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PROPOSED ACTION ON REGULATIONS

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Agricultural Seeds, Vegetable Seeds — Notice File Number Z2019−1223−01 1

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Japanese Beetle, Inspections for Compliance — Notice File Number Z2019−1223−03 4

TITLE 4. CALIFORNIA HORSE RACING BOARD
Penalties for Medication Violations — Notice File Number Z2019−1220−04 6

TITLE 4. CALIFORNIA HORSE RACING BOARD
Shockwave Therapy Restricted — Notice File Number Z2019−1220−03 12

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
General Industry Safety Orders Section 5189 — Process Safety Management of Acutely Hazardous Materials, Appendix A List of Acutely Hazardous Chemicals, Toxics, and Reactives (HORCHER) — Notice File Number Z2019−1220−02 16

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
General Industry Safety Orders Section 6051, 6056, 6057 — Commercial Diving Operations — Notice File Number Z2019−1220−01 18

TITLE 14. FISH AND GAME COMMISSION
Mammal Tag Quotas — Notice File Number Z2019−1224−05 23

TITLE 14. FISH AND GAME COMMISSION
Waterfowl — Notice File Number Z2019−1224−07 27

TITLE 14. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
Pharmaceutical and Sharps Stewardship Project — Notice File Number Z2019−1223−02 30

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINSTRATION
Hospitals and Other Medical Facilities — Notice File Number Z2019−1224−02 36

(Continued on next page)

Time-Dated Material

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
Chemical Listed Effective January 3, 2020 As Known to the State of California to Cause Reproductive Toxicity (Development Endpoint): Cannabis (Marijuana) Smoke and Tetrahydrocannabiol 50

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
Safe Use Determination (SUD) Issuance Notice — Styrene 51

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State 52

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture proposes to adopt Section 3899 in the regulations in Title 3 of the California Code of Regulations pertaining to the Schedule of Agricultural Seeds.

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 Department no later than 15 days prior to 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 regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on February 17, 2020. The Department will consider only comments received at the Department offices by that time or postmarked no later than February 17, 2020. Submit comments to:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The purpose of this amendment is to update the Section 3899 to add Industrial Hemp, update various seed scientific and common names to match current nomenclature, and fix alphabetical errors in the list. By harmonizing this regulation with the industry standard, the Department avoids ambiguity and ensures compatibility with standards followed by other states.

The proposed amendment of Section 3899 will include industrial hemp as an agricultural crop in the list of plants and crops grown in California, and ensure that industrial hemp seed that is sold is in compliance with Chapter 2 of Division 18 of the California Food and Agricultural Code (FAC), also known as the California Seed Law.

The Department considered any other possible related regulations in this area, and finds that these are the only regulations dealing in this subject area, and the only State agency which can implement this proposed regulation. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

Including industrial hemp in the list of agricultural crops will ensure seed is properly identified and of the quality and amount specified on the label, and ensure assessment of sales of such seed to cover the Department's costs to provide an orderly market place.

According to Vote Hemp, the United States has seen significant growth in acreage of industrial hemp cultivation: 9,770 acres of industrial hemp were grown in 2016; 25,713 acres were grown in 2017; 78,176 acres were grown in 2018. This rapid increase may have resulted in seed sold that is of a character not represented to the buyer.

The general amendment changes improve the quality and comprehensibility of Section 3899, but they are non−substantive.

ADOPTED TEXT

The adoption of this proposed regulation will add industrial hemp (Cannabis sativa L.) and its synonym "Hemp" to section 3899(a) and to specify that the listing applies to "industrial hemp" as defined in the FAC and not to "cannabis" as defined in the Health and Safety Code (HSC), and include a reference to the definition of industrial hemp at the end of section 3899(a).

The adoption of this proposed regulation will also make the following updates to scientific names where necessary to match current accepted nomenclature.

Update scientific names where necessary to match current accepted nomenclature:

Change to either species or genus name:

- Harlan brome (*Bromus stamineus*; update = *B. catharticus Vahl* var. *elatus (*E. Desv.) *Planchuelo*),
- Mountain Brome (*Bromus marginatus*; update = *B. carinatus* Hook. and Arn. *Var. marginatus (Steud.)* Barkworth and Anderton),
- Buffalograss (*Buchloe dactyloides*; update = *Bouteloua dactyloides Columbus*),
- Guineagrass (*Panicum maximum* var. *maximum*; update = *Megathyrsus maximus* (Jacq.) B. K. Simon and S. W. L. Jacobs),
- Pearl millet (*Pennisetum glaucum*; update = *Cenchrus americanus* (L.) Morrone);
- Napiergrass (*Pennisetum purpureum*; update = *Cenchrus purpureus* (Schumach.) Morrone),
- Natalgrass (*Rhynchelytrum repens*; update = *Melinis* repens (Willd.) Zizka),
- Smilograss (*Piptatherum miliaceum*; update = *Oloptum miliaceum* (L.) Röser and Hamasha)

Added subspecies or variety name:

- Field bean (*Phaseolus vulgaris*; update = *Phaseolus vulgaris* var. *vulgaris*),
- Tepary bean (*Phaseolus acutifolius*; update = *Phaseolus acutifolius* var. *acutifolius*),
- Yellow bluestem (*Bothriochloa ischaemum*; update = *Bothriochloa ischaemum* var. *ischaemum*),
- California brome (*Bromus carinatus*; update = *Bromus carinatus* var. *carinatus*),
- Corn (*Zea mays*; update = *Zea mays* subsp. *mays*),
- Popcorn (*Zea mays*; update = *Zea mays* subsp. *mays*),
- Annual rape (*Brassica napus* var. *napus*; update = *Brassica napus* subsp. *napus f. annua* (Schübl. and G. Martens) Thell.),
- Turnip rape (*Brassica rapa* subsp. *silvestris*; update = *Brassica rapa* subsp. *Oleifera* (DC.) Metzg.),
- Winter rape (*Brassica napus* var. *napus*; update = *Brassica napus* subsp. *napus f. napus*),
- Intermediate wheatgrass (*Thinopyrum intermedium* subsp. *intermedia*; update = *Thinopyrum intermedium* subsp. *intermedium*),
- Pubescent wheatgrass (*Thinopyrum intermedium* subsp. *intermedia*; update = *Thinopyrum intermedium* subsp. *Barbulatum* (Schur) Barkw. and D.R. Dewey),

Remove subspecies or variety name:

- Barley (*Hordeum vulgare* L. subsp. *vulgare*; update = *Hordeum vulgare* L.),
- Japanese millet (*Echinochloa* var. *frumentacea*; update = *Echinochloa frumentacea*)

Correct citations for listed taxon:

- Alfilaria (*Erodium cicutarium* (L.) *L'Her.*: update = *Erodium cicutarium* (L.) *L'Hér.*),
- Bahiagrass (*Paspalum notatum Fluegge*; update = *Paspalum notatum Flüeggé*),
- Giant bermudagrass: (*C. dactylon* (L.) *Pers. var. aridus* Harlan and de Wet; update = *C. dactylon* (L.) *Pers.* var. *aridus* J.R. Harlan and de Wet),
- Big bluegrass (*P. secunda* J.S. Presl; update = *P. secunda* J. Presl.),
- Dallisgrass (*Paspalum* dilatatum Poir); update = (*Paspalum dilatatum* Poir.),
- Dichondra (*Dichondra repens* Forst. and Forst. f.; update = *Dichondra repens* J.R. Forst. and G. Forst.),
- Whitestem filaree (*Erodium moschatum* (L.) L'Her.; update = *Erodium moschatum* (L.) L'Hér.),
- Hardinggrass (*Phalaris aquatica* (L.); update = *Phalaris aquatica* L.)
- India mustard (*Brassica juncea* (L.) Czernj. and Coss; update = *Brassica juncea* (L.) Czern.),
- Napiergrass (*Pennisetum purpureum* Schum.); update = *Cenchrus purpureus* (Schumach.) Morrone)
- Pigeonpea (*Cajanus cajan* (L.) Millsp.; update = *Cajanus cajan* (L.) Huth),
- Sesbania (*Sesbania exaltata* (Raf.) Rydb. Ex A.W. Hill; update = *Sesbania exaltata* (Raf.) Rydb.),
- Beardless wheatgrass (*Pseudoroegneria spicata* (Pursh) A. Love; update = *Pseudoroegneria spicata* (Pursh) Á. Löve),
- Tall wheatgrass (*Thinopyrum ponticum* (Podp.) Z. W. Liu and R. C. Wang; update = *Thinopyrum ponticum* (Podp.) Barkworth and D. R. Dewey),
- Western wheatgrass (*Pascopyrum smithii* (Rydb.) A. Love; update = *Pascopyrum smithii* (Rydb.) Barkworth and D. R. Dewey)

Correct alphabetizing for the following:

- Broomcorn: Sorghum
- Broom millet: Proso millet
- Oatgrass, tall
- Velvetbean

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following 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.

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

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

Cost impacts on a representative private person or business: All sellers of agricultural and vegetable seed are required to register with the department with an annual fee of forty dollars.

Small Business Determination: The proposed regulation may affect small business that sell industrial hemp seed. They will be required to pay an annual fee of forty dollars.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has made an assessment that the proposed regulation likely would not eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation likely would promote the creation of new jobs and businesses and affect the expansion of businesses currently doing business within California. By including industrial hemp on the schedule of agricultural seeds, hemp can be registered by seed sellers in the state of California, allowing them to expand and grow their business.

ALTERNATIVES CONSIDERED

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

The Department considered taking no action. If no action is taken industrial hemp would not be included on the seeds for planting list and seed sellers would not be able to register.

AUTHORITY

The Department proposes to amend Section 3899 pursuant to the authority vested by Sections 407 and 52332 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Section 52332 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In his absence, you may contact Rachel Avila at (916) 403−6813. Questions regarding the substance of the proposed regulation should be directed to Rachel Avila.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture (Department) proposes to amend Section 3280 in title 3 of the California Code of Regulations for the protection of California's agricultural industry, residential neighborhoods, and the natural environment from the movement and spread of Japanese Beetle within California.

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 Department no later than 15 days prior to 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 regulation to the Department. Comments may be submitted by USPS mail, FAX or email. The written comments must be received by the Department at its office by February 17, 2020. The Department will consider only comments received at the Department offices by that time or postmarked no later February 17, 2020. Submit comments to:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

Unless there are substantial changes to the proposed regulation prior to adoption, the Department may adopt the proposal as set forth in this notice without further notice to the public.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Existing law allows the Secretary to adopt quarantine regulations as necessary to protect the California agricultural industry from pests and prevent the spread of injurious insect pests and animal diseases (Food and Agricultural Code (FAC) sections 407, 5301, and 5302).

The proposed amendment to section 3280 is intended to clarify prohibitions found in the FAC for the prevention of the artificial spread of Japanese beetle into California via any means of transportation, and establish enforcement mechanisms, including holds, inspections, and fines, for violations of the prohibitions.

The Department considered any other possible related regulations in this area and finds that these are the only regulations dealing in this subject area, and the Department is the only State agency that can implement this proposed regulation. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this proposed regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Anticipated Benefits from This Regulatory Action

By increasing trap densities at nurseries, creating new enforcement mechanisms, and defining key terms that are part of the enforcement mechanisms, the amendment of Section 3280 will prevent damage to the agricultural industry of California, including direct damage from Japanese beetle infesting conveyances arriving from infested states and provinces. Indirect economic damage will also be prevented from implementation of quarantines, increased agricultural industry production costs, increased pesticide use, increased cost to consumers, increased cost of pesticide use to homeowners, the need to implement a State interior quarantine and the need to implement a federal domestic quarantine.

ADOPTED TEXT

This proposed action establishes that if, after inspection of any conveyance such as an aircraft, truck, or train car by a California State Plant Quarantine Official, a live Japanese beetle is found in the conveyance or shipment within the conveyance, the following steps shall be taken:

1. The conveyance shall be held for treatment.
2. The shipper of the shipment will be notified of the hold and treatment immediately.
3. The conveyance shall be treated at shipment owner expense.
4. The conveyance shall be re−inspected to determine if free from Live Japanese beetle.

5. Upon the inspector's determination that the conveyance is beetle free, the shipment shall be released from hold.
6. The secretary or the commissioner may assess a fine of $2,500 per live Japanese beetle detected pursuant to FAC section 5311.

If a live Japanese beetle is found on or in a conveyance, the inspector shall issue a hold notice (State Form 66−130) to the shipper representative. The conveyance will then be held for treatment until the inspecting officer determines the Japanese beetle in the conveyance or shipment has been exterminated.

This proposed action also extends the existing Japanese beetle quarantine area to North Dakota, defines the following terms used in the regulation: category 1 state, conveyance, shipper, transporter, owner, bailee, inspecting officer, inspection, and California State Plant Quarantine Officer, and live, dead, and moribund beetles. It also gives minimums for trap density at origin, a site less then 5 acres uses 3 traps, 5−30 acres a minimum of three traps, with 1 additional trap added for every 5 acres over 15 acres, 31 to 160 minimum of 6 traps, with 1 additional trap added for every 10 acres over 60 acres, and sites greater then 160 a minimum of 16 traps, with 1 additional trap added for every 12 acres over 200 acres. It also requires that the documentation to recommend a noninfested county be placed on the approved county list include the date that the area was surveyed.

APPEALS

Before a civil penalty is levied as described in section 3280(f)(5), the person charged with the violation can appeal the fine. The appeals process complies with the provisions of FAC 5311. The person charged with the violation shall receive notice and be given an opportunity to be heard, if they decide they may seek a review of the decision of the secretary within 30 days of the decision.

To appeal to the secretary the person against whom a civil penalty is levied they may take the following actions within 10 days of the date of receiving notification of the penalty, as follows:

- The appeal shall be in writing, signed, and shall state the grounds for the appeal.
- Any party, at the time of filing the appeal or within 10 days thereafter, may present written evidence and a written argument to the secretary.
- The secretary may grant oral arguments at the time written arguments are filed.
- If an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days prior to the date set therefor, unless altered by an agreement between the secretary and the person appealing the penalty.
- The secretary shall decide the appeal within 10 days after the filing of the appeal, and at oral argument.
- The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.
- On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the penalty levied, or reverse the decision.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following 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.

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

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: There will potentially be a cost impact to shippers, but this impact will be ameliorated as shippers bring their conveyances into compliance with the Japanese beetle quarantine.

Cost impacts on a representative private person or business: This regulatory proposal may have a small impact on the expansion of current businesses in the State as existing California businesses may choose to be trained and equipped to treat for Japanese beetle and make themselves available as vendors for this service. This impact should be temporary as shippers bring themselves into compliance with the Japanese beetle restrictions and cease bringing beetles into the State.

Small Business Determination: The proposed regulation may affect small business.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant effect on housing costs: None.

Results of the Economic Impact Assessment

The Department has made an assessment that the proposed regulation would not likely eliminate jobs or existing businesses within California. The Department has made an assessment that the proposed regulation would likely promote the creation new jobs and businesses and affect the expansion of businesses currently doing business within California. As stated above under "Anticipated Benefits from this Regulatory Action" the proposed regulation will prevent damage to the agricul-

tural industry of California by preventing direct damage from Japanese beetle infested conveyances arriving from infested states and provinces. The health and welfare of California residents will be protected from indirect economic damage from implementation of quarantines, increased agricultural industry production costs, increased pesticide use, increased cost to consumers, increased cost of pesticide use to homeowners, and the need to implement a State interior quarantine and the need to implement a federal domestic quarantine.

The amendment requires shippers to treat airplanes that do not pass inspection. New vendors may be formed to provide this service or current venders may hire new staff.

ALTERNATIVES CONSIDERED

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

The Department considered taking no action. If no action is taken, Japanese beetle will continue to enter California and there will be a higher potential for infestations requiring a quarantine. This would be harmful to the agricultural industry of the state.

AUTHORITY

The Department proposes to adopt Section 3280 pursuant to the authority vested by Sections 407, 5301, 5302, and 5311 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5024, 5301, 5311, 5701, 6403, 6441, 6442, and 6461 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is:

Dean Kelch, Environmental Program Manager
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
2800 Gateway Oaks Drive, Suite #200
Sacramento, CA 95833
Dean.Kelch@cdfa.ca.gov
916.403.6650
916.651.2900 (FAX)

In his absence, you may contact Rachel Avila at (916) 403−6813. Questions regarding the substance of the proposed regulation should be directed to Rachel Avila.

INTERNET ACCESS

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AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 4. CALIFORNIA HORSE RACING BOARD

NOTICE OF PROPOSAL TO AMEND RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS; RULE 1843.5. MEDICATION, DRUGS AND OTHER SUBSTANCES PERMITTED AFTER ENTRY IN A RACE; RULE 1844. AUTHORIZED MEDICATION

The California Horse Racing board (Board/CHRB) proposes to amend the regulations described below af-

ter considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1843.3, Penalties for Medication Violations, Rule 1843.5, Medication, Drugs and Other Substances Permitted After Entry in a Race, and Rule 1844, Authorized Medication. The proposed amendment to Rule 1843.3 will remove the Category "C" penalties for non−steroidal anti−inflammatory drug substances (NSAID) previously allowed under Rule 1844. The proposed amendment also adds Category "C" penalties for a fourth and subsequent violations within a 365−day period. The proposed amendment to Rule 1843.5 will change the definition of when a horse is deemed entered to race; modifies subsection (e) to delete two substances that may be administered by injection until 24 hours before post time; deletes the NSAIDs that may be administered until 24 hours before post time; provides that not more than one glucocorticoid may be administered to a horse entered to race; and prohibits the use of any authorized bleeder medication except furosemide. The proposed amendment to Rule 1844 removes the list of NSAIDS that were authorized for administration to horses entered to race; and removes eight drug substances that may be present in the official blood test sample.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, February 20, 2020**, or as soon after that as business before the Board will permit, at **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. 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.

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 **February 17, 2020**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, suite 300
Sacramento, CA 95825
Telephone (916) 263−6026
Fax: (916) 263−6022
E−mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19461, 19562, 19580, 19581 and 19582, Business and Professions Code. Reference: Sections 19461, 19580, 19581, 19582, Business and Professions Code. Section 11425.50, Government Code.

Business and Professions Code sections 19440, 19461, 19562, 19580, 19581 and 19582 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19461, 19580, 19581, and 19582 Business and Professions Code and section 1142.5. Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari−mutuel wagering. Business and Professions Code section 19461 provides that every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California. Business and Professions Code section 19581 provides that no substance of any kind shall be administered by any means to a horse after it has been entered to race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. Business and Professions Code section 19582 provides that violations of section 19581, as determined by the Board, are punishable as set forth in regulations

adopted by the Board. Government Code section 11425.50 states that the decision shall be in writing and shall include a statement of the factual and legal basis for the decision. The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

In March 2019, pursuant to its authority under Rule 1844.1, Suspension of Authorized Medication, the Board suspended the authorized administration of eleven medications for all thoroughbred horses participating at Santa Anita Park (SA) and Golden Gate Fields (GGF). The presence of the suspended medications in a post−race test samples would be considered a violation of Board regulations. The Board also approved an agreement between the racing associations and the Thoroughbred Owners of California (TOC) to reduce the maximum amount of furosemide to half the level authorized under Rule 1845, Authorized Bleeder Medication. The authorized furosemide level of furosemide was 500 mg to be administered in consultation with the trainer, owner and the furosemide veterinarian. Under the agreement, the level has been reduced to 250 mg.

Rule 1843.3:

The proposed amendment to Rule 1843.3 will modify subsection (d) to add Category "C" penalties for fourth and subsequent medication violations within a 365−day period. A fourth violation within a 365−day period will require a minimum 15−day suspension and a fine of $2,500. Any subsequent violations within the same 365−day period will require a greater suspension and fine than the previous violation. The addition of penalties for fourth and subsequent violations involving Category "C" substances is necessary because in such cases the Board is currently limited to third offense Category "C" penalties. If a trainer has four or more Category "C" violations within the same 365−day period, there is currently no penalty available beyond that for a third violation. The addition of penalties for fourth and subsequent violations within a 365−day period will allow the Board to provide a greater suspension and fine, if warranted.

The proposed amendment to Rule 1843.3 will also remove subsection (d) Category "C" penalties for Rule 1844 authorized medication violations. The penalties are specifically for NSAID overages. The removal of the Category "C" penalties for Rule 1844 NSAID violations is necessary, as under the proposed amendment to Rule 1844 such substances will no longer be authorized for horses entered to race; therefore, the substance should not be present in an official test sample. If a test sample demonstrates the presence of an NSAID, the violation will warrant a general Category "C" penalty.

Rule 1843.5:

The proposed amendment to Rule 1843.5 will modify subsection (a) to change the definition of "entered." Rule 1843.5 currently states a horse is deemed "entered" in a race 48 hours before post time of the running of the race. This definition of "entered" has been used in Rule 1843.5 because past practice was to draw (close) entries 48 hours before the race. However, industry practice has changed, which makes the subsection outdated, and necessitates the amendment. Most races are now drawn at least 72 hours before the race date, and some are drawn five days before the race. The proposed amendment to subsection 1843.5(a) provides that a horse is deemed "entered" at midnight the day entries close for the race. The new definition of "entered" will provide horsemen with consistency and clarity while still providing for a period in which an entered horse can only be administered medications, drugs and other substances permitted under the Board's rules and regulations. Subsection 1843.5(a) has also been changed to state that the definition of "entered" applies to article 15. The change is necessary for purposes of clarity, as the subsection currently applies the definition of "entered" to Rule 1843.5, however, the definition applies to other related regulations within article 15.

Subsection 1843.5(b) has been modified to provide that only water, hay and grain may be provided to the horse until post time. Feed supplements may no longer be administered to a horse after it is deemed entered to race. The change is necessary to ensure that unauthorized substances are not fed to horses accidently. The trainer may not be fully informed as to the contents of a feed supplement, so it is possible to inadvertently administer a forbidden substance via contaminants of feed and supplements. The proposed amendment will return the feeding regimen for horses entered to race to the time honored "hay, oats and water." The proposed change in the definition of "entered" under Rule 1843.5 will provide at least 72 hours (3 days) for any prohibited substances in feed supplements to be eliminated while the horse is on water, hay and grain. The amended subsection 1843.5(b) is consistent with the industry's initiative for zero tolerance regarding the use of race day medications and will aid in ensuring that horses entered to race will run free from the influence of unauthorized substances.

Subsection 1843.5(c) has been modified for purposes of consistency to state that drugs, medications or other substances shall not be administered to a horse after it is deemed entered to race. The subsection currently states the substances may not be administered to a horse within 48 hours of the post time of the race in which it is entered. However, the proposed amendment to Rule 1843.5 changes the definition of "entered," no longer

using the 48−hour period, which necessitates the change to subsection 1843.5(c).

Subsection 1843.5(e) has been modified to provide that only injectable vitamins may be administered to a horse by injection until 24 hours before the post time of the race in which the horse is entered. Electrolyte solutions and amino acid solutions will no longer be allowed. The change is consistent with the industry's goal of minimizing the number of drugs and substances that may be administered pre−race and is necessary to eliminate a "grey area" faced with horses entered to race. A trainer may use a potent alkalizing agent that can be claimed to be an "electrolyte." The alkalizing agent would act to keep lactic acid[1] from building up in the horse, which would give the horse a slight advantage in a race by helping with endurance.

Subsection 1843.5(g) currently allows for the administration of the NSAIDs phenylbutazone, flunixin and ketoprofen to a horse until 24 hours before the post time of the race in which it is entered. The industry uses NSAIDs for their pain−eliminating and anti−inflammatory properties; managing conditions such as colic, pneumonia and orthopedic pain in horses. The most commonly used NSAIDs are phenylbutazone, flunixin and ketoprofen. However, there is some concern that the presence of these drug substances can interfere with the veterinarian's ability to properly evaluate a horse on race day as they can mask underlying physiological problems associated with the horse's legs, feet or joints. A horse that does not feel pain will run as if it would without its underlying problems, which may exacerbate any pre−existing conditions, and make the horse prone to further injury when worked to the same extent as a healthy horse. The proposed amendment removes phenylbutazone, flunixin and ketoprofen as substances that can be administered to a horse until 24 hours of the post time of the race in which it is entered. The change is consistent with the proposed amendment of Rule 1844, Authorized Medication, which disallows the use of NSAIDs in horses entered to race. It is also consistent with the TOC and Stronach Group agreement which states there will be no authorized threshold for NSAIDs for horses racing at SA and GGF.[2]

A new subsection 1844(g) provides that not more than one glucocorticoid including adrenocorticotropic hormone (ACTH)[3] may be administered to a horse that is entered to race. The allowance for ACTH is consistent with the Association of Racing Commissioners International Model Rules of Racing, which allows for the administration of ACTH as prescribed by a veterinarian.

Subsection 1843.5(h) has been amended for the purposes of consistency to provide that furosemide is the only substance that can be administered under Rule 1845, Authorized Bleeder Medication. The current subsection (h)(2) is not necessary as under Rule 1845, no bleeder medication other than furosemide is authorized. A new subsection 1843.5(h)(2) states that only water may be used to wash the horse's mouth out on race day. This is consistent with the amended subsection 1843.5(b), which provides that the horse may only have water, hay and grain up until post time. Like feed supplements, the contents of a commercial mouth wash may result in an unintended positive test result.

All other changes to Rule 1843.5 are for the purposes of grammar, clarity and renumbering.

Rule 1844:

The proposed amendment to Rule 1844 will delete the current subsections 1844(c) through 1844(d), which allow the administration of NSAIDs to horses entered to race. Phenylbutazone, flunixin, ketoprofen or their metabolites or analogues may no longer be present in post−race test samples. The change is consistent with the proposed amendment of Rule 1843.5, which disallows the use of NSAIDs in horses entered to race.

It is also consistent with the TOC and Stronach Group agreement which states there will be no authorized threshold for NSAIDs for horses racing at SA and GGF.

Subsection 1844(e) has been renumbered and is now subsection 1844(c).

Subsection 1844(f) has been renumbered and is now subsection (d). The new subsection 1844(d) has been amended to remove eight drug substances that could be present in official blood test samples. The drugs are: Betamethasone; Dexamethasone; Diclofenac; Firocoxib; Methylprednisolone; Prednisolone; Triamcinolone Acetonide; and Isoflupredone. The drugs are anti−inflammatory. Their potential to mask an injury has been a concern since so many fatal musculoskeletal injuries in horses show signs of pre−existing injury that were missed or under appreciated. The removal of the drugs moves California in line with international horse

[1] During an intense exercise session or a race, metabolic by products including lactic acid, ammonia and heat accumulate in the horse's muscles. It is believed that excessive lactic acid is a cause of muscle fatigue.

[2] The agreement was predicated on the Board adopting the parties' request for the setting of race conditions under Rule 1581, Racing Secretary to Establish Conditions. The Board approved the request at its March 2019 Regular Meeting. At the same meeting, the Board suspended authorization for eleven medications, including the NSAIDs phenylbutazone, flunixin, and ketoprofen for all horses participating in a horse race meeting at SA and GGF.

[3] Adrenocorticotropic hormone (ACTH) is a hormone produced by the anterior pituitary gland. ACTH stimulates secretion of natural glucocorticoid steroid hormones from adrenal glands. Those natural corticosteroids steroids have the same pharmacological effect as if directly administered glucocorticoid.

racing where the drugs are not authorized. In addition, the removal of the drugs is consistent with the TOC and Stronach Group agreement which states there will be no authorized threshold for the drug substances.

All other changes to Rule 1844 are for the purposes of grammar, clarity and renumbering.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment of Rule 1843.3 provides for penalties for trainers who have more than three category "C" penalties within a 365−day period. This will have the benefit of allowing the Board to impose greater penalties in such cases, which may act as a deterrent. The proposed amendment of Rule 1843.5 redefines "entered" to conform with current industry practices. The definition will provide clarity and consistency for California's horsemen. The proposed amendment also disallows NSAIDs for horses entered to race and provides that furosemide is the only authorized bleeder medication. The proposed amendment to Rule 1843.5 will have the benefit of providing consistency for horsemen and will help to ensure that California's race horses are running free of medications and drug substances that can mask potential pre−existing conditions, or that may enhance the horses' performance. The proposed amendment to Rule 1844 will disallow NSAIDS, which is consistent with the amendment to Rule 1843.5. The medications have the potential to "mask" a horse's pre−existing injuries, which can make it difficult for the official veterinarian or racing veterinarian to determine the true health of the horse. The proposed amendment to Rule 1844 will also disallow eight drug substances that currently may be present in official blood test samples. The substances have anti−inflammatory properties, which have the potential to mask injuries. The amended regulations will have the benefit of helping to improve the horses' health and prevent horse fatalities, which will also protect the health of the rider. The proposed regulatory actions will also benefit the wagering public by assuring that the health and safety of horse and rider are safeguarded, and the outcome of pari−mutuel races are run free of substances that may influenced the outcome of the races.

CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendments, the Board has conducted an evaluation for any related regulations and has determined that Rule 1843.3 is the only regulation describing the penalties for violation of each drug classification. Rule 1843.5 and Rule 1844 name medications, drugs and other substances permitted after entry in a race. Rule 1845, Authorized Bleeder Medication allows the administration of the bleeder medication furosemide after entry in a race. However, the Board has determined that the proposed amendments to Rules 1843.3, 1843.5 and 1844 are neither inconsistent nor incompatible with Rule 1845, or with other 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 Government Code sections 17500 through 17630: none.

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

Cost of savings in federal funding to the State: none.

The Board has made an initial determination that the proposed amendments to Rules 1843.3, 1843.5 and 1844 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 impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The results of the Board's Economic Impact Assessment as required by Government Code section 11346.3(b) are as follows: The adoption of the proposed amendments to Rules 1843.3, 1843.5 and 1844 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) increase or decrease investment in California; (5) benefit the state's environment. The proposed amendment to Rule 1843.3 will remove the Category "C" penalties for non−steroidal anti−inflammatory drug substances (NSAID) previously allowed under Rule 1844. The proposed amendment also adds Category "C" penalties for a fourth and subsequent violations within a 365−day period. The proposed amendment to Rule 1843.5 will change the definition of when a horse is deemed entered

to race; delete two substances under subsection (e) that may be administered by injection until 24 hours before post time; deletes the NSAIDs that may be administered until 24 hours before post time; provides that not more than one glucocorticoid may be administered to a horse entered to race; and prohibits the use of any authorized bleeder medication except furosemide. The proposed amendment to Rule 1844 removes the list of NSAIDS that were authorized for administration to horses entered to race; and removes eight drug substances that could be present in the official blood test sample.

The proposed amendments to Rules 1843.3, 1843.5 and 1844 will benefit worker safety in that they will improve race horse health and safety, which promotes the health and safety of the horse racing industry's workers, especially those that ride and train horses. The proposed amendments do not affect small businesses because horse racing is not a small business under Government Code section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 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, or would be as effective and less burdensome on 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 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 PERSON

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:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263−6026
Fax: (916) 263−6022
E−mail: haroldc@chrb.ca.gov

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

Amanda Drummond, Policy and Regulations Manager
California Horse Racing Board
Telephone: (916) 263−6033

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 regulations, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based on, may be obtained by contacting Harold Coburn, or the alternative contact persons 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 regulations substantially as described in this notice. If modifications are made which 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 regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations 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 regulations in its current or modified form, should be sent to the attention of Harold Coburn 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 the notice,

the proposed text of the regulation and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

NOTICE OF PROPOSAL TO ADD RULE 1866.2. SHOCK WAVE THERAPY RESTRICTED

The California Horse Racing Board (Board/CHRB) proposes to add the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1866.2, Shockwave Therapy Restricted, to provide a regulation governing the use of Extracorporeal Shock Wave Therapy (ESWT) technology within CHRB inclosures. Rule 1866.2 will provide guidelines and procedures for the use of ESWT within a CHRB inclosure.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, February 20, 2020**, or as soon after that as business before the Board will permit, at the **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. 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.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **February 17, 2020**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95815
Telephone: (916) 263−6026
E−mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19562 and 19580, Business and Professions Code. Reference: Sections 19440, 19562 and 19580, Business and Professions Code.

Business and Professions Code sections 19440, 19562 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19440, 19562 and 19580, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVER VIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari−mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California.

Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy (ESWT) machines are used to administer shockwave therapy to horses. The non−invasive treatments consist of transmitting short, high energy pressure pulses to a designated area of the body through a hand−held probe. Different levels of energy may be used, depending upon the purpose of the therapy. Those who use the therapy believe the ESWT energy waves stimulate growth in the cells treated, jump−starting the healing process of any nearby injuries. The therapy is used to treat horses' musculoskeletal problems, soft tissue injuries and bone injuries. Shockwave therapy may increase healing in the veterinary patient, but it can also act as an analgesic in the area targeted. This raises the concern that some may use the therapy to keep horses going that shouldn't be worked. It is believed that the analgesic effect may last up to 72 hours, so racing juris-

dictions have ruled that shockwave therapy machines on the track must be used only by veterinarians and must be registered. Treated horses must be reported and are prohibited from racing for several days after treatment.

Subsection 1866.2(a) of the proposed regulation requires that all ESWT machines must be registered with the official veterinarian before being brought onto any CHRB inclosure. The official Veterinarian shall keep a listing of all registered ESWT machines within the inclosure. Registering of ESWT machines by the official veterinarian is necessary to help regulate the use of the machines. The official veterinarian will know how many ESWT machines are within the inclosure, and who is using them.

Subsection 1866.2(b) provides that only CHRB licensed veterinarians may use ESWT machines within the inclosure. The provision is necessary to ensure the ESWT machines are used correctly. Careless use by non−veterinarians could be a problem. Use of shockwaves on various organs, such as the eyes, intestines or lungs can cause serious damage. Higher than recommended settings for the number or strength of the pulses could also cause tissue damage on the body or worsen microfractures. Subsection (b) is also necessary to help ensure that ESWT is used for its intended purpose and not solely for its analgesic effect.

Subsection 1866.2(c) provides that ESWT machines are not allowed in the stable area and shall be used in a designated area approved by the official veterinarian. The subsection is necessary to provide an additional level of control over the use of the machines within the inclosure. It would be difficult to monitor the use of ESWT machines within the barn area. Providing a designated area for ESWT allows the official veterinarian to monitor the practice and ensures that only CHRB licensed veterinarians are administering the therapy.

Subsection 1866.2(d) requires the treating veterinarian to keep a log of all ESWT treatments. The log shall be available for inspection by the official veterinarian, the stewards or CHRB investigators, and it shall provide the date of the treatment, identifying information for the horse treated and information regarding the area treated and number of pulses administered. ESWT treatments are otherwise required to be reported using the form Veterinarian Report Confidential CHRB−24 (Rev. 01/18) (CHRB−24), which is incorporated by reference in the regulation. The CHRB−24, however, does not provide the same detail as required in the treating veterinarian's log. The log required under subsection 1866.2(d) is necessary to ensure that if something untoward were to happen to the horse, a detailed record of the ESWT treatments will be available for inspection.

Subsection 1866.2(e) requires that all ESWT treatments be reported using the CHRB−24. This provision is consistent with Board Rule 1942, Veterinarian Report, which requires that every veterinarian who treats a horse within the inclosure shall in writing report the treatment to the official veterinarian. Subsection 1866.2(e) requires that the ESWT treatment be reported by 10:00 a.m. the day following treatment. The reporting deadline is necessary to ensure the official veterinarian is informed of such treatments in a timely manner.

Subsection 1866.2(f) provides that a horse treated with ESWT shall be placed on the Veterinarian's List for 30 days. The day after treatment is the first day on the list, and the horse shall automatically be removed from the list on the 31st day. However, if a horse is placed on the Veterinarian's List for multiple reasons, it must meet the criteria required for those other reasons prior to removal from the list. This provision is consistent with Board Rule 1866, Veterinarian's List, which provides that the official veterinarian shall maintain a Veterinarian's List of those horses determined to be unfit to compete in a race due to veterinary treatment, physical distress, injury, lameness, unsoundness or infirmity. Subsection (b)(2) of Rule 1866 requires that horses receiving veterinary treatment−shockwave therapy be place on the list. The Board has determined that a horse receiving ESWT must remain on the Veterinarian's List for a period of 30 days beginning the day following the treatment. While it is generally believed the analgesic effect of ESWT may remain for up to up to 72 hours, the injury treated with ESWT must still be given time to heal. Therefore, the Board has determined that a 30−day period is in the horse's best interest. Horses receiving ESWT generally have issues with musculoskeletal problems, soft tissue injuries and bone injuries; conditions that require the horse be placed on the Veterinarian's List. If a horse is on the list for reasons in addition to receiving ESWT, subsection 1866.2(f) requires that it fulfill the criteria required for removal for the other infirmities. This is consistent with Rule 1866, which states the eligibility criteria for a horse to be removed from the list.

Subsection 1866.2(g) provides that horses treated with ESWT may not participate in a recorded workout for 30 days after treatment. Most horses in training get daily exercise, but not all exercise is considered an official workout. An official workout is one where the horse is timed by a track clocker. The time will be published in all records of the horse's past performances, which are often used by horse racing fans to determine the potential placement of a horse entered to race. The Board has determined that the 30−day period is necessary to ensure the analgesic effect of ESWT is gone, and to ensure the horse has had time to heal. Subsection (g) is consistent with the requirement that the horse remain on the Veterinarian's List for 30 days.

Subsection 1866.2(h) provides that no owner, trainer or licensee shall bring onto the inclosure a horse that has received ESWT in the previous 30 days without approval of the official veterinarian. Under Rule 1560, Duties of the Official Veterinarian, the official veterinarian is charged with enforcing the Board's rules and regulations related to veterinary practices and shall maintain a list of all infirm horses on the grounds. Informing the official veterinarian of the ESWT procedure will ensure the horse is placed on the Veterinarian's List and will not participate in an official workout for at least 30 days after treatment. The provision is necessary, as it is in the interest of horse racing and the health and safety of horse and rider that the true condition of all race horses within the inclosure is disclosed. In addition, the Board wants to prevent licensees from circumventing the provisions of Rule 1866.2 by removing horses from the inclosure just to receive ESWT and then entering the horses to race.

Subsection 1866.2(i) provides that any person using or possessing an ESWT machine in violation of the rule shall be considered to have violated Rule 1867, Prohibited Veterinary Practices, and is subject to a Class "A" penalty. The Board recognizes there are legitimate uses for ESWT within the inclosure; however, the potential for misuse or abuse of the therapy is a serious matter. The analgesic effect of ESWT is a temptation for licensees who are more concerned with winning than the health and welfare of horse and rider. A class "A" penalty means a trainer would receive a minimum one−year suspension absent mitigating circumstances. In addition, the trainer would be fined a minimum of $10,000 and be referred to the Board for any further action deemed necessary by the Board.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed addition of Rule 1866.2 will provide clarity regarding the use of ESWT machines within a CHRB inclosure. The proper use of ESWT machines within the inclosure will benefit horses suffering from musculoskeletal problems, soft tissue injuries and bone injuries. Rule 1866.2 will place any horse receiving ESWT on the Veterinarian's List, which will provide a period of rest and recuperation, and will ensure that the horse has demonstrated its physical fitness prior to entry to race. The regulation will help promote the health and safety of horse and rider. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory.

Ensuring that horses entered to race are sound also promotes jockey/driver safety. Accordingly, the proposed regulation benefits the health and welfare of California residents and improves worker safety. Sound, healthy horses result in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact for the industry.

CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendment, the Board has conducted an evaluation of any related regulations. The Board determined that Rule 1866 does provide that a horse receiving ESWT shall be placed on the Veterinarian's List. Rule 1866 also provides that a horse placed on the Veterinarian's List may not workout for a period of 72 hours after being placed on the list and provides minimum time periods horses must remain on the list. These provisions are not in conflict with Rule 1866.2. The proposed addition of Rule 1866.2 prohibits recorded workouts for a period of 30 days. The horse may still workout (exercise) as provided under Rule 1866; such exercise sessions are not recorded workouts. Rule 1866.2 requires the horse receiving ESWT to remain on the Veterinarian's List for a period of 30 days. The provision is not in conflict with Rule 1866, which provides for a "minimum" of 10 days for horses placed on the list for the first time in 365 days, and greater "minimum" time periods for horses placed on the list more than once within a 365−day period. If Rule 1866 would require a horse to be on the Veterinarian's List for more than 30 days, Rule 1866.2 provides that the horse must meet the criteria for removal from the list. The proposed addition of Rule 1866.2 is the only regulation dealing with procedures related to possessing and using ESWT machines within a CHRB inclosure. Therefore, the proposed regulation is 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 Government Code sections 17500 through 17630: none.

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

Cost of savings in federal funding to the State: none.

The Board has made an initial determination that the proposed addition of Rule 1866.2 will not have a significant statewide adverse economic impact directly affecting business including the ability of California business 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 impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The results of the Board's Economic Impact Assessment as required by Government Code section 11346.3(b) are as follows: The proposed addition of Rule 1866.2 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) increase or decrease investment in California; (5) benefit the state's environment. The proposed addition of Rule 1866.2 impacts individuals who administer ESWT within a CHRB inclosure and those who may administer ESWT in violation of the rule. In making the determination that the proposed addition of Rule 1866.2 will not have an adverse economic impact the Board took into consideration the fact that ESWT is administered to horses that would already be on the Veterinarian's List. ESWT is used to address maladies such as horses' musculoskeletal problems, soft tissue injuries and bone injuries. Regardless of the use of ESWT, any one of these issues would result in the horse being placed on the Veterinarian's List. A sampling of horses on the Veterinarian's List at Santa Anita Park Race Track (SA) from January 2019 through the end of March 2019 showed that 63 horses were placed on the Veterinarian's List for ESWT, or an average of 21 horses a month. During the same time period SA provided stall space for 3,295 horses (1,950 on−track, 1,345 off−track). The number of horses on the Veterinarian's List for ESWT during the three−month period represented only .64 percent of the total. The proposed addition of Rule 1866.2 promotes transparency and accountability in the use of ESWT within CHRB inclosures. The guidelines provided under the regulation will help to ensure the health and safety of race horses and will discourage the surreptitious use of ESWT machines for purposes other than healing. Transparency in medication procedures and sound, healthy race horses protects the economic interests of the industry and its licensees. Sound race horses promote jockey/driver safety. Accordingly, the proposed regulation benefits the health and welfare of California residents involved in horse racing and improves worker safety. Sound, healthy horses result in a favorable public response to horse racing, which could result in a positive economic impact for the industry.

Effect on small business: none. The proposal to add Rule 1866.2 does not affect small businesses because horse racing is not a small business under government Code section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 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, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost−effective to affected private persons and equally as 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 PERSON

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:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, suite 300
Sacramento, CA 95825
Telephone (916) 263−6026
Fax: (916) 263−6022
E−mail: haroldc@chrb.ca.gov

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

Robert Brodnik, Staff Counsel
Telephone: (916) 263−6025

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

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 on, may be obtained by contacting Harold Coburn, or the alternative contact persons 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 which 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 Harold Coburn 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 Harold Coburn 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 the notice, the proposed text of the regulation and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

General Industry Safety Orders
Section 5189

Process Safety Management of Acutely Hazardous Materials, Appendix A List of Acutely Hazardous Chemicals, Toxics and Reactives (HORCHER)

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **February 20, 2020** in the **Council Chambers** of the **Rancho Cordova City Hall, 2729 Prospect Park Drive, Rancho Cordova, California**. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on **January 3, 2020** and closes at 5:00 p.m. on **February 20, 2020**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

By mail to
Sarah Money, Occupational Safety and Health Standards Board,
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833; or

By e–mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as ef-

fective as federal occupational safety and health standards. These proposed regulations will implement, interpret, and make specific Labor Code Section 142.3.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Occupational Safety and Health Standards Board (Board) intends to adopt the proposed rulemaking action pursuant to Labor Code Section 142.3, which mandates the Board to adopt regulations at least as effective as federal regulations addressing occupational safety and health issues.

The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) issued technical amendments for minor corrections to the Process Safety Management (PSM) of Highly Hazardous Chemicals standard on April 15, 2019, as 29 Code of Federal Regulations, Part 1910, Section 1910.119. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register (FR), Volume 84, No. 72, pages 15102−15104, April 15, 2019, as justification for the Board's proposed rulemaking action. The Board proposes to adopt regulations which are the same as the federal regulations except for editorial and format differences.

Appendix A of California's PSM standard contains the "List of Acutely Hazardous Chemicals, Toxics and Reactives (Mandatory)." The list contains a typographical error in the Chemical Abstract Service (CAS) number for the chemical "Methyl Vinyl Ketone." The published version of the standard incorrectly lists the CAS number as "79−84−4." The correct CAS number is "78−94−4." The error first appears in the proposed rule of the standard (55 FR 29167, July 17, 1990) and is repeated in the final rule (57 FR 6407, Feb. 24, 1991). However, the FR notes that the incorrect CAS number, "79−84−4," is not a valid CAS number and does not represent a different chemical.

Upon review of the technical amendments, two additional typographical errors in California's Appendix A were discovered: The CAS number for "Osmium Tetroxide" is incorrect and the listing for the chemical, "Carbonyl Fluoride Cellulose Nitrate (concentration > 12.6 percent nitrogen)" is actually a combination of two chemicals, "Carbonyl Fluoride" and "Cellulose Nitrate (concentration > 12.6 percent nitrogen)." California proposes to correct these errors to make its Appendix A commensurate with the federal counterpart.

The proposed amendments are substantially the same as those promulgated by Federal OSHA; therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting standards substantially the same as a federal standard. However, the Board is still providing a comment period and will convene a public hearing. The primary purposes of the written and oral comments at the public hearing are to:

1. Identify any clear and compelling reasons for California to deviate from the federal standard; and,
2. Identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and,

The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The Board evaluated the proposed regulations pursuant to government Code section 11346.5(a)(3)(D) and has determined that the proposed rulemaking action is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

DOCUMENTS RELIED UPON

1. 84 Federal Register 15102−15104 (April 15, 2019).

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Because the proposed amendments correct typographical errors and do not impose new requirements on California businesses, no significant costs are anticipated as a result of the proposed action. The affected chemicals are not new to the "List of Acutely Hazardous Chemicals, Toxics and Reactives (Mandatory)" in Appendix A of either the federal or state PSM regulations, nor are the threshold quantities proposed for change. Correcting the CAS numbers and separating the inadvertently combined chemicals into two separate entries does not alter the requirements of the regulation, which have been in place since its promulgation in 1991.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment may affect small businesses; however, no significant economic impact is anticipated because the proposed amendments correct typographical errors and do not impose new requirements on California businesses.

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) and the back−up contact person is Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274−5721.

AVAILABILITY OF TEXT OF THE PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations without further notice even though modifications may be made to the original proposal in response to public comments or at the Board's discretion.

AVAILABILITY OF THE MEMORANDUM TO THE STANDARDS BOARD MEMBERS

Upon its completion, copies of the Memorandum may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulation in an underline/strikeout format and the Notice of Proposed Action can be accessed through the Standards Board's website at http://www.dir.ca.gov/oshsb.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

General Industry Safety Orders
Sections 6051, 6056, and 6057

Commercial Diving Operations

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **February 20, 2020** in the **Council Chambers** of the **Rancho Cordova City Hall, 2729 Prospect Park Drive, Rancho Cordova, California.** At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board's office. The written comment period commences on **January 3, 2020** and closes at 5:00 p.m. on **February 20, 2020.** Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to
Sarah Money, Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833; or

By e–mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Association of Diving Contractors International contacted federal OSHA, claiming that in several specific instances California's diving regulations are not as protective as the corresponding federal regulations. Federal OSHA contacted Board staff to discuss amendments to the regulations and resolve the concerns.

In 2017, several of California's regulations were amended via Labor Code Section 142.3(a)(3) which permits an expedited rulemaking process by exempting the Board from certain provisions of the Government Code when adopting standards substantially the same as federal standards (also known as the Horcher process). For the remaining instances where the amendments could not be made via that expedited process, the Board is proposing to make the changes in accordance with the requirements of the Administrative Procedure Act (APA).

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations are provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

The proposed rulemaking brings some California requirements into conformity with existing federal regulations while also proposing amendments for which corresponding federal regulations do not exist.

Anticipated Benefit

The proposal promotes worker safety by updating commercial diving requirements to be at least as effective as their federal counterparts, and allowing for reasonable protective measures for divers engaged in technical diving operations. Additionally, the proposal corrects many errors in the existing text that could cause confusion for stakeholders seeking compliance.

The specific changes are as follows:

Section 6051. Definitions.

Section 6051 contains definitions for use in interpreting and complying with Article 152 "Diving Operations." The Board proposes to add new definitions for "Film and TV Diving", "Positive Buckling Device", and "Zoo and Aquarium Exhibit Diving" and to modify the existing definition for "Technical Diving." The changes will aid the regulated public in complying with the requirements of the associated sections.

The Board also proposes to correct all occurrences of the word "HOOKAH" to read "hookah." The proposed change is editorial and will have no regulatory effect.

Section 6056. Basic Operation Procedures.

Section 6056 contains depth limitations, breathing gas, diver supervision, and other safety requirements for divers engaged in SCUBA diving, surface–supplied air diving, and liveboating. Existing subsection 6056(a)(1)(C) allows SCUBA diving to take place only in currents of one (1) knot or less unless the diver is line–tended. An exception to the requirement, however, is proposed for technical divers performing film and TV diving operations in a controlled environment where the current is artificially increased above one (1) knot and where, in case of an emergency, the current can be reduced to one (1) knot or less. The exception also requires the dive team to be trained to work in such conditions. The exception will allow technical divers performing film and TV diving operations to safely and feasibly produce media for film and television.

Subsection 6056(a)(1)(D) prohibits SCUBA diving in enclosed or physically confining space unless the diver is line–tended. An exception to the requirement is

proposed for technical divers performing film and TV diving operations in a controlled environment where the dive team is trained to respond to emergencies which could arise under such conditions. The exception will allow technical divers performing film and TV diving operations to safely and feasibly produce media for film and television.

Subsection 6056(a)(2) provides requirements for the supervision of an in−water SCUBA diver. In order to be commensurate with federal OSHA requirements, the subsection is proposed for amendment to require a standby diver at all times while a SCUBA diver is in the water. Likewise, the federal requirements and the corresponding proposed California amendment require the in−water diver to be line−tended from the surface, or accompanied by another SCUBA diver in the water.

California opts to retain the more protective existing language requiring the companion SCUBA diver to remain in effective communication with the diver being supervised throughout the operation, instead of being "in continuous visual contact" as required by the corresponding federal regulation. The Board also proposes to match the layout of the federal text by deleting subsection 6056(a)(2)(C) and combining it with existing subsection 6056(a)(2)(B). The amendment will make the California language commensurate with federal language and render the requirements easier to understand.

Furthermore, an exception to subsection 6056(a)(2) is proposed to allow technical divers to comply with any one of the supervisory diving requirements: a standby diver, line−tending from the surface, or an in−water companion SCUBA diver. The exception will allow technical divers reasonable latitude in providing supervision to an in−water diver.

Subsection 6056(a)(5) provides requirements for diving with the use of hookah gear. Newly proposed subsection 6056(a)(5)(A) restricts hookah diving to technical diving operations only. Existing subsection 6056(a)(5)(A) is proposed to be re−lettered to 6056(a)(5)(B) and amended to limit hookah diving to a maximum depth of 30 feet of seawater (fsw), instead of the current limit of 190 fsw. The depth limitation of 30 fsw is based on the ability of the first stage hookah regulator to properly function at the depth without the need to compensate for increased pressures at greater depths.

Newly proposed subsections 6056(a)(5)(C) and (D) require additional safety protections such as the use of a non−return valve and a safety harness that allows the hookah diver to be safely pulled from the water in an emergency.

Existing subsections 6056(a)(5)(B)−(D) are proposed to be re−lettered to subsections 6056(a)(5)(E)−(G). Existing subsection 6056(a)(5)(B), (proposed to be re−lettered to subsection (E)), is proposed for further amendment to add the word "gas" to the phrase "independent reserve breathing [gas] supply". Additionally, the subsection is proposed for amendment to require a hookah diver to carry sufficient reserve breathing gas to return to the surface should the diver's air supply malfunction. The existing requirement that the hookah diver be equipped with a regulator is proposed to be placed before the requirement for the reserve breathing gas to increase readability.

Finally, newly proposed subsection 6056(a)(5)(H) requires a second stage regulator used for hookah diving to be designed to function at the diver's working depth. The above proposed amendments relating to hookah diving will ensure that technical divers can safely use hookah equipment during technical diving operations.

The semi−colon at the end of subsection 6056(b)(2)(A) is proposed to be replaced with a period. Additionally, a hyphen is proposed to be added between the words "surface" and "supplied" in subsection 6056(b)(2)(B) to match others occurrences of the word "surface−supplied" in California's diving regulations. Neither change will have any regulatory effect.

Existing subsection 6056(b)(2)(C) is proposed for amendment to delete the word "standby" from the phrase "A standby diver equipped with surface−supplied gear . . . shall hose tend at the underwater point of entry. . . ." The use of the word "standby" conflicts with the definition of a "standby diver," which is a topside diver ready to assist in the rescue of an in−water diver.

The existing language of subsection 6056(b)(2)(C) requires the diver(s) to be located at the underwater point of entry into an enclosed or physically confining space and not on the surface. The change will remove a potential point of confusion from the existing language and ensure that a diver working in enclosed or physically confining spaces is attended at the underwater point of entry.

Section 6057. Equipment Procedures and Requirements.

Section 6057 contains requirements for recordkeeping of alteration, maintenance, repair, testing, or calibration of dive equipment. The section also contains requirements for specific features and functions for SCUBA, surface−supplied air, and other diving equipment.

Subsection 6057(a) is proposed to be amended to add the missing word "shall" in the sentence "Each equipment modification, repair, test, calibration or maintenance service [sic] be logged. . . ." The corresponding federal language found in 29 CFR 1910.430(a)(2) includes the word "shall." The proposed revision will have no regulatory effect in that, notwithstanding the

correction being appropriate, the preexisting sentence's meaning had been implicitly clear.

Subsections 6057(b)(2)(B) and (C) are proposed for amendment to replace the word "must" with "shall" in the phrase "SCUBA tanks must . . .," which appears in both subsections. Additionally, subsection 6057(b)(4)(A) is proposed for amendment to correct the misspelling of the word "buoyancy."

Finally, subsection 6057(b)(7) is proposed for amendment to replace the word "at" with the word "for" in the phrase "Underwater breathing masks and helmets used at [sic] SCUBA must. . . ." The word "must" is proposed for replacement with the word "shall" in this subsection as well. The proposed amendments are editorial and will have no regulatory effect.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies or School Districts: None.

Cost or Savings to State Agencies: None.

Cost to Any Local Government or School District Which Must be Reimbursed in Accordance with Government Code Sections 17500 through 17630: None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

Cost or Savings in Federal Funding to the State: None.

Cost Impact on a Representative Private Person or Business:

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments for technical diving will preserve existing requirements for technical divers, while updating California regulations to be commensurate with their corresponding federal regulations. Although the updated regulations contain a requirement for a standby diver, they do not necessarily impose a cost impact.

Under existing requirements, a dive team consists of at least three members: an in−water diver to perform the work, a dive supervisor, and either an in−water buddy diver or a topside line−tender. The topside line−tender can serve as a standby diver in addition to his/her line−tending duties, thus obviating any potential costs of the new requirement. In situations where the employer elects to use an in−water buddy diver instead of the topside line−tender, an additional employee may be required to serve as a standby diver, thus potentially incurring costs.

The Board estimates that in the limited cases where an additional employee is needed to serve as a standby diver for commercial diving operations using SCUBA gear, the cost of the added employee could be up to $680 for an 8−hour day. The Board estimates that such a situation would occur fewer than 100 times each year because the vast majority of commercial diving work is performed using surface−supplied air, due to its advantages in communication with the diver and its inherent safety features. Additional equipment costs are not anticipated because employers regularly stock extra gear for various uses, such as additional dive team members rotating positions in an effort to avoid decompression limits.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Including the Ability of California Businesses to Compete:

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states. The proposed amendments for technical diving will preserve existing requirements for technical divers, while updating California regulations to be commensurate with their corresponding federal regulations. As other states are required to either follow the federal commercial diving regulations or create their own equivalent regulations, the proposed amendments (unrelated to technical diving) are the same or similar to the requirements of other states.

Significant Affect on Housing Costs: None.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendment(s) may affect small businesses; however, no significant economic impact is anticipated. Although the updated regulations contain a requirement for a standby diver, they do not necessarily impose a cost impact.

Under existing requirements, a dive team consists of at least three members: an in−water diver to perform the work, a dive supervisor, and either an in−water buddy diver or a topside line−tender. The topside line−tender can serve as a standby diver in addition to his/her line−tending duties, thus obviating any potential costs from the new requirement. In situations where the employer elects to use an in−water buddy diver instead of the topside line−tender, an additional employee may be required to serve as a standby diver, thus potentially incurring costs.

The Board estimates that in the limited cases where an additional employee is needed to serve as a standby diver for commercial diving operations using SCUBA gear the cost of the added employee could be up to $680

for an 8−hour day. The Board estimates that such a situation would occur fewer than 100 times each year because the vast majority of commercial diving work is performed using surface−supplied air, due to its advantages in communication with the diver and its inherent safety features. Additional equipment costs are not anticipated because employers regularly stock extra gear for various uses, such as additional dive team members rotating positions in an effort to avoid decompression limits.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation of new businesses or the elimination of existing California businesses or affect the expansion of existing California businesses because the proposed amendments for technical diving will preserve existing requirements for technical divers, while updating California regulations to be commensurate with their corresponding federal regulations.

BENEFITS OF THE PROPOSED ACTION

The proposal promotes worker safety by updating commercial diving requirements to be at least as effective as their federal counterparts, while preserving reasonable protective measures for divers engaged in technical diving operations. Additionally, the proposal corrects many errors in the existing text that could cause confusion for stakeholders seeking compliance. No significant environmental impact is anticipated from the proposed action.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Christina Shupe (Executive Officer) or the back−up contact person, Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274−5721.

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

The Board 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 Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based. Copies may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shupe or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at http://www.dir.ca.gov/oshsb.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 203, 203.1, 265, 332, 460, 1050, 3051, 3452, 3453, 3953, 4334, 4370, 4902, Fish and Game Code and to implement, interpret or make specific Sections 360, 361, 362, 364 and 364.1; Title 14, California Code of Regulations, relating to annual adjustments to mammal hunting tag quotas.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Section 360: Existing regulations provide for the number of deer hunting tags in subsection 360(c) Additional Hunts. The proposed action provides a recommended range of tag numbers for each hunt from which a final number will be determined, based on the post−winter status of each deer herd. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected in March/April and analyzed. The proposed action changes the number of tags for all existing hunts (except those on military installations) to a series of ranges as indicated in the table below.

Deer: Section 360(c) Additional Hunts, Tag Allocations

- Hunt number G−1 (Late Season Buck Hunt for Zone C−4); Current 2019, 2,710; Proposed 2020 Range [0−5,000]
- Hunt number G−3 (Goodale Buck Hunt); Current 2019, 25; Proposed 2020 Range [0−50]
- Hunt number G−6 (Kern River Deer Herd Buck Hunt); Current 2019, 50; Proposed 2020 Range, [0−100]
- Hunt number G−7 (Beale Either−Sex Deer Hunt); Current 201920 Military* [20 Military*]
- Hunt number G−8 (Fort Hunter Liggett Antlerless Deer Hunt); Current 2019 10 Military* and 10 Public [20*]
- Hunt number G−9 (Camp Roberts Antlerless Deer Hunt); Current 2019, 0; Proposed 2020 Range, [30*]
- Hunt number G−10 (Camp Pendleton Either−Sex Deer Hunt); Current 2019, 250 Military*; Proposed 2020 Range, [250 Military*]
- Hunt number G−11 (Vandenberg Either−Sex Deer Hunt); Current 2019, 0; Proposed 2020 Range, [0−500]
- Hunt number G−12 (Gray Lodge Shotgun Either−Sex Deer Hunt); Current 2019, 30; Proposed 2020 Range [0−50]
- Hunt number G−13 (San Diego Antlerless Deer Hunt); Current 2019, 300; Proposed 2020 Range [0−300]
- Hunt number G−19 (Sutter−Yuba Wildlife Areas Either−Sex Deer Hunt); Current 2019, 25; Proposed 2020 Range [0−50]
- Hunt number G−21 (Ventana Wilderness Buck Hunt) Current 2019, 25; Proposed 2020 Range [0−100]
- Hunt number G−37 (Anderson Flat Buck Hunt); Current 2019, 25; Proposed 2020 Range [0−50]
- Hunt number G−38 (X−10 Late Season Buck Hunt); Current 2019, 300; Proposed 2020 Range [0−300]
- Hunt number G−39 (Round Valley Late Season Buck Hunt); Current 2019, 2; Proposed 2020 Range [0−150]
- Hunt number M−3 (Doyle Muzzleloading Rifle Buck Hunt); Current 2019, 20; Proposed 2020 Range [0−75]
- Hunt number M−4 (Horse Lake Muzzleloading Rifle Buck Hunt); Current 2019, 10; Proposed 2020 Range [0−50]
- Hunt number M−5 (East Lassen Muzzleloading Rifle Buck Hunt); Current 2019, 5; Proposed 2020 Range [0−50]
- Hunt number M−6 (San Diego Muzzleloading Rifle Either−Sex Deer Hunt); Current 2019, 80; Proposed 2020 Range [0−100]
- Hunt number M−7 (Ventura Muzzleloading Rifle Either−Sex Deer Hunt); Current 2019, 150; Proposed 2020 Range [0−150]
- Hunt number M−8 (Bass Hill Muzzleloading Rifle Buck Hunt); Current 2019, 20; Proposed 2020 Range [0−50]
- Hunt number M−9 (Devil's Garden Muzzleloading Rifle Buck Hunt); Current 2019, 15; Proposed 2020 Range [0−100]
- Hunt number M−11 (Northwestern California Muzzleloading Rifle Buck Hunt); Current 2019, 0; Proposed 2020 Range [0−200]

- Hunt number MA−1 (San Luis Obispo Muzzleloading Rifle/Archery Either−Sex Deer Hunt); Current 2019, 150; Proposed 2020 Range [0−150]
- Hunt number MA−3 (Santa Barbara Muzzleloading Rifle/Archery Buck Hunt); Current 2019, 150; Proposed 2020 Range [0−150]
- Hunt number J−1 (Lake Sonoma Apprentice Either−Sex Deer Hunt); Current 2019, 25; Proposed 2020 Range [0−25]
- Hunt number J−3 (Tehama Wildlife Area Apprentice Buck Hunt); Current 2019, 15; Proposed 2020 Range [0−30]
- Hunt number J−4 (Shasta−Trinity Apprentice Buck Hunt); Current 2019, 15; Proposed 2020 Range [0−50]
- Hunt number J−7 (Carson River Apprentice Either−Sex Deer Hunt); Current 2019, 0; Proposed 2020 Range [0−50]
- Hunt number J−8 (Daugherty Hill Wildlife Area Apprentice Either−Sex Deer Hunt); Current 2019, 15; Proposed 2020 Range [0−20]
- Hunt number J−9 (Little Dry Creek Apprentice Shotgun Either−Sex Deer Hunt); Current 2019, 5; Proposed 2020 Range [0−10]
- Hunt number J−10 (Fort Hunter Liggett Apprentice Either−Sex Deer Hunt); Current 2019, 25 Military and 60 Public; Proposed 2020 Range [30*]
- Hunt number J−11 (San Bernardino Apprentice Either−Sex Deer Hunt); Current 2019, 40; Proposed 2020 Range [0−50]
- Hunt number J−12 (Round Valley Apprentice Buck Hunt); Current 2019, 10; Proposed 2020 Range [0−20]
- Hunt number J−13 (Los Angeles Apprentice Either−Sex Deer Hunt); Current 2019, 40; Proposed 2020 Range [0−100]
- Hunt number J−14 (Riverside Apprentice Either−Sex Deer Hunt); Current 2019, 30; Proposed 2020 Range [0−75]
- Hunt number J−15 (Anderson Flat Apprentice Buck Hunt); Current 2019, 10; Proposed 2020 Range [0−30]
- Hunt number J−16 (Bucks Mountain−Nevada City Apprentice Either−Sex Deer Hunt); Current 2019, 75; Proposed 2020 Range [0−75]
- Hunt number J−17 (Blue Canyon Apprentice Either−Sex Deer Hunt); Current 2019, 25; Proposed 2020 Range [0−25]
- Hunt number J−18 (Pacific−Grizzly Flat Apprentice Either−Sex Deer Hunt); Current 2019, 75; Proposed 2020 Range [0−75]
- Hunt number J−19 (Zone X−7a Apprentice Either−Sex Deer Hunt); Current 2019, 25; Proposed 2020 Range [0−40]
- Hunt number J−20 (Zone X−7b Apprentice Either−Sex Deer Hunt); Current 2019, 20; Proposed 2020 Range [0−20]
- Hunt number J−21 (East Tehama Apprentice Either−Sex Deer Hunt); Current 2019, 50; Proposed 2020 Range [0−80]

* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs. Military only tags are designated for Department of Defense and eligible personnel as authorized by the Installation Commander.

Existing regulations for Additional Hunts G−8 (Fort Hunter Liggett Antlerless Deer Hunt) and J−10 (Fort Hunter Liggett Apprentice Either−Sex Deer Hunt) provide for hunting to begin on October 7 and continue for three consecutive days and reopen on October 14 and continue for two consecutive days, including the Columbus Day holiday. The proposal would modify the season to account for the annual calendar shift. The proposal would change the season dates to open on October 3 and October 10, for two and three consecutive days respectively and include the Columbus Day holiday.

Section 361: Existing regulations provide for the number of deer hunting tags for existing area−specific archery hunts. The proposed action provides a recommended range of tag numbers for each hunt from which a final number will be determined, based on the post−winter status of each deer herd. These ranges are necessary at this time because the final number of tags cannot be determined until spring herd data are collected and analyzed in March/April and analyzed.

The proposed action changes the number of tags for all existing hunts (except those on military installations) to a series of ranges as indicated in the table below.

Archery Deer Hunting: Section 361(b)

- A−1 (C Zones Archery Only Hunt); Current 2019 1,945; Proposed 2020 [0−3,000]
- A−3 (Zone X−1 Archery Hunt); Current 2019 100; Proposed 2020 [0−1,000]
- A−4 (Zone X−2 Archery Hunt); Current 2019 10; Proposed 2020 [0−100]
- A−5 (Zone X−3a Archery Hunt); Current 2019 40; Proposed 2020 [0−300]
- A−6 (Zone X−3b Archery Hunt); Current 2019 70; Proposed 2020 [0−400]
- A−7 (Zone X−4 Archery Hunt); Current 2019 120; Proposed 2020 [0−400]

- A−8 (Zone X−5a Archery Hunt); Current 2019 15; Proposed 2020 [0−100]
- A−9 (Zone X−5b Archery Hunt); Current 2019 5; Proposed 2020 [0−100]
- A−11 (Zone X−6a Archery Hunt); Current 2019 50; Proposed 2020 [0−200]
- A−12 (Zone X−6b Archery Hunt); Current 2019 90; Proposed 2020 [0−300]
- A−13 (Zone X−7a Archery Hunt); Current 2019 45; Proposed 2020 [0−200]
- A−14 (Zone X−7b Archery Hunt); Current 2019 25; Proposed 2020 [0−100]
- A−15 (Zone X−8 Archery Hunt); Current 2019 40; Proposed 2020 [0−100]
- A−16 (Zone X−9a Archery Hunt); Current 2019 140; Proposed 2020 [0−500]
- A−17 (Zone X−9b Archery Hunt); Current 2019 300; Proposed 2020 [0−500]
- A−18 (Zone X−9c Archery Hunt); Current 2019 350; Proposed 2020 [0−500]
- A−19 (Zone X−10 Archery Hunt); Current 2019 100; Proposed 2020 [0−200]
- A−20 (Zone X−12 Archery Hunt); Current 2019 100; Proposed 2020 [0−500]
- A−21 (Anderson Flat Archery Buck Hunt); Current 2019 25; Proposed 2020 [0−100]
- A−22 (San Diego Archery Either−Sex Deer Hunt); Current 2019 1,000; Proposed 2020 [0−1,500]
- A−24 (Monterey Archery Either−Sex Deer Hunt); Current 2019 100; Proposed 2020 [0−200]
- A−25 (Lake Sonoma Archery Either−Sex Deer Hunt); Current 2019 35; Proposed 2020 [0−75]
- A−26 (Bass Hill Archery Buck Hunt); Current 2019 30; Proposed 2020 [0−100]
- A−27 (Devil's Garden Archery Buck Hunt); Current 2019 5; Proposed 2020 [0−75]
- A−30 (Covelo Archery Buck Hunt); Current 2019 40; Proposed 2020 [0−100]
- A−31 (Los Angeles Archery Either−Sex Deer Hunt); Current 2019 1,000; Proposed 2020 [0−1,500]
- A−32 (Ventura/Los Angeles Archery Late Season Either−Sex Deer Hunt); 250; Proposed 2020 [0−300]
- A−33 (Fort Hunter Liggett Late Season Archery Either−Sex Deer Hunt); Current 2019 50*; Proposed 2020 (25 Military and 25 Public) 50*

* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs. Military only tags are designated for Department of Defense and eligible personnel as authorized by the Installation Commander.

Existing regulations for Hunt A−33 (Fort Hunter Liggett Late Season Archery Either−Sex Deer Hunt) provide for hunting to open beginning the first Saturday in October and continue through November 12, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and December 31. The current proposal would modify the season to account for the annual calendar shift by changing the season dates to open beginning the first Saturday in October and continue through November 11, except if rescheduled by the Commanding Officer with Department concurrence between the season opener and December 31.

Section 362: The current regulation in Section 362, Title 14, CCR, provides for limited hunting of Nelson bighorn rams in specified areas of the State. The proposed change is intended to adjust the number of tags available for the 2020 season based on bighorn sheep fall/winter population surveys conducted by the Department. Final tag quota recommendations will be made pending completion of all surveys and data analyses. quota recommendations will be made pending completion of all surveys and data analyses.

Nelson Big Horn Sheep hunt zones followed by 2020 proposed range of tags.

- Zone 1 — Marble/Clipper Mountains [0−5]
- Zone 2 — Kelso Peak/Old Dad Mountains [0−4]
- Zone 3 — Clark/Kingston Mountain Ranges [0−4]
- Zone 4 — Orocopia Mountains [0−2]
- Zone 5 — San Gorgonio Wilderness [0−3]
- Zone 6 — Sheep Hole Mountains [0−2]
- Zone 7 — White Mountains [0−6]
- Zone 8 — South Bristol Mountains [0−3]
- Zone 9 — Cady Mountains [0−4]
- Zone 10 — Newberry, Rodman, Ord Mountains [0−6]
- Open Zone Fund−Raising Tag [0−1]
- Marble/Clipper/South Bristol Mountains Fund−Raising Tag [0−1]
- Cady Mountains Fund−Raising Tag [0−1]

Section 364: Current regulations in Section 364, Title 14, CCR, provide definitions, hunting zone descriptions, season dates, and elk license tag quotas. In order to achieve elk herd management goals and objectives and maintain hunting quality, it is periodically necessary to adjust quotas, seasons, hunt areas and other criteria in response to dynamic environmental and biological conditions. The proposed amendments to Section 364 will establish the 2020 tag quotas, season dates, and tag distribution within each hunt adjusting for annual fluctuations in populations.

1. Subsections 364(r) through (aa) specify elk license tag quota ranges for each hunt in

accordance with management goals and objectives.

2. Modify Season Dates. Due to military use constraints at Fort Hunter Liggett, hunt dates are annually subject to change and may be adjusted or cancelled by the Commanding Officer.

Section 364.1: Current regulations in Section 364.1, SHARE Elk Hunts, T14, CCR, specify elk tag quotas for each hunt area. In order to achieve elk herd management goals and objectives and maintain hunting quality, it is periodically necessary to adjust quotas in response to dynamic environmental and biological conditions.

Preliminary tag quota ranges are indicated pending final 2020 tag allocations in accordance with elk management goals and objectives. Survey data collected between August 2019, and March 2020, will be the basis for the final tag numbers recommended to the Commission at the April 2020 adoption hearing.

GOALS AND BENEFITS OF THE REGULATION

The proposed regulations will contribute to the sustainable management of native big game mammal populations in California. Existing elk herd management goals specify objective levels for the proportion of bulls to cows in the herds. These ratios are maintained and managed in part by periodically modifying the number of tags. The final recommended number of tags will be based upon findings from annual harvest, herd composition counts, and population estimates where appropriate.

NON−MONETARY BENEFITS TO THE PUBLIC

The Commission does not anticipate non−monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government.

CONSISTENCY WITH STATE REGULATIONS

The Commission, pursuant to Fish and Game Code Sections 200 and 203, has the sole authority to regulate native big game mammal hunting in California. Commission staff has searched the California Code of Regulations and has found the proposed changes pertaining to elk tag allocations are consistent with Title 14. Therefore, the Commission has determined that the proposed amendments are neither inconsistent nor incompatible with existing State regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Friday, February 21, 2020, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Thursday, April 16, 2020 at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before noon April 10, 2020 at the address given below, or by email to FGC@fgc.ca.gov. All comments (both oral and written) must be received no later than April 16, 2020, at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address. **Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244−2090.**

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller−Henson, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, P.O. Box 944209, Sacramento, California 94244−2090, phone (916) 653−4899. Please direct requests for the above−mentioned documents and inquiries concerning the regulatory process to Melissa Miller−Henson or Jon Snellstrom at the preceding address or phone number. **Brad Burkholder, Environmental Program Manager, has been designated to respond to questions on the substance of the proposed regulations. He can be reached at (916) 445−1829 or via email at Brad.Burkholder@wildlife.ca.gov.**

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments dur-

ing the regulatory process may preclude full compliance with the 15−day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed 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 proposed action adjusts tag quotas for existing hunts and modifies season dates for hunts on military land. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed action will not have significant impacts on the creation or elimination of jobs or the creation of new businesses or the elimination of existing businesses within California because it is unlikely to result in a change in hunting effort. The proposed action does not provide benefits to worker safety because it does not address working conditions.

The Commission anticipates benefits to the health and welfare of California residents. Hunting provides opportunities for multi−generational family activities and promotes respect for California's environment by the future stewards of the State's resources. The Commission anticipates benefits to the State's environment in the sustainable management of natural resources.

(c) Cost Impacts on a Representative Private Person or Business:

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

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

CONSIDERATION OF ALTERNATIVES

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 265 and 355, Fish and Game

Code and to implement, interpret or make specific Sections 502 and 507; Title 14, California Code of Regulations, relating to annual waterfowl regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and daily bag and possession limits. The proposed Frameworks for the 2020−21 season were approved by the flyway councils and will be considered for adoption at the Service's Regulations Committee meeting October 8−9, 2019. The proposed Frameworks allow for a liberal duck season which includes: a 107−day season, 7 daily duck limit including 7 mallards but only 2 hen mallards, 1 pintail, 2 canvasback, 2 redheads, and 2 scaup (during an 86 day season; daily bag limit decrease from 3 to 2); and closing no later than January 31. Duck daily bag limit ranges and duck season length ranges are provided to allow the Commission flexibility.

A range of season length and bag limit (zero bag limit represents a closed season) is also provided for black brant. The range is necessary, as the black brant Framework cannot be determined until the Pacific Flyway Winter Brant Survey is conducted in January 2020. The regulatory package is determined by the most current Winter Brant Survey, rather than the prior year survey. The regulatory package will be prescribed per the Black Brant Harvest Strategy pending results of the survey, well before the Commission's adoption meeting. See the table in the Informative Digest for the range of season and bag limits. Lastly, Federal regulations require that California's hunting regulations conform to those of Arizona in the Colorado River Zone and those of Oregon in the North Coast Special Management Area.

The recommended changes to Section 502 are:

1) Open the duck season on the second Saturday in October and close January 20 in subsection 502(d)(1)(B) for the Northeastern Zone. This recommendation reduces the duck season length to 103 days.
2) Open the duck season on the fourth Saturday of October and close January 31 in subsection 502(d)(2)(B) for the Southern San Joaquin Valley Zone, in subsection 502(d)(3)(B) for the Southern California Zone, and in subsection 502(d)(5)(B) for the Balance of State Zone. This recommendation reduces the duck season length to 100 days.
3) Open the regular goose season on the fourth Saturday in October and close January 31 in subsection 502(d)(2)(B) for the Southern San Joaquin Valley Zone and in subsection 502(d)(3)(B) for the Southern California Zone. This recommendation reduces the season length to 100 days.
4) Open the Late Season for geese on the weekend after the Youth Hunt Days in subsection 502(5)(B) for the Balance of State Zone and in subsection 502(d)(6)(A)9 for the Imperial County Special Management Area. If item 5 (below) is enacted, the Late Season for geese would occur after the Veterans and Active Military Personnel Waterfowl Hunting Days.
5) Designate two days as Veterans and Active Military Personnel Waterfowl Hunting Days (VAMP Days hereafter) for the Northeastern, Southern San Joaquin Valley, Southern California, and Balance of State zones. This recommendation creates a new subsection, 502(f)(1)(A)(B)(C)1−4 and renumbering will occur for the subsequent section (Falconry Take of Ducks subsection becomes 502(g)(1)).
6) Allow up to five days of falconry−only season in subsection 502(g)(1)(B)2. for the Balance of State Zone, in subsection 502(g)(1)(B)3. for the Southern San Joaquin Valley Zone and in subsection 502(g)(1)(B)4. for the Southern California Zone.

Current regulations in Section 507(a)(4), Title 14, CCR, continue to describe the shotgun size and shot shell type authorized for the taking of migratory game birds.

The Commission is recommending deleting the reference to lead and No BB which was already amended by legislation:

1) . . . Shotgun shells may not be used or possessed that contain shot size larger than ~~No. BB in lead or~~ T shot in steel or other nontoxic shot approved by the U.S. Fish and Wildlife Service. All shot shall be loose in the shell.

Minor editorial changes are also proposed to clarify and simplify the regulations and to comply with existing federal Frameworks.

GOALS AND BENEFITS OF THE REGULATION

The benefits of the proposed regulations are consistency with federal law and the sustainable management of the State's waterfowl resources. Positive impacts to jobs and/or businesses that provide services to waterfowl hunters will be realized with the continued adoption of waterfowl hunting seasons in 2020−21.

NON−MONETARY BENEFITS TO THE PUBLIC

The Commission does not anticipate non−monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government.

CONSISTENCY WITH STATE REGULATIONS

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Sections 502 and 507 are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate waterfowl hunting regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Friday, February 21, 2020, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Thursday, April 16, 2020, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before noon April 10, 2020 at the address given below, or by email to FGC@fgc.ca.gov. All comments (both oral and written) must be received no later than April 16, 2020, at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address. **Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244−2090.**

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller−Henson, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, P.O. Box 944209, Sacramento, California 94244−2090, phone (916) 653−4899. Please direct requests for the above−mentioned documents and inquiries concerning the regulatory process to Melissa Miller−Henson or Jon Snellstrom at the preceding address or phone number. **Melanie Weaver, Senior Environmental Scientist, has been designated to respond to questions on the substance of the proposed regulations. She can be reached at (916) 445−3717 or via email at Melanie.Weaver@wildlife.ca.gov.**

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15−day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed 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 proposed regulations would provide additional recreational opportunity to the public

and could result in minor increases in hunting days and hunter spending on equipment, fuel, food and accommodations.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California. The proposed waterfowl regulations will set the 2020−21 waterfowl hunting season dates and bag limits within the federal Frameworks. Little to minor positive impacts to jobs and/or businesses that provide services to waterfowl hunters may result from the proposed regulations for the 2020−21 waterfowl hunting season.

The most recent U.S. Fish and Wildlife national survey of fishing, hunting, and wildlife−associated recreation for California, estimated that migratory bird hunters contributed about $169,115,000 to businesses in California during the 2011 migratory bird hunting season. The impacted businesses are generally small businesses employing a few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long−term intent of the proposed regulations is to sustainably manage waterfowl populations, and consequently, the long−term viability of the same small businesses.

(c) Cost Impacts on a Representative Private Person or Business:

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

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

CONSIDERATION OF ALTERNATIVES

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

TITLE 14. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

Title 14: Natural Resources

Division 7: Department of Resources Recycling and Recovery

Chapter 11: Product Stewardship

Article 4: Pharmaceutical and Sharps Waste Stewardship Program

Sections: 18972 to 18975.2

PROPOSED REGULATORY ACTION

The California Department of Resources Recycling and Recovery (CalRecycle) proposes to adopt California Code of Regulations, Title 14, Division 7, Chapter 11, Article 4 commencing with Section 18972. The proposed regulation is intended to clarify processes for implementing the Pharmaceutical and Sharps Waste Stewardship Act (referred to throughout as the "Act") [Chapter 1004, Statutes of 2018 (Jackson, Senate Bill 212)].

PUBLIC HEARING

A public hearing to receive public comments is scheduled for February 19, 2020. The hearing will be held at the:

Joe Serna Jr., Cal EPA Building
Sierra Hearing Room
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at 1:00 p.m. on February 19, 2020, and will conclude after all testimony is given. Any person may present statements or arguments, orally or in writing, with respect to the proposed action. CalRecycle requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheelchair accessible. If you have any questions, please contact pharmasharps@calrecycle.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit to CalRecycle written comments relevant to the proposed regulation. The written comment period for this rulemaking closes on February 17, 2020. CalRecycle will consider only comments received by that time. Comments may be submitted via the contact information below. CalRecycle will also accept written comments during the public hearing described above. Please submit your written comments to:

Jason Smyth
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812−4025
Fax: (916) 319−7147
e−mail: pharmasharps@calrecycle.ca.gov

AUTHORITY AND REFERENCES

Public Resources Code Sections 40401, 42031.2, and 40502 provide authority for this regulation. The purpose of the proposed actions is to implement, interpret, and make specific the law related to pharmaceutical and sharps waste stewardship. The following is a list of references cited in this proposed regulation: sections 42030, 42031, 42031.2, 42031.4, 42031.6, 42032, 42032.2, 42033, 42033.2, 42033.4, 42033.5, 42033.6, 42034, 42034.2, 42034.4, 42035, 42035.2, 42035.4, 42035.6, 42035.8, 42036, 42036.2 and 42036.4, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

EXISTING LAWS AND REGULATIONS

The California Integrated Waste Management Act, Public Resources Code Section 40000 et seq., gives the CalRecycle authority to provide for the protection of public health, safety, and the environment through waste prevention, waste diversion, and safe waste processing and disposal. Public Resources Code Sections 40502 requires CalRecycle to adopt rules and regulations to implement the California Integrated Waste Management Act.

POLICY STATEMENT OVERVIEW AND EFFECT OF PROPOSED RULEMAKING

Pharmaceutical and home−generated sharps waste present significant environmental and public health concerns for California and currently is not managed effectively. As outlined in a 2017 report from the California State Auditor, while greater than 90 percent of state residents live within a 20−minute drive of a pharmaceutical or home−generated sharps collection site, collection services in rural areas are limited, and approximately four million Californians do not have reasonable access to disposal sites. Furthermore, information on these collection sites is not readily available to ultimate users. Not all pharmacies, law enforcement agencies, and household−hazardous waste facilities accept pharmaceuticals and/or home−generated sharps; among facilities that do, not all accept Drug Enforcement Administration controlled substances such as prescription opioids or auto−injectors such as Epi−Pens. Currently, options for proper disposal of pharmaceuticals and home−generated sharps waste are complex and confusing, and as a result, these products are often inappropriately disposed in the household garbage, toilets, or sinks.

The Act is meant to address the above problems by expanding access to proper disposal methods for pharmaceutical and home−generated sharps waste and a robust education and outreach campaign to promote proper disposal. The Act places the cost burden of the program on the covered entities of certain pharmaceuticals defined as “covered drugs” and home−generated sharps waste and requires them to manage the home−generated sharps waste collected at local household hazardous waste facilities, which is typically paid for by local governments through general fund, property tax, or ratepayer revenue.

The Act creates a statewide pharmaceutical and home−generated sharps waste stewardship program and requires a program operator, consisting of a covered entity or stewardship organization as defined Section 42030 of the Public Resources Code, to establish and submit to CalRecycle, either individually or collec-

tively through participation in a non−profit stewardship organization, a stewardship plan for covered drugs, home−generated sharps waste, or both.

The proposed regulation is intended to clarify the Act by providing procedures for submittal and approval of Stewardship Plans, as well as reporting requirements and enforcement provisions. More specifically, this regulation includes provisions on the following topics:

1. Definitions
2. Criteria for determining a covered entity
3. Document submittals: stewardship plan, initial program budget, annual report, and annual budget
4. Document approvals: stewardship plan, initial program budget, annual report, and annual budget
5. Stewardship plan for covered drugs
6. Stewardship plan for home−generated sharps waste
7. Annual report for covered drugs
8. Annual report for home−generated sharps waste
9. Program budgets
10. Record keeping requirements
11. Administrative fee to Department of Resources Recycling and Recovery
12. Stewardship organization audits of covered entities or authorized collectors
13. Retailer, wholesaler, distributor product verification
14. Criteria to impose an administrative civil penalty
15. Procedure for imposing administrative civil penalties
16. Procedure for revoking requiring resubmittal, or additional reporting of an approved stewardship plan for failure to meet a material requirement of the statute

The clarification provided in the proposed regulation will assist in the efficient and effective implementation of the Act and, together, the Act and the proposed regulation will lower the cost burden on individuals and local governments for the management of covered drugs and home−generated sharps waste, and will also result in benefits to public health and the environment (discussed in further detail starting on page 7).

Staff held informal public workshops on January 30, 2019 and February 27, 2019 to solicit stakeholder input regarding statutory terms and processes that should be defined and clarified through rulemaking. The input gathered through these workshops, written correspondence, and additional stakeholder meetings was then used to prepare informal draft regulatory text. Staff conducted two additional informal public workshops on May 17, 2019 and June 17, 2019 and held a public comment period to solicit stakeholder feedback on the informal draft regulatory text. Staff then incorporated comments from stakeholders into the proposed regulation.

CONSISTENCY EVALUATION

CalRecycle performed a search of existing state regulations and finds that the proposed regulation is not inconsistent or incompatible with existing state laws or regulations. CalRecycle considered any other possible related regulations and determined that this is the only regulation dealing in this subject area, and CalRecycle is the only agency that can implement this proposed regulation.

PLAIN ENGLISH REQUIREMENTS

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

FORMS INCORPORATED BY REFERENCE

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

MANDATED BY FEDERAL LAW OR REGULATIONS

Federal law or regulations do not contain comparable requirements.

LOCAL MANDATE

CalRecycle has determined that the proposed regulation does not impose a mandate on local agencies or school districts.

FISCAL IMPACT

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT REQUIRING REIMBURSEMENT

CalRecycle has determined the proposed regulation does not impact any costs to local agencies or school districts, which must be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of the Government Code. However, at the local government level some current expenditures may be reduced, to the extent that costs related to disposal of home−

generated sharps waste may be covered by a stewardship program.

COSTS OR SAVINGS TO ANY STATE AGENCY

In Fiscal Year 2019−20, CalRecycle and the Board of Pharmacy staff costs to develop the regulation and oversee its implementation will total $1,518,100. Costs for the state are expected to increase in subsequent years as additional enforcement staff are hired to ensure that regulated entities are in compliance. Starting in 2023, the State's costs associated with the Act (including costs incurred prior to 2023) will be reimbursed by covered entities participating in stewardship programs. CalRecycle's costs to oversee implementation of the Act prior to reimbursement will be covered by a loan from CalRecycle's E−Waste program.

NON−DISCRETIONARY COSTS OR SAVINGS

CalRecycle has determined that the proposed regulation does not impose any non−discretionary costs or savings upon local agencies.

COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE

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

HOUSING COSTS

Department staff have determined that the proposed regulation will not have a significant effect on housing costs.

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

CalRecycle has made an initial determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. While manufacturers of pharmaceuticals and sharps will be responsible for bearing nearly all direct costs of the regulation, these costs represent an insignificant proportion of the profits made on these products.

There are approximately 700 covered entities that will bear nearly all of the direct costs of the regulation, of which approximately 500 are pharmaceutical manufacturers and 200 are sharps manufacturers. CalRecycle estimates that the initial cost for the statewide pharmaceutical program is approximately $9.8 million, or $20,000 for each of the pharmaceutical manufacturers. These costs include administration, outreach and education, and installation of pharmaceutical kiosks at approximately 750 pharmacies statewide. The ongoing annual cost is estimated to be $8.9 million, or $18,000 per pharmaceutical manufacturer, which includes administration, outreach and education, collection and disposal of pharmaceuticals at kiosks, and installation of additional pharmaceutical kiosks each year.

CalRecycle estimates that the initial cost for the statewide sharps program is approximately $13.2 million, or $66,000 per sharps manufacturer. These costs include administration, outreach and education, mail−back containers, collection and disposal of sharps, and installation of sharps kiosks at approximately 850 pharmacies statewide. The ongoing annual cost is $12.2 million, or $61,000 per sharps manufacturer, which includes administration, outreach and education, mail−back containers and mail−back costs, collection and disposal of sharps, and installation of additional sharps kiosks each year to supplement the mandatory mail−back requirement.

However, CalRecycle anticipates that the financial impact on a covered entity as a result of the regulation will vary depending on its size. The manufacturers of pharmaceuticals and sharps that are responsible for funding the program are primarily large businesses but may also include some small businesses that manufacture niche products. While the regulation does not specify how the costs of the program should be allocated between the entities participating in a stewardship organization, it is anticipated that costs will be allocated in proportion to the quantity of covered pharmaceuticals or sharps the manufacturer sells in California. This assumption is consistent with producer responsibility programs in operation elsewhere which utilize a sales−based formula to determine each manufacturer's financial obligation. The result is that large manufacturers will pay a greater proportion of the implementation costs than the smaller manufacturers.

In 2012, the Pharmaceutical Research and Manufacturers of America (PhRMA), an industry association of prescription drug producers, sued the County of Alameda for passing an ordinance establishing a local stewardship program for prescription drugs similar to the one outlined in the Act. PhRMA argued that the Alameda County ordinance violated the Commerce Clause of the U.S. Constitution by affecting the costs for drug producers to operate in California versus other states. The U.S. District Court, Northern District of California sided with Alameda County by ruling that "the Ordinance serves a legitimate public health and safety interest, and that the relatively modest compliance costs producers will incur should they choose to sell their products in the county do not unduly burden interstate commerce." PhRMA appealed the ruling up to the U.S. Supreme Court, which declined to hear the case and thus let the District Court ruling stand.

This lawsuit demonstrated that the costs of operating a stewardship program are minimal compared with profits made on prescription drugs. PhRMA estimated that total annual compliance costs in Alameda County would be $1.2 million, compared with $965 million in retail pharmaceutical sales. The Department estimates a similar minimal impact for the statewide pharmaceutical program with $8.9 million in cost versus $22 billion in revenue. It is reasonable to assume that the impact of the sharps program would be minimal as well.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

CREATION OR ELIMINATION OF JOBS WITHIN CALIFORNIA

Approximately 40 new jobs will be created statewide as a direct result of the regulation. This number includes 17 new jobs for CalRecycle and the State Board of Pharmacy, with the remainder being jobs in newly formed stewardship organizations. In order to calculate potential job loss, staff had to consider how much of the costs to operate the stewardship programs may be passed on to consumers through retail price increases. It is important to note that statute requires stewardship plans demonstrate adequate funding for all administrative and operational costs of the stewardship program, to be borne by participating covered entities. However, determining whether a change in retail prices for the thousands of covered products in the marketplace will occur as a result of the regulation or the number of the other factors that go into a manufacturer's determination of product price will be exceedingly difficult, if not impossible. Therefore, although it is expected that manufacturers will not increase prices consistent with the law, staff ran the Regional Economic Models Inc. (REMI) economic model under three different assumptions regarding how much of program costs may be passed on to consumers in order to prepare as conservative an economic analysis as possible. Under the most conservative assumption that 100 percent of the program costs could be passed on to consumers, around 40 jobs are expected to be lost, resulting in a total net job loss of 0 due to the 40 new jobs that are created as discussed above.

CREATION OF NEW BUSINESSES OR ELIMINATION OF EXISTING BUSINESSES WITHIN CALIFORNIA

Covered entities are likely to form a number of stewardship organizations (501(c)(3) non−profit organizations, per statutory requirements) to administer the stewardship programs. A small expansion in waste hauling and disposal is also expected, which might lead to additional businesses being created, but is more likely to result in expansion of existing businesses.

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE

CalRecycle anticipates a small expansion of waste hauling and disposal businesses within the state.

BENEFITS OF THE REGULATION

CalRecycle has determined that the proposed regulation will result in the following benefits to public health and the environment:

1. Reduction of needle−stick injuries. The regulation is anticipated to decrease the rate of needle stick injuries and reduce the associated costs by providing consumers with safe and convenient disposal methods for home−generated sharps waste.
2. Reduction of accidental poisonings. The regulation is anticipated to reduce the incidence of accidental poisoning of children and pets from unused medications by providing consumers with convenient disposal options and conducting education and outreach campaigns to encourage their use.
3. Reduction in abuse of prescription drugs. The stockpiling of dangerous and highly addictive prescription drugs such as opioids in household medicine cabinets is a known gateway to prescription drug abuse and this regulation may make a minor contribution to reducing prescription drug abuse.
4. Water quality. Most existing water treatment infrastructure is not designed to treat or remove pharmaceuticals that have been improperly disposed of down the sink or toilet. The regulation will likely reduce the amount of trace pharmaceutical contamination in both surface and ground water by diverting unused covered drugs toward proper disposal methods.

COST IMPACT ON REPRESENTATIVE PERSONS OR BUSINESSES

Although the Act states that all administrative and operational costs of the programs are to be borne by covered entities, the regulation cannot ensure that pharmaceutical and sharps manufacturers will not raise the retail price of products in order to pass on to consumers the increased costs of compliance with the Act as with any other cost of doing business. In order to most conservatively capture the range of potential impacts on individuals due to price increases, the REMI economic model was run with different levels of consumer−cost pass−through. Under the most conservative assumption that 100 percent of program costs are passed on to consumers, the costs per individual in California for the pharmaceutical program would be approximately 25

cents for initial program costs and 22 cents annually thereafter. And under this scenario, the costs for the sharps program would be approximately $10.75 per sharps user initially, and $13.30 annually thereafter.

BUSINESS REPORT

The Act mandates multiple reporting requirements. Program operators are required to annually submit an annual budget and annual report to CalRecycle for approval; covered entities are required to annually submit product lists to the Board of Pharmacy; and retailers of covered products as well as wholesalers and distributors are required to monitor CalRecycle's website for compliant covered entities and notify CalRecycle if they sell covered products that are not from a compliant covered entity. The proposed regulation does not require additional reports beyond what is laid out in statute, but the regulation does add clarity and specificity to some of these reporting requirements. It is necessary for the health, safety and welfare of the people of the state that the regulations and reporting requirements apply to businesses.

SMALL BUSINESS

Retail pharmacies in California are considered small businesses as most employ fewer than 100 people. Retail pharmacies will be directly impacted by the regulation and will incur costs associated with recordkeeping, occasional reporting to CalRecycle, and distributing sharps containers, which are estimated to cost a combined total of $100,000 per year split among all the pharmacies, or less than $50 per pharmacy. One of the reasons these costs are relatively small is that retail pharmacies are anticipated to fulfill the recordkeeping requirements at the corporate level instead of incurring recordkeeping costs at each individual pharmacy.

ALTERNATIVES STATEMENT

CalRecycle considered alternatives to the proposed rules and determined that: 1) no alternative would be more effective in carrying out the purpose for which the action is proposed; 2) no alternative would be as effective and less burdensome to affected private persons, while at the same time protecting human health, safety, and the environment, and the integrity of public funds; and 3) no alternative would be more cost−effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Three specific alternatives are described below.

ALTERNATIVE 1

Alternative 1 is to clarify in regulation the phrase "provides or initiates distribution of a sharps waste container and mail−back materials at the point of sale" to mean that every customer is given a sharps container and mail−back materials at each individual sale sufficient to accommodate the volume of sharps purchased. However, some customers who purchase syringes (and associated medications) on a frequent and routine basis may prefer not to receive a sharps container every time they purchase sharps. For example, a self−injector may prefer to receive a 1−gallon sharps container which could accommodate the amount of sharps they use over the course of nine months and enable them to make multiple purchases of syringes without incurring the additional burden of receiving and transporting a sharps container during that period of time.

Alternative 1 may also create a burden on pharmacies that have limited floor space to store sharps containers. Alternative 1 is estimated to cost covered entities $114 million per year, which exceeds the cost of the regulation ($21.1 million per year) and is not anticipated to result in significantly more sharps collected from ultimate users.

Alternative 1 was not selected as it does not significantly increase the quantity of sharps waste that would be collected and is more costly than the proposed regulation.

ALTERNATIVE 2

The proposed regulation requires that education and outreach materials produced by a stewardship organization are held to at least the same accessibility standards used by CalRecycle on its internet website. These accessibility standards include provisions for visually or hearing−impaired individuals, availability of text translations for several different languages, and full Americans with Disabilities Act compliance. A lower cost alternative would not require all education and outreach materials to meet accessibility standards. Under Alternative 2, stewardship organizations would save thousands of dollars per year in printing, translation, and information technology costs, but the education and outreach campaigns would be less successful in reaching certain communities and target audiences. Consequently, Alternative 2 would result in less pharmaceutical and sharps waste collected and reduce the effectiveness of the law, which is why it was not selected.

ALTERNATIVE 3

The third alternative would be for CalRecycle to not adopt any regulation beyond what is required by subsection (f)(2) of Section 42030 of the Public Resources Code. While this alternative would avoid much of CalRecycle's time and effort spent on the regulatory process, the clarity provided by the regulation is essen-

tial to minimize confusion, facilitate effective program implementation, and ensure that ultimate users have adequate access to safe and convenient disposal options for their covered drugs and home−generated sharps waste.

CONTACT PERSON

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

Jason Smyth
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812−4025
PHONE: (916) 341−6676
FAX: (916) 319−7147
e−mail: pharmasharps@calrecycle.ca.gov

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

Cynthia Dunn
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery
P.O. Box 4025
Sacramento, CA 95812−4025
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FAX: (916) 319−7495
e−mail: pharmasharps@calrecycle.ca.gov

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

CalRecycle will have the entire rulemaking file, and all information that provides the basis for the proposed regulation, available for inspection and copying throughout the rulemaking process on its internet webpage at https://www.calrecycle.ca.gov/laws/rulemaking/pharmasharps. Copies of the rulemaking file may also be obtained by contacting Jason Smyth or Cynthia Dunn using the contact information listed above. 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, the economic and fiscal impact statement, the documents relied upon for the proposed action, and the initial statement of reasons (ISOR).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

FINAL STATEMENT OF REASONS

The Final Statement of Reasons (FSOR) will be made available at the above listed internet webpage or by contacting the people named above.

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

The California Department of Tax and Fee Administration Proposes to Adopt Amendments to Section 1503, *Hospitals and Other Medical Facilities, Institutions and Homes for the Care of Persons,* and Section 1591, *Medicines and Medical Devices,* in Title 18 of the California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (CDTFA), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to amend California Code of Regulations, title 18, section (Regulation or Reg.) 1503, *Hospitals and Other Medical Facilities, Institutions and Homes for the Care of Persons,* and Regulation 1591, *Medicines and Medical Devices.* The proposed amendments to Regulation 1503 clarify that medical service facilities are service providers to their patients and residents, including those insured pursuant to Part A of the Medicare Act. The proposed amendments to Regulation 1503 reformat the second sentence, the third sentence, and both the third and fourth sentences in subdivision (b)(2), as subdivision (b)(2)(A), (B), and (C)1, respectively. The proposed amendments to Regulation 1503 limit reformatted sub-

division (b)(2)(C)1, which provides that "a medical service facility is the retailer of any property furnished in connection with its medical services if its contract with the medical service facility's resident or patient or other customer specifically provides that title to the subject tangible personal property passes to the resident or patient or other customer. When the contract has a provision passing title to the subject tangible personal property to the resident or patient or other customer, the medical service facility may purchase such property for resale, and tax applies to the charge by the medical service facility unless its sale is otherwise exempt from tax," so the subdivision only applies to transactions prior to January 1, 2019. The proposed amendments to Regulation 1503 also add new subdivision (b)(2)(C)2 to Regulation 1503, operative January 1, 2019, to provide that "a medical service facility is the retailer of tangible personal property furnished in connection with its medical service for which it makes a separately itemized charge, if possession or control of the property passes to the resident or patient or other customer and its contract with the resident or patient or other customer specifically provides that title to the property passes to the resident or patient or other customer," clarify that a medical service facility is the "consumer of tangible personal property furnished in connection with its medical services if possession or control of the property does not pass to the resident or patient or other customer," and provide a non−exhaustive series of categories of property the possession or control of which does not pass to the resident or patient or other customer, with specific examples within each category.

In addition, the proposed amendments to Regulation 1503 clarify that the exemption in RTC section 33 and described in subdivision (b)(3) applies to "human" whole blood. The proposed amendments to Regulation 1503 also make non−substantive changes to replace "Section" with "section" in three places in subdivision (a)(1)(C), delete brackets that were inadvertently inserted in subdivision (b)(1), move the reference to "for a charge" in reformatted subdivision (b)(2)(A), and replace "medical services facility" with "medical service facility" in two places in the second sentence in reformatted subdivision (b)(2)(C)1. Finally, the proposed amendments to Regulation 1591 clarify that sales of medicines, devices, appliances, and supplies for which payment is made under Part A of the Medicare Act qualify as exempt sales to the United States Government "to the extent allowed pursuant to Regulation 1503."

AUTHORITY

RTC section 7051

REFERENCE

Regulation 1503: RTC sections 33, 6006, 6007, 6015, 6016, 6051, 6359 and 6363.6.

Regulation 1591: RTC sections 6006 and 6369, and Health and Safety Code sections 1200, 1200.1, 1204.1 and 1250.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Sales and Use Taxes

The Sales and Use Tax Law (SUTL) (RTC, Section 6001 et seq.) currently imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (RTC, Section 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, Sections 6012, 6051.) The sales tax is imposed on retailers, but retailers may collect reimbursement from their customers if their contracts of sale so provide. (Civ. Code, Section 1656.1; Reg. 1700, *Reimbursement for Sales Tax.*)

When sales tax does not apply, use tax applies to the sales price of tangible personal property purchased from a retailer for storage, use, or other consumption in California, unless a specific exemption or exclusion applies. (RTC, Sections 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, Section 6202.) However, retailers that are engaged in business in this state are required to collect the use tax from their customers and report and pay it to the state. (RTC, Section 6203.)

Administration and Enforcement of Sales and Use Taxes

The SUTL was administered and enforced by the State Board of Equalization (BOE) pursuant to RTC section 7051, which states that the BOE shall enforce the provisions of the SUTL, the BOE may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of the SUTL, and the BOE may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect. However, on June 27, 2017, the Governor approved Assembly Bill No. (AB) 102 (Stats. 2017, ch. 16), the Taxpayer Transparency and Fairness Act of 2017, which added part 8.7 (commencing with section 15570) to division 3 of title 2 of the Government Code (part 8.7). Part 8.7 established the CDTFA (Gov. Code, Section 15570) and transferred most of the BOE's former duties, powers and responsibilities to the CDTFA, operative July 1, 2017, including the BOE's former duties,

powers, and responsibilities related to the administration and enforcement of the SUTL. (Gov. Code, Section 15570.22.) Part 8.7 provided for the laws prescribing the powers, duties and responsibilities transferred to the CDTFA, including the SUTL, and the regulations adopted under those laws to continue in force on and after July 1, 2017. *(Ibid.*) Part 8.7 further provides that "whenever any reference to the [BOE] appears in any statute, regulation, or contract, or in any other code, with respect to any of the functions transferred to the [CDTFA], it shall be deemed to refer to the [CDTFA]." (Gov. Code, Section 15570.24.)

Sales and Purchases

A "sale" means and includes any transfer of title or possession, in any manner or by any means whatsoever, of tangible personal property for a consideration. (RTC, Section 6006.) Also, "purchase" generally has the same meaning as "sale." (RTC, Section 6010.) However, the inclusion of a title transfer clause in a contract is not dispositive when determining whether the contract is for the sale of tangible personal property. Rather, one must look to the "true nature" of the transaction at issue to determine if there is a bona fide sale of tangible personal property. (*Northrop Corp. v. State Bd. of Equalization* (1980) 110 Cal.App.3d 132, 139 (*Northrop Corp*.); see also *Lockheed Aircraft Corp. v. State Bd. of Equalization* (1978) 81 Cal.App.3d 257, 267 (*Lockheed*) [all the stipulated facts were "consistent with a bona fide sale"].)

In sales and use tax matters, "the language utilized by the parties to characterize their transaction does not, in itself, necessarily control" (*Southern California Edison Co. v. State Bd. of Equalization* (1972) 7 Cal.3d 652, 662) and "something more than a mere unexercised contractual right to acquire possession must exist to vest ownership or title in a party." (*Northrop Corp.* at p. 140.) In *City of Fontana v. California Dept. of Tax and Fee Administration* (2017) 17 Cal.App.5th 899, 930, the court stated:

> Documents may be important, even dispositive, but they should not be made a litmus test. Nor should the four corners become a fetish. It is a bedrock principle of taxation that substance is more important than form. [Citations omitted.] To this end, the Board has the discretion to discard the literalism of writings and the terminology used by the contracting parties.

In *Northrop Corp.,* the court, when determining whether a sale had occurred, stated:

> ["]To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of . . . tax policies . . ." (*Comm'r. v. Court Holding Co.* (1945) 324 U.S. 331, 334 [89 L. Ed. 981, 985, 65 S.Ct. 707]) and that "[i]n interpreting [a] transaction the taxing authority is not necessarily bound by the language the taxpayer chose to describe it or by the bookkeeping entries chosen to record it." (*W. E. Hall Co. v. Franchise Tax Bd.* (1968) 260 Cal.App.2d 179, 183 [66 Cal. Rptr. 911].)

(*Northrop Corp., supra*, 110 Cal.App.3d at p. 139.)

Taxable Retail Sales and Purchases

In general, "gross receipts" mean the total amount of the sale, without any deduction on account of the cost of the materials used, labor, or service cost, or any other expense (RTC, Section 6012, subd. (a)(2)) and "sales price" generally has the same meaning as "gross receipts." (RTC, Section 6011.) A "retail sale" or "sale at retail" is a sale of tangible personal property for purposes other than resale in the regular course of business. (RTC, Section 6007.) Also, "storage" generally includes any keeping or retention of tangible personal property in this state for any purpose, "use" generally includes the exercise of any right or power over tangible personal property incident to the ownership of that property, but "storage" and "use" do not include the sale of that property in the regular course of business. (RTC, Sections 6008, 6009.) So, sales or use tax generally applies to the total amount charged for tangible personal property purchased from a retailer in a retail sale, unless an exemption or exclusion applies, and sales and use tax does not generally apply to property purchased for resale in the regular course of the purchaser's business.

In addition, subdivision (a) of Regulation 1667, *Exemption Certificates*, explains that:

> The law provides that for the purpose of the proper administration of the sales and use tax and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.
>
> This presumption may be rebutted by the seller as to any sale by establishing to the satisfaction of the [CDTFA] that the gross receipts from the sale are not subject to the tax or by timely taking a resale certificate as provided in Regulation 1668 or by taking [an exemption] certificate as provided in this regulation.

Exempt Sales to the United States Government

Federal law generally prohibits states from imposing taxes, such as use taxes, on the United States Government, including its agencies and instrumentalities. (See, e.g., *McCulloch v. Maryland* (1819) 17 U.S. 316; *Western Lithograph Co. v. State Bd. of Equalization* (1938) 11 Cal.2d 156, 158−159 (*Western Lithograph*); and subdivision (a) of Regulation 1614, *Sales to the United States and its Instrumentalities,* use tax does not apply to the storage, use, or other consumption of tangible

personal property by agencies or instrumentalities of the United States, unless federal law permits taxing the agency or instrumentality.) Also, sales tax does not apply to sales of tangible personal property to the United States Government because RTC section 6381 provides an express exemption from sales tax for retailer's gross receipts from sales of any tangible personal property to the United States Government, including its unincorporated agencies and instrumentalities.

In addition, subdivision (f)(2)(A) of Regulation 1591, *Medicines and Medical Devices*, provides that tax does not apply to the sale of items to a person insured pursuant to Part A of the Medicare Act (Medicare Part A), as such sales are considered exempt sales to the United States Government. Under Part A, the healthcare provider has a contract with the United States Government to provide certain services; thus, sales of medicines, devices, appliances, and supplies in which payment is made under Part A qualify as exempt sales to the United States Government. (*Ibid.*)

However, the exemption for sales to the United States Government does not apply to sales of tangible personal property to a healthcare provider, unless the provider is part of the United States Government. Also, the federal *Medicare Provider's Reimbursement Manual* anticipates that state taxes may apply to sales of medical supplies to healthcare providers who will use them in providing service to Medicare Part A patients, and generally provides that the "[t]axes are allowable costs [reimbursable under Medicare Part A] to the extent they are actually incurred and related to the care of beneficiaries." (See section 2122.1 of the *Medicare Provider Reimbursement Manual.*)

Service Enterprises

As relevant here, Regulation 1501, *Services Enterprises Generally*, specifies that persons engaged in the business of rendering services are consumers, not retailers, of the tangible personal property that they use incidentally in rendering the service. Accordingly, tax applies to the sale of the property to them. (Reg. 1501.) If, in addition to rendering services, they regularly sell tangible personal property to consumers, then they are retailers with respect to those sales, and they must obtain permits, file returns and remit tax measured by such sales. (*Ibid.*) If their purchases of tangible personal property are predominantly for consumption rather than for resale, they should not give resale certificates covering such purchases, but should follow the procedure prescribed in Regulation 1701, *Tax–Paid Purchases Resold,* to be credited for taxes paid at the time of purchase. (*Ibid.*)

The basic distinction in determining whether a transaction involves a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service is one of the true object of the contract; that is, is the real object sought by the buyer the service per se or the property produced by the service. (Reg. 1501.) If the true object of the contract is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. (*Ibid.*)

Medical Service Facilities

Institutions that provide medical services, such as hospitals, have historically been considered to be consumers of tangible personal property they purchase from suppliers for their own use or other consumption in the provision of their medical services, such as surgical instruments and surgical gowns and gloves worn by medical personnel. (See, e.g., Sales and Use Tax Annotations (Annotations) 300.007.200 (4/30/92) [items consumed by doctors and nurses during surgery], 300.0035 (3/2/82) [empty containers, such as IV bags and syringes, used in a hospital's medicine handling system], and 300.0134 (12/27/95) [disposable gloves worn by hospital staff]; annotations are summaries of the conclusions reached in selected legal rulings of counsel and do not have the force and effect of law (Reg. 35101).) They have generally been considered to be consumers of tangible personal property, including medicines, that they purchase from suppliers and furnish to their patients and residents as part of their services, as discussed further below.

They have also historically been considered to be retailers of other tangible personal property that they purchase from suppliers and sell to their patients, residents, or other customers, rather than furnish as part of their services.

BOE Ruling No. 7 (as amended September 17, 1952), *Hospitals, and Institutions and Homes for the Care of Children, and Aged and Incompetent Persons,* provided that tax does not apply to these institutions' lump–sum charges for their services and tangible personal property furnished as part of the services, but tax applies to medicines and other tangible personal property if a separate charge is made. It also provided that tax applies to sales to these institutions of tangible personal property for which a separate charge is not made. This encouraged these institutions not to separately bill for items commonly furnished to their patients, so that tax would apply to the amount the institutions were charged for the property, as consumers, rather than the amount the institutions charged their patients, as retailers of the property. This distinction became less significant after the Legislature enacted RTC section 6369 to provide an exemption for prescription medicines operative January 1, 1962. (Stats. 1961, ch. 866.) However, the distinction between being a consumer or retailer is still relevant today because RTC section 6369, subdivision (b), ex-

pressly excludes any auditory, prosthetic, ophthalmic, or ocular device or appliance, and articles that are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devises, or other mechanical, electronic, optical, or physical equipment or article or the component parts and accessories thereof from the definition of exempt medicines.

BOE Ruling No. 7 was subsequently codified as Regulation 1907 in title 18 of the California Code of Regulations, and then amended and renumbered as Regulation 1503 in title 18 of the California Code of Regulation effective April 29, 1970. The 1970 amendments clarified that property is furnished in connection with a hospital's or other qualified institution's services if it is administered to the patient by an employee, physician or nurse, and the administration is of a technical or professional nature, such as injections or other internal applications, and applying casts, splints, dressings and bandages. The 1970 amendments also clarified that a hospital or other qualified institution is the consumer of property administered to a patient when it makes a lump−sum charge for administration, but a hospital or other qualified institution is the retailer of property administered to a patient when it makes separate charges for the property and the administration.

In 2001, the BOE amended Regulation 1503, *Hospitals and Other Medical Facilities, Institutions and Homes for the Care of Persons,* and Regulation 1503 has not been amended since. Subdivision (b)(1) of Regulation 1503 was amended to define the term "medical service facilities" to include hospitals and other medical service facilities. Subdivision (b)(1) was also amended to restate the general rule and provide that "[Operative April 1, 2001, e]xcept as provided in subdivision (b)(2) of this regulation, medical service facilities are service providers to their patients and residents, and are consumers of the tangible personal property furnished in connection with those services, whether separately itemizing charges for the services and for the tangible personal property or billing in lump sum, and sales of that tangible personal property to the medical service facilities are taxable retail sales unless specifically exempted." Accordingly, the furnishing of the same property by medical service facilities to their patients and residents are not retail sales subject to tax. (The brackets were inadvertently inserted in the text of amended subdivision (b)(1) due to a clerical error.)

However, subdivision (b)(2) of Regulation 1503 was amended to provide three unnumbered exceptions to the general rule. The first exception provides that "A medical service facility is the retailer of tangible personal property furnished for a charge to persons other than residents and patients." (*Ibid.*) The second exception provides that "A medical service facility is the retailer of tangible personal property for which it makes a separately itemized charge if the property is furnished to a patient or resident with the intent that the patient or resident remove the property from the premises of the medical service facility for use by the patient or resident. Examples of such items include crutches or a wheelchair provided upon release from the medical service facility and discharge kits for new mothers (which might include formula, diapers, etc.)." (*Ibid.*) The third exception provides that "Notwithstanding subdivision (b)(1) of this regulation, a medical service facility is the retailer of any property furnished in connection with its medical services if its contract with the facility's resident or patient or other customer specifically provides that title to the property passes to the resident or patient or other customer. When the contract has a provision passing title to the subject property to the resident or patient or other customer, the medical services facility may purchase such property for resale, and tax applies to the charge by the medical services facility unless its sale is otherwise exempt from tax." (*Ibid.*)

The 2001 amendments were intended to simplify the application of tax to medical supply items that hospitals and other qualified institutions, recharacterized as "medical service facilities," purchased from suppliers and actually furnished to their patients and residents in connection with their medical services. The amendments primarily simplified the application of tax to items furnished to patients and residents by ensuring that suppliers' sales of such items to the facilities were generally taxable and the facilities' furnishing of the items to their patients and residents was generally not taxable, based on the true object of the facilities' contracts, which is to provide services to their patients or residents. The amendments also simplified the application of tax by giving facilities the option to be retailers of medical supply items that they regularly furnish to their patients and residents by including title clauses in their contracts, so that the exemption for sales to the United States Government would apply to their bona fide sales of such items to patients insured under Medicare Part A. The amendments were not intended to overturn the general rule under Regulation 1501 that service providers are consumers of the products they use in rendering their services or expand the situations in which a medical service facility could opt to be a retailer or make service providers into retailers of items that they use or otherwise consume, not sell, such as surgical instruments and surgical gowns and gloves worn by medical personnel.

As stated in Formal Issue Paper 00−026 (July 26, 2000) presented to the BOE members with the 2001 amendments to Regulation 1503:

> It is clear that hospitals are primarily service providers . . . . Staff believes the abolishment of the regulatory distinction between administered and non−administered medical supply items would help to ensure that hospitals are taxed based on the true object of the contract, which would be as the provider of the services to their patients, rather than on distinctions such as "administered" versus "non−administered" and itemized billing versus lump−sum billing.
>
> [¶] . . . [¶]
>
> Amending Regulation 1503 to abolish the distinction between administered and non−administered medical supply items will simplify sales and use tax reporting for hospitals and medical service facilities as well as for their suppliers, reducing the need for complex accounting records to distinguish between taxable and nontaxable supply purchases. However, the exemption for sales to the federal government, under Medicare Part A, does not apply unless the hospital is selling tangible personal property to the United States. This exemption would not apply when a medical service facility acts as a consumer. Nevertheless, current industry practice, as found in recent hospital audits, is that hospitals are not structuring their transactions to be sales to the United States, and that they are thus not claiming exempt government sales. Additionally, medical service facilities will still have the option to be a retailer under the proposed regulation by including an explicit clause in the contract between the facility and the patient transferring title to medical supply items to the patient.

Blood and Blood Plasma

RTC section 33 provides that "[h]uman whole blood, plasma, blood products, and blood derivatives, or any human body parts held in a bank for medical purposes, shall be exempt from taxation for any purpose." Subdivision (b)(3) of Regulation 1503 currently provides that "[t]ax does not apply with respect to purchases, sales or donations of whole blood or blood plasma for use in transfusions," based upon RTC section 33.

Deduction for Tax−Paid Purchases Resold

Subdivision (a) of Regulation 1701, *Tax−Paid Purchases Resold,* provides that:

> A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration or display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
>
> The deduction under the caption "Tax−paid purchases resold" must be taken on the retailer's return in which his sale of the property is included. If the deduction is not taken in the proper quarter, a claim for refund of tax must be filed.

Medical service facilities that maintain a tax−paid inventory may claim a deduction for tax paid purchases resold or claim a refund when they resell tax−paid items for sales and use tax purposes.

Effects, Objectives, and Benefits of the Proposed Amendments

Need for Clarification and Guidance

CDTFA staff determined that there was an issue (or problem within the meaning of Gov. Code, Section 11346.2, subd. (b)(1)) with the 2001 amendments to Regulation 1503 because they may create an unintended exemption from tax, wherein medical service facilities can claim they are making exempt sales of property to the United States Government when the facilities are consumers of such property. This is because, beginning around 2011, medical service facilities started adding a title transfer clause to their admission contracts, which transferred title to their medical supply items to their Medicare Part A patients. For instance, one hospital's admission form reads:

> If you are a patient eligible for Medicare Part A benefits, you acknowledge that title to all tangible medical related products and devices provided to you or consumed while providing services to you in the hospital ("Medical Supplies") vests in you when the first of the following occurs: when the Medical Supplies are provided to you or consumed while the hospital is providing services to you; when the hospital begins to process the Medical Supplies; or when the hospital receives payment from Medicare.

These medical service facilities began to claim that they were retailers of all the medical supply items they furnished to their Medicare Part A patients in connection with their medical services and the medical supply items consumed by the facilities in the provision of their medical services, which the Medicare Part A patients never obtained possession or control of or any other rights to, except bare legal title.

Also, medical service facilities usually pay sales tax reimbursement or use tax on the purchase of all their medical supplies. Accordingly, to take advantage of the exemption for sales to the United States Government, these medical service facilities and their suppliers began to file claims for refund with the CDTFA for the tax paid on the sale of these items to the facilities. Based on

a review of recent claims for refund, CDTFA staff has found that medical service facilities have asserted that they have sold their patients items such as blades, drill bits, forceps, scissors, and other surgical instruments, electrodes, needles, unfilled syringes, surgical gowns and gloves worn by the medical personnel, surgical drapes, and other items consumed by medical service facilities in the provision of medical services, and claimed refunds for tax paid on such items.

However, it is clear that there is not a bona fide retail sale of such property to a Medicare Part A patient given that these are service transactions, there is no indication that Medicare Part A patients have any interest in acquiring property that medical staff consume while providing services, and that the patients are not generally able to exercise any of the bundle of rights associated with legal ownership of such property. They neither possess nor exercise dominion or control over such property, nor are they free to sell or give it away. Furthermore, these medical service facilities do not consistently treat themselves as retailers of the same property when it is used in the provision of services to patients other than Medicare Part A patients. Beyond the title transfer clauses that apply only to Medicare Part A patients, there is no indication that the patients ever become the lawful and true owners of these items.

Accordingly, CDTFA staff determined that it was necessary to amend Regulation 1503 to have the effect and accomplish the objective of addressing the issue (or problem) discussed above. Therefore, CDTFA staff drafted amendments to delete the brackets that were inadvertently inserted in Regulation 1503, subdivision (b)(1), in 2001. CDTFA staff drafted amendments to Regulation 1503, subdivision (b)(1), to clarify that, except as provided in subdivision (b)(2), medical service facilities are service providers to their patients and residents, "including patients and residents insured pursuant to Part A of the Medicare Act," and are the consumers of tangible personal property furnished in connection with those services. Staff also drafted amendments that reformatted the three exceptions in subdivision (b)(2), as subdivision (b)(2)(A), (B), and (C), made a solely grammatical change that moved "for a charge" to the end of the first exception, and limited the third exception regarding the passage of title so it only applies to transactions prior to January 1, 2019.

CDTFA staff also determined that there was another issue (or problem within the meaning of Gov. Code, Section 11346.2, subd. (b)(1)) with Regulation 1503, subdivision (b)(3), because subdivision (b)(3) does not specify that the exemption provided by RTC section 33 and described in subdivision (b)(3) only applies to human blood, and staff has received questions from taxpayers regarding whether the exemption for blood described in subdivision (b)(3) applies to animal blood, as a result. Therefore, staff determined that it was necessary to amend Regulation 1503, subdivision (b)(3), to clarify that the exemption provided by RTC section 33 only applies to "human" blood and add a reference to RTC section 33 to Regulation 1503's reference note to have the effect and accomplish the objective of addressing the issue (or problem).

First Discussion Paper and Interested Parties Meeting

CDTFA staff prepared a discussion paper explaining the proposed amendments to Regulation 1503, which was issued on September 6, 2018. The CDTFA held an interested parties meeting to discuss the proposed amendments on September 27, 2018. During the meeting, the interested parties generally disagreed with the proposed amendments to make the exception in reformatted subdivision (b)(2)(C) inoperative after December 31, 2018. The interested parties also questioned whether the CDTFA had the statutory authority to amend Regulation 1503 to limit the effect of title transfer provisions, and referenced case law (e.g., *Lockheed*) in which courts held that defense contractors made bona fide sales to the federal government under contracts that expressly passed title to tangible personal property to the federal government.

The CDTFA subsequently received written comments from eight interested parties, which were all dated October 31, 2018. Keith Farmer submitted a letter on behalf of the University of California, San Francisco Health System (UCSF Health), Tony Davis submitted a letter on behalf of the University of California, Los Angeles Health System (UCLA Health), Kathy Janowski submitted a letter on behalf of the Methodist Hospital of Southern California, Kristina Nguyen submitted a letter on behalf of the Hollywood Presbyterian Medical Center, Staci Dickerson submitted a letter on behalf of SHARP HealthCare, and Ann McLeod submitted a letter on behalf of the California Hospital Association (CHA), which each contained substantially similar comments opposing the proposed amendments. Their comments expressed concern that the amendments could have adverse effects on the health care industry, and asserted that the CDTFA lacked legal authority to "disallow a valid exemption," that "the fact that the intended beneficiaries are claiming the benefit of the rule is no reason to change the rule," that looking to the economic reality of the transaction between the medical service facility and the patient overturns years of decisions looking to the contract governing a transaction to govern the application of sales and use tax, and that there is no artificial distinction between the facilities treatment of Medicare Part A patients and non−Medicare Part A patients because different sources pay for their medical care.

Downey Smith and Fier (DSF) submitted a letter on its own behalf, which expressed concern that the proposed amendments would make hospitals "absolute consumers" regardless of their agreements with patients, their invoices, or any other facts that may be involved in the transactions, asserted that the CDTFA required a statutory change to support the amendments, and suggested that the CDTFA thoroughly review case law involving United States Government contracts, including *Diamond Nat. Corp. v. State Bd. of Equalization* (1976) 425 U.S. 268 (*Diamond National*) and *Aerospace Corp. v. State Bd. of Equalization* (1990) 218 Cal.App.3d 1300 (*Aerospace Corp.*). Finally, James R. Dumler submitted a letter on behalf of McClellan Davis, LLC. The letter stated that the proposed amendments make institutions the "ultimate consumer" and prohibit them from contracting in any manner that would permit them to complete a retail sale with their patients. The letter stated that a plain reading and application of RTC section 6006 and "Code section 1614, subdivisions (a) and (f)," to a transaction that includes a title clause which results in the transfer of tangible personal property to a patient that is insured by Medicare Part A clearly results in a sale, and that sale is clearly exempt from sales tax because it is to the United States Government, regardless of what Regulation 1503 provides. The letter also stated that the title clause language in Regulation 1503 is not unique, and that similar title provisions can be found in Regulations 1521 and 1628. No interested parties specifically commented on or opposed the non−substantive amendments to delete the brackets from Regulation 1503, subdivision (b)(1), the proposed amendments reformatting the exceptions in Regulation 1503, subdivision (b)(2), and the proposed amendments to clarify that the exemption in Regulation 1503, subdivision (b)(3), applies to "human" blood.

Second Discussion Paper and Second Interested Parties Meeting

After considering the interested parties' comments, CDTFA staff agreed that its proposed amendments to render the third exception in Regulation 1503, subdivision (b)(2), inoperative after December 31, 2018, were overly broad. This is because the amendments applied to medical supply items that medical service facilities could historically be the retailers of prior to the 2001 amendments. CDTFA staff intended for Regulation 1503 to provide that a medical service facility may still be a retailer of these items when there is a bona fide sale of an item to a patient or resident because the patient, resident, or other customer in fact obtains possession or control of the item and staff only intended for the proposed amendments to bring Regulation 1503 back into line with the historical interpretation of the state's SUTL. Examples of these items include wheelchairs, crutches, scooters, admission kits, toothbrushes, combs, socks, knee braces, discharge kits for new mothers, formula, diapers, and other items furnished by the medical services facility's staff, attending physician, or patient's private doctor or nurse.

However, CDTFA staff did not agree that the 2001 amendments to Regulation 1503 were intended to allow a title transfer provision to overturn the general rule under Regulation 1501 that service providers are consumers of the products they actually consume in providing their services or change the historical treatment of medical service facilities as consumers of items, such as blades, drill bits, forceps, scissors, and other surgical instruments used by medical personnel and surgical gowns and gloves worn by medical personnel. Also, CDTFA staff did not agree that the 2001 amendments created a valid exemption for such items, or that Regulation 1503 could not be amended to make facilities the consumers of such items without a statutory change because the 2001 amendments were not based on a statutory change.

CDTFA staff determined that RTC section 7051 authorizes the CDTFA to amend Regulation 1503 to clarify that medical service facilities are consumers of items they actually consume. CDTFA staff determined that RTC section 7051 authorizes the CDTFA to prescribe the requirements for medical service facilities to be retailers of items they actually furnish to their patients and residents in connection with their services, similar to the manner in which subdivision (b)(2)(A) of Regulation 1521, *Construction Contractors*, requires a construction contract to transfer title to materials prior to the time they are installed and separately state the sales price of the materials from the charge for installation for a construction contractor, other than a United States Construction Contractor, to be the retailer, rather than the consumer, of materials furnished and installed in the performance of the construction contract. (United States Construction Contractors are statutory consumers of the materials and fixtures which they furnish and install in the performance of construction contracts with the United States Government (RTC, Section 6007.5; Reg. 1521, subd. (b)(1)(A)).) CDTFA staff also determined that RTC section 7051 authorizes the CDTFA to limit the retroactive effect of the amendments to January 1, 2019, so that they would not apply to pending claims for refunds, and taxpayers who relied on the 2001 amendments could still file claims for refunds for transactions that occurred on or before December 31, 2018, until the expiration of the applicable statute of limitations for filing a claim for a refund.

Accordingly, to address the concern that medical service facilities would become the "absolute" or "ultimate" consumers without the option to make retail sales

to patients and residents of items they could historically be the retailers of prior to the 2001 amendments, CDTFA staff:

- Reformatted the prior text of subdivision (b)(2)(C), which renders the third exception in Regulation 1503, subdivision (b)(2), inoperative after December 31, 2018, as subdivision (b)(2)(C)1;
- Added new subdivision (b)(2)(C)2 to the draft amendments to Regulation 1503;
- Added a new first paragraph to new subdivision (b)(2)(C)2 to clarify that, on and after January 1, 2019, except for property of which possession or control does not pass to the resident or patient or other customer, a medical service facility will be the retailer of property furnished in connection with its medical services if the facility makes a separately itemized charge for the property and the facility's contract with the patient, resident, or other customer provides that title to the property passes to the patient, resident, or other customer, and when a facility sells tangible personal property, the facility may purchase the property for resale and tax applies to the charge by the facility unless its sale is otherwise exempt;
- Added a new second paragraph to new subdivision (b)(2)(c)2 to clarify that, on and after January 1, 2019, medical service facilities are consumers of property if possession or control of the property does not pass to the patient, resident, or other customer and such property includes, but is not limited to: blades, drill bits, forceps, scissors and other surgical instruments, electrodes, batteries, strips and other testing supplies and equipment, needles, unfilled syringes and other property used for injections or other internal applications, gowns, gloves and other items worn by the medical service facility employees or other medical personnel, surgical drapes, scrub brushes, sterile dressing, sponges and other items used to maintain a sterile environment, and devices, equipment, drapes, covers, labels and other items that do not come into contact with the body of the resident, patient or other customer; and
- Deleted "whether separately itemizing charges for the services and for the tangible personal property or billing in lump sum" from subdivision (b)(1) of Regulation 1503 to make that subdivision consistent with the proposed amendments adding new subdivision (b)(2)(C)2, which requires separately itemized charges.

In addition, Health and Safety Code sections are referred to in Regulation 1503, subdivision (a)(1). CDTFA staff noticed that subdivision (a)(1)(A), (B), and (E) all correctly use "section" in their references to the Health and Safety Code, but subdivision (a)(1)(C) uses "Section" in its references. (Jessen, California Style Manual (4th ed. 2000), section 2:6.) Therefore, staff drafted new amendments to replace all the references to "Section" with "section" in subdivision (a)(1)(C) to make it consistent with subdivision (a)(1)(A), (B), and (E).

Furthermore, CDTFA staff determined that there was another issue (or problem within the meaning of Gov. Code, Section 11346.2, subd. (b)(1)) with subdivision (f)(2)(A) of Regulation 1591. This is because the proposed amendments to Regulation 1503, subdivision (b)(1) and (2), are intended to clarify the extent to which medical service facilities may sell medical supply items to their patients, and Regulation 1591, subdivision (f)(2)(A), generally provides without qualification that "sales of medicines, devices, appliances, and supplies in which payment is made under Part A qualify as exempt sales to the United States Government." While CDTFA maintains that many of the transactions at issue in Regulation 1503 and 1591 are not in fact sales, CDTFA staff determined that it was prudent to amend Regulation 1591 to have the effect and accomplish the objective of addressing the issue by making Regulation 1591 consistent with the proposed amendments to Regulation 1503. CDFTA staff therefore drafted amendments to Regulation 1591, subdivision (f)(2)(A), to clarify that, "to the extent allowed pursuant to Regulation 1503," sales of medicines, devices, appliances, and supplies in which payment is made under Part A qualify as exempt sales to the United States Government

CDTFA staff subsequently prepared a second discussion paper to respond to the comments following the first interested parties meeting and to explain the revised amendments to Regulation 1503, as well as the new amendments to Regulation 1591. CDTFA staff noted in the second discussion paper that the contracts between the defense contractors and the federal government in *Aerospace Corp.* and *Lockheed* are clearly distinguishable from the contracts at issue here between medical service facilities and their individual patients.

First, the contracts between the federal government and defense contractors in those decisions took a form mandated by federal law. In the circumstances presented here, federal law and regulations are silent. The facilities themselves are crafting the contracts that shift title to medical supplies to their Medicare Part A patients; the federal government has not asserted that these transactions are exempt. In fact, as noted above, the federal *Medicare Provider's Reimbursement Manual* anticipates that state taxes may be included as an allowable cost of patient care services. (Sections 2122.1 and 2122.2 of the *Medicare Provider Reimbursement Manual.*)

Second, the defense contracts with the federal government were for tangible personal property and were thus clearly within the ambit of RTC section 6381. The only question was the extent of the included tangible personal property. (See *TRW Space and Defense Sector v. County of Los Angeles* (1996) 50 Cal.App.4th 1703.) In enacting RTC section 6381 to exempt direct sales of tangible personal property to the federal government, the Legislature was not also overturning the rule that those who provide services to the federal government are consumers of the products consumed in providing the services.

Third, the *Lockheed* decision itself recognized that the defense context is special and thus there were specific reasons to take the federal contracts at face value. For example, "[t]he federal government has an interest in acquiring the unique equipment if the contracting corporation defaults." (*Lockheed, supra,* 81 Cal.App.3d at p. 268.) Here, there is no indication that the federal government, or even the patients, have any interest in acquiring the tangible personal property consumed by the facilities and purportedly transferred to the Medicare Part A patients.

Finally, not only was there a reasonable special federal interest in the title transfer provisions, but the federal government also acted in a manner that confirmed these provisions were bona fide. The federal government did exert its ownership rights over the property in a way that Medicare Part A patients in the current context do not. The *Lockheed* court noted that, "the federal government did instruct Lockheed and Aerojet in the disposition of the test equipment after the termination of performance under the contracts. Some test equipment was sold for scrap and the proceeds credited to the federal government . . . ." (*Lockheed, supra,* 81 Cal.App.3d at p. 267.)

The second discussion paper also responded to the interested parties' comment on the potential implication of the intergovernmental immunity doctrine as set forth in *Diamond National.* As the Supreme Court has explained, the modern immunity doctrine "is appropriate in only one circumstance: when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." (*United States v. New Mexico* (1982) 455 U.S. 720, 735.) The mere fact that a hospital is contracting with the federal government is not sufficient to bring it into the ambit of a federal instrumentality shielded by intergovernmental immunity. This was the argument the Court rejected in *United States v. New Mexico.*

Diamond National involved an immunity from tax granted by a federal statute, and the question was whether the legal incidence of a sales tax fell upon the national bank purchasing printed forms from a vendor (Diamond). The California Court of Appeal found the incidence to fall on the vendor, but the U.S. Supreme Court found it to fall on the purchaser — the national bank — and hence under a federal statute (former 12 U.S.C. Section 548) the transaction could not be subject to tax. While *Diamond National* may suggest that a medical service facility could not charge sales tax on actual sales to Medicare Part A patients, the proposed amendments to Regulations 1503 and 1591 continue to exempt such transactions from sales and use tax. As to whether California can impose its sales tax on purchases made by medical service facilities, *Diamond National* poses no impediment. Even if the legal incidence of the sales tax falls upon the purchasers under federal law, the purchasers here are the medical service facilities, which are not federal instrumentalities. The Ninth Circuit rejected a similar attempt to expand the reach of *Diamond National* to federal contractors in *In re Howell* (1984) 731 F. 2d 624, 628. (Moreover, the majority's opinion in *Diamond National* is one paragraph long, it contains no analysis of California law, the California courts have continued to consistently hold that the incidents of California's sales tax fall on the vendor, not the purchaser, and California courts have limited the application of *Diamond National* to cases involving a federal claim of immunity (*Xerox Corp. v. County of Orange* (1977) 66 Cal.App.3d 746, 757; *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1047−1048, including footnote 6).)

The inapplicability of *Diamond National* is further indicated by the fact that, as noted earlier, the *Medicare Provider Reimbursement Manual* allows lawfully enacted state sales tax as an allowable cost for Medicare purposes. If federal rules prohibited charging sales and use tax to medical service facilities for items used in providing service to Medicare patients, no such reimbursement would be necessary or allowable. In 2012, the Seventh Circuit Court of Appeals considered whether certain payments from the federal government to a hospital for the provision of health care services to Medicare beneficiaries needed to be offset against certain taxes imposed by the state on the hospital. (*Abraham Lincoln Memorial Hosp. v. Sebelius* (2012) 698 F.3d 536, 542−543.) The court's opinion leaves no doubt that state taxes imposed on hospitals are considered to be reasonable costs under Medicare rules and are subject to reimbursement. Furthermore, other states also treat medical service facilities as the consumers of goods used in the provision of services to Medicare patients and require that hospitals pay sales or use tax on the purchase of such items. (See 34 Tex. Admin. Code Section 3.284(d)(11)(C) ("Health care providers, such as doctors, clinics, hospitals, nursing homes, or other institutions providing health care or medical services to individuals owe tax on therapeutic appliances, devices,

and related supplies they use in providing nontaxable health care and medical services. Unless the health care provider qualifies as an exempt organization under Tax Code, Section 151.309 or Section 151.310, sales or use tax must be paid by the health care provider on the purchase, lease, or rental of all therapeutic appliances, devices, and related supplies."); Texas Comptroller's Letter No. 8603L0708E10, Mar. 18, 1986 ("The health care service is considered the consumer of all items used in patient care and tax is due at the time of purchase on all items that are not exempted under the sales tax law . . . The fact that Medicare or Medicaid will make a reimbursement does not change the taxability of an item."); N.J. Stat. Ann. Section 54:32B−8.1(c) ("Receipts from sales of supplies purchased for use in providing medical services for compensation, but not transferred to the purchaser of the service in conjunction with the performance of the service, shall be considered taxable receipts from retail sales notwithstanding the exemption from the tax imposed under the 'Sales and Use Tax Act' provided under this section."); Letter Mass. Dep't of Rev., Ruling 84−19: Medicare or Medicaid Reimbursement, 3/12/84.)

A second interested parties meeting was held on December 17, 2018, to discuss the revisions to the proposed amendments to Regulation 1503 and the new amendments to Regulation 1591. CDTFA staff subsequently received three written comments. DSF submitted a letter dated January 16, 2019, on its own behalf, Tony Davis submitted a letter dated January 11, 2019, on behalf of UCLA Health, and Ryan Witz submitted a letter dated January 16, 2019, on behalf of CHA, which all continued to oppose the drafted amendments, although DSF's letter did concede that "The CDTFA's concern regarding the scope of products being claimed as sold may have merit."

All three interested parties' letters commented that the 2001 amendments to Regulation 1503 created an exemption for sales to the United States Government under Medicare Part A by allowing medical services facilities to be retailers when their contracts contain clauses transferring title to their patients, residents, or other customers, and stated that such a result was not unintended when the predecessor agency amended the regulation. However, CDTFA staff disagreed and determined that the intention of the 2001 amendments was to simplify the regulation and tax medical service facilities based on the true object test, not to expand the situations in which a medical service facility could opt to be a retailer, as previously discussed. Also, all three interested parties' letters suggested moving the amendments' effective date of January 1, 2019, to a later date, to allow additional time for the interested parties to establish new compliance procedures. However, CDTFA staff did not agree that it would be appropriate to allow the problem with the 2001 amendments to Regulation 1503 to continue after January 1, 2019.

One new concern expressed in the January 2019 letters was that the revised amendments to Regulation 1503 would require the review of confidential patient records to determine tax liability. However, CDTFA staff did not agree that this was an issue because it is common for CDTFA staff to review sensitive records in the performance of audits, and medical service facilities may provide auditors with redacted records to protect patient confidentiality. Similarly, medical service facilities may support their claimed retail sales to the United States Government by using records containing a contract or account number rather than by revealing patient names. With regards to the effective date of January 1, 2019, CDTFA staff notes that taxpayers are still able to file claims for refunds for taxes paid on transactions that occurred on or before December 31, 2018, until the expiration of the applicable statute of limitations for filing a claim for refund.

DSF commented that the proposed language for subdivision (b)(2)(C)2 of Regulation 1503 was not clear or concise, in part because the proposed amendments list examples of specific products, rather than types of products, of which a medical service facility would be the consumer. DSF commented that as technology advances, the list of items would change, requiring continuous updating of the regulation's language. CDTFA staff generally disagreed with this comment because the proposed language is clear and not intended to be all−inclusive. The proposed language states, "Property the possession or control of which does not pass to the resident or patient or other customer includes, but is not limited to . . ." and then provides a series of categories, with specific examples within each category. Thus, the proposed language contemplates that new products may be developed within each category and the proposed language it is sufficiently clear and concise so that it is not necessary to specifically list every product in each category.

In addition, DSF encouraged the CDTFA to "avoid the use of 'except' and state what it intends in the affirmative" and CDTFA staff agreed that it should avoid the use of "except." Also, in reviewing the clarity of the new proposed language, CDTFA staff determined that the inclusion of "sterile dressing" as an item the possession or control of which does not pass to the patient, resident, or other customer in proposed subdivision (b)(2)(C)2 may be confusing, as "dressing" is a broad term encompassing items that may either be consumed or sold at retail. A dressing used by medical staff to dress a patient's wound or incision is consumed by the medical services facility, while on the other hand, the provision of a sterile dressing (e.g., adhesive bandages) to a patient for his or her own use may be a sale at retail.

Thus, after considering the interested parties' comments in response to the second discussion paper and at the second interested parties' meeting, CDTFA staff determined that it was necessary to:

- Delete "except for property of which possession or control does not to pass to the resident or patient or other customer" from the first paragraph in proposed subdivision (b)(2)(C)2 and revise the paragraph to affirmatively require that "possession or control of the property [furnished in connection with medical services] passes to the resident or patient or other customer" in order for a facility to be a retailer of the property, to make the paragraph more clear; and
- Delete "sterile dressing" from the examples of property the possession or control of which does not pass to the resident or patient or other customer in the second paragraph in proposed subdivision (b)(2)(C)2.

Determinations

CDTFA staff subsequently prepared a Formal Issue Paper dated March 27, 2019, with the number "Regulations 1503 and 1591." The Formal Issue Paper recommended that the CDTFA propose to adopt staff's amendments to Regulation 1503 and Regulation 1591 to address all of the issues (or problems) described above. Also, Exhibit 1 to the Formal Issue Paper included staff's revenue estimate, Exhibit 2 to the Formal Issue Paper included staff's proposed amendments to Regulation 1503, Exhibit 3 to the Formal Issue Paper included staff's proposed amendments to Regulation 1591, Exhibits 4 through 6 to the Formal Issue Paper included the interested parties' January 2019 written comments (discussed above), and Exhibits 7 through 14 to the Formal Issue Paper included the interested parties' October 2018 written comments (discussed above).

The CDTFA determined that staff's proposed amendments to Regulation 1503, subdivision (b)(1) and (2), are reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) due to the 2001 amendments to Regulation 1503 creating the potential for an unintended exemption from tax, wherein medical service facilities can claim they are making exempt sales of property to the United States Government when the facilities are consumers of such property, discussed above, by: clarifying in subdivision (b)(1) that medical service facilities are service providers to their patients and residents, including those insured pursuant to Part A of the Medicare Act; deleting "whether separately itemizing charges for the services and for the tangible personal property or billing in lump sum" from subdivision (a)(1) to make it consistent with new subdivision (b)(2)(C)2; reformatting the three current exceptions in subdivision (b)(2), which describe when a medical service facility is a retailer, as subdivision (b)(2)(A), (B), and (C)1; limiting the third current exception in reformatted subdivision (b)(2)(C)1 regarding the passage of title so it only applies before January 1, 2019; adding new subdivision (b)(2)(C)2; adding the first paragraph to subdivision (b)(2)(C)2 to clarify that "On and after January 1, 2019, a medical service facility is a retailer of tangible personal property furnished in connection with its medical services for which it makes a separately itemized charge, if possession or control of the property passes to the resident or patient or other customer and its contract with the resident or patient or other customer specifically provides that title to the property passes to the resident or patient or other customer. When a medical service facility sells tangible personal property to the resident or patient or other customer, the medical service facility may purchase such property for resale, and tax applies to the charge by the medical service facility unless its sale is otherwise exempt from tax"; and adding the second paragraph to subdivision (b)(2)(C)2 to clarify that "A medical service facility is the consumer of tangible personal property furnished in connection with its medical services if possession or control of the property does not pass to the resident or patient or other customer" and provide a non−exhaustive series of categories of property the possession or control of which does not pass to the resident or patient or other customer, with specific examples within each category.

The CDTFA determined that staff's proposed amendments to Regulation 1591, subdivision (f)(2)(A), are reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) regarding the amendments to Regulation 1503, subdivision (b)(1) and (2), limiting the extent to which medical service facilities may sell medical supply items to their patients and Regulation 1591, subdivision (f)(2)(A), providing without qualification that "sales of medicines, devices, appliances, and supplies in which payment is made under Part A qualify as exempt sales to the United States Government," discussed above, by clarifying that such sales may qualify as exempt sales to the United States Government "to the extent allowed by Regulation 1503."

The CDTFA also determined that staff's proposed amendments to Regulation 1503, subdivision (b)(3), are reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) regarding the type of blood to which the exemption in RTC section 33 applies by specifying that the exemption in RTC section 33 and described in subdivision (b)(3) applies to "human" whole blood. Finally, the CDTFA determined that staff's proposed amendments to Regulation 1503 are reasonably necessary to have the

effect and accomplish the objective of addressing the non−substantive issues (or problems) with the regulation by replacing the capitalized instances of "Section" in subdivision (a)(1)(C) with "section," for consistency within the regulation, and removing the brackets that were inadvertently inserted in subdivision (b)(1) in 2001.

The CDTFA anticipates that the proposed amendments to Regulations 1503 and 1591 will promote fairness and generally benefit taxpayers, the CDTFA, and state and local government by eliminating a tax loophole whereby medical service facilities can claim they are making exempt sales of property to the United States Government when the facilities are consumers of such property. The CDTFA also anticipates that the proposed amendments to Regulation 1503 will promote fairness and benefit taxpayers and the CDTFA by making subdivision (a)(1)'s references to sections in the Health and Safety Code more consistent, making subdivision (b)(1) read more clearly without the brackets that were inadvertently inserted in 2001, and clarifying that the exemption in RTC section 33 and described in subdivision (b)(3) applies specifically to "human" whole blood.

Finally, the CDTFA noticed that there was one more issue (or problem) because the last sentence in the current text of Regulation 1503, subdivision (b)(2), uses the term "medical services facility," instead of the defined term "medical service facility," in two places, and that the last sentence in the first paragraph of proposed subdivision (b)(2)(C)2 of Regulation 1503 used the term "medical services facility," instead of the defined term "medical service facility," in two places. Therefore, the CDTFA changed both sentences so they consistently use the defined term "medical service facility" when the CDTFA prepared the text of the proposed amendments to Regulation 1503 for the regular rulemaking process because the CDTFA determined that the changes were reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem).

The CDTFA has performed an evaluation of whether the proposed amendments to Regulations 1503 and 1591 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. Regulation 1503 is the only regulation that prescribes the circumstances under which a medical service facility is the retailer of property furnished to a resident, patient, or other customer in connection with its medical services, and the amendments to Regulation 1591 are consistent with the amendments to Regulation 1503. In addition, the CDTFA has determined that there are no comparable federal regulations or statutes to the provisions in the proposed amendments to Regulations 1503 and 1591.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The CDTFA has determined that the adoption of the proposed amendments to Regulation 1503 and Regulation 1591 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE−TIME COST TO THE CDTFA, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The CDTFA has determined that the adoption of the proposed amendments to Regulation 1503 and Regulation 1591 will result in an absorbable $436 one−time cost for the CDTFA to update its website after the proposed regulatory action is completed. The CDTFA has determined that the adoption of the proposed amendments to Regulation 1503 and Regulation 1591 will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non−discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The CDTFA has made an initial determination that the adoption of the proposed amendments to Regulation 1503 and Regulation 1591 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 adoption of the proposed amendments to Regulation 1503 and Regulation 1591 may affect small business.

COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The CDTFA is not aware of any cost impacts that a representative private person or business, other than a

medical service facility, would necessarily incur in reasonable compliance with the proposed action.

The CDTFA estimated that approximately $9.4 million in state, local, and district sales and use tax revenue would likely be saved during the first 12 months after the adoption of the proposed amendments to Regulations 1503 and 1591. Also, the CDTFA anticipates that the impacted medical service facilities will seek reimbursement from the United States Government for those taxes, and that the impacted medical service facilities may, but probably will not, bear all of the costs related to the $9.4 million of state, local, and district sales and use tax revenue that is likely to be saved during the first 12 months after the adoption of the proposed amendments.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The CDTFA assessed the economic impact of the proposed amendments to Regulation 1503 and Regulation 1591 on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the CDTFA has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the EIA, the CDTFA determined that the adoption of the proposed amendments to Regulation 1503 and Regulation 1591 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the CDTFA determined that the adoption of the proposed amendments to Regulation 1503 and Regulation 1591 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1503 and Regulation 1591 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments to Regulation 1503 and Regulation 1591 should be directed to Leslie Ang, Tax Counsel III (Supervisor), by telephone at (916) 323−9856, by e−mail at Leslie.Ang@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Leslie Ang, MIC:82, 450 N Street, PO Box 942879, Sacramento, CA 94279−0082.

Written comments for the CDTFA's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Ms. Kim DeArte, Regulations Coordinator, by telephone at (916) 309−5227, by fax at (916) 322−2958, by e−mail at CDTFARegulations@cdtfa.ca.gov. or by mail at California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, PO Box 942879, Sacramento, CA 94279−0050. Ms. DeArte is the designated backup contact person to Ms. Ang.

WRITTEN COMMENT PERIOD

The written comment period ends on February 17, 2020. The CDTFA will consider the statements, arguments, and/or contentions contained in written comments received by Ms. Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the CDTFA decides whether to adopt the proposed amendments to Regulation 1503 and Regulation 1591. The CDTFA will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted at the public hearing and the CDTFA will consider the statements, arguments, and/or contentions contained in written comments submitted at the public hearing before the CDTFA decides

whether to adopt the proposed amendments to Regulation 1503 and Regulation 1591.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The CDTFA has prepared copies of the text of the proposed amendments to Regulation 1503 and Regulation 1591 illustrating the express terms of the proposed action. The proposed amendments are illustrated in underline and strikeout format because California Code of Regulations, title 1, section 8, subdivision (b), provides that "[t]he final text of the regulation shall use underline or italic to accurately indicate additions to, and strikeout to accurately indicate deletions from, the California Code of Regulations."

The CDTFA has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1503 and Regulation 1591, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to Regulation 1503 and Regulation 1591 and the initial statement of reasons are also available on the CDTFA's website at *www.cdtfa.ca.gov*.

PUBLIC HEARING

The CDTFA has not scheduled a public hearing to discuss the proposed amendments to Regulation 1503 and Regulation 1591. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the CDTFA will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The CDTFA may adopt the proposed amendments to Regulation 1503 and Regulation 1591 with changes that are non−substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the CDTFA will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Ms. DeArte. The CDTFA will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the CDTFA adopts the proposed amendments to Regulation 1503 and Regulation 1591, the CDTFA will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the CDTFA's website at www.cdtfa.ca.gov.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (Proposition 65)

CHEMICALS LISTED EFFECTIVE JANUARY 3, 2020 AS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE REPRODUCTIVE TOXICITY (DEVELOPMENTAL ENDPOINT): CANNABIS (MARIJUANA) SMOKE AND DELTA−9−TETRAHYDROCANNABINOL (DELTA−9−THC)

Effective **January 3, 2020**, the Office of Environmental Health Hazard Assessment is adding cannabis (marijuana) smoke and delta−9−tetrahydrocannabinol (delta−9−THC) to the list of chemicals known to the state to cause reproductive toxicity (developmental endpoint) for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)[1]. At a public meeting on December 11, 2019, the Developmental and Reproductive Toxicant Identification Committee (DARTIC) in its official capacity as the "state's qualified experts" determined that cannabis (marijua-

[1] The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq.

na) smoke and delta−9−tetrahydrocannabinol (delta−9−THC) were shown to cause reproductive toxicity based on the developmental endpoint. Regulations for the listing of chemicals by the DARTIC are set out in Title 27, California Code of Regulations, section 25305(b)(1).

A complete, updated Proposition 65 chemical list is available on the OEHHA website at https://oehha.ca.gov/proposition−65/proposition−65−list.

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

ISSUANCE OF SAFE USE DETERMINATION FOR STYRENE IN FIBER CARE BATHS, INC. BATHWARE PRODUCTS MANUFACTURED UTILIZING FIRST AND SECOND LAMINATIONS SYSTEMS AND LV−9800 ACRYLATED GEL−COAT

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986[1]. OEHHA received a request for a Safe Use Determination (SUD) for styrene[2] in Fiber Care Baths, Inc. bathware products. The request was made by Tech America Corp. on behalf of Fiber Care Baths, Inc., pursuant to Title 27 of the California Code of Regulations, section 25204(b)(3).

The only products covered by the request are Fiber Care Baths, Inc. bathware products, including tub showers, tubs, shower pans, shower stalls, walk−in baths, and handicapped access stalls, manufactured utilizing first and second laminations systems (with respective concentrations of styrene monomer of 13.8 percent and 12.2 percent by weight) and application of the LV−9800 acrylated gel−coat (with 5 percent styrene monomer by weight), without additional sources of styrene monomer in the products.

In accordance with the process set forth in Section 25204(f), OEHHA held a written public comment period on this request from August 17, 2018 to September 18, 2018. No hearing was requested and no public comments were received.

As provided in Sections 25204(a) and (k), OEHHA is issuing the following SUD to Fiber Care Baths, Inc. for bathware products manufactured utilizing first and second laminations systems and application of the LV−9800 acrylated gel−coat and without additional sources of styrene monomer in the products, as specified in the request[3]:

OEHHA is issuing this safe use determination for styrene exposures to occupants of homes and other buildings with Fiber Care Baths, Inc. bathware products installed, when the bathware products have been manufactured by the specified standardized process utilizing first and second laminations systems (with respective concentrations of styrene monomer of 13.8 percent and 12.2 percent by weight) and application of the LV−9800 acrylated gel−coat (with 5 percent styrene monomer by weight), and with no additional sources of styrene monomer in the product, and where bathware product styrene emission levels do not exceed 0.04 micrograms per square meter per hour.

The essential elements and results of OEHHA's assessments are described in the supporting documentation available at: https://oehha.ca.gov/proposition−65/proposition−65−safe−use−determinations−suds.

Based on the screening−level exposure analysis described in the supporting documentation, an upper−end estimate of styrene exposure was determined for occupants of homes and other buildings (e.g., hospitals, long−term care facilities) with the specified Fiber Care Baths, Inc. bathware products installed. This estimated exposure to styrene for building occupants with these bathware products installed, 0.41 micrograms per day is 1.5 percent of the No Significant Risk Level (NSRL) for styrene of 27 micrograms per day, which corresponds to an excess cancer risk of one in 100,000. A warning is not required for styrene exposure from Fiber Care Baths, Inc. bathware products meeting these specifications for occupants of homes and other buildings where these specific products are installed.

Questions regarding this notice should be directed to:

[1] The Safe Drinking Water and Toxics Enforcement Act of 1986, commonly known as Proposition 65, is codified at Health and Safety Code section 25249.5 et seq.

[2] Styrene was listed under Proposition 65 as a chemical known to the state to cause cancer effective April 22, 2016.

[3] Styrene is present in Fiber Care Baths, Inc. bathware products in two lamination composite layers as well as in an acrylated gel−coat. The concentration of styrene monomer in the first lamination composite layer is 13.8 percent by weight. The concentration of styrene monomer in the second lamination composite layer is 12.2 percent by weight. The acrylated gel−coat contains 5 percent styrene monomer by weight.

Tyler Saechao
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS−12B
Sacramento, California 95812−4010
P65Public.Comments@oehha.ca.gov
Telephone: (916) 445−6900

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

File# 2019−1105−04
AIR RESOURCES BOARD
Aboveground Storage Tank Certification Procedures

This rulemaking action by the Air Resources Board amends existing certification procedures for vapor recovery systems at gasoline dispensing facilities including the following documents incorporated by reference: Definitions for Vapor Recovery Procedures (D−200) and Certification Procedure for Vapor Recovery Systems at Gasoline Dispensing Facilities Using Aboveground Storage Tanks (CP−206). This action modifies the compliance deadline for owners of existing aboveground storage tank gasoline dispensing facilities in non−attainment areas with annual gasoline throughput of 480,000 gallons or less to allow for the continued use of pre−enhanced vapor recovery Phase II systems until the end of useful life.

Title 17
AMEND: 94010, 94016
Filed 12/19/2019
Effective 04/01/2019
Agency Contact: Chris Hopkins (916) 445−9564

File# 2019−1112−04
BOARD OF FORESTRY AND FIRE PROTECTION
Safety Element Review Procedures ADA Amendment

This action, without regulatory effect, reformats the Safety Element Review Procedures form.

Title 14
AMEND: 1265.02
Filed 12/19/2019
Agency Contact: Edith Hannigan (916) 862−0120

File# 2019−1114−04
CALIFORNIA ENERGY COMMISSION
Appliance Efficiency Regulations for General Service Lamps

On January 19, 2017, the U.S. Department of Energy published federal definitions for general service lamps and their subcategories to take effect on January 1, 2020. These federal regulations expanded the number of light bulbs subject to the 45 lumen−per−watt efficacy standard in federal law that applies to general service lamps sold on or after January 1, 2020. In this regular rulemaking, the California Energy Commission (the "Commission") is adopting regulations to incorporate the changes made in the federal regulations published on January 19, 2017, into the Commission's appliance efficiency regulations for general service lamps. Additionally, the Commission is adopting a regulation stating that each part of Division 2 in Title 20 of the California Code of Regulations "shall be deemed severable, and in the event that any provision of [Division 2] is held to be invalid, the remainder of [the] division shall continue in full force and effect."

Title 20
ADOPT: 1004
AMEND: 1602, 1604, 1605.1, 1605.3, 1606, 1608
Filed 12/24/2019
Effective 01/01/2020
Agency Contact: Corrine Fishman (916) 654−4976

File# 2019−1106−02
CALIFORNIA HIGHWAY PATROL
Driver's Hours−of−Service

In this resubmitted rulemaking action, the California Highway Patrol amends its regulations to establish exemptions to the hours−of−service requirements for drivers of utility service vehicles, drivers of farm products, governmental drivers during emergency restoration of basic essential public services, and tow truck operators. The amendments also modify the definition of "on−duty time."

Title 13
AMEND: 1201, 1212, 1212.5
Filed 12/23/2019
Effective 04/01/2020
Agency Contact: David Kelly (916) 843−3400

File# 2019−1112−02
CALIFORNIA HIGHWAY PATROL
Inhalation Hazards Safe Stops

This action by the California Highway Patrol updates the list of safe stopping places for commercial vehicles transporting inhalation hazards on highways in the state.

Title 13
AMEND: 1157.21
Filed 12/24/2019
Effective 04/01/2020
Agency Contact: Tian−Ting Shih (916) 843−3400

File# 2019−1112−03
CALIFORNIA HIGHWAY PATROL
Radioactive Material Shipmen — Safe Haven

In this action, the Department amends its regulation concerning the transport of radioactive material by specifying a list of 12 safe havens along specified routes to which carriers can go in the event of an emergency. The action also adds requirements for minimizing the time this material is in transit, for advance notice to safe havens of a carrier's selected route, and for avoiding densely populated areas, congested thoroughfares, residential areas, and places where crowds are assembled.

Title 13
AMEND: 1158.2
Filed 12/23/2019
Effective 04/01/2020
Agency Contact: Tian−Ting Shih (916) 843−3400

File# 2019−1108−01
CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
CTCAC Regulations Implementing Federal and State LIHTC Laws

This action by the California Tax Credit Allocation Committee amends regulations regarding the federal and state Low Income Housing Tax Credit programs. pursuant to Health and Safety Code section 50199.17.

Title 4
AMEND: 10305, 10317, 10322, 10325, 10326, 10327
Filed 12/23/2019
Effective 12/23/2019
Agency Contact: Gina Ferguson (916) 651−7707

File# 2019−1211−02
CONTRACTORS STATE LICENSE BOARD
Fees

This emergency rulemaking by the Contractors State License Board increases fees for license renewal for active licenses, inactive licenses and renewal of a home improvement salesperson registration.

Title 16
AMEND: 811
Filed 12/19/2019
Effective 12/19/2019
Agency Contact: Betsy Figueria (916) 255−3369

File# 2019−1106−01
DEPARTMENT OF CORRECTIONS AND REHABILITATION
Unfavorable Behavior Points

This action amends regulations concerning the calculation of unfavorable behavior points to establish a 10−year limitation period on the length of time a prior serious disciplinary offense, as specified, may count toward an inmate's preliminary classification score.

Title 15
AMEND: 3375, 3375.3
Filed 12/18/2019
Effective 04/01/2020
Agency Contact: Jon Struckmann (916) 445−2314

File# 2019−1210−03
DEPARTMENT OF JUSTICE
Identification Requirements for Firearms and Ammo Eligibility Checks

Title 11
ADOPT: 4045.1
AMEND: 4002, 4142, 5478
Filed 12/19/2019
Effective 12/31/2019
Agency Contact: Julia Zuffelato (916) 210−6040

File# 2019−1210−04
DEPARTMENT OF JUSTICE
Data Broker Registration

This emergency rulemaking action establishes the initial fee that must be paid in order to register with the Office of the Attorney General as a data broker.

Title 11
ADOPT: 999.400
Filed 12/18/2019
Effective 01/01/2020
Agency Contact: Julia Zuffelato (916) 210−6040

File# 2019−1122−02
DEPARTMENT OF PUBLIC HEALTH
Requirements for Use of X−Ray Mammography

The Department of Public Health made comprehensive amendments to regulations pertaining to requirements for the use of X−ray in mammography.

Title 17
ADOPT: 30315.05, 30315.20, 30315.22, 30315.23, 30315.33, 30315.50, 30315.52, 30316.30, 30317.10, 30317.20, 30318.11
AMEND: 30315.10, 30315.34, 30315.36, 30315.60, 30316, 30316.10, 30316.20, 30316.60, 30316.61, 30318.10, 30319, 30320.90
REPEAL: 30315.33, 30315.35, 30315.50, 30315.51, 30315.52, 30316.22, 30316.30, 30316.40, 30316.50, 30317, 30317.10, 30317.20, 30317.30, 30317.40, 30317.50, 30317.60, 30317.70, 30318.11, 30319.20
Filed 12/18/2019
Effective 07/01/2020
Agency Contact: Veronica Rollin (916) 445−2529

File# 2019−1210−06
DEPARTMENT OF PUBLIC HEALTH
Prenatal Screening Regulations

This request for emergency filing and printing by the Department of Public Health adopts, amends, and repeals regulations pertaining to the Prenatal Screening Program including definitions, laboratories and analytical methods, reporting, and requirements for approval. This action is exempt from review by the Office of Administrative law pursuant to Health and Safety Code section 124977(d).

Title 17
ADOPT: 6520, 6541, 6542, 6543, 6544, 6545, 6540, 6547, 6548, 6549
AMEND: 6523, 6525, 6527, 6529, 6531, 6532, 6540.1
REPEAL: 6521, 6521.3, 6521.5, 6521.7, 6521.9, 6521.11, 6521.13, 6521.15, 6521.17, 6521.19, 6521.21, 6521.23, 6521.25, 6521.27, 6521.29, 6521.31
Filed 12/20/2019
Effective 12/20/2019
Agency Contact: Anita Shumaker (916) 440−7718

File# 2019−1125−01
FAIR POLITICAL PRACTICES COMMISSION
Disclose Act

This action by the Fair Political Practices Commission (the "Commission") amends definitions and adds sections related to mass mailing and advertisement disclosure.

Title 2
ADOPT: 18450.2, 18450.3, 18450.4
AMEND: 18435, 18450.1
Filed 12/24/2019
Effective 01/23/2020
Agency Contact: Sasha Linker (916) 327−8269

File# 2019−1212−03
FISH AND GAME COMMISSION
Special Order Regarding Take of Chinook Salmon

This action by the Fish and Game Commission readopts emergency regulations that opened the lower Klamath River and upper Trinity River for Upper Klamath−Trinity River Spring Chinook Salmon fishing.

Title 14
AMEND: 7.50
Filed 12/23/2019
Effective 12/24/2019
Agency Contact: Sherrie Fonbuena (916) 654−9866

File# 2019−1113−01
SUPERINTENDENT OF PUBLIC INSTRUCTION
Regional Parent Advisory Council

Education Code section 54444.2, subdivision (a), requires that the Superintendent of Public Instruction "take the steps necessary to ensure effective parental involvement throughout the state migrant education program[.]" This includes adopting "rules and regulations requiring each operating agency receiving migrant education funds or services to actively solicit parental involvement in the planning, operation, and evaluation of its programs through the establishment of, and consultation with, a parent advisory council." (Ed. Code, sec. 54444.2, subd. (a)(1).) In this regular rulemaking, the Superintendent of Public Instruction is adopting regulations regarding the governance of Parent Advisory Councils at the regional level.

Title 5
ADOPT: 12010, 12011, 12012, 12013, 12014, 12015, 12016, 12017, 12018, 12019, 12020, 12021, 12022
Filed 12/24/2019
Effective 04/01/2020
Agency Contact: Hillary Wirick (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.