
Sacramento, CA 95814-4052

San Diego Office:
1350 Front Street, Room 2034
San Diego, CA 92101-3697

San Francisco Office:
One Sansome Street, Suite 600
San Francisco, CA 94104-4448

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Legal Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

If the Department makes changes 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 proposed text. A request for a copy of any modified text should be addressed to the contact person designated below. The modified text will also be available on the Department's website. The Department will accept written comments on the modified text for at least 15 days after the date on which it is made available.

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

CONTACT PERSON

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

Jesse Mattson, Senior Counsel
Department of Business Oversight
2101 Arena Boulevard
Sacramento, CA 95834
(916) 576-4892

Or to: jesse.mattson@dbo.ca.gov

Inquiries regarding the substance of the proposed regulation may be directed to:

Charles Carriere, Senior Counsel
Department of Business Oversight
One Sansome Street, Suite 600
San Francisco, CA 94104-4448
(415) 972-8570

Or to: charles.carriere@dbo.ca.gov

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

TITLE 11. DEPARTMENT OF JUSTICE

DIVISION 1. ATTORNEY GENERAL CHAPTER 20.5. DATA BROKER REGISTRATION

The Department of Justice (Department) proposes to amend and adopt section 999.400 of Title 11, Division 1, Chapter 20.5 of the California Code of Regulations concerning Data Broker Registration.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a virtual public hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes on October 26, 2020 at 11:59 p.m. Only written comments received by the provided time will be considered. Submit written comments to:

Department of Justice
California Justice Information Services Division
Attn: Danielle Hofmeister
P.O. Box 160608
Sacramento, CA 95816-0608
DataBrokerRegulation@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Civil Code section 1798.99.82.
Reference: Civil Code section 1798.99.82.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Assembly Bill (AB) 1202 (Chapter 753, Statutes of 2019) requires a business that meets the definition of a "data broker" to annually register with the Attorney General (AG), and, in doing so, complete all of the following: (1) pay a registration fee in an amount determined by the AG, not to exceed the reasonable

costs of establishing and maintaining the required informational internet website; (2) provide the name of the data broker and its primary physical, email, and internet website addresses; and (3) provide any additional information or explanation the data broker chooses to provide concerning its data collection practices. The AG is required to create a page on the Department's website where the information provided by data brokers shall be made accessible to the public. (See <https://oag.ca.gov/data-brokers>.) A data broker that fails to register as required is subject to injunction and is liable for civil penalties, fees, and costs in an action brought in the name of the people of the State of California.

Effect of the Proposed Rulemaking:

The Department adopted an emergency regulation (Office of Administrative Law file #2019-1210-04) to establish the fee for the registration system that became effective January 1, 2020. This proposed regulation will adjust the fee that was established in the related emergency regulation and make permanent the fee provision. This fee adjustment is necessary to align the fee with the actual costs incurred by the Department since January 1, 2020, and update the number of data brokers the Department anticipates will register annually based on the number of registrants since January 1, 2020.

Anticipated Benefits of the Proposed Regulation:

This rulemaking ensures the Department has access to critical funding to ensure Californians' right to privacy and safety by implementing a necessary fee to support a system of registration for data brokers. This registration system provides Californians with a necessary tool to help control the collection and sale of their personal information and provides access to crucial information, to which they are entitled under California law.

Comparable Federal Regulations:

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

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that this is the only regulation that concerns the registration of data brokers.

Forms Incorporated by Reference:

None.

Materials Relied Upon:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE
PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The Department anticipates this regulation will result in approximately \$200,000 in revenue to the Department that will be used to pay the reasonable costs to maintain the data broker registry.

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

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

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

Cost impacts on representative person or business: This regulation imposes an annual registration fee of \$400.00 on data brokers plus processing fees payable to the Department's vendor.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that the proposed action would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulation only codifies requirements pertaining to businesses that satisfy the definition of "data broker" in subdivision (d) of Civil Code section 1798.99.80.

The Department analyzed recent historical data and trends to determine projected economic impacts that businesses may incur to comply with this regulation over its lifetime. The Department also considered the economic impact associated with the registration fee.

However, these impacts would not result in an adverse economic impact because the cost of this fee is nominal in proportion to the profits of data brokers.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

Benefits of the proposed action: This rulemaking ensures the Department has access to critical funding to ensure Californians' right to privacy and safety by implementing a necessary fee to support a system of registration for data brokers. This registration system provides Californians with a necessary tool to help control the collection and sale of their personal infor-

mation and provides access to crucial information, to which they are entitled under California law.

Business report requirement: None.

Small business determination: The Department has determined that this regulation may affect small businesses to the extent that a company required to register as a data broker and pay the registration fee qualifies as a “small business” under Government Code section 11342.610, which includes a business activity in services, where annual gross revenues do not exceed \$2 million. But this regulation will only have a slight effect because the fee imposed by this regulation is nominal compared to the company’s profits.

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 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.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
California Justice Information Services Division
Attn: Danielle Hofmeister
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-5336
DataBrokerRegulation@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
California Justice Information Services Division
Attn: Kelly Brannigan
P.O. Box 160608
Sacramento, CA 95816-0608
(916) 210-5270
DataBrokerRegulation@doj.ca.gov

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulation (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/hdc/regs>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt this regulation substantially as described in this notice or make modifications based on the comments. 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 the regulation as revised. Requests for copies of any modified regulations may be sent to the attention of the name and address provided above. The Department will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/hdc/regs>. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/hdc/regs>.

TITLE 11. DEPARTMENT OF JUSTICE

DIVISION 1. ATTORNEY GENERAL CHAPTER 18. ELECTRONIC RECORDING DELIVERY SYSTEM

The Department of Justice (Department) proposes to amend section 999.138 of Title 11, Division 1, Chapter 18, Article 5 of the California Code of Regulations to administer the requirements of the Electronic Recording Delivery Act set forth in Government Code section 27390, et seq.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a virtual public hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on October 26, 2020 at 11:59 p.m. Only written comments received by that time will be considered. Submit written comments to:

Department of Justice
Justice Data and Investigative Services Bureau
Attention: Mike VanWinkle
P.O. Box 160968
Sacramento, CA 95816-0968
erds@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Government Code section 27393.
Reference: Government Code sections 27393(b)(2) and 27397.5.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

A County Recorder may accept for recording, in lieu of a written paper, a digitized or digital image

of certain recordable instruments. The Electronic Recording Delivery Act of 2004 (the “Act”) permits electronic delivery, recording and return of certain types of instruments through an electronic recording delivery system (ERDS) upon approval by the county board of supervisors and certification by the Attorney General (AG). (Gov. Code, § 27390 et seq.) The Act requires the AG, in consultation with interested parties, to adopt regulations for ERDS review, approval, and oversight.

Effect of the Proposed Rulemaking:

The regulation proposed in this rulemaking action would address questions that have arisen regarding changes that took effect on January 1, 2020. The proposed rulemaking would revert some of the language governing security requirements for computer workstations back to what had been in place for several years prior to the most recent rulemaking action. While the program strives to maintain a high level of information technology (IT) security for documents transmitted via ERDS, it has been determined that the pre-existing language and requirements were sufficient. The proposed language allows County Recordors to ensure that all ERDS workstations meet and maintain current IT security standards that preserve the confidentiality of the transmitted documents in the most cost-effective way.

Anticipated Benefits of the Proposed Regulations:

This rulemaking action will benefit the safety and welfare of California residents by ensuring a secure information transmission system, which protects the integrity and security of electronically recorded documents and prevents fraud.

Comparable Federal Regulations:

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

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that this is the only regulation that concerns ERDS security requirements.

Forms Incorporated by Reference:

None.

Materials Relied Upon:

None.

Other Statutory Requirements:

The Electronic Recording Delivery Act authorizes the Department to adopt regulations in consultation with interested parties. (Gov. Code, § 27393.) On May 12, 2020, the Electronic Recording Delivery System

Advisory Committee held a stakeholder meeting at which interested persons were invited to participate in discussions about the regulation and the changes to the security requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

Other non-discretionary costs or savings imposed on local agencies: The proposal will result in additional savings of approximately \$215,000 in the current State Fiscal Year and each State Fiscal Year thereafter by reducing the workload of vendors hired by County Recorders to implement electronic recording.

Cost or savings in federal funding to state: None.

Cost impacts on representative person or business: The proposed action would allow County Recorders to maintain secure workstations without incurring costs to meet overly restrictive requirements.

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 effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states or on representative private persons, because the proposed changes only affect County Recorders. These standards apply to a select number of individuals who voluntarily elect to participate in the program, and serve to provide consolidated and centralized guidelines. There are no new requirements in this proposed regulatory action that would be imposed on businesses, thus there would be no adverse economic impact directly affecting businesses.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

Benefits of the proposed action: By resolving concerns about ERDS requirements and standards, this

proposed regulation furthers objectives to ensure ERDS security, which includes protecting the public from fraud, thus securing Californians' safety, welfare, and privacy.

Business report requirement: None.

Small business determination: The Department has determined that the proposed action does not affect small businesses because the proposed regulation affects only those individuals who voluntarily elect to use an ERDS.

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

The Department has determined that the proposed regulation is the most effective way to ensure that secure transmissions are utilized and ERDS are maintained with clear standards.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Justice Data and Investigative Services Bureau
Attention: Mike VanWinkle
P.O. Box 160968
Sacramento, CA 95816-0968
(916) 210-3157
erds@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Department of Justice
Justice Data and Investigative Services Bureau
Attention: John Navarrete
P.O. Box 160968
Sacramento, CA 95816-0968
(916) 210-4237
erds@doj.ca.gov

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/jdis/regs#erds>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt the regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/jdis/regs#erds>. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF
DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/jdis/regs#erds>.

TITLE 15. DEPARTMENT
OF CORRECTIONS AND
REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department) proposes to amend Section 3124 of Title 15, Division 3, Chapter 1, regarding Content of Law Libraries.

PUBLIC COMMENT PERIOD

The public comment period begins **September 11, 2020** and closes on **October 29, 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, 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 his or her 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

S. Pollock
Telephone: (916) 445–2308
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

Brandy Buenafe
Telephone: (916) 322–2803
Division of Rehabilitative Programs

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: the Department of Corrections, the Department of the Youth Authority, and the 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 the Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of regulations on an emergency basis.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The United States Supreme Court has held that inmates have a constitutional right to access the court during confinement, either by the mechanism of a lawyer or a law library, *Lewis v. Casey*, 518 U.S. 343 (1996). California has provided law libraries, staffed with trained paraprofessionals and professionals, and containing a legal collection to fulfill the requirement in *Lewis*. Over the past decade, more legal library materials, or their equivalents, are available via the Law Library Electronic Delivery System (LLEDs), so they no longer need to be purchased in physical format.

This action will:

Provide the required materials only in digital format, increasing the use of the electronic resources by inmates, which will increase their digital literacy and better prepare them for their return to the community.

DOCUMENTS INCORPORATED BY REFERENCE

None.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

Digital literacy is a prosocial skill inmates will need to navigate the community when they are released. ATM machines, online job applications, touch screen kiosks, and smartphones all require digital literacy. The ability to use these resources will assist inmates in achieving employment and thereby reduce recidivism.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY 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 contents of law libraries.

LOCAL MANDATES

This action imposes no mandates on local agencies nor school districts, nor 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 regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, nor will it 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. These regulations may benefit the welfare of California residents by improving inmates' digital literacy, and assisting them with reintegration and success in the community, thus helping to reduce recidivism.

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 that are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the 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.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NO. 1653–2020–057–001–R1

Project: Howland Hill Road Metcalf Grove Creek Fish Passage Improvement Culvert Replacement Project

Location: Del Norte

Applicant: Victor Bjelajac
California State Parks

Background

North Coast Redwoods District (NCRD) of State Parks proposes to replace an undersized and dilapidated culvert crossing on Howland Hill Road with an appropriately sized culvert and to restore fish passage within Metcalf Grove Creek, a small tributary to Nickerson Creek, in Jedediah Smith Redwoods State Park.

The crossing was identified as a total barrier with a limited amount of upstream habitat in the California Department of Fish and Wildlife Passage Assessment Database <https://nrm.dfg.ca.gov/PAD/Default.aspx> (California Department of Fish and Wildlife [CDFW] 2020). Upon recent inspection the culvert has deteriorated, with a sink hole 2 feet wide by 3 feet deep in the center of the road over the top of a culvert. The culvert bottom is rusted out and water is flowing both under and through the culvert. This degraded condition has resulted in a loss of fill under and around the culvert.

Project Location: The location of the Howland Hill Road Metcalf Grove Creek Fish Passage Improvement Culvert Replacement Project (Project) can be accessed from Crescent City from U.S. 101 by turning left (east-northeast) onto Elk Valley Road; continue 1 mile and turn right (east) onto Howland Hill Road; after ~1½ miles the road becomes unpaved as it enters Jedediah Smith Redwoods State Park; continue another ½ mile on Howland Hill Road. The project is located on Assessor Parcel Number (APN) 112–020–02, and affects Metcalf Grove Creek, a tributary to Nickerson Creek. Metcalf Grove Creek supports populations of Cutthroat trout (*O. clarkii*) and steelhead (*O. mykiss*), and while no observations exist, supports habitat for Coho salmon (*O. kisutch*).

Project Description:

California State Parks (Victor Bjelajac, Applicant) proposes to restore access to habitat within Metcalf

Grove Creek to provide a net conservation benefit for Cutthroat trout (*O. clarkii*) and steelhead (*O. mykiss*) and Coho salmon (*O. kisutch*). The goals of the project include: (1) preventing sediment delivery to the stream; (2) improving fish passage at the site; (3) preventing impacts to old growth trees and their root zone; (4) minimizing increased road elevation to the greatest extent possible; and, (5) expeditiously providing access to the public. The proposed action will remove the existing 3-foot diameter culvert, set at a 4.7% slope, and surrounding road fill and replace with a new 6-foot diameter CMP culvert. The new culvert will be 40 feet in length and placed at 2% slope, 1–2 feet below the current channel bed and field fit to ensure the culvert is embedded and lined with coarse engineered stream bed material to mimic the riffle pool step length to provide a natural channel substrate bottom to the road crossing structure. Backfill material will be compacted around the pipe in lifts, and rip-rap armoring will be installed on the crossing fill faces at the inlet and outlet. The road surface elevation will be raised with imported material to approximately 4 feet over the top of culvert and regraded with compacted aggregate to restore the existing roadway.

Project Size:

The total area of ground disturbance associated with the Project is approximately 0.02 acres and 100 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following:

1. A 40-foot long, 6-foot diameter corrugated metal culvert,
2. approximately 130 cubic yards of native soil,
3. up to four 25-foot long by 24-inch diameter logs, and
4. up to 35 cubic yards of rock slope protection

Project Timeframes:

Start date: August 2020

Completion date: October 2020

Number of Workdays: Approximately five days

Work window: Sept. 15 — Oct. 15, 2020

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish passage, the Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State

Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) Waste Discharge Identification (WDID) No1A20118WNDN, Electronic Content Management Identification (ECM PIN) No. CW-867605 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Cutthroat trout (*O. clarkii*) and steelhead (*O. mykiss*) and critical habitat for Coho salmon (*O. kisutch*).

Receiving Water: Metcalf Grove Creek, tributary to Nickerson Creek.

Filled or Excavated Area:

Permanent area impacted: none
Temporary area impacted: 0.02 acres maximum
Length temporarily impacted: 100 linear feet
Length permanently impacted: 40 linear feet

Dredge Volume: None.

Discharge Volume: A 40-foot long, 6-foot diameter corrugated metal culvert, approximately 130 cubic yards of native soil, up to four 25-foot long by 24-inch diameter logs, and < 35 cubic yards of rock slope.

Project Location: The Project is located along Metcalf Grove Creek in Jedediah Smith Redwoods State Park where Howland Hill Road crosses Metcalf Grove Creek. Coordinates for the Project are 41.7654° N, 124.1295° W.

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

On July 28, 2020 the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on August 11, 2020, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z2020-0811-08) on August 21, 2020. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI.

Prior to dewatering, qualified fisheries staff will relocate fish and amphibians present in the excavation area to undisturbed stream reaches. Only State Park staff trained in proper relocation protocols will perform fish relocation. Exclusion fencing will be installed to prevent reoccupation during construction activities. Cofferdams will be installed upstream and downstream of the culvert pipe to isolate the excavation area. Pumps will be set up to divert water around the excavation area. Any turbid water pumped from the work site will be disposed of in an upland location where it will not drain directly into any stream channel. Once the excavation area has been cleared of fish and amphibians and drained, the existing fill and culvert will be excavated and removed and new culvert will be installed, backfilled with compacted material, and armored at the inlet and outlet with rip-rap. Disturbance and removal of vegetation will not exceed that which is necessary to complete operations. Staging areas will be limited to the existing road, so no additional disturbance will be required.

Additional Best Management Practices and specific avoidance and minimization requirements are found in an attachment to the NOI.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of

the plan are found in an attachment to the NOI, *Howland Hill Road Metcalf Grove Creek Fish Passage Improvement Culvert Replacement: Monitoring and Reporting Plan*.

Notice of Completion

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

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number and ECM PIN number 1A20118WNDN; CW-867605 indicated above;
- success criteria for the Project.

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant's NOI. Applicant shall include the project name, WDID number, and ECM PIN number 1A20118WNDN; CW-867605 with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: seth.ricker@wildlife.ca.gov.

Project Authorization

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

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

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NO. 1653-2020-059-001-R1

Project: Ryan Creek Floodplain and Sediment Reduction Project

Location: Mendocino County

Applicant: Mr. Mark Lancaster

Northwest California Resource Conservation

Background

Project Location: The Ryan Creek Floodplain and Sediment Reduction Project (Project) is located on Ryan Creek, tributary to Outlet Creek, north of Wil-lits, between Highway 101 and Ryan Creek Road, Mendocino County, at a property owned by John and Julie Austin, Assessor Parcel Number (APN) 037-150-12-00. Ryan Creek supports populations of Coho Salmon, Chinook Salmon, and steelhead (*Oncorhynchus tshawytscha*, *O. kisutch*, and *O. mykiss*).

Project Description: Mark Lancaster with Northwest California Resource Conservation proposes to enhance habitat within Ryan Creek to provide a net conservation benefit for Coho salmon, Chinook salmon, and steelhead. The Project includes laying back several sections of over-steepened and actively eroding streambanks along the left bank of Ryan Creek and stabilizing the banks with revetments including features to enhance fisheries habitat. The action is necessary to prevent approximately 300 cubic yards of sediment discharge from sloughing banks from entering potential spawning habitat and protect property of landowners threatened by channel adjustments due to prior passage projects.

The Project is designed to improve habitat along approximately 425 linear feet and includes revegetation of the riparian zone, placement of large wood to promote pool formation and provide cover for fishes, and construction of an off-channel alcove feature. It is expected that the creek will not have surface flow at the time of project implementation. If surface flow or residual pools are encountered at the time of implementation, a small berm in the streambed may be installed to direct stream flow along the right streambank and away from areas disturbed by project activities. In the

unlikely event of substantial surface flow, a water diversion system may be installed using a gravity pipe to transport the stream flow to the downstream end of the project. There should not be fishes residing in the reach during the project work as it is not suitable for late summer rearing (CDFW site visit August 13, 2020). The reach will, however, be surveyed for aquatic life prior to any manipulation. If animals are encountered during this inspection, they will be relocated out of the project area before the channel is dewatered.

Project Size: The total area of ground disturbance associated with the Project is approximately 0.1 acres and 500 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following:

1. Rock rip-rap
2. Native vegetation
3. Large woody material

Project Timeframes:

Start date: August 2020

Completion date: September 2020

Work window: September 15–October 15, 2020

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve spawning and rearing habitat the Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) No. 1B190130WNME, Electronic Content Management Identification (ECM PIN) No. CW-860701 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided measures to avoid and minimize impacts to native Coho salmon, Chinook salmon, and steelhead and aquatic species.

The Project will result in temporary impacts to approximately 0.1 acre of riparian area and 500 linear feet of waters of the state including the streambank. The Project shall be constructed and maintained as described within application materials. The Project will be implemented during the low-flow period in the months of August–September 2020 and is expected to take less than 10 days.

Receiving Water: Ryan Creek, tributary to Outlet Creek thence Eel River.

Filled or Excavated Area:

Permanent area impacted: none

Temporary area impacted: 0.01 acres maximum

Length temporarily impacted: 500 linear feet

Length permanently impacted: 0 linear feet

Dredge Volume: None.

Discharge Volume: 50 cubic yards Class IV Rip-Rap, 50 cubic yards Class VII Rip-Rap, (1) 24 inches diameter Maple, (10) Willow sp., (3) black locust, (4) Douglas fir

Project Location: 39.479936 ° N / 123.364110 ° W., (NAD 83); APN: 037-150-12-00.

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

On August 5, 2020 the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law for publishing in the General Public Interest section of the California Regulatory Notice Register. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in the NOI and affirmed during project consultation with CDFW on 19 August 2020, contains the following categories: (1) Construction-period Water Quality Protection and Erosion and Sedimentation Control Measures; (2) Post-construction and Sediment Control and Water Quality Protection Requirements; (3) General Program Conditions for Vegetation Management; and (4) General Measures to Avoid Impacts on Biological Resources.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI. The project monitoring plan will consist of:

1. Photo point monitoring before, during, and after construction including after the first winter post construction. Photos will be taken from the same point and angle for comparative analysis.
2. Pre- and post-project channel cross sections and thalweg surveys will document streambanks receded to a more stable 1:1.5 to 1:2 slope gradient (V:H ratio) compared to the current 1:0.25 to 1:1 bank angles. Additionally, monitoring will occur after storms to assure that the streambank is functioning as designed. The monitoring schedule is seasonal and/or as needed. Monitoring after storm events will occur one winter after project completion. The party responsible for determining attainment of performance standards will be completed by the NWCA RC&DC staff. The ground-based photographic monitoring plans will be available at the 5C website (www.5counties.org).

Notice of Completion

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

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

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

Project Authorization

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

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

DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH FOR A FULLY PROTECTED SPECIES

Research on the San Francisco Garter Snake (*Thamnophis sirtalis tetrataenia*)

The Department of Fish and Wildlife (Department) received a proposal on July 8, 2020, from Carin Apperson with the San Francisco Public Utilities Commission requesting authorization to take the San Francisco Garter Snake (*Thamnophis sirtalis tetrataenia*) ('SFGS'), for scientific research purposes, consistent with conservation and recovery of the species. The snake is a Fully Protected reptile and is also listed as Endangered under the California and federal Endangered Species Acts.

Ms. Apperson is requesting authorization to capture and relocate SFGS and salvage dead specimens resulting from proposed habitat management activities on a 60-acre site within the Adobe Gulch Grassland, in accordance with methods approved by the Department and the U.S. Fish and Wildlife Service (Service).

The proposed research will use standard capture and handling methods. SFGS will be captured by hand and information on the age, class and sex will be recorded. Any injured SFGS will be brought to a local humane society for rehabilitation and later released back at the site or at a nearby location. If found, SFGS carcasses may be salvaged and the remains donated to a public scientific institution as designated by the Department and the Service. This research will provide habitat association information and assess efficacy of recovery efforts. No adverse effects on individual SFGS or SFGS populations are expected.

The Department intends to issue, under specified conditions, a memorandum of understanding (MOU) to authorize qualified professional wildlife researchers, with Ms. Apperson as the Principal Investigator, to carry out the proposed activities. The researchers are also required to have a valid federal recovery permit for the snake, and a scientific collecting permit (SCP) to take other terrestrial species in California.

Pursuant to California Fish and Game Code (FGC) Section 5050(a)(1), the Department may authorize take of Fully Protected reptile species after a 30 days' notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 5050 for take of Fully Protected reptiles, it would issue the MOU on or after October 11, 2020, for an initial and renewable term of up to, but not to exceed, five years.

Contact: Laura Patterson, Laura.Patterson@wild-life.ca.gov, 916-373-6633.

DEPARTMENT OF MANAGED HEALTH CARE

DATE: September 11, 2020

ACTION: Notice of 2nd Comment Period of 15 Days for Amendments to Department of Managed Health Care Conflict-of-Interest Code

SUBJECT: Conflict-of-Interest Code, section 1000 in Title 28, California Code of Regulations

NOTICE IS HEREBY GIVEN that the Department of Managed Health Care (DMHC), pursuant to the authority vested in it by Section 87306 of the Government Code, proposes amendments to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The DMHC proposes to amend further its Conflict-

of-interest code from the amendments noticed to impacted parties on June 26, 2020, to include Research Data Supervisor in the DMHC Help Center who are involved in 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.

Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendment by submitting them in writing **no later than 5:00 p.m. on September 26, 2020**, to the Contact Person set forth below.

The DMHC has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The DMHC has determined that the proposed amendment:

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

In making this proposed amendment, the DMHC must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendment is proposed or would be as effective as and less burdensome on the affected persons than the proposed amendments.

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

Mary Peterson, Attorney
 Department of Managed Health Care
 980 Ninth Street, 5th Floor
 Sacramento, CA 95814
 Phone: (916) 414-0194
 Fax: (916) 322-3968
 E-mail: mary.peterson@dmhc.ca.gov

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE 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.

Board of Equalization
 File Number 2020-0819-05
 Allocation of Certificated Aircraft

This emergency rulemaking action by the Board of Equalization readopts with changes emergency regulations initially adopted in OAL Matter No. 2019-1216-04. The emergency regulations make changes to Tax Rule 202 pertaining to the allocation of aircraft of certified air carriers and scheduled air taxi operations to implement changes enacted in Statutes 2019, chapter 333 (SB 791).

Title 18
 Amend: 202
 Filed 08/31/2020
 Effective 10/27/2020
 Agency Contact: Lawrence Lin (916) 322-1982

Bureau of Automotive Repair
 File Number 2020-0820-01
 Consumer Assistance Program Updates

This emergency rulemaking action by the Bureau of Automotive Repair increases repair assistance contribution limits for income-eligible vehicle owners, amends repair assistance requirements, restructures consumer copayments for repairs, and amends Consumer Assistance Program eligibility requirements.

Title 16
 Amend: 3394.3, 3394.4, 3394.6
 Filed 08/31/2020
 Effective 08/31/2020
 Agency Contact: Holly O'Connor (916) 403-8627

California Horse Racing Board
 File Number 2020-0518-05
 Authorized Bleeder Medication

In this action, the California Horse Racing Board adopts a prohibition on the use of Furosemide for two year olds and reduces from 500 milligrams to 250 milligrams the maximum dosage of Furosemide for all other race horses.

Title 04
 Amend: 1845
 Filed 08/31/2020
 Effective 10/01/2020
 Agency Contact: Zachary Voss (916) 263-6036

California Horse Racing Board
 File Number 2020-0723-03
 Suspension of License to Conduct a Race Meeting

This action makes permanent the California Horse Racing Board's (Board's) emergency regulation under which the Board may suspend or impose conditions upon a license to conduct a racing meeting when necessary to protect the health and safety of horses or riders, including the process for a hearing on the license suspension or imposition of conditions thereon and for review of a hearing decision suspending or imposing conditions on a license.

Title 04
 Adopt: 1435
 Filed 09/01/2020
 Effective 09/01/2020
 Agency Contact: Robert Brodnik (916) 263-6025

California Underground Facilities Safe Excavation Board
 File Number 2020-0716-04
 Dig Safe Board — Investigation and Enforcement

This action by the California Underground Facilities Safe Excavation Board adopts regulations establishing criteria for consideration when assessing sanctions for violations relating to areas of continual excavation near high-priority subsurface installations.

Title 19
Adopt: 4201
Filed 08/27/2020
Effective 10/01/2020
Agency Contact: Diane Arend (916) 568-2917

California Water Commission
File Number 2020-0821-04
Special Application for Early Funding

This emergency action adds provisions to section 6010 of Title 23 of the California Code of Regulations to provide an additional funding opportunity for applicants to the Water Storage Investment Program to obtain funding for the completion of environmental documentation and for obtaining necessary permits for the project. The additional funding opportunity is for applicants that did not apply for or did not receive an award of funding for these purposes as part of their application to the program.

Title 23
Amend: 6010
Filed 08/31/2020
Effective 08/31/2020
Agency Contact:
Holly Geneva Stout (916) 651-9566

CalSavers Retirement Savings Board
File Number 2020-0821-06
CalSavers Retirement Savings Program Regulations
Amendments

The CalSavers Retirement Savings Board submitted this deemed emergency action to amend the CalSavers Retirement Savings Program to add a new default investment fund for participants born January 1, 2003 to December 31, 2007; remove a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; clarify the tax-qualified retirement plans that, if offered by an employer, would render them exempt; and other minor changes.

Title 10
Amend: 10000, 10001, 10002, 10003, 10004, 10005, 10006
Filed 08/31/2020
Effective 08/31/2020
Agency Contact: Eric Lawyer (916) 838-2869

Department of Corrections and Rehabilitation
File Number 2020-0721-04
Administrative Determinants

This rulemaking action by the Department of Corrections and Rehabilitation amends the administrative

determinants used to determine housing assignments for inmates with a history of specific sex crimes and inmates serving a life term whose placement score is not consistent with a Level II security level.

Title 15
Amend: 3375.2, 3377.1
Filed 08/31/2020
Effective 10/01/2020
Agency Contact: Sarah Pollock (916) 445-2308

Department of Insurance
File Number 2020-0717-02
Department Location: San Francisco Bay Area

The Department of Insurance (Department) submitted this action as one without regulatory effect, pursuant to California Code of Regulations, title 1, section 100, to make comprehensive amendments to its regulations. The amendments update outdated addresses and office locations for the Department, correct a misspelled word, and update the statutory language of Insurance Code section 12905, which is quoted in one of the regulations.

Title 10
Amend: 2174.2., 2177.3., 2195.2., 2197.1., 2197.2., 2199.1., 2199.2.6., 2199.4.2., 2206, 2274.55., 2274.59., 2278.59., 2303.21., 2318, 2318.5., 2318.6., 2350, 2352.1., 2353, 2353.1., 2354, 2396, 2398, 2498.5., 2498.6., 2498.4.9., 2499, 2509.33., 2509.45., 2509.57., 2509.77., 2534.45., 2570.09., 2598.3., 2601.04., 2603.02., 2603.03., 2605.06., 2632.11., 2643.8., 2648.2., 2651.1., 2652.5., 2652.8., 2652.9., 2653.1., 2655.1., 2683.11., 2683.23., 2697.3., Note to Chapter 5, subchapter 3, article 7
Filed 08/27/2020
Agency Contact: George Teekell (415) 538-4390

Fish and Game Commission
File Number 2020-0723-01
Commercial Pacific Herring Eggs on Kelp

This action, among other things, amends the California Pacific Herring Fishery Management Plan (FMP) implementation regulations regarding definitions, buoy markings, noise restrictions, marine mammals, and landing requirements.

Title 14
Amend: 163, 164
Filed 09/02/2020
Effective 11/30/2020
Agency Contact:
Sherrie Fonbuena (916) 654-9866

Office of the State Fire Marshal
File Number 2020–0722–01
Hazardous Liquid Pipelines — New Technologies

In this regular resubmittal action the Office of the State Fire Marshal adopts new Article 7 implementing requirements for pipelines near environmentally and ecologically sensitive areas in the Coastal Zone.

Title 19
Adopt: 2100, 2101, 2102, 2103, 2104, 2105, 2106,
2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115,
2116, 2117, 2118, 2119, 2120
Filed 08/31/2020
Effective 10/01/2020
Agency Contact: Diane Arend (916) 568–2917

San Francisco Bay Conservation and Development
Commission
File Number 2020–0720–05
Suisun Marsh Local Protection Program

This regulatory action by the San Francisco Bay Conservation and Development Commission submitted pursuant to Government Code section 11354.1 amends the Solano County component of the Suisun Marsh Local Protection Program.

Title 14
Amend: 11990
Filed 08/31/2020
Effective 08/31/2020
Agency Contact:
Lawrence J. Goldzband (415) 352–3653

Secretary of State
File Number 2020–0415–03
Statewide Voter Registration System

In this action, the Secretary of State (SOS) repealed outdated regulations and adopted new regulations concerning: the processing of voter registration and other voter records, voting security, voter record confidentiality, and other activities necessary to conducting elections. The regulations also establish requirements for SOS certification of election management system vendors.

Title 02
Adopt: 19060, 19061.1, 19062, 19063, 19064,
19065, 19066, 19067, 19068, 19069, 19070, 19071,
19072, 19073, 19074, 19075, 19076, 19077, 19078,
19079, 19080, 19081, 19082, 19083, 19084, 19085,
19086, 19087, 19088, 19089, 19090, 19091, 19092,
19093, 19094, 19095, 19096, 19097, 19098
Repeal: 20108, 20108.1, 20108.12, 20108.15,
20108.18, 20108.20, 20108.25, 20108.30, 20108.35,
20108.36, 20108.37, 20108.38, 20108.40, 20108.45,
20108.50, 20108.51, 20108.55, 20108.60, 20108.65,
20108.70, 20108.71, 20108.75, 20108.80
Filed 08/27/2020
Effective 08/27/2020
Agency Contact: Raj Bathla (916) 695–1597

State Allocation Board
File Number 2020–0821–01
Leroy F. Greene School Facilities Act of 1998;
Facility Hardship/SMP

This emergency action splits and amends the application process for the Facility Hardship and Seismic Mitigation Programs and amends certain funding opportunities.

Title 02
Adopt: 1859.82.1, 1859.82, 1859.82.3, 1859.82
Amend: 1859.2, 1859.51, 1859.61, 1859.76,
1859.77.3, 1859.80, 1859.81, 1859.83, 1859.90.3,
1859.93, 1859.106
Repeal: 1859.82
Filed 08/31/2020
Effective 08/31/2020
Agency Contact: Lisa Jones (916) 376–1753

State Water Resources Control Board
File Number 2020–0529–01
Urban Water Use Efficiency and Conservation

In this regular rulemaking action the State Water Resources Control Board adopts two new sections requiring monthly reporting by urban water suppliers.

Title 23
Adopt: 990, 991
Filed 08/31/2020
Effective 10/01/2020
Agency Contact: David Rose (916) 341–5196

State Water Resources Control Board
File Number 2020–0710–01
Underground Storage Tanks

In this action, the State Water Resources Control Board amends its regulations concerning underground storage tank (UST) inspection and reporting requirements for local agencies and for UST owners and operators.

Title 23
Amend: 2713, 2716
Filed 08/27/2020
Effective 10/01/2020
Agency Contact: Laura Fisher (916) 341–5870

Superintendent of Public Instruction
File Number 2020–0720–02
Staffing Ratios

In this regular rulemaking, the Superintendent of Public Instruction is amending staffing ratios for facilities operating state–subsidized Early Learning and Care programs.

Title 08
Amend: 18290, 18291, 18292
Filed 08/26/2020
Effective 10/01/2020
Agency Contact: Lorie Adame (916) 319–0860

**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.