



# California Regulatory Notice Register

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<b>PROPOSED ACTION ON REGULATIONS</b>
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### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

#### SHELL EGG FOOD SAFETY

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (herein after referred to as “Department”) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. 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. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **beginning January 10, 2020 and ending at 5:00 p.m. on February 25, 2020.** Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

**Authority and Reference:** Pursuant to the authority vested by sections 407, 27531 and 27533 of the Food and Agricultural Code and section 25993 of the Health and Safety Code, the Department is proposing to implement, interpret or make specific the requirements for marketing shell eggs in California in accordance with sections 27510, 27510.1, 27518, 27521, 27541 and 27573 of the Food and Agricultural Code, and sections 25990 and 25991 of the Health and Safety Code, as described in the Informative Digest.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW/BENEFITS

Existing law, Proposition 12 (2018) amended the requirements of Health and Safety Code sections 25990–25993.

Existing law, section 25990(b)(3) of the Health and Safety Code specifies that a business owner or operator shall not knowingly engage in the sale within the state of a shell egg that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner.

Existing law, section 25991(b) of the Health and Safety Code defines a business owner or operator to mean any person who owns or controls the operations of a business.

Existing law, section 25991(e) of the Health and Safety Code defines acts that mean an animal was confined in a cruel manner.

Existing law, section 25991 (e)(4) specifies that confining in a cruel manner would mean confining an egg-laying hen with less than 144 square inches of usable floorspace per hen.

Existing law, section 25991(f) of the Health and Safety Code defines a “covered animal” as meaning any calf raised for veal, breeding pig, or egg-laying hen who is kept on a farm.

Existing law, section 25991(g) of the Health and Safety Code defines an “egg-laying hen” as meaning any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production.

Existing law, section 25991(h) of the Health and Safety Code defines “enclosure” as meaning a structure used to confine a covered animal or animals.

Existing law, section 25991(p) of the Health and Safety Code defines a “shell egg” as meaning a whole egg of an egg-laying hen in its shell form, intended for use as human food.

Existing law, section 25991(s) of the Health and Safety Code defines “usable floorspace” as meaning the total square footage of floorspace provided to each covered animal, as calculated by dividing the total square footage of floorspace provided to the animals in an enclosure by the number of animals in that enclosure. In the case of egg-laying hens, usable floorspace shall include both groundspace and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.

Existing regulations under Subchapter 3 (commencing with section 1350), Chapter 1, Division 3, of Title 3 of the California Code of Regulations, specify the requirements for egg registrants marketing eggs in California.

The Department is proposing amendments to the requirements for the marketing of eggs in California in

section 1350 (shell egg food safety) of Title 3 of the California Code of Regulations to conform the Department's enclosure requirements for egg-laying hens to existing law, section 25991 of the Health and Safety Code.

This proposal would require any person registered with the Department to engage in business in California as an egg producer or egg handler, and any out-of-state egg handler or egg producer selling eggs in California, to comply with the minimum numeric enclosure requirement for egg-laying hens as required by Health and Safety Code section 25990 if the eggs produced from those hens are sold in California.

Anticipated Benefits of the Proposal: Registered egg producers would benefit from this proposal because the Department is making existing enclosure requirements for egg-laying hens consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

Consistency and Compatibility with Existing State Regulations: The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The intent is to conform existing section 1350 of Title 3 of the California Code of Regulations to Health and Safety Code sections 25990(b)(3) and 25991(e)(4) regarding enclosure requirements for egg-laying hens.

Documents Incorporated by Reference: None.

Technical, Theoretical, and Empirical Study, Report, or Similar Documents: Informational document titled: "California Legislative Analyst's Office: Proposition 12 Establishes New Standards for Confinement of Certain Farm Animals; Bans Sale of Certain Non-Complying Products. Initiative Statute."

## FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

- The Department has determined that this proposed regulatory action will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.
- The Department has made an initial determination that the proposed regulatory action will not have

any significant statewide adverse economic impact directly affecting California businesses including the ability of California businesses to compete with businesses in other states.

- The Department has made an initial determination that this regulatory proposal will impact registered egg handlers who market their eggs in the state.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action. This determination is based on the fact this proposal does not have economic impact over what is strictly required by the law itself, which is Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

Anticipated compliance requirements as a result of this proposal:

- Egg registrants marketing their eggs in California would need to comply with the minimum enclosure requirements for egg-laying hens as specified in Health and Safety Code sections 25990(b)(3) and 25991(e)(4).
- Paperwork/Reporting: There are no new paperwork or reporting requirements under this proposal. Existing requirements may include standard business records and assessments that may be retained and otherwise required by statute or regulation and submitted to the Department as part of routine business transactions in order for producers to market their eggs in California.
- Record-keeping: There are no new record-keeping requirements under this proposal. Businesses now comply with standard record-keeping as may be required by statute or regulation, but the records are not required to be sent to the Department. The Department conducts routine audits and inspections of farms or facilities to ensure compliance with statutes and regulations.

Effect on Housing Costs: None.

Effect on Small Businesses: The Department's proposal may affect small businesses as defined in Government Code section 11342.610.

## RESULTS OF ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Private Persons/Businesses affected by this proposal:

Egg Handler registrants: approximately 2,532 [In-State: 1,181; Out of State: 1,351].

Benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment:

This proposal does not directly impact human health, worker safety, or the State's environment. This regulatory proposal is necessary for the Department to conform its enclosure requirements for egg-laying hens to Health and Safety Code sections 25990(b)(3) and 25991(e)(4). The Department believes that registered egg producers would benefit from this proposal because the Department is making existing enclosure requirements for egg-laying hens consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

The above determinations are based on the fact that the proposed regulation itself does not have impact over what is strictly required by the law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

Occupations/Businesses Impacted: This proposal will impact egg registrants that market their eggs in California.

Business Reporting Requirement: The regulation does not require a report that shall apply to businesses. There are no new reporting requirements as a result of this proposal.

Comparable Federal Regulations: This proposal does not duplicate or conflict with federal regulations because there are no federal regulations governing enclosure size requirements for egg-laying hens if those eggs are marketed to California consumers.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all the information upon which the proposal is based, may be obtained by contacting the persons named below in this Notice or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

The rulemaking file consists, at this time, of the proposed text, Initial Statement of Reasons, and supporting information as follows: Informational document titled: "California Legislative Analyst's Office: Proposition 12 Establishes New Standards for Confinement of Certain Farm Animals; Bans Sale of Certain Non-Complying Products. Initiative Statute."

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

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below. Any person may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the contact persons named below.

CONTACT PERSONS

Inquiries and any written comments concerning this proposal are to be addressed to the following:

Tony Herrera, Egg Quality Manager  
Department of Food and Agriculture  
Animal Health and Food Safety Services  
Meat, Poultry and Egg Safety Branch  
Egg Safety and Quality Management Program  
1220 N Street, Sacramento, CA 95814  
Telephone (916) 900-5004  
E-mail: [tony.herrera@cdfa.ca.gov](mailto:tony.herrera@cdfa.ca.gov)

The back-up contact person is as follows:

Nancy Grillo, Associate Analyst  
Department of Food and Agriculture  
Animal Health and Food Safety Services  
1220 N Street, Sacramento, CA 95814  
Telephone (916) 900-5033  
E-mail: [nancy.grillo@cdfa.ca.gov](mailto:nancy.grillo@cdfa.ca.gov)

Website Access:

Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfr.ca.gov/ahfss/regulations.html>.

**TITLE 13. CALIFORNIA HIGHWAY PATROL**

**Inhalation Hazards Routes — Map 7  
(CHP-R-2019-06205)**

The California Highway Patrol (CHP) proposes to amend regulations in Title 13 of the California Code of Regulations, Division 2, Chapter 6, Article 2.5, Section 1157.18, regarding designated routes for highway transportation of inhalation hazards by commercial vehicles in the Brawley–El Centro area.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Pursuant to Division 14.3, Transportation of Inhalation Hazards, commencing with Section 32100 of the California Vehicle Code (CVC), the CHP shall adopt regulations specifying highway routes to be used in the transportation of inhalation hazards by commercial vehicles. The CVC requires the CHP to keep information current in regulations, with maps clearly indicating designated routes and a list of locations for inspection stops, required inspection stops, and safe stopping places. The CHP's field commands conduct annual reviews of the inhalation hazards routes and stops to determine if changes are necessary. The proposed amendments will keep inhalation hazards routes consistent with the recently constructed Brawley Bypass and expanded State Route (SR) 78 and SR 111, and enhance public health and safety in the area. The proposed regulation amendments will also change a map label from an inspection stop to a required inspection stop for the newly upgraded In–Ko–Pah Brake Check and Truck Rest Area along Interstate 8 about 40 miles west of El Centro.

The proposed amendments have received concurrence from the CHP's Border Division, Brawley Fire Department, El Centro Fire Department, Westmorland Fire Department, Westmorland Police Department, Imperial County Fire Department, State Fire Marshal, and the California Department of Transportation.

This proposed regulatory action will continue to provide a nonmonetary benefit to the protection of the health, safety, and welfare of California's residents, workers, and environment. The changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. The

proposed changes update and clarify highway routes designated for carriers transporting inhalation hazards, and contribute to transportation safety and public health.

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

**PUBLIC COMMENT**

Any interested person may submit written comments on the proposed action via facsimile at (916) 322–3154, by electronic mail to [cvsregulations@chp.ca.gov](mailto:cvsregulations@chp.ca.gov), or by writing to:

California Highway Patrol  
Commercial Vehicle Section  
Attention: Dr. Tian–Ting Shih  
P.O. Box 942898  
Sacramento, CA 94298–0001

Written comments must be received by February 24, 2020.

**PUBLIC HEARINGS**

Section 32102(b) CVC requires the CHP to hold public hearings in each field operation Division of the Department in which are located proposed routes. Thus, the CHP will conduct a public hearing on the proposed regulation amendments at:

California Highway Patrol  
Border Division  
9330 Farnham Street  
San Diego, CA 92123–1216

at 9:00 a.m. on March 6, 2020.

**AVAILABILITY OF INFORMATION**

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based, and the proposed regulation text in strikeout and underline format. Requests to review or receive copies of this information should be directed to the CHP either at the above address, by facsimile at (916) 322–3154, or by calling the CHP, Commercial Vehicle Section (CVS), at (916) 843–3400. All requests for information should include the following: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection. Interested parties are advised to call CHP, CVS, for an appointment.

All documents regarding the proposed action are available through the CHP's Website at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>. Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above-noted address. Copies will also be posted on the CHP Website.

#### CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or the substance of the proposed regulations should be directed to Dr. Tian-Ting Shih or Sergeant Adam Roha, at (916) 843-3400.

#### ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or nonsubstantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### FISCAL IMPACT AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code (GC) Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Benefits of the Proposed Action: The proposed regulation updating designated routes for carriers transporting inhalation hazards will continue to provide benefits,

including the nonmonetary benefit of protecting public health and safety for residents, workers, and the environment by providing a regulatory basis for enforcement efforts as they relate to safety compliance ratings.

The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

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

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

#### EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action will not affect small businesses. The action is intended to clarify and update the designated routes for commercial vehicles transporting inhalation hazards on highways. As a result, no small business will be affected by the update.

#### ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the CHP, or otherwise identified and brought to the attention of the CHP, 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. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### AUTHORITY

This regulatory action is being taken pursuant to Section 32102, CVC.

#### REFERENCE

This action implements, interprets, or makes specific Sections 32101, 32102, 32103, 32104, and 32105, CVC.

**TITLE 13. AIR RESOURCES BOARD**

NOTICE OF PUBLIC HEARING TO  
CONSIDER THE PROPOSED AMENDMENTS  
TO THE REGULATION ON THE  
COMMERCIALIZATION OF ALTERNATIVE  
DIESEL FUELS

The California Air Resources Board (CARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments to the Regulation on the Commercialization of Alternative Diesel Fuels (ADF).

DATE: February 27, 2020

TIME: 9:00 a.m.

LOCATION:

California Environmental Protection Agency  
California Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a meeting of the Board, which will commence at 9:00 a.m., February 27, 2020, and may continue at 8:30 a.m., on February 28, 2020. Please consult the agenda for the hearing, which will be available at least ten days before February 27, 2020, to determine the day on which this item will be considered.

WRITTEN COMMENT PERIOD AND  
SUBMITTAL OF COMMENTS

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on January 10, 2020. Written comments not physically submitted at the hearing must be submitted on or after January 10, 2020, and **received no later than February 24, 2020**. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. CARB requests that, when possible, written and email statements be filed at least ten days before the hearing to give CARB staff and Board members additional time to consider each comment.

The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail:

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

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

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

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600, 39601, 43013, 43018 and 43101, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal.Rptr. 249 (1975). This action is proposed to implement, interpret and make specific sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 40000, 43000, 43016, 43018, 43026, 43101, 43830.8 and 43865, Health and Safety Code; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal.Rptr. 249 (1975).

INFORMATIVE DIGEST OF PROPOSED  
ACTION AND POLICY STATEMENT OVERVIEW  
(GOV. CODE, section 11346.5, subd. (a)(3))

**Sections Affected:** Proposed amendments to California Code of Regulations, title 13, division 3, chapter 5, article 3, subarticle 2, section 2293.2 and Appendix 1.

**Background and Effect of the Proposed Regulatory Action:**

California Air Resources (CARB or Board) staff is proposing to amend the Regulation on the Commercialization of Alternative Diesel Fuels (Alternative Diesel Fuel regulation) to improve the rigor and clarity of its



testing and certification program.<sup>1</sup> The Alternative Diesel Fuel (ADF) regulation is a key element of California's Fuels Program;<sup>2</sup> it preserves or improves public health and the environmental and emissions benefits associated with the use of innovative ADFs in California. This report presents staff's proposal to amend the ADF regulation to reinforce the emissions certification testing requirements and require biodiesel additives and ADF formulations uniformly to be certified according to new certification procedures. The proposed amendments will further ensure that additives or ADF formulations are certified to mitigate potential oxides of nitrogen (NOx) emissions increases from the use of biodiesel consistent with rigorous and appropriate protocols.

CARB may also consider other changes to the sections affected, as listed on page two of this notice, during the course of this rulemaking process.

### ***Background on the ADF Regulation***

The ADF regulation governs the introduction and use of innovative alternative diesel fuels in California, while preserving or enhancing public health, the environment and the emissions benefits of the existing motor vehicle diesel fuel regulations. The regulation consists of two major parts: 1) a three-stage process for ADFs to be introduced into the California market including, if necessary, a determination of mitigation measures needed to ensure no degradation in air quality, and 2) in-use requirements for biodiesel as the first ADF.

The first part of the regulation establishes the administrative and regulatory framework for the commercialization of ADFs. The formal framework is necessary for two primary reasons. First, programs such as the California's Low Carbon Fuel Standard (LCFS) and the federal Renewable Fuels Standard incentivize the rapid development of ADFs. Many of these fuels provide criteria pollutant and toxic air contaminant emission reductions in addition to their greenhouse gas (GHG) benefit. Second, some ADFs may have adverse effects under certain and limited circumstances.

The biodiesel portion of the ADF regulation includes provisions designed to control potential increases in NOx emissions that could otherwise be caused by the

use of biodiesel under certain and limited circumstances. The biodiesel provisions contain a process for certification of additives or ADF formulations that have demonstrated, through emissions testing, to mitigate potential NOx increases from the use of biodiesel. Additives approved for NOx emission control purposes used to meet the in-use requirements must result in emissions equivalence with CARB diesel.

### ***Regulatory Development of the ADF Regulation***

The Board approved the ADF regulation for adoption on September 25, 2015, and the regulation entered into full effect on January 1, 2016. The regulation was subsequently amended in 2018.

Beginning in 2016, regulated parties started reporting produced, imported, and blended amounts of all biodiesel blendstocks and the biodiesel blends produced, pursuant to the reporting and recording requirements of the biodiesel in-use provisions of the regulation. The biodiesel in-use requirements, which mitigate potential NOx increases, went into effect on January 1, 2018. Effective January 1, 2018, all biodiesel blends above the NOx control level must be NOx mitigated by using additives or fuel formulations approved by CARB.

In 2018, staff proposed amendments to the ADF biodiesel in-use NOx mitigation sunset provisions and certification requirements of the regulation to ensure long term NOx mitigation. The amendments were adopted by the Board on September 27, 2018 and took effect in January 2019.

The Initial Statement of Reasons (ISOR or Staff Report) for the proposed amendments builds on the comprehensive and extensive work that was done in support of the original 2015 rulemaking<sup>3</sup> and the amendments to the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations (2018 Amendments).<sup>4</sup> The full regulatory record and background for these ADF regulation rulemakings is available at the Alternative Diesel

<sup>1</sup> Codified at Title 13, California Code of Regulations, sections 2293–2293.9 and Appendix 1 of Subarticle 2.

<sup>2</sup> California's Fuels Program includes several fuels regulations and programs that establish the overarching framework of California's transportation fuel policies. Background information about the program is available at: <https://ww3.arb.ca.gov/fuels/background.htm>.

<sup>3</sup> See "Staff Report: Initial Statement of Reasons: Proposed Regulation on the Commercialization of Alternative Diesel Fuels." January 2 (2015); and "Final Statement of Reasons for Rulemaking, Including Summary of Public Comments and Agency Responses." September (2015). Available at: <https://ww3.arb.ca.gov/regact/2015/adf2015/adf2015.htm>.

<sup>4</sup> See "Staff Report: Initial Statement of Reasons: Proposed Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels." March 6 (2018); and "Final Statement of Reasons: Amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels." November (2018). Available at: <https://ww2.arb.ca.gov/rulemaking/2018/low-carbon-fuel-standard-and-alternative-diesel-fuels-regulation-2018>.

Fuels Rulemaking History webpage.<sup>5</sup> Additional program information is available at the ADF webpage.<sup>6</sup>

### ***Proposed Amendments to the ADF Regulation***

Staff is proposing amendments to reinforce the process for certification of additives and ADF formulations. Staff anticipates that parties will continue to wish to undergo certification as demand for ADFs grow. As this market develops, it is appropriate to ensure that all certified products undergo consistent and rigorous testing. At present, however, products have been certified under different versions of the regulation, and the testing protocols have changed over time. Accordingly, these amendments require all certified products going forward to use the same testing procedures, and ensure these procedures are rigorous, and consistent with the public health protection purposes of the ADF regulation.

The proposed amendments to the certification procedures would require, in addition to various additional clarifying terms, 1) emissions testing at two independent labs, 2) additional emissions testing with a commercially available Designated Equivalent Limits Diesel, 3) presence of a qualified observer during test fuel preparation and emissions testing, 4) more stringent chain of custody demonstration provisions. The amendments would require that any certified additive or alternative diesel fuel formulation would need to pass a statistical test for emissions equivalence with diesel for both NOx and particulate matter (PM) at both emissions testing labs and on both diesel test fuels.

Staff is also proposing amendments that would require all biodiesel additives and ADF formulations to be certified according to new certification procedures. Existing certified products could continue to be used before January 1, 2021 under legacy certifications, but use after that date will be allowed only for products certified under the procedures of these amendments. Staff is also proposing to include renewable diesel blends with biodiesel and conventional diesel consisting of at least 75 percent renewable diesel and at most 20 percent biodiesel as an approved emissions equivalent formulation, as ratios of at least 2.75 to 1 of renewable diesel to biodiesel are sufficient to fully mitigate NOx emissions from biodiesel.<sup>7</sup> Therefore, an R75 B20 fuel would provide NOx emissions reductions compared to CARB Diesel and would be NOx beneficial as a whole.

<sup>5</sup> Alternative Diesel Fuels Rulemaking History webpage available at: <https://ww2.arb.ca.gov/our-work/programs/alternative-diesel-fuels/alternative-diesel-fuels-rulemaking-history>.

<sup>6</sup> Alternative Diesel Fuels webpage available at: <https://ww2.arb.ca.gov/our-work/programs/alternative-diesel-fuels>.

<sup>7</sup> See “Proposed Regulation on the Commercialization of Alternative Diesel Fuels — Staff Report: Initial Statement of Reasons.” January 2 (2015). Available at: <https://www.arb.ca.gov/regact/2015/adf2015/adf15isor.pdf>.

### **Objectives and Benefits of the Proposed Regulatory Action:**

As discussed above, staff is proposing amendments to reinforce the process for certification of additives and ADF formulations. The objective of the proposed amendments is to ensure that the process for certification of additives or alternative diesel fuel formulations is consistent for all products in the market and provides assurance that those additives or formulations that pass emissions testing are effective in mitigating the potential NOx emissions from biodiesel use. Given that the proposed amendments will continue to ensure the NOx emissions reductions required by the ADF regulation, these amendments will also protect public health and safety, worker safety, and the State’s environment. A detailed description of the proposed amendments is provided in Chapter III of the “Staff Report: Initial Statement of Reasons — Public Hearing to Consider the Proposed Amendments to the Regulation on the Commercialization of Alternative Diesel Fuels,” referred to as the ISOR. The Proposed Regulation Order is Appendix A of the ISOR.

### **Comparable Federal Regulations:**

There are no current federal regulations comparable to the proposed regulation.

### **An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, section 11346.5, subd. (a)(3)(D)):**

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

## DISCLOSURES REGARDING THE PROPOSED REGULATION

### **Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, section 11346.5, subs. (a)(5) and (6)):**

The determinations of the Board’s Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandates to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500),

or other nondiscretionary cost or savings to State or local agencies.

**Housing Costs (Gov. Code, section 11346.5, subd. (a)(12)):**

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

**Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, sections 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):**

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

**Results of The Economic Impact Analysis/Assessment (Gov. Code, section 11346.5, subd. (a)(10)):**

A detailed assessment of the economic impacts of the proposed regulatory action can be found in Chapter VIII of the ISOR.

**NON-MAJOR REGULATION: Statement of the Results of the Economic Impact Assessment (EIA):**

*Effect on Jobs/Businesses:*

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in Chapter VIII of the ISOR.

*Benefits of the Proposed Regulation:*

The objective of the proposed regulatory action is to ensure that the process for certification of additives and alternative diesel fuel formulations provides assurance that those additives or formulations that pass emissions testing are effective at mitigating the potential NOx emissions from the use of the biodiesel.

A summary of these benefits is provided, please refer to “Objectives and Benefits,” under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion, above.

**Cost Impacts on Representative Private Persons or Businesses (Gov. Code, section 11346.5, subd. (a)(9)):**

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on represen-

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

**Effect on Small Business (Cal. Code Regs., tit. 1, section 4, subds. (a) and (b)):**

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

In total, up to 59 businesses with California operations maybe impacted by the proposed amendments; 8 biodiesel producers, 15 importers, 32 blenders, 3 additive manufacturers and 1 auto emissions testing lab. Six entities are both producers/importers and blenders. Thirteen importers (out of the total 15 importers) have their headquarters located out of the state. All biodiesel production is located in-state. Five blenders reported their business addresses as out-of-state. The auto emissions testing lab is located in-state.

Additive manufacturers are the only directly impacted businesses, and all of the additive manufacturers are small businesses. Only those additive manufacturers that wish to certify to supply their products after the effective date for the uniform certification requirement are impacted by the proposed regulation. The proposed amendments require biodiesel additives and ADF formulations uniformly to be certified according to new certification procedures. These three manufacturers would need to certify their additives or formulations according to new certification procedures if they wished to continue using them in California after January 1, 2021. That certification could result in a one-time initial cost of \$525,000 for one manufacturer or \$1.6 million for all three manufacturers combined.

**Consideration of Alternatives (Gov. Code, section 11346.5, subd. (a)(13)):**

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

ENVIRONMENTAL ANALYSIS

CARB prepared an environmental analysis (EA) for the 2018 Amendments under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the require-

ments of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). As we discuss below, in light of this analysis, staff concluded that no additional environmental review is required for these amendments.

The EA, included in Appendix D of that ISOR, entitled Appendix D: Final Environmental Analysis for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation (2018 EA), dated September 17, 2018, determined that the impacts associated with the 2018 Amendments included: beneficial impacts to energy demand and greenhouse gases (GHG); less than significant impacts to air quality (odor), energy demand, GHGs, hazards and hazardous materials, mineral resources, population, employment, and housing, public services, and recreation; and potentially significant and unavoidable adverse impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, energy demand, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources, noise, transportation and traffic, and utilities and service systems.

The potentially significant and unavoidable adverse impacts are disclosed for both short term, construction related activities, and long-term operational activities, which explains why some resource areas were identified above as having both less than significant impacts and potentially significant impacts. The EA also identified possible localized operational impacts to air quality from activities including feedstock transport to production facilities, production of biofuels, transport of finished fuels to blending facilities, and from carbon capture and sequestration (CCS) projects, associated with reasonably foreseeable compliance responses to the LCFS regulation and the ADF regulation. While the EA found these localized impacts unlikely, CARB could not dismiss the potential for these impacts, and conservatively identified these impacts as potentially significant and unavoidable.

While the 2018 EA concluded that many impacts associated with the 2018 Amendments could be reduced to a less-than-significant level through conditions of approval applied to project-specific development, the authority to require and implement that mitigation lies with land use agencies or other agencies approving the development projects, not with CARB. Consequently, the 2018 EA took a conservative approach in its significance conclusions and disclosed, for CEQA compliance purposes, that impacts from the development of new facilities or modification of existing facilities associated with reasonably foreseeable compliance responses to the 2018 Amendments could be potentially significant and unavoidable under several resource ar-

reas. These significance determinations are discussed in greater detail in the 2018 EA.<sup>8</sup>

In regard to these proposed amendments to the ADF regulation, staff has determined that no additional environmental review is required because there are no changes that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects than previously identified in the 2018 EA. The basis for reaching this conclusion is provided in Chapter VI of the ISOR.

### SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks' Office at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than ten business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alternativo u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

### AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency repre-

<sup>8</sup> See "Final Environmental Analysis Prepared for the Proposed Amendments to the Low Carbon Fuel Standard and the Alternative Diesel Fuels Regulation." September 27 (2018). Available at: [https://ww3.arb.ca.gov/regact/2018/lcfs18/finalea.pdf?\\_ga=2.153489400.1380169015.1569650930-60175395.1569650915](https://ww3.arb.ca.gov/regact/2018/lcfs18/finalea.pdf?_ga=2.153489400.1380169015.1569650930-60175395.1569650915).

sentative, James Guthrie, Staff Air Pollution Specialist, Emerging Technology Section, at (916) 327-1508 or Susie Chung, Air Pollution Specialist, Emerging Technology Section, at (916) 327-0647.

#### AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled Staff Report: Initial Statement of Reasons — Public Hearing to Consider the Proposed Amendments to the Regulation on the Commercialization of Alternative Diesel Fuels.

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on CARB's website listed below or may be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, on January 7, 2020.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air

Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

#### FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice or may be accessed on CARB's website listed below.

#### INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2020/adf2020>.

### TITLE 13. DEPARTMENT OF MOTOR VEHICLES

The Department of Motor Vehicles (department) proposes to adopt Sections 153.00, 153.02, 153.04, 153.06, 153.08, 153.10, 153.12, 153.14, 153.16, 153.18, 153.20, 153.22, 153.24, 153.26 and 153.28 in Article 3.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, regarding the Electronic Lien and Title Program to implement provisions relating to section 4450.5 of the Vehicle Code.

#### PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

#### DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than midnight, **February 25, 2020**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

**AUTHORITY AND REFERENCE**

The department proposes to adopt these regulations under the authority granted by Vehicle Code sections 1651 and 4450.5, in order to implement Vehicle Code section 4450.5.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Vehicle Code section 4450.5 directs the department to develop an Electronic Lien and Title program, in consultation with stakeholders, that would require lienholders' title information be stored electronically, if the department determines that such a program is cost-effective compared to its paper system.

In 1989, the department developed its Electronic Lien and Title pilot program and participation was voluntary. General Motors Acceptance Corporation was the first lienholder to join.

Under the Electronic Lien and Title program, when the department receives an application for title or registration showing the lienholder's name, address, and Electronic Lien and Title ID number an electronic lien record is produced, by the department, in lieu of a paper title. A web-based connectivity system was implemented to allow for Secure File Transfer between software vendors/service providers and the department.

California Relay Telephone Service for the deaf or hard of hearing from TDD Phones: 1-800-735-2929; from Voice Phones: 1-800-735-2922

Vehicle Code sections 1801 and 1801.1 authorize the department to allow a person to submit any document required to be submitted to the department by using electronic media deemed feasible by the department instead of requiring the actual submittal of the original document. Vehicle Code section 1801.1(c) authorizes the department to, among other things, establish security standards and technological requirements, or terms and conditions, including methods of authentication for electronically submitted signatures.

This proposed action would implement Vehicle Code section 4450.5 and make specific the forms an Electronic Lien and Title Program service provider applicant and lienholder applicant must submit to the department to apply to become a participant. Additionally, this proposed action would specify program administration structure.

**ANTICIPATED BENEFITS OF THE  
PROPOSED REGULATION**

This action will benefit the welfare of California residents and worker safety by reducing titling fraud of vehicles.

**CONSISTENCY AND COMPATIBILITY WITH  
STATE REGULATIONS**

During the process of developing these regulations, the department conducted a search for similar regulations on the topic of the electronic lien and title program and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

**COMPARABLE FEDERAL  
STATUTES OR REGULATIONS**

The department conducted a review of federal regulations related to the electronic lien and title program and has determined that there are no comparable federal regulations.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

The following documents are incorporated by reference:

- Electronic Lien and Title (ELT) Program Service Provider Application, REG 670 (NEW 1/2019)
- Electronic Lien and Title (ELT) Service Provider Permit, REG 672 (NEW 1/2019)
- Electronic Lien and Title (ELT) Program Lienholder Application, REG 671 (NEW 1/2019)
- Electronic Lien and Title (ELT) Program Information Security and Disclosure Statement Service Provider/Lienholder Employee, REG 677 (NEW 1/2019)
- Electronic Lien and Title (ELT) Program Information Security and Disclosure Statement Service Provider/Lienholder Firm, REG 678 (NEW 1/2019)
- Electronic Lien and Title (ELT) Lienholder Permit, REG 672 F (NEW 1/2019)
- Electronic Lien and Title (ELT) Program Change Request, REG 673 (NEW 1/2019)
- Electronic Lien and Title (ELT) Program Withdrawal Request, REG 674 (NEW 1/2019)

These documents will not be published in the California Code of Regulations because it would be impractical and cumbersome to do so; however, the documents are readily available to interested parties by contacting the department representative identified below.

**Economic and Fiscal Impact Determinations**

The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Effects on Housing Costs:* None.
- *Impacts Directly Affecting Businesses:* The proposed adoptions will require lienholders who hold an interest in California titled vehicles to participate.
- *Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:* None.
- *Cost Impact on Representative Private Persons or Businesses:* While the department does not anticipate a cost impact to the lending industry, the department does anticipate fiscal and economic benefits as they will no longer have to store and manage paper documents.
- *Small Business Impact:* This proposed action will affect small businesses in the same manner it will affect any business.
- *Local Agency/School Districts Mandate:* The proposed regulation action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code.

**Results of the Economic Impact Statement**

The department has determined that this proposed action will not affect the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state.

This action will benefit the welfare of California residents and worker safety by reducing titling fraud of vehicles.

**PUBLIC DISCUSSION OF PROPOSED REGULATIONS**

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

**ALTERNATIVES CONSIDERED**

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

**CONTACT PERSON**

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

Tracy Brazil, Regulations Analyst  
 Department of Motor Vehicles  
 Legal Affairs Division  
 P.O. Box 932382, MS C-244  
 Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-8919  
 Facsimile: (916) 657-6243  
 E-Mail: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff  
 Department of Motor Vehicles  
 Telephone: (916) 657-6469

**AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall

make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <http://www.dmv.ca.gov/portal/dmv/detail/about/lad/regactions>.

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department 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 fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

### 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, 205, 265, 270, 315, 316.5, 399 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5 and 2084 of said Code, proposes to adopt subsection (b)(91.2) of Section 7.50, Title 14, California Code of Regulations, relating to upper Klamath-Trinity spring Chinook salmon sport fishing.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

#### BACKGROUND

The Klamath River Basin spring-run Chinook Salmon (*Oncorhynchus tshawytscha*) in-river sport fishery is managed by the Commission via general basin seasons, daily bag limit, and possession limit regulations. Regular creel surveys and tag returns from anglers provide information on the status of spring-run Chinook Salmon in the Klamath River Basin. (Spring Chinook salmon may also be referred to as upper Klamath-Trinity spring Chinook Salmon — UKTSCS, Klamath River Spring Chinook — KRSC, “Klamath Spring Chinook,” “Trinity Spring Chinook,” or simply “spring-run Chinook”.)

In February 2019, the Commission accepted a petition to list UKTSCS, which confers candidacy status. Under the California Endangered Species Act (CESA), take prohibition measures apply (Fish and Game Code Section 2085). The Commission adopted emergency regulations in February 2019 for certain portions of the Klamath and Trinity Rivers to prohibit take and help protect UKTSCS by minimizing confusion by sport anglers who may not have been aware of the CESA candidacy protections. The Commission also received testimony and letters from the public, as well as the Del Norte County and Siskiyou County boards of supervisors that a complete prohibition on take of spring-run Chinook Salmon would create economic harm to businesses. The public requested that the Commission consider shortening the closed periods, or otherwise allow some sport fish take during the spring Chinook Salmon fishing season.

The California Department of Fish and Wildlife (Department) assessed the ability under Section 2084 of the Fish and Game Code to allow for some level of sport fishing take by hook and line, while still providing protective spring-run Chinook Salmon regulatory measures. On April 17, 2019, the Commission adopted emergency regulations to mitigate the potential adverse economic and fiscal impacts of a complete prohibition of take. The emergency regulations, which went into effect June 26, 2019, allow limited sport fishing take of spring-run Chinook Salmon on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River from the Old Lewiston Bridge to the mouth of the South Fork Trinity River, and the New River main stem downstream of the confluence of the East Fork to the confluence with the Trinity River between July 1 and August 31.

#### REGULATORY PROPOSAL

This proposed rulemaking will make permanent the June 2019 emergency regulations allowing limited



sport fish take of UKTSCS in most of the same reaches. The proposed regulation would allow continued limited sport fishing take of UKTSCS on the Klamath River downstream of the Highway 96 bridge at Weitchpec between July 1 and August 14, and the Trinity River from the Old Lewiston Bridge to the mouth of the South Fork Trinity River between July 1 and August 31, with a bag limit of one Chinook Salmon and a possession limit of two Chinook Salmon, after which fall season regulations under subsection (b)(91.1) of Section 7.50 will apply. This proposed rulemaking does not make permanent the language for the New River reach (main stem downstream of the confluence of the East Fork to the confluence with the Trinity River between July 1 and August 31).

#### BENEFITS OF THE PROPOSED REGULATIONS

Compared to the full closure under CESA, the proposed regulations provide increased recreational fishing opportunity for a July 1 start during the peak of the season, and through August 14 (Klamath River — six weeks) or August 31 (Trinity River — eight weeks). The July 1 opening date in the lower Klamath River protects the majority of wild-origin UKTSCS which enter and migrate through the lower Klamath River by reducing the spring Chinook Salmon fishing season by six months (opening July 1 instead of January 1). These wild salmon are destined for spawning in the upper Salmon River and upper South Fork Trinity River. Similarly, the July 1 opening date on the upper Trinity River protects wild UKTSCS by reducing the fishing season by six months.

Making permanent this six to eight-week window reduces potential economic impacts and helps mitigate the risk of hardship to local businesses and communities from a full closure to fishing under CESA, while protecting UKTSCS during its migratory and spawning phases. Allowing limited take at the end of the traditional spring season for sport fish by hook and line of UKTSCS is consistent with Fish and Game Code Section 2084.

#### CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to authorize the taking of any fish by hook and line for sport that is listed as an endangered, threatened, or candidate species (Section 2084, Fish and Game Code).

The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and has found no other State regulations related to spring Chinook Salmon sport fishing in the Klamath River Basin.

#### SCHEDULED HEARINGS

**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, 1416 Ninth Street, Sacramento, California, 95814, on Friday, February 21, 2020, at 8:30 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, 1416 Ninth Street, Sacramento, California, 95814, on Thursday, April 16, 2020, at 8:30 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 on April 2, 2020, at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 10, 2020. All comments 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](http://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, 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 Sherrie Fonbuena at the preceding address or phone number. **Wade Sinnen, Senior Environmental Scientist, Department of Fish and Wildlife, (707) 822-5119 or [Wade.Sinnen@wildlife.ca.gov](mailto:Wade.Sinnen@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.**

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 Business, 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. Making permanent the June 2019 emergency regulations via the certificate of compliance process would both create permanent incentives for more tourists to travel to coastal northern California, and help stimulate the local economies in Del Norte, Siskiyou, Trinity and neighboring counties.
- (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 significant impact on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California. This is due to the re-opening of limited sport fishing take during the peak of the season, starting July 1, and through August 14 (Klamath River) or August 31 (Trinity River). Compared to the full closure under CESA, the proposed regulation provides increased recreational fishing opportunity for the six- to eight-week window between July and August in the Klamath River Basin.

The Commission anticipates benefits to the health and welfare of California residents through the activity of fishing for salmon. The Commission does not anticipate any benefits to worker safety because the proposed regulation will not affect existing working conditions. The Commission anticipates a neutral impact to the state's environment, as the majority of fish present in the river reaches during the limited six- or eight-week windows are believed to be of hatchery origin.

- (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 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. FISH AND GAME COMMISSION**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 205, 265, 270, 275, 315, 316.5, 399, and 2084 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 255, 265, 270, 275, 316.5, and 2084 of said Code, proposes to amend Sections 2.35 and 7.00, and subsections (b)(5), (b)(68), (b)(124), and (b)(156.5) of Section 7.50, Title 14, California Code of Regulations, relating to Central Valley sport fishing regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations.

Current regulations in subsections (b)(5), (b)(68), (b)(124), and (b)(156.5) of Section 7.50 prescribe the 2019 seasons and daily bag and possession limits for Sacramento River fall-run Chinook Salmon (*Oncorhynchus tshawytscha*; SRFC) sport fishing in the American, Feather, Mokelumne, and Sacramento rivers, respectively. Collectively, these four rivers constitute the “Central Valley fishery” for SRFC for purposes of this document. Each year, the Department of Fish and Wildlife (Department) recommends new Chinook Salmon bag and possession limits for consideration by the Fish and Game Commission (Commission) to align the fishing limits with up-to-date management goals, as set forth below.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented

as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The PFMC will develop the annual Pacific coast ocean salmon fisheries regulatory options for public review at its March 2020 meeting and will adopt its final regulatory recommendations at its April 2020 meeting based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season. Based on the April 2020 recommendation by PFMC, the Department will recommend specific bag and possession limit regulations to the Commission at its April 16, 2020 meeting. The Commission will then consider adoption of the Central Valley sport fishing regulations at its May 14, 2020 teleconference.

PROPOSED REGULATIONS

**CHINOOK SALMON BAG AND POSSESSION LIMITS**

The Department recognizes the uncertainty of SRFC in-river harvest projections. Therefore, for the 2020 Central Valley fishery, the Department is presenting three regulatory options for the Commission’s consideration to tailor 2020 Central Valley fishery management to target 2020 in-river fisheries harvest projections.

- Option 1 is the most liberal of the three options, and allows take of any size Chinook Salmon up to the daily bag and possession limits.
- Option 2 allows for take of a limited number of adult (age three to five) Chinook Salmon, with grilse (age two) Chinook Salmon making up the remainder of the daily bag and possession limits.
- Option 3 is the most conservative option, and allows for a grilse-only Chinook Salmon fishery.

All three options will also increase fishing opportunities on Chinook Salmon by extending the Chinook Salmon sport fishing season on the Sacramento River from the Deschutes Road bridge to the Red Bluff Diversion Dam from a closure date of December 16 to a closure date of December 31.

A minor correction will also be made to subsections 7.50(b)(124)(A), (B), and (D), to ensure consistency in the format in which the daily bag and possession limit for hatchery trout or hatchery steelhead is displayed in the regulatory text.

All options would be applicable to the following river segments and time periods:

- American River, subsection 7.50(b)(5):
  - (B) From the USGS gauging station cable crossing near Nimbus Hatchery to the SMUD power line crossing the southwest boundary of Ancil Hoffman Park, July 16 through October 31
  - (C) From the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park to the

Jibboom Street bridge, July 16 through December 31

- (D) From the Jibboom Street bridge to the mouth, July 16 through December 16

Feather River, subsection 7.50(b)(68):

- (D) From the unimproved boat ramp above the Thermalito Afterbay Outfall to 200 yards above the Live Oak boat ramp, July 16 through October 31
- (E) From 200 yards above the Live Oak boat ramp to the mouth, July 16 through December 16

Mokelumne River, subsection 7.50(b)(124):

- (A) From Comanche Dam to Elliott Road, July 16 through October 15
- (B) From Elliott Road to the Woodbridge Irrigation District Dam and including Lodi Lake, July 16 through December 31
- (D) From the Lower Sacramento Road bridge to the mouth, July 16 through December 16

Sacramento River below Keswick Dam, subsection 7.50(b)(156.5):

- (B) From Deschutes Road bridge to the Red Bluff Diversion Dam, August 1 through December 31
- (C) From the Red Bluff Diversion Dam to the Highway 113 bridge, July 16 through December 16
- (D) From the Highway 113 bridge to the Carquinez Bridge, July 16 through December 16.

The following options are provided for Commission consideration:

**Option 1 — Any Size Chinook Salmon Fishery**

This option is the Department’s preferred option if the 2019 SRFC stock abundance forecast is sufficiently high to avoid the need to constrain inland SRFC harvest.

Bag limit of [0–4] Chinook Salmon.

Possession limit — [0–12] Chinook Salmon.

**Option 2 — Limited Adult and Grilse Salmon Fishery**

Bag limit of [0–4] Chinook Salmon of which no more than [0–4] fish over 27 inches total length may be retained.

Possession limit — [0–12] Chinook Salmon of which no more than [0–4] fish may be over 27 inches total length.

**Option 3 — Grilse Salmon Fishery Only**

Bag limit of [0–4] Chinook Salmon less than or equal to 27 inches total length.

Possession limit — [0–12] Chinook Salmon less than or equal to 27 inches total length.

**EXTEND CHINOOK SALMON SPORT FISHING SEASON ON THE SACRAMENTO RIVER**

Sport fishing interests have requested the Chinook Salmon sport fishing season on the Sacramento River be extended from the current December 16 closure date to December 31 to enhance late–season fishing opportunity on the river. At issue is regulating the closure date to minimize contact in the fishery with federally and state–listed as endangered winter–run Chinook Salmon.

The Department supports extending the fishing season from December 16 to December 31 upstream of the Red Bluff Diversion Dam (River Mile (RM) 243), which will provide late season fishing for late–fall–run Chinook Salmon without negatively impacting winter–run Chinook Salmon.

**Proposal: Amend subsection 7.50(b)(156.5)(C), Sacramento River**

Extend the Chinook Salmon sport fishing season on the Sacramento River from the Deschutes Road bridge to the Red Bluff Diversion Dam to December 31.

**REMOVE EXCEPTION FOR TAKE OF COHO SALMON IN THE FEATHER RIVER**

Section 7.00 includes an exception for the take of Coho Salmon in Lake Oroville and Oroville–Thermalito Complex, and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam. Section 7.00 also includes an exception for incidentally hooked Coho Salmon in the same area. Coho Salmon have not been stocked in Lake Oroville since 2013. Coho Salmon are no longer planted in the Feather River water impoundments. Therefore, the exceptions for take and incidentally hooked Coho Salmon stated in Section 7.00 should be removed.

**Proposal: Amend Section 7.00, Re: Take of Coho Salmon in the Feather River**

Remove exception for take and incidentally hooked Coho Salmon in Lake Oroville and Oroville–Thermalito Complex, and the Feather River from the Diversion Pool Dam to the Fish Barrier Dam.

**PROHIBIT FISHING AT CONCRETE FLOOD CONTROL WEIRS**

Annually, during the rainy season, fish often get trapped below the concrete flood control weirs on the Sacramento River. Fish trapped in these areas are often state or federally listed as endangered or threatened species and, therefore, should not be exposed to angling opportunity. Subsections 7.50(b)(156.5)(D) and (E) include a “Note” which states that it is unlawful to take fish 0–250 feet downstream from the overflow side of the Moulton, Colusa, Tisdale, Fremont, and Sacramento weirs. However, there is no regulation in place that makes angling near flood control weirs unlawful. Section 2.35 prohibits angling near fishways and egg–

taking stations, dams, weirs or racks with fishways or egg-taking stations, and the upstream side of fish screens; but does not apply to areas, except for Fremont Weir, described in the notes in subsections 7.50(b)(156.5)(D) and (E).

**Proposal 1: Amend Section 2.35, Regarding Take of Fish at Weirs**

Amend Section 2.35 to include and differentiate flood control weirs in the Central Valley from other types of weirs and include a fishing closure of 0–250 feet downstream from the overflow side of Moulton, Tisdale, Fremont, and Sacramento weirs.

**Proposal 2: Amend subsections 7.50(b)(156.5)(D) and (E), Sacramento River**

Remove Note which states it is unlawful to take fish 0–250 feet downstream from the overflow side of the Moulton, Colusa, Tisdale, Fremont, and Sacramento weirs. These fishing closures will now be stipulated in Title 14, Section 2.35, with the exception of the Colusa Weir.

BENEFITS OF THE PROPOSED REGULATIONS

The Commission anticipates benefits to the environment in the sustainable management of Central Valley Chinook Salmon resources. Other benefits of the proposed regulations are consistency with federal fishery management goals, health and welfare of California residents, and promotion of businesses that rely on Central Valley Chinook Salmon sport fishing.

CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate recreational fishing in waters of the state (Fish and Game Code sections 200, 205, 315 and 316.5).

The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to Chinook Salmon recreational fishing seasons, bag, and possession limits for Central Valley sport fishing.

**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 California Natural Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, 95814 on Friday, February 21, 2020 at 8:30 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 California Natural Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, 95814 on Thursday, April 16, 2020 at 8:30 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 teleconference hearing originating in the Commission’s conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, 95814, on Thursday, May 14, 2020, at 8:30 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 Friday, May 1, 2020 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on Monday, May 11, 2020. All comments must be received no later than Thursday, May 14, 2020, at the teleconference hearing. 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](http://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, Executive Director, Fish and Game Commission, 1416 Ninth Street, 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 Craig Castleton at the preceding address or phone number. **Karen Mitchell, Senior Environmental Scientist, Department of Fish and Wildlife, (916) 445–0826 or [Karen.Mitchell@wildlife.ca.gov](mailto:Karen.Mitchell@wildlife.ca.gov), has been designat-**

ed to respond to questions on the substance of the proposed regulations.

#### 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 Business, 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 changes are necessary for the continued preservation of the resource, while providing inland sport fishing opportunities and thus, the prevention of adverse economic impacts.

- (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 significant adverse economic impacts but acknowledges the potential for short-term negative impacts on the creation or elimination of jobs within the state. The Commission anticipates no adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. Minor variations in the bag and possession limits and/or the implementation of a size limit are unlikely to significantly impact the volume of business activity. The loss of up to 27 jobs with Option 3 is not expected to eliminate businesses because reduced fishing days will be partially offset by the extension of the salmon fishing season by two weeks on a portion of the Sacramento River from the Deschutes Road bridge to the Red Bluff Diversion Dam, and by opportunities to fish for grilse Chinook Salmon and other species.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a Chinook Salmon sport fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the environment by the sustainable management of Chinook Salmon resources in the Central Valley.

The Commission does not anticipate any benefits to worker safety.

Other benefits of the proposed regulations are concurrence with federal fishery management goals and promotion of businesses that rely on Central Valley sport fishing.

- (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 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. FISH AND GAME COMMISSION**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 265, 270, 315, 316.5, 399, and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5, and 2084 of said Code, proposes to amend subsection (f) of Section 5.87 and subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Klamath River Basin sport fishing regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall-run Chinook Salmon (*Oncorhynchus tshawytscha*) through a cooperative system of State, federal, and tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200

miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The Commission adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River Basin (in-river) sport fisheries, which are consistent with federal fishery management goals.

Tribal entities within the Klamath River Basin maintain fishing rights for ceremonial, subsistence, and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the tribes.

**Klamath River Fall-Run Chinook Salmon**

Adult Klamath River fall-run Chinook Salmon (KRFC) harvest allocations and natural spawning escapement goals are established by the PFMC. The Klamath River Basin in-river sport salmon fishery is managed using adult quotas.

The KRFC harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

For the purpose of implementing PFMC adult allocation and California Department of Fish and Wildlife (Department) salmon fishery harvest assessment, within the Klamath River Basin the Department currently considers 22 inches total length as a provisional cutoff. Salmon greater than 22 inches total length are defined as adult salmon (ages 3-5) and salmon less than or equal to 22 inches total length are defined as grilse salmon (age-two).

**PFMC Overfishing Review**

KRFC stocks have been designated as “overfished” by the PFMC. This designation is the result of not meeting conservation objectives for this stock. Management objectives and criteria for KRFC are defined in the PFMC Salmon Fishery Management Plan (FMP). The threshold for overfished status of KRFC is a three-year geometric mean less than or equal to 30,525 natural area adult spawners. This threshold was not met for KRFC during the 2015-2017 period. The 30,525 KRFC natural area adult spawners is considered the minimum stock size threshold, per the FMP. The KRFC adult natural area spawning escapement for 2018 was 53,624 natural area adult spawners, which exceeded the one-year conservation threshold of 40,700 natural area adult spawners. The three-year geometric mean is still less than the required 40,700 natural area adult spawners, therefore the KRFC are still considered as an “overfished” stock.

Accordingly, the FMP outlines a process for preparing a “rebuilding plan” that includes assessment of the

factors that led to the decline of the stock, including fishing, environmental factors, model errors, etc. The rebuilding plan includes recommendations to address conservation of KRFC, with the goal of achieving rebuilt status. Rebuilt status requires meeting a three-year geometric mean of 40,700 adult natural area KRFC spawner escapement. The plan developed by representatives of NMFS, PFMC, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife (Department), and Tribal entities, was submitted to the PFMC in February 2019, adopted by the PFMC in June 2019 and submitted to the NMFS in August 2019. Forthcoming recommendations from the rebuilding plan may alter how KRFC are managed in the future, including changing the in-river allocation number, and/or allocating less than the normal target number.

**KRFC Allocation Management**

The PFMC 2019 allocation for the Klamath River Basin sport harvest was 7,637 adult KRFC. Preseason stock projections of 2020 adult KRFC abundance will not be available from the PFMC until March 2020. The 2020 basin allocation will be recommended by the PFMC in April 2020 and presented to the Commission for adoption as a quota for the in-river sport harvest at its May 2020 teleconference meeting.

The Commission may modify the KRFC in-river sport harvest quota, which is normally a minimum of 15 percent of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the FMP.

The annual KRFC in-river sport harvest quota is specified in subsection 7.50(b)(91.1)(D)1. The quota is split between four geographic areas with a subquota for each area, expressed as a percentage of the total in-river quota, specified in subsection 7.50(b)(91.1)(D)2. For angler convenience, the subquotas, expressed as the number of fish, are listed for the affected river segments in subsection 7.50(b)(91.1)(E). The in-river sport subquota percentages are shown in Figure 1, and are as follows:

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec — 17 percent of the in-river sport quota;
2. for the main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth — 50 percent of the in-river sport quota;
3. for the Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat — 16.5 percent of the in-river sport quota; and

4. for the Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River — 16.5 percent of the in-river sport fishery quota.

**PROPOSED CHANGES**

Because the PFMC recommendations are not known at this time, ranges are shown in [brackets] in the proposed regulatory text below of bag and possession limits which encompass historical quotas. A range is also shown for the Department’s grilse salmon size limit cutoff delineating between adult and grilse salmon. All are proposed for the 2020 KRFC fishery in the Klamath and Trinity rivers. The final KRFC bag and possession limits will align with the final federal regulations to meet biological and fishery allocation goals specified in law, or established in the FMP.

**KRFC SPORT FISHERY (QUOTA MANAGEMENT):**

Quota: For public notice requirements, the Department recommends the Commission consider a quota range of 0–67,600 adult KRFC in the Klamath River Basin for the in-river sport fishery. This recommended range encompasses the historical range of the Klamath River Basin allocations and allows the PFMC and Commission to make adjustments during the 2020 regulatory cycle. Subquotas: The proposed subquotas for KRFC stocks are as follows:

- Main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec — 17 percent of the total quota equates to [0–11,492];
- Main stem Klamath River from downstream of the Highway 96 bridge at Weitchpec to the mouth — 50 percent of the total quota equates to [0–33,800];
- Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat — 16.5 percent of the total quota equates to [0–11,154]; and
- Trinity River downstream from the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River — 16.5 percent of the total quota equates to [0–11,154].

Seasons: No changes are proposed for the Klamath River and Trinity River KRFC seasons:

- Klamath River — August 15 to December 31
- Trinity River — September 1 to December 31

Bag and Possession Limits: As in previous years, no retention of adult KRFC is proposed once the subquota has been met.

***KRFC Size Limit (Grilse Size Considerations)***

The Department is proposing a grilse salmon size limit cutoff range of less than or equal to 22 inches (55.9



cm) to 23 inches (58.4 cm) total length (TL) for discussion before the Department makes a final recommendation. Considered in this context, the size limit cutoff discussion is a trade-off between restricting take of the available adult salmon and quota management versus increasing harvest of two-year-old grilse salmon. In preparation for the proposed regulatory changes for the 2020 KRFC in-river recreational fishing season, the Department has completed an evaluation of the potential impacts to KRFC from increasing the size limit cutoff distinguishing age-two fish from age-three fish for in-river recreational harvest (Appendix A to the Initial Statement of Reasons — ISOR). The Department analyzed a range of grilse size limits between 21 and 24 inches total length. A 21 inch TL size limit was considered overly conservative, and would prevent fishing opportunity on grilse KRFC with little benefit to adult stocks. Raising the maximum grilse size to 24 inches TL was considered too liberal. The range of proposed bag and possession limits for KRFC stocks are as follows:

- Bag Limit — [0–4] Chinook Salmon — of which no more than [0–4] fish over [22–23] inches total length may be retained until the subquota is met, then 0 fish over [22–23] inches total length.
- Possession limit — [0–12] Chinook Salmon of which no more than [0–4] fish over [22–23] inches total length may be retained when the take of salmon over [22–23] inches total length is allowed.

**KRSC SPORT FISHERY:**

The Klamath River Basin also supports Klamath River spring-run Chinook Salmon (KRSC). Presently, KRSC stocks are not managed or allocated by the PFMC. No regulatory changes are proposed for the general KRSC opening and closing season dates, and bag, possession and size limits.

***Brown Trout Bag and Possession Limit Increase on the Main Stem Trinity River***

The Department is proposing to increase the daily bag and possession limit for Brown Trout on the main stem of the Trinity River from a five-fish daily bag/10-fish possession limit to a 10-fish daily bag/20-fish possession limit. This proposed change will increase fishing opportunity on a non-native trout species. As the focus for the Trinity River is on native fish production, a reduction of brown trout may help enhance habitat availability for native fish, consistent with the goals of the federally-administered Trinity River Restoration Program.

***Other Changes for Clarity***

The Department is proposing additional changes for clarity, as follows:

1. Amend subsection 5.87(f) to ensure that the size limit cutoff between a grilse and adult Chinook Salmon in the Klamath River Basin is consistent with the size limit cutoff listed in subsection 7.50(b)(91.1).
2. Add paragraph (3) to subsection 7.50(b)(91.1)(A) to include a reference to Section 1.74, Title 14, CCR for sport fish report card requirements.
3. Amend the heading of subsection 7.50(b)(91.1)(A) to read, “Restrictions and Requirements.”
4. Throughout the regulatory text in subsection 7.50(b)(91.1), update the year from 2019 to 2020.

**BENEFITS OF THE PROPOSED REGULATIONS**

The Commission anticipates benefits to the environment in the sustainable management of Klamath River Basin salmonid resources.

Other benefits of the proposed regulations are conformance with federal fishery management goals, health and welfare of California residents and promotion of businesses that rely on salmon sport fishing in the Klamath River Basin.

**CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS**

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. Commission staff has searched the California Code of Regulations and has found no other State regulations related to sport fishing in the Klamath River Basin.

**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 California Natural Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, 95814 on Friday, February 21, 2020 at 8:30 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 California Natural Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, 95814 on Thursday,

April 16, 2020 at 8:30 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 teleconference hearing originating in the Commission's conference room, 1416 Ninth Street, Suite 1320, Sacramento, California, 95814, on Thursday, May 14, 2020, at 8:30 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 Friday, May 1, 2020 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on Monday, May 11, 2020. All comments must be received no later than Thursday, May 14, 2020, at the teleconference hearing. 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](http://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, Executive Director, Fish and Game Commission, 1416 Ninth Street, 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 Craig Castleton at the preceding address or phone number. **Wade Sinnen, Senior Environmental Scientist, Department of Fish and Wildlife, (707) 822-5119 or [Wade.Sinnen@wildlife.ca.gov](mailto:Wade.Sinnen@wildlife.ca.gov)**, has been designated to respond to questions on the substance of the proposed regulations.

#### 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 compli-

ance 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 Business, 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 are projected to range from minor to no impact on the net revenues to local businesses servicing sport fishermen. If the 2020 KRFC quota is reduced, visitor spending may correspondingly be reduced, and in the absence of alternative visitor activities, the drop in spending could induce some business contraction. If the 2020 KRFC quota remains similar to the KRFC quotas allocated in previous years, then local economic impacts are expected to be unchanged. Neither scenario is expected to directly affect the ability of California businesses to compete with businesses in other states.

- (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:

An estimated 30-50 businesses that serve sport fishing activities are expected to be directly and/or indirectly affected depending on the final KRFC quota. The impacts range from no impact

(Projection 1 under the Economic Impact Assessment (EIA), below) to small adverse impacts (Projection 3, EIA, below).

Depending on the final KRFC quota, the Commission anticipates the potential for some impact on the creation or elimination of jobs in California. The potential adverse employment impacts range from no impact to the loss of 22 jobs. Under all alternatives, due to the limited time period of this regulation’s impact, the Commission anticipates no impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

For all of the proposed scenarios, the possibility of growth of businesses to serve alternative recreational activities exists. Adverse impacts to jobs and/or businesses would be less if fishing of other species and grilse KRFC is permitted, than under a complete closure to all fishing. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed regulatory action is to increase sustainability in fishable salmon stocks and, consequently promote the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages a healthy outdoor activity and the consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California’s salmonid resources.

The Commission does not anticipate any benefits to worker safety because the proposed action does not affect working conditions.

- (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 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.

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FISH AND WILDLIFE**

**CESA CONSISTENCY DETERMINATION REQUEST FOR**

Phase 4 and 5 of the 2017 Storm Damage  
Department of Water Resources  
Rehabilitation Project (SDDR)  
2080-2019-011-03

Butte, Glenn, Colusa, Sutter, Sacramento,  
San Joaquin, Tehama, and Yolo Counties

The California Department of Fish and Wildlife (CDFW) received a notice on December 24, 2019 that the California Department of Water Resources (DWR) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves the repair of damaged levees at 29 non-emergency sites. Proposed activities will include, but are not limited to, creation of temporary access roads, clearing and grubbing, excavation of rock and levee soils, slope grading, and placement of rock, soil, and native vegetation. The

proposed project will occur at multiple sites in Butte, Glenn, Colusa, Sutter, Sacramento, San Joaquin, Tehama, and Yolo Counties.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (Service Ref. No. 08ESMF00–2019–F–3198) in a memorandum to the U.S. Army Corps of Engineers on December 6, 2019, which considered the effects of the proposed project on state endangered and federally threatened delta smelt (*Hypomesus transpacificus*) and state and federally threatened giant garter snake (*Thamnophis hammondi*).

Pursuant to California Fish and Game Code section 2080.1, DWR is requesting a determination that the Biological Opinion (BO) and its associated Incidental Take Statement (ITS) are consistent with CESA for purposes of the proposed project. If CDFW determines the BO and its associated ITS are consistent with CESA for the proposed project, DWR will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

**DEPARTMENT OF  
FISH AND WILDLIFE**

**CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
5665 Campbell Road Project  
2080–2019–010–05  
Santa Barbara County**

California Department of Fish and Wildlife (CDFW) received a notice on December 23, 2019, that Terra Firma Long Beach, LLC proposes to rely on a federal take authorization and Habitat Conservation Plan to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves cultivation activities. The proposed project will occur at 5665 Campbell Road (Assessor’s Parcel number 099–110–047), in the Lompoc area of Santa Barbara County.

The U.S. Fish and Wildlife Service (Service) issued an Incidental Take Permit (Service Permit No. TE58523D) (ITP) and Habitat Conservation Plan (HCP) to Terra Firma Long Beach, LLC on October 24, 2019 which considered the effects of the proposed project on the state threatened and federally endangered California tiger salamander (*Ambystoma californiense*).

Pursuant to California Fish and Game Code section 2080.1, Terra Firma Long Beach, LLC is requesting a determination that the ITP and associated HCP are con-

sistent with CESA for purposes of the proposed project. If CDFW determines the ITP and associated HCP are consistent with CESA for the proposed project, Terra Firma Long Beach, LLC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

**DECISION NOT TO PROCEED**

**MEDICAL BOARD OF CALIFORNIA**

**NOTICE OF DECISION NOT TO PROCEED  
Pursuant to Government Code section 11347**

Pursuant to Government Code section 11347, the Medical Board of California hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register on June 28, 2019, and subject to a public hearing on August 14, 2019. The proposed rulemaking concerned physician assistant supervision.

Any interested person with questions concerning this rulemaking should contact Kerrie Webb at (916) 263–2389 or by e-mail at [kerrie.webb@mbc.ca.gov](mailto:kerrie.webb@mbc.ca.gov).

The Board also will publish this Notice of Decision Not to Proceed on its website.

**RULEMAKING PETITION  
DECISIONS**

**CALIFORNIA GAMBLING  
CONTROL COMMISSION**

October 28, 2019

Mr. Jarhett Blonien, Esq.  
J. Blonien APLC  
1121 L Street, Suite 105  
Sacramento, CA 95814

Re: Notice of Decision on Petition for Adoption of Regulations Pursuant to Government Code sections 11340.06 and 11340.7

Dear Mr. Blonien:

The California Gambling Control Commission (Commission) hereby responds to your petition pursuant to Government Code section 11340.6 requesting the adoption of regulation regarding the approval of games and use of gambling equipment.

INTRODUCTION AND PROCEDURAL HISTORY

On October 2, 2019 the request for the Commission to adopt regulations regarding the approval of games and use of gambling equipment (Petition) was received via email by the Commission’s Executive Director from Jarhett Blonien (Petitioner). The Executive Director sent an email acknowledging receipt of the Petition on October 2, 2019. This letter will serve as notification of the Commission’s decision on the merits of the Petition.

AUTHORITY AND SECTIONS TO BE AFFECTED

Petitioner cited Business and Profession Code section 19841(b) as authority to take regulatory action. Business and Profession Code section 19841(b) provides that regulations adopted by the commission shall: “Provide for the approval of game rules and equipment by the department to ensure fairness to the public and compliance with state laws.” While not cited by the Petitioner, The “department” means the Department of Justice. (Business and Profession Code section 19805(h).) The Bureau of Gambling Control is the bureau of the Department of Justice that enforces the Gambling Control Act.

Petitioner did not cite to any affected sections of the California Code of Regulations or propose any new sections.

THE COMMISSION’S DETERMINATION

For the reasons discussed below, the Commission denies in whole the Petition.. The Commission will conduct further inquiry into this matter and analyze whether additional regulation by the Commission would improve the controlled game and equipment approval process without infringing on the Department’s established authority and existing regulations.

REASONS SUPPORTING THE COMMISSION’S DETERMINATION

The Department has Approval Procedures

The Department has statutory responsibility to approve the play of any controlled game, was vested by the Legislature with the authority to adopt regulations reasonably related to its functions and duties, and has already adopted regulations and forms setting forth the game approval and process.

The Gambling Control Act as first enacted in 1997 contained Business and Professions Code section 19824A, which identified that it was a duty of the Division of Gambling Control to approve “the play of any

controlled game, including placing restrictions and limitations on how a controlled game may be played.”

In 2002, Business and Professions Code section 19824A was renumbered to section 19826 and in 2004 was amended to expand the Division of Gambling Control’s duties concerning game approval.

In 2007, section 19826 was amended without regulatory effect to replace “division” with “department,” referring to the Department of Justice, Bureau of Gambling Control. Otherwise, the language in 19826, subdivision (g) remains the same.

Business and Professions Code section 19826, subsection (f) states that it is a responsibility of the department to “adopt regulations reasonably related to its functions and duties as specified in this chapter.”

In 1999, the Department adopted 11 CCR section 2071 regarding gaming activity authorization. The regulation identifies the procedure for identifying and requesting approval of proposed gaming activities and game rules; the Bureau’s ability to conduct subsequent reviews and withdraw authorization for games and gaming activities in certain instances; and the ability of a requestor to object to the Department’s determination by objecting to the Chief or filing a writ in superior court. The Department also adopted regulations requiring annual reporting by gambling establishments to identify the games and gaming activities offered and requiring that gambling chips meet certain criteria and potentially be submitted to the Department for approval. (11 CCR sections 2072 and 2051).

Further, in 2004, the Department adopted 11 CCR section 2038 requiring that form BGC-APP 026 be used for an applicant to seek approval of a game or gaming activity from the Department.

The Commission Requires Additional Research and Input

The petition requests that the Commission “adopt regulations regarding the approval of games and use of gambling equipment.” However, because approval of gaming activities and equipment is a Department function and the Department has taken care to promulgate regulations on the topic, it is unclear what type of regulatory action petitioner seeks from the Commission or why additional regulation regarding the game approval process would be beneficial to the Commission’s stakeholders.

The Commission is interested in and will conduct further examination of the controlled game and equipment approval process to determine whether there are any areas in which an additional layer of regulation by the Commission would be beneficial to the public and other Commission stakeholders. If the Commission identifies a need for further regulation over game approvals, it

will initiate the normal rule making process, which includes an opportunity for public review and comment.

**AGENCY CONTACT PERSON**

Fred Castano  
Public Relations Officer  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220  
(916) 263-0700  
[FCastano@cgcc.ca.gov](mailto:FCastano@cgcc.ca.gov)

**OBTAINING COPIES OF THE PETITION**

Any interested persons may obtain a copy of the Petition by contacting Fred Castano, Public Relations Officer.

Sincerely,

/s/  
STACEY LUNA BAXTER  
Executive Director

**CALIFORNIA GAMBLING  
CONTROL COMMISSION**

October 28, 2019

Mr. Jarhett Blonien, Esq.  
J. Blonien APLC  
1121 L Street Suite 105  
Sacramento, CA 95814

Re: Notice of Decision on Petition for Adoption of Adequate Financing/Bankroll Procedures Regulations Pursuant to Government Code sections 11340.06 and 11340.7

Dear Mr. Blonien:

The California Gambling Control Commission (Commission) hereby responds to your petition pursuant to Government Code sections 11340.6 and 11340.7 regarding the Commission's responsibilities under Business and Professions Code section 19841, which directs the Commission to adopt regulations that "prescribe minimum procedures for adoption by owner licensees to exercise effective control over their internal fiscal and gambling affairs. . ." The petition further requests the repeal of the existing regulation, 11 C.C.R., section 2053.

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 3, 2019 the request for the Commission to adopt regulations concerning adequate financing at gambling establishments (Petition) was received via email by the Commission's Executive Director from Jarhett Blonien (Petitioner). The Executive Director sent an email acknowledging receipt of the Petition on October 3, 2019. This letter will serve as notification of the Commission's decision on the merits of the Petition.

**AUTHORITY AND SECTIONS TO  
BE AFFECTED**

Without other detail, Petitioner cited Business and Profession Code section 19841 as authority to take regulatory action.

**THE COMMISSION'S DETERMINATION**

For the reasons discussed below, the Commission denies in whole the Petition. The Commission has reviewed your request and determined that no rulemaking action is necessary at this time. Although the Commission has prescribed regulations regarding the minimal controls owner licensees must follow regarding internal fiscal and gambling affairs, as required under Business and Profession Code section 19841, the Commission has not adopted regulations specific to adequate financing at a gambling establishment because the Department has already adopted its own regulations. The Department's regulations are clear and sufficient. Further, the Commission has no legal authority to repeal a regulation legally promulgated by another state agency in accordance with the Administrative Procedures Act.

**REASONS SUPPORTING THE  
COMMISSION'S DETERMINATION**

*The Existing Regulations are Sufficient*

The Department has promulgated clear guidelines under section 2053 to ensure adequate financing is available. The guidelines also provide for alternative forms of financing at the discretion of the Department. The petition does not identify any specific deficiencies that require a remedy via additional regulation. Further, in investigating the concern identified in the petition, namely that only five gambling establishments have had alternative forms of security approved, the Commission determined that only one establishment has been denied such an arrangement due to the establishment failing to provide the Department with the requested information. A single denial is insufficient indication of an unfulfilled need for alternative arrangements on the part of the industry.

*A Commission Regulation Paralleling Section 2053 Would be Unnecessary and Duplicative*

The Administrative Procedures Act requires that all rulemakings must be evaluated to ensure the proposed regulation is necessary and non-duplicative. (Government Code section 11349) Since no specific concerns with the current regulations are identified in the petition, it is unclear what would distinguish a Commission-promulgated regulation from section 2053.

*A Commission Regulation that is Inconsistent with Section 2053 Would be Confusing*

The reason that consistency is evaluated under the Administrative Procedures Act is to ensure clarity and uniformity for the regulated community. If the Commission promulgated regulations that differed substantially from the language of section 2053, this would lead to greater confusion, not less, about what was required within the regulated community.

*The Commission has No Authority to Repeal Regulations Promulgated by the Department*

There is no provision of law that authorizes the Commission to repeal regulations legally promulgated by another agency and approved by the Office of Administrative Law.

AGENCY CONTACT PERSON

Fred Castano  
Public Relations Officer  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220  
(916) 263-0700  
[FCastano@cgcc.ca.gov](mailto:FCastano@cgcc.ca.gov)

OBTAINING COPIES OF THE PETITION

Any interested persons may obtain a copy of the Petition by contacting Fred Castano, Public Relations Officer.

Thank you for your concern in this matter.

Sincerely,

/s/  
STACEY LUNA BAXTER  
Executive Director

**DISAPPROVAL DECISIONS**

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. The full text of disapproval decisions is available at [www.oal.ca.gov](http://www.oal.ca.gov) under the “Publications” tab. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225 — FAX (916) 323-6826. Please request by OAL file number.

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**State of California  
Office of Administrative Law**

**In re:  
Department of Industrial Relations**

**Regulatory Action: Title 8  
California Code of Regulations  
Adopt section: 15203.11  
Amend sections: 15203.2, 15251, 15430**

**DECISION OF DISAPPROVAL OF REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2019-1105-01**

**OAL Matter Type: Regular (S)**

SUMMARY OF REGULATORY ACTION

This rulemaking action would have established requirements for reporting information needed to evaluate the administrative costs, expenditures, solvency, and performance of public self-insured employer workers’ compensation programs.

DECISION

On November 5, 2019, the Department of Industrial Relations, Office of Self-Insurance Plans (OSIP) submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On December 20, 2019, OAL notified OSIP of the disapproval of this regulatory action. The reasons for the disapproval were failure to comply with the “clarity” stan-

dard of Government Code section 11349.1 and failure to follow all required procedures under the California Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

**CONCLUSION**

For the reasons set forth above, OAL has disapproved this regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), OSIP may resubmit this rulemaking action within 120 days of its receipt of this Decision of Disapproval. A copy of this disapproval decision will be e-mailed to the OSIP contact person on the date this decision is signed below.

Any changes made to the regulation text to address the clarity issues discussed above must be made available for at least 15 days for public comment pursuant to Government Code section 11346.8 and section 44 of title 1 of the CCR. OSIP must resolve all other issues raised in this Decision of Disapproval before resubmitting to OAL.

If you have any questions, please contact me at (916) 323-6225.

Date: December 27, 2019

Eric Partington  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: André Schoorl, Acting Director  
Copy: John Cumming

**DEPARTMENT OF PUBLIC HEALTH**

**State of California  
Office of Administrative Law**

**In re:  
Department of Public Health**

**Regulatory Action: Title 17  
California Code of Regulations  
Adopt sections: 30313.05, 30313.07, 30313.09,  
30313.10, 30313.15, 30313.20, 30313.25, 30313.30,  
30313.40, 30313.45, 30313.50  
Amend sections: 30306, 30307, 30312, 30313**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2019-1105-05**

**OAL Matter Type: Regular (S)**

**SUMMARY OF REGULATORY ACTION**

On November 5, 2019, the Department of Public Health (Department) submitted to the Office of Administrative Law (OAL) this proposed action to establish the qualifications, authorization, and renewal processes, including new application and renewal fees as well as continuing education requirements, for persons who perform therapeutic X-ray system output calibrations and radiation protection surveys of therapeutic X-ray installations. The proposed action would also have established the process for previously authorized persons to remain authorized and specified the standards for limiting, revoking, and suspending authorization.

**DECISION**

On December 20, 2019, OAL notified the Department that it could not approve this action because of failure to meet the clarity standard of Government Code sections 11349.1(a)(3) and 11349(c) and certain procedural requirements of the California Administrative Procedure Act (APA).

**CONCLUSION**

For these reasons outlined above, OAL disapproved the above-referenced rulemaking action. Pursuant to



Government Code section 11349.4(a), the Department may resubmit this rulemaking action within 120 days of its receipt of this Decision of Disapproval. A copy of this Disapproval Decision will be emailed to the Department on the date indicated below.

Any changes made to the regulation text to address the issues discussed above must be made available for at least 15 days for public comment pursuant to Government Code section 11346.8 and section 44 of title 1 of the CCR prior to resubmission.

Date: December 27, 2019

Dale P. Mentink  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Susan Fanelli, Acting Director  
Copy: Dawn Basciano

**AVAILABILITY OF INDEX OF  
PRECEDENTIAL DECISIONS**

**CALIFORNIA STATE TEACHERS'  
RETIREMENT SYSTEM**

**NOTICE OF AVAILABILITY OF PRECEDENTIAL  
DECISIONS AND DECISION INDEX**

Notice is hereby given that the California State Teachers' Retirement System, pursuant to subdivision (c) of Section 11425.60 of the Government Code, maintains an index of precedential decisions. The index is available to the public at [calstrs.com/precedential-decisions](http://calstrs.com/precedential-decisions).

To subscribe to receive notification when the index is updated, email [LegalServices@CalSTRS.com](mailto:LegalServices@CalSTRS.com). For additional information, contact:

Office of the General Counsel  
CalSTRS  
P. O. Box 15275  
Sacramento, CA 95851-0275  
Telephone: (916) 414-1724  
Email: [LegalServices@CalSTRS.com](mailto:LegalServices@CalSTRS.com)

**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# 2019-1108-02  
BOARD OF EDUCATION  
Vision Testing

This action implements vision testing standards for schools, including training and testing requirements.

Title 5  
ADOPT: 597  
AMEND: 590, 591, 594, 596  
Filed 12/26/2019  
Effective 04/01/2020  
Agency Contact: Hillary Wirick (916) 319-0860

File# 2019-1216-04  
BOARD OF EQUALIZATION  
Allocation of Aircraft of Certificated Air Carriers and Scheduled Air Taxi Operators

This emergency rulemaking action by the Board of Equalization makes changes to Tax Rule 202 pertaining to the allocation of aircraft of certified air carriers and scheduled air taxi operations to implement changes enacted in Statutes 2019, chapter 333 (SB 791).

Title 18  
AMEND: 202  
Filed 12/26/2019  
Effective 01/01/2020  
Agency Contact: Lawrence Lin (916) 322-1982

File# 2019-1114-05  
CALIFORNIA ENERGY COMMISSION  
Repeal of Energy Conservation Assistance Act Regulations

This action by the California Energy Commission repeals regulations implementing the Energy Conservation Assistance Act (Pub. Resources Code, sec. 25410 et al.).

Title 20  
REPEAL: 1650, 1651, 1652, 1653, 1654, 1655  
Filed 12/30/2019  
Effective 04/01/2020  
Agency Contact: Corrine Fishman (916) 654-4976

File# 2019-1216-01  
DEPARTMENT OF EDUCATION  
LEAs Exemption Licensing

In this emergency readopt action the Department of Education adopts six sections related to health and safety requirements for the supervision of children, indoor space, outdoor space, restroom facilities, and drinking water for California State Preschool Programs exempt from the licensing requirements in Title 22 of the California Code of Regulations pursuant to Health and Safety Code section 1596.792(o).

Title 5  
ADOPT: 18140, 18145, 18155, 18160, 18165  
Filed 12/26/2019  
Effective 12/30/2019  
Agency Contact: Hillary Wirick (916) 319-0860

File# 2019-1115-01  
DEPARTMENT OF JUSTICE  
Revised Tobacco Escrow Agreement

This rulemaking action makes permanent amendments to the requirements for establishing and maintaining qualified tobacco escrow accounts to ensure that manufacturers of tobacco products, who did not participate in the 45-state Master Settlement Agreement, and their escrow agent banks properly hold, track, and monitor escrow account funds on deposit for the benefit of California.

Title 11  
AMEND: 999.12  
REPEAL: 999.13  
Filed 12/26/2019  
Effective 12/26/2019  
Agency Contact: Julia Zuffelato (916) 210-6040

File# 2019-1219-02  
DEPARTMENT OF JUSTICE  
Dealer Record of Sale (DROS) Fee

This emergency action amends the Dealer Record of Sale (DROS) fee pursuant to Penal Code section 28233.

Title 11  
AMEND: 4001  
Filed 12/30/2019  
Effective 01/01/2020  
Agency Contact: Julia Zuffelato (916) 210-6040

File# 2019-1113-02  
DEPARTMENT OF SOCIAL SERVICES  
CalWORKS Income Regulations Exemptions

In this rulemaking action, the Department of Social Services (“Department”) amends a regulation to provide a non-exhaustive list of benefits and related allowances received by the United States Department of Veterans Affairs, which are exempt from consideration as income for CalWORKS eligibility purposes.

Title MPP  
AMEND: 44-111  
Filed 12/30/2019  
Effective 04/01/2020  
Agency Contact: Oliver Chu (916) 657-3588

File# 2019-1226-01  
DEPARTMENT OF SOCIAL SERVICES  
90-Day Transition Plan, Youth Policy

This resubmitted rulemaking action specifies the scope of the information that a social worker or probation officer may offer to a youth or nonminor dependent concerning Advance Health Care Directives.

Title MPP  
ADOPT: 31-237(f)(2)  
Filed 12/31/2019  
Effective 12/31/2019  
Agency Contact: Kenneth Jennings (916) 657-2586

File# 2019-1118-02  
NEW MOTOR VEHICLE BOARD  
2019-2020 ACP Fees

This action without regulatory effect amends the Arbitration Certification Program (ACP) fee, which is updated annually based on the formula established in section 553.70 of title 13 of the California Code of Regulations.

Title 13  
AMEND: 553.70  
Filed 12/30/2019  
Agency Contact:  
Danielle R. Phomsopha (916) 327-3129

File# 2019-1114-01  
OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT  
Proposition 65 — Responsibility to Provide Exposure Warnings

This rulemaking action by the Office of Environmental Health Hazard Assessment amends the consumer product exposure warning transmission requirements to provide more specific guidance regarding responsibilities for providing warnings to businesses in the chain of commerce versus retail sellers of a given product.

Title 27  
 AMEND: 25600.2  
 Filed 12/31/2019  
 Effective 04/01/2020  
 Agency Contact: Monet Vela (916) 323-2517

File# 2019-1112-01  
**PUBLIC EMPLOYMENT RELATIONS BOARD**  
 Implementation of the Public Employee Communication Chapter (Government Code Chapter 11.5, Sections 3555-3559), Implementation of the Prohibition on Public Employers Deterring or Discouraging Union Membership (Government Code Chapter 11, Sections 3550-3553), Update to Precedential Board Decisions Regulation

This rulemaking action implements processes for resolving disputes arising under the Public Employees Communications Chapter (PECC) (Gov. Code, sec. 3555 et seq.) and the Prohibition on Public Employers Deterring or Discouraging Union Membership chapter (PEDD) (Gov. Code, sec. 3550 et seq.), and additionally makes changes to the Board's existing regulation concerning designation of precedential decisions.

Title 8  
 ADOPT: 32036, 32038, 32039, 32610, 32610.5, 32611, 32611.5, 33014, 33014.5  
 AMEND: 31001, 32020, 32030, 32050, 32055, 32060, 32075, 32080, 32090, 32091, 32100, 32105, 32120, 32130, 32132, 32135, 32136, 32140, 32142, 32145, 32147, 32149, 32150, 32155, 32162, 32164, 32168, 32169, 32170, 32176, 32178, 32180, 32185, 32190, 32200, 32205, 32206, 32207, 32209, 32210, 32212, 32215, 32220, 32230, 32295, 32300, 32305, 32310, 32315, 32320, 32325, 32350, 32400, 32410, 32450, 32455, 32460, 32465, 32470, 32602, 32605, 32612, 32615, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32645, 32647, 32648, 32649, 32650, 32661, 32680, 32690, 32980, 32998  
 Filed 12/27/2019  
 Effective 04/01/2020  
 Agency Contact: Sheena Farro (916) 322-3198

File# 2019-1112-07  
**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**  
 San Francisco Bay Plan — Update of Findings and Policies Regarding Bay Fill for Habitat; Update of Bay Plan Map 4

This regulatory action by the San Francisco Bay Conservation and Development Commission amends the San Francisco Bay Plan to: (1) amend the Major Con-

clusions and Policies section; (2) amend the Fish, Other Aquatic Organisms, and Wildlife findings and policies; (3) amend the Tidal Marshes and Tidal Flats findings and policies; (4) amend the Subtidal Areas findings and policies; (5) amend the Dredging findings and policies; and (6) amend the Shoreline Protection findings and policies. This action also amends Bay Plan Map 4 by adding a policy regarding the Middle Harbor Enhancement Area project in Oakland.

Title 14  
 AMEND: 11900  
 Filed 12/27/2019  
 Effective 12/27/2019  
 Agency Contact:  
 Lawrence J. Goldzband (415) 352-3653

File# 2019-1112-08  
**SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**  
 San Francisco Bay Plan — Update of Findings and Policies Regarding Environmental Justice and Social Equity

This regulatory action by the San Francisco Bay Conservation and Development Commission amends the San Francisco Bay plan to (1) add an Environmental Justice and Social Equity section, including findings and policies; (2) amend the Public Access findings and policies; (3) amend the Shoreline Protection findings and policies; and (4) amend the Mitigation findings and policies.

Title 14  
 AMEND: 11900 (a)  
 Filed 12/27/2019  
 Effective 12/27/2019  
 Agency Contact:  
 Lawrence J. Goldzband (415) 352-3653

File# 2019-1120-01  
**VETERINARY MEDICAL BOARD**  
 Consumer Protection Enforcement Initiative (CPEI)

This action by the Veterinary Medical Board amends and adopts regulations to implement the Consumer Protection Enforcement Initiative.

Title 16  
 ADOPT: 2017, 2042  
 AMEND: 2003  
 Filed 12/30/2019  
 Effective 04/01/2020  
 Agency Contact:  
 Amanda Drummond (916) 515-5238

**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](http://www.oal.ca.gov).