



California Regulatory Notice Register

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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

Multi-County: Yolo Subbasin Groundwater Agency
Central California Irrigation District

ADOPTION

Multi-County: Schools Program Alliance
Clayton Water District

A written comment period has been established commencing on July 9, 2021 and closing on August 23, 2021. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than August 23, 2021. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING
COSTS AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code-reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

**TITLE 2. LEGISLATIVE COUNSEL
BUREAU**

**NOTICE OF INTENTION TO AMEND THE
CONFLICT-OF-INTEREST CODE OF THE
LEGISLATIVE COUNSEL BUREAU**

NOTICE IS HEREBY GIVEN that the Legislative Counsel Bureau, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on July 9, 2021, and closing on August 23, 2021. All inquiries should be directed to the contact listed below.

The Legislative Counsel Bureau proposes to amend its conflict-of-interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Changes to the conflict-of-interest code include the following:

Appendix A

Legal Branch

- Renaming of the designated position Principal Deputy Legislative Counsel II as Principal Deputy Legislative Counsel (All levels).
- Removal of the designated position Principal Deputy Legislative Counsel I.
- Removal of the designated position Support Services Manager — Legal Office Administrator I.

Workplace Conduct Unit

- Designation of the position Director to the newly added Workplace Conduct Unit.

Administrative Branch

- Removal of the designated position Staff Services Manager III — Deputy Administrative Officer.
- Renaming of the designated position Staff Services Manager I — Business Services

Operations Manager to Business Services Operations Manager.

- Renaming of the designated position Staff Services Analyst — General Procurement and Contract Officer to General Procurement and Contract Officer.
- Designation of the position General Procurement and Contract Manager.
- Renaming of the designated position Training Officer II to Training Officer — Professional Development Office.

Legislative Data Center

- Renaming of the designated position Chief Deputy, Legislative Data Center — Enterprise Technology Branch to Chief Deputy Director, CEA (Level C).
- Removal of the position Chief Deputy, Legislative Data Center — Customer Service Branch.
- Renaming of the designated position All Deputy Directors, CEA II to Legislative Data Center, CEA (Levels A and B).
- Renaming of the designated position All Data Processing Managers IV to Information Technology Manager (All levels).
- Removal of the designated position All Information Systems Managers.
- Renaming of the designated position All Information Systems Supervisors I-IV to Information Technology Supervisor (All levels).
- Renaming of the designated position All Information Technology Contracts and Procurement Specialists to Information Technology Contracts and Procurement Specialist (All levels).
- Removal of the designated position All Information Technology Specialists I — Contracts and Procurement Unit.

Appendix B

- Various nonsubstantive changes to disclosure categories 1 through 5.
- Addition of disclosure category 6 for the designated position Director of the Workplace Conduct Unit.

Appendix C

- Amendment to the language in the introductory paragraph describing designated attorney classifications working within the defined scopes of practice.

Scopes of Practice A, B, C & D

- Addition of language to each scope of practice to define the attorneys included within that scope of practice.

- Removal of attorney names from all scopes of practice.

Scope of Practice E

- Addition of language to define the attorneys included within the scope of practice.
- Removal of the subject area of Attorney Training and replacement with the subject area of formal legal opinions in any of the subject areas in Scopes of Practice A to D, inclusive.
- Removal of attorney names from scope of practice.

Scope of Practice F

- Removal of Scope of Practice F.

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

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than August 23, 2021, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than August 8, 2021.

The Legislative Counsel Bureau has determined that the proposed amendments:

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

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

Name: C. David Johnson, Jr.
 Title: Chief Deputy Legislative Counsel
 Address: Office of Legislative Counsel
 925 L Street, Suite 900
 Sacramento, CA 95814

Telephone
 Number: (916) 341-8250
 Email
 Address: David.Johnson@lc.ca.gov

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

TESTING AND NOTIFICATION
 REQUIREMENTS FOR BASIC
 COURSE PRESENTERS
 AMEND COMMISSION REGULATIONS
 1005, 1007, AND 1008; AND COMMISSION
 PROCEDURE D-1

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

PUBLIC COMMENTS
 DUE BY AUGUST 23, 2021

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-4547, by email to Anita Finner at anita.finner@post.ca.gov, or by letter to:

Commission on POST
 Attention: Rulemaking
 860 Stillwater Road, Suite 100
 West Sacramento, CA 95605-1630

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code section 13503 (authority of the Commission on POST) and Penal Code section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code section 13503(e), which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

INFORMATIVE DIGEST/POLICY
 STATEMENT OVERVIEW

Currently, Basic Course presenters are not required to notify the employing agencies when a student fails a POST mandated test. Additionally, the Basic Training Bureau has experienced situations where presenters

have administered POST mandated tests that resulted in numerous student initial test and retest failures.

Therefore, POST staff recommends updating Commission Procedure D-1 requiring presenters to notify a student's employing agency following an initial test failure. This will allow the employing agency the opportunity to provide counseling to the student prior to the presenter administering the retest.

It is also recommended that presenters be required to notify the Basic Training Bureau when 15% or more of the students attending the course fail any POST-required scenario or exercise test, to include both initial test(s) and retest(s). In addition, the notification shall be made within 24 hours of the failure(s). Test failures of 15% or more shall be based on the total class size at the time of test administration.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments to the regulations will add clarity to testing and notification requirements to basic course presenters, which will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the state's environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

POST has determined that these proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, POST has concluded that these are the only regulations that concern testing and notification requirements for basic course presenters.

FORMS INCORPORATED BY REFERENCE

There are no forms incorporated by reference.

ADOPTION OF PROPOSED REGULATIONS

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should

be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

ESTIMATE OF ECONOMIC IMPACT

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

Non-Discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Costs to Any Local Agency or School District for Which Government Code sections 17500-17630 Requires Reimbursement: None.

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses: POST has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: POST has found that the proposed language will not affect small businesses because the amended language addresses the update to Basic Course test failure notification requirements.

Additionally, the Commission's main function to select and maintain training standards for law enforcement has no effect financially on small businesses.

Effect on Housing Costs: POST has made an initial determination that the proposed regulation would have no effect on housing costs.

**RESULTS OF ECONOMIC
IMPACT ASSESSMENT
per Gov. Code section 11346.3(b)**

The adoption of the proposed amendments of regulations 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.

The benefits of the proposed amendments of regulations to the regulations will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the state's environment.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to Anita Finner, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-3901. General questions regarding the regulatory process may be directed to Katie Strickland at (916) 227-2802.

TEXT OF PROPOSAL

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630. These documents are also located on the POST Website at <https://post.ca.gov/Regulatory-Actions>.

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named above.

To request a copy of the Final Statement of Reasons once it has been approved, submit a written request to the contact person(s) named above.

TITLE 11. DEPARTMENT OF JUSTICE

The Department of Justice (Department) proposes to amend sections §§999.224-999.229 of Title 11,

Division 1, Chapter 19, of the California Code of Regulations (CCR) concerning California's Racial and Identity Profiling Act of 2015 (Act or AB 953).

PUBLIC HEARINGS

The Department will hold a virtual public hearing to provide all interested persons with an opportunity to present statements or comments, either orally or in writing, with respect to the proposed regulations, as follows:

First hearing:

Friday, August 20, 2021
12:00 p.m. — 2:00 p.m. PST
Online via BlueJeans
<https://bluejeans.com/564571798/8333>
(Join from computer or phone)

(NOTE: You will be prompted to join via the BlueJeans app if you have it installed. You may also join via your browser without installing the app.)

OR
Dial: (408) 317-9254
Meeting ID: 564 571 798

Second hearing:

Wednesday, September 1, 2021
6:00 p.m. — 8:00 p.m. PST
Online via BlueJeans
<https://bluejeans.com/564571798/8333>
(Join from computer or phone)

(NOTE: You will be prompted to join via the BlueJeans app if you have it installed. You may also join via your browser without installing the app.)

OR
Dial: (408) 317-9254
Meeting ID: 564 571 798

At the hearings, any person may present statements or comments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral statements or comments at the hearing also submit a written copy of the comments made at the hearing.

A person may make a request for a reasonable accommodation, pursuant to the Americans with Disabilities Act, to the Contact Person listed below.

WRITTEN COMMENT PERIOD

Any interested party, or their duly authorized representative, may submit written comments relevant to the proposed regulatory action to the Contact Person listed below. The written comment period closes on September 3, 2021. The Department will consider only comments received by that time. Please address comments to:

Tanya Koshy
Deputy Attorney General
Civil Rights Enforcement Section
California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612
Phone: (510) 897-1983
Fax: (213) 897-7605
Email: Tanya.Koshy@doj.ca.gov

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

AUTHORITY AND REFERENCE

Government Code section 12525.5, subdivision (e) authorizes the Department to adopt these regulations which implement, interpret, and make specific the provisions of Government Code section 12525.5.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Summary of Existing Laws and Regulations

Assembly Bill 953 (AB 953), or California’s Racial and Identity Profiling Act of 2015 (RIPA), took effect on January 1, 2016.

AB 953 enacted multiple provisions to uncover and address the unlawful practice of racial and identity profiling. Among other things, AB 953 enacted Government Code section 12525.5, which requires state and local law enforcement agencies (LEAs), as specified, to collect detailed data regarding stops of individuals, including perceived demographic information on the person stopped. Government Code section 12525.5, subdivision (g)(2) defines “stops” to mean “any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person’s body or property in the person’s possession or control.”

Government Code section 12525.5, subdivision (b) provides a non-exclusive list of the information that must be reported for each stop:

The reporting shall include, at a minimum, the following information for each stop:

- (1) The time, date, and location of the stop.
- (2) The reason for the stop.
- (3) The result of the stop, such as, no action, warning, citation, property seizure, or arrest.
- (4) If a warning or citation was issued, the warning provided or violation cited.
- (5) If an arrest was made, the offense charged.
- (6) The perceived race or ethnicity, gender, and approximate age of the person stopped, provided that the identification of these characteristics shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped. For motor vehicle stops, this paragraph only applies to the driver, unless any actions specified under paragraph (7) apply in relation to a passenger, in which case the characteristics specified in this paragraph shall also be reported for him or her.
- (7) Actions taken by the peace officer during the stop, including, but not limited to, the following:
 - (A) Whether the peace officer asked for consent to search the person, and, if so, whether consent was provided.
 - (B) Whether the peace officer searched the person or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any.

Finally, Government Code section 12525.5, subdivision (e) requires LEAs to report this data to the California Attorney General, whose duty is to issue regulations regarding this data collection and submission.

On November 7, 2017, the Attorney General issued regulations, which set forth additional information required to be reported by officers, definitions of terms used in the regulations, and specific guidance regarding the reporting required under Government Code section 12525.5, subdivision (b).

Effect of the Proposed Rulemaking

This proposed action builds on the 2017 regulations by adding new and revising existing data elements, adding new and revising existing data values, and clarifying existing reporting requirements in various ways.¹ As examples, the proposed amendments include the addition of two new data elements, Person

¹Data elements are the categories of information (such as the Perceived Race or Ethnicity of the Person Stopped) that an officer must collect for each stop (Cal. Code Regs., tit. 11, § 999.224(a)(4).) Data values are the components or characteristics of each data element, such as the “Asian” or “Hispanic/Latino(a)” under the data element, Perceived Race or Ethnicity of the Person Stopped. (*Id.* § 999.224(a)(5).)

Stopped Perceived to be Unhoused and Stop Made During the Course of Performing a Welfare Check or an Officer's Community Caretaking Function. These data elements provide additional context to the stops. The Department also proposes adding data values to existing data elements so that officers can report their stops more accurately. These various proposals streamline the officers' reporting obligations, make those obligations clearer, and provide additional context and information to improve the data analysis conducted by the Racial and Identity Profiling Advisory Board ("the Board").

The proposed action would also permit reporting agencies to disclose their stop data, on a confidential basis, for the purposes of advancing public policy, scientific study, or analysis of the data for use by the agency itself. This would incentivize agencies to address any disparities that are uncovered from those analyses.

Finally, the proposed action eases various administrative burdens on the Department. For example, the Department proposes agencies attest, by submitting a stop data entry, that they are ensuring that neither personally identifiable information nor any other information that is exempt from disclosure is included in the entry.

Anticipated Benefits of Proposed Regulations

The California Legislature, in its findings regarding RIPA's amendments to California's prohibition on racial and identity profiling, set forth in Penal Code section 13519.4, succinctly explained the broad objectives of RIPA.

Specifically, the objectives of RIPA are: (1) to create the stop data reporting program that is the subject of these regulations (Gov. Code, § 12525.5); (2) to require the Department of Justice to receive and report on citizen complaints that allege racial or identity profiling, as part of its annual reporting on citizen complaints (Pen. Code, § 13012); and (3) to amend Penal Code section 13519.4 to expand the definition of racial and identity profiling and ensure that officers receive adequate training regarding how to recognize and prevent racial and identity profiling. As the Legislature explained, "racial or identity profiling alienates people from law enforcement, hinders community policing efforts, and causes law enforcement to lose credibility and trust among the people whom law enforcement is sworn to protect and serve." (Gov. Code, § 13519.4, subdivision (d)(3).)

RIPA expands the definition of racial or identity profiling², and specifically provides that the consideration of a person's personal characteristics cannot be a basis for deciding which persons to stop or how to treat a person who has been stopped. RIPA further identifies the types of activities that are subject to California's ban on racial and identity profiling, noting that "[these] activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest." (Pen. Code, § 13519.4, subdivision (e).)

The existing regulations, and the proposed amendments to those regulations, advance RIPA's objectives. Further, the benefits of the proposed amendments build off of the benefits of the existing regulations. The existing regulations implement Government Code section 12525.5, which provides LEAs, the Board, advocates, academics and other members of the community with the ability to analyze, stops by officers, as well as the actions taken during a stop, all of which can reveal whether racial or identity profiling exists. This data is essential to understanding whether there are biases (either implicit or explicit) in law enforcement activities and are an important first step in addressing these biases if they exist.

If disparities are apparent, LEAs, the Board, and researchers can determine why those disparities are occurring—whether they are attributed to a systemic problem or a small percentage of officers—what, if any part of those disparities can be explained by legitimate policing activities, and what can and should be done to address the disparities observed. Indeed, collecting stop data is not only invaluable to researchers and the public, but will also provide critical guidance to LEAs, particularly with respect to training of their officers, if this stop data suggests patterns of discriminatory treatment or biases.

Several amendments streamline the reporting process for officers by clarifying existing reporting obligations in the regulations. For example, the Department proposes defining terms referenced in existing regulations or revising existing definitions, such as "custodial settings," to make it easier for an officer to understand when they are required to report interactions and what types of information

²"Racial or identity profiling" is defined as "the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description." (Pen. Code, § 13519.4, subdivision (e).)

they are required to collect. As another example, the Department proposes adding examples describing scenarios where an officer would need to report, which would likewise help officers understand the scope of their reporting obligations.

Other proposed amendments would benefit LEAs, the Board, advocates, academics, the public, and other stakeholders by improving data analysis. The Board in particular benefits from all of these amendments because they would help it serve its function specified by law, including: “analyz[ing] the data[,]” producing “detailed findings on the past and current status of racial and identity profiling” in California, “mak[ing] policy recommendations for eliminating” profiling, and working with “state and local law enforcement agencies to review and analyze racial and identity profiling policies and practices across geographic areas in California.” (Pen. Code, § 13519.4, subdivision (j)(3).)

For example, the Department proposes adding a small number of data elements that officers are required to collect for each stop. One such proposed new data element is whether an officer perceived a stopped individual as unhoused. Adding this data element could reveal potential disparities in the demographics of the people stopped by officers, how these persons are treated during stops, and the outcomes of these stops. LEAs, the Board, researchers, and the public can use this and other data to determine why any disparities are occurring.

Other proposals would fill in gaps in the data collection by adding data values from which officers can choose when collecting information on each data element. For example, the Department proposes adding several data values under the Actions Taken by Officer During Stop data element (including whether the officer asked for the person’s supervision status or conducted a pat search), which provides more context to the stop and improves data analysis.

Comparable Federal Regulations

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

Determination of Inconsistency/Incompatibility with Existing State Regulations

Government Code section 11346.5(a)(3)(D) requires the Department of Justice to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. The Department has determined these proposed regulations are neither inconsistent nor incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations.

Other Statutory Requirements

Section 12525.5 requires the Attorney General to consult with a variety of stakeholders in drafting regulations implementing the Racial and Identity Profiling Act of 2015; these stakeholders include the Board, “federal, state, and local law enforcement agencies and community, professional, academic, research, and civil and human rights organizations.” (Gov. Code, § 12525.5, subdivision (e).)

Consistent with the Attorney General’s statutory obligations, the proposed amendments set forth in this proposed action are the result of informal and formal recommendations by, and consultation with, stakeholders. For example, the Department has informally collected feedback and commentary on the existing regulations from LEAs, since the time the Department began to train LEAs on their reporting requirements and the first wave of LEAs began to collect stop data. The Department has also evaluated the stop data entries submitted by LEAs and have identified revisions to the regulations that would improve consistency and accuracy of the data. The Department has also revisited commentary provided by the public and representatives from civil rights, community and social and criminal justice organizations during the rulemaking process for the existing regulations during 2016–2017.

Once the Department developed draft proposals, it sought feedback from a social psychologist with expertise and research interest in racial profiling, stereotyping, prejudice, and discrimination. The Department also solicited feedback from the Board’s Stop Data Analysis Subcommittee.³

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department of Justice has made the following initial determinations:

Mandate on local agencies or school districts: None.

AB 953 requires the Department of Justice to draft and issue regulations to implement the stop data reporting requirements of Government Code section 12525.5. The Legislative Counsel’s Digest of AB 953 notes that costs incurred by local agencies because of this state–mandated program are reimbursable:

By imposing a higher level of service on local entities that employ peace officers, the bill would impose a state–mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory

³The minutes from the Stop Data Analysis Subcommittee meeting can be found here: <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/mm-board-111220.pdf>.

provisions establish procedures for making that reimbursement.

(Legislative Counsel’s Digest, Assembly Bill No. 953, Stats. 2015, ch. 466, pp. 4153–4154.) Further, Section 5 of AB 953 provides: “If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.” (Stats. 2015, ch. 466, § 5, p. 4159.)

Accordingly, the costs incurred as a result of the proposed amendments to existing regulations are mandated by statute, and not created as a result of them.

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

Costs or savings to any state agency: None or negligible.

State agencies that are subject to reporting requirements (the Department of Justice, the California Highway Patrol, the University of California, the California State University, and California Community Colleges) and are already reporting stop data would incur negligible costs, if any, to modify existing stop data reporting systems. For any state agencies that are still developing their stop data collection systems, there would no costs to incorporating these amendments.

Other nondiscretionary costs of savings imposed on local agencies: None or negligible.

Local agencies that are subject to reporting requirements and are already reporting stop data would incur negligible costs, if any, to modify existing stop data reporting systems. For agencies that are still developing their stop data collection systems, there would no costs to incorporating these amendments.

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

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

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

Cost impacts on representative private person or businesses:

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

Small businesses determination:

The Department has determined that these proposed amendments may have a positive impact on some small businesses in the information technology sector.

Significant effect on housing costs: None.

Business reporting requirement: None.

The reporting requirements in the proposed amendments do not apply to businesses. Rather, only law enforcement agencies, as specified in Government Code section 12525.5 and the existing regulations, will be required to collect and report stop data to the Department.

Results of Economic Impact Analysis:

The Department concludes that it is unlikely the proposed amendments will (1) create or eliminate jobs in California, (2) create new businesses or eliminate existing businesses in California, or (3) result in the expansion of businesses currently doing business in California. The proposed amendments will not adversely impact the health and welfare of California residents, worker safety, nor the State’s environment.

Benefits of the proposed action: The proposed amendments benefit the public and California’s peace officers by strengthening the existing guidance on stop reporting requirements of RIPA. Reporting law enforcement contacts with individuals will provide law enforcement agencies, the public and researchers with the opportunity to uncover, address, and eradicate racial and identity profiling.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), 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, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The proposed amendments to the existing regulations impose no costs or requirements on private persons. As a result, there are no less burdensome or more cost-effective alternatives to these proposed amendments with respect to their impact on private persons, because these regulations will impose no costs on private persons.

The Department has determined that there are no reasonable alternatives to the proposed amendments that would be more effective in carrying out the intent of RIPA. Government Code section 12525.5 requires the Department to issue regulations for the collection and reporting of stop data, which must be reported to

the Department and analyzed by the Board. In order to ensure accurate and uniform reporting, the information collected must be uniform both in its categories of information collected and in the responses to these categories, in order for this information to be submitted electronically and for the data to be accessible to law enforcement agencies, the Board, researchers and the public, and so that meaningful review and analysis of this data is possible.

CONTACT PERSON

General or substantive comments concerning this proposed rulemaking, including requests for copies of documents associated with this action such as the text of the proposed amendments, initial statement of reasons, should be directed to:

Tanya Koshy
Deputy Attorney General
Civil Rights Enforcement Section
California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612
Phone: (510) 897-1983
Email: Tanya.Koshy@doj.ca.gov

In the event the Contact Person is unavailable, inquiries regarding this proposed rulemaking may be directed to the below backup Contact Person:

Anna Rick
Associate Governmental Program Analyst
Civil Rights Enforcement Section
California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612
Phone: (510) 897-3095
Email: AB953@doj.ca.gov

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

The Department of Justice will make copies of the following documents available on the Department of Justice's website at <https://oag.ca.gov/ab953/regulations>: this notice, the text of the proposed modified regulations, the initial statement of reasons, the economic and fiscal impact statement (STD 399) and attachment, and the notice of publication/regulations submission (STD 400). The entire rulemaking file is available for inspection and copying throughout the rulemaking process during business hours at the following locations:

California Office of the Attorney General
1515 Clay Street
Oakland, CA 94612

Copies of these documents are also available upon request by contacting Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Department of Justice may adopt the proposed amendments substantially as described in this notice. If the Department of Justice makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the proposed amendments, as revised. Copies of any modified text will be available on the Department of Justice's website at <https://oag.ca.gov/ab953/regulations>. Please send requests for copies of any modified regulations to Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person). The Department of Justice will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Tanya Koshy, Deputy Attorney General, at the contact information above (Contact Person), or by visiting the Department of Justice's website at: <https://oag.ca.gov/ab953/regulations>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice, the initial statement of reasons, and the text of the proposed modified regulations will be posted and available for downloading on the Department of Justice's website at: <https://oag.ca.gov/ab953/regulations>.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to

amend Sections 3000, 3043.8, 3045.1, 3323, 3336, 3338, 3341.9, 3375.3, 3375.4, 3375.5 into Title 15, Division 3, Chapter 1, regarding gassing, retention in restricted housing, manufacture of weapons, work groups, and definitions of regulatory terms.

PUBLIC COMMENT PERIOD

The public comment period begins **July 9, 2021** and closes on **August 25, 2021**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

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

CONTACT PERSONS

Primary Contact

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

Back-Up

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

Program Contact

Steve Jimenez
 Telephone: (916) 324-7956
 Division of Adult Institutions

AUTHORITY AND REFERENCE

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

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Aggravated battery by means of gassing is defined in California PC section 4501.1 as intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that result in actual contact with the skin or membranes to any non-inmate. The Department has not previously addressed the specific acts of aggravated battery by means of gassing or the act of battery on an inmate by means of gassing.

This action will:

- Establish and define the act of Aggravated Battery by Means of Gassing, pursuant to Penal Code section 4501.1, and establish the act of battery on an inmate by means of gassing.
- Clarify the definition of the term “Same and Similar Behavior” as it relates to serious misconduct which may mitigate or aggravate a Security Housing Unit (SHU) term.
- Remove outdated language pertaining to inmate assignments to work groups in specific circumstances.
- Establish and update existing language pertaining to the application of a determinate Segregated

Housing Unit (SHU) term assessment conducted by staff.

- Clarify and amend language pertaining to retaining an inmate in Administrative Segregation to ensure the inmate is afforded all procedural safeguards and due process rights.
- Clarify language to conform to the penal code and ensure consistency in the application of the points used to determine an inmate's classification score.

DOCUMENTS INCORPORATED BY REFERENCE

None.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department has determined the proposed regulations may have a positive impact on worker and inmate's safety by appropriately addressing sanctions for acts of battery by means of gassing against staff and inmates. The proposed regulations will also benefit inmates by ensuring procedural safeguards are addressed when circumstances for retention in segregated housing have changed.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code section 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the the regulatory provisions addressed by this rulemaking action.

LOCAL MANDATES

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

FISCAL IMPACT STATEMENT

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

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

EFFECT ON HOUSING COSTS

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

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

EFFECT ON SMALL BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on the state's environment. These regulations may benefit worker safety and the health and welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has

otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed during the written comment period or at a scheduled hearing should one be scheduled.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

**TITLE 16. ARCHITECTS BOARD/
LANDSCAPE ARCHITECTS TECHNICAL
COMMITTEE**

REQUIREMENTS FOR AN APPROVED
EXTENSION CERTIFICATE
PROGRAM, § 2620.5

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

PUBLIC HEARING

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

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than **5:00 p.m. on Tuesday, August 24, 2021**, or must be received by the Board at the hearing, should one be scheduled.

AVAILABILITY OF MODIFICATIONS

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

Authority and Reference: Pursuant to the authority vested by section 5630 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section 5650 and Government Code section 87100, the Board is considering changes to section 2620.5 of article 1 of division 26 of title 16 of the California Code of Regulations¹ (CCR).

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

INFORMATIVE DIGEST

BPC section 5630 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary to establish criteria for approving schools of landscape architecture and carry out the provisions under the Landscape Architects Practice Act (chapter 3.5 of division 3 of the BPC). As required by BPC section 5650, applicants for licensure as a landscape architect must demonstrate a total of six years of qualifying training and educational experience to establish eligibility. As provided in CCR section 2620, examination and licensure applicants are granted two years of educational experience for completion of an approved extension certificate program only or four years of educational experience for completion of an approved extension certificate and a degree which consists of a four-year curriculum. CCR section 2620.5 sets forth the requirements for an approved extension certificate program.

The Board is proposing the following changes:

- Amend CCR section 2620.5, subdivision (a) to make minor/technical revisions, correct a citation to the Education Code and require a program to provide instruction on current California statutes and regulations covering the environment, landscape architecture, and water conservation.
- Adopt CCR section 2620.5, subdivision (b) to establish an application process by which an extension certificate program can apply for Board approval.
- Adopt CCR section 2620.5, subdivision (c) to establish a criteria for Board designees that conduct a site inspection and/or review of an educational program seeking Board approval of the program's landscape architect extension certificate program, ensure that no Board designee has a current financial interest related to the recommendation of the extension certificate program, and authorize site visits to include meetings with the educational institutional administrator, the educational program director, faculty, students, and alumni.
- Adopt CCR section 2620.5, subdivision (d) to establish a process for Board designees to evaluate the educational program and make a recommendation to the Landscape Architects Technical Committee (LATC) regarding extension certificate approval of an educational program.
- Adopt CCR section 2620.5, subdivision (e) to establish a process by which LATC shall evaluate the educational program and make a recommendation to the Board regarding an

educational program's extension certificate approval.

- Adopt CCR section 2620.5, subdivision (f) to establish a process by which the Board shall review an LATC recommendation and make a determination regarding an educational program's extension certificate approval.
- Adopt CCR section 2620.5, subdivision (g) to establish a process by which the Board shall notify an education program of any actions taken regarding their extension certificate application.
- Adopt CCR section 2620.5, subdivision (h) to establish a process by which an educational program may appeal the Board's denial of their extension certificate application.
- Adopt CCR section 2620.5, subdivision (i) to specify that the Board approval period of any educational program shall be for a term of six years, unless otherwise specified.
- Adopt CCR section 2620.5, subdivision (j) to establish a process by which an educational program may apply for renewal of Board extension certificate approval.

POLICY STATEMENT OVERVIEW/
ANTICIPATED BENEFITS OF PROPOSAL

Protection of the public is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. By amending the requirements for extension certificate application, review, and approval, the proposal is expected to increase clarity of the requirements for educational programs interested in obtaining and maintaining Board extension certificate approval. These requirements for obtaining extension certificate approval will result in extension certificate programs that enhance landscape architecture student knowledge and practice preparedness and improve public protection.

CONSISTENCY AND COMPATIBILITY
WITH EXISTING STATE REGULATIONS

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: The Board will incur one-time costs of approximately \$1,570 to conduct an

8-hour site-inspection as part of the initial review and approval process.

There is currently one extension program located in Southern California, which is anticipated to seek approval. The Board will send an Associate Governmental Program Analyst (AGPA) to Los Angeles and conduct the inspection with two local subject matter experts with costs as follows:

- Inspection (*AGPA 8 hours @ \$ 103 per hour) \$ 824
- Travel (1 day — airline, car rental, & per diem) \$ 346
- Two Subject Matter Experts — \$ 200 per day each) \$ 400

Total Costs: \$1,570

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal clarifies the current requirements for an educational program to obtain Board extension certificate approval by adding appropriate application, review, and appeal deadlines and increases transparency of the extension certificate approval process for the benefit of the educational programs and students.

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will not have an effect on small business as it only revises the existing extension certificate approval process. If a small business applies to the Board for extension certificate approval, it would incur application preparation costs that are not increased by this proposal. The proposal would benefit the small business by clarifying the application, renewal, and appeal deadlines.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

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

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents by enhancing the knowledge of extension certificate program students, making those students better prepared for the practice of landscape architecture. This regulatory proposal is not anticipated to benefit worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

Set forth are the alternatives that were considered and the reason the alternatives were rejected:

One option was to keep the status quo. The Board rejected this option as the requirements for an approved extension certificate program would remain unclear and the following issues must be addressed in regulation: 1) program approval as well as expiration, renewal, and extensions of said approval; 2) program denial and appeal of said denial; 3) the process to conduct site reviews; and 4) the information that shall be provided by the extension certificate program to evaluate the program's compliance with this regulation.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2420 Del Paso Road, Suite 105, Sacramento, California 95834.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the California Architects Board, Landscape Architects Technical Committee at 2420 Del Paso Road, Suite 105, Sacramento, California 95834 or by telephoning the Contact Person listed below.

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

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

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

CONTACT PERSON

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

Name: Kourtney Nation
 Address: 2420 Del Paso Road,
 Suite 105
 Sacramento, CA 95834
 Telephone Number: (916) 575-7237
 Fax Number: (916) 575-7283
 E-Mail Address: kourtney.nation@dca.ca.gov

The backup contact person is:

Name: Trish Rodriguez
 Address: 2420 Del Paso Road,
 Suite 105
 Sacramento, CA 95834
 Telephone Number: (916) 575-7231
 Fax Number: (916) 575-7283
 E-Mail Address: latc@dca.ca.gov

Website Access: Materials regarding this proposal can be found at https://latc.ca.gov/news/laws/proposed_regulation.shtml.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT
 CONSISTENCY DETERMINATION
 NUMBER 2080-2021-005-05

Project: The Selected Remedy at the Casmalia Resources Superfund Site
Location: Santa Barbara County
Applicant: United States Environmental Protection Agency

Background

United States Environmental Protection Agency (EPA) will authorize and oversee remediation activities at the Casmalia Resources Superfund Site, an inactive, 252-acre, Class I hazardous waste management facility that is located west of the City of Santa Maria in northern Santa Barbara County. The Selected Remedy at the Casmalia Resources Superfund Site (Project) includes five distinct areas for remediation (Figure 1):

- Area 1 — Capped Landfills, Burial Trench Area, and Central Drainage Area
- Area 2 — Resource Conservation and Recovery Act (RCRA) Canyon and West Canyon Spray Area
- Area 3 — Former Ponds and Pads Area
- Area 4 — Stormwater Ponds and Treated Liquids Impoundments
- Area 5 — Zone 1 Groundwater (subsurface)

EPA has adopted a multi-phased approach to implementation of the selected remedial action. Design and construction of remedy components will proceed concurrently as separate phases along parallel path timelines. The design and construction of the Project will take place in seven different phases, with construction under the first phase scheduled to begin in the summer of 2021. The EPA estimates design and construction of the Project will be completed over a period of approximately 6 to 7 years, depending on scheduling of specific work activities. Each phase will include Casmalia Steering Committee submittal of multiple remedial design related documents, including work plans, pre-design documents, and draft and final engineering design documents.

Phases 1-5 include engineered components of the selected Project containment and treatment remedy. Phase 6 will address habitat mitigation projects,

including planning, design, and construction of new wetland ponds, and occur concurrent to phases 1–5. Phase 7 will include ongoing site maintenance, and monitoring activities, which will take place concurrently to Phases 1–6 and continue after construction is complete.

- Phase 1: Grading, capping, Non–Aqueous Phase Liquid (NAPL) well installation, and monitoring well installation
- Phase 2: Runoff Control Facility Pond closure, and Pond 13 conversion to retention basin, and monitoring well installation
- Phase 3: RCRA Canyon/West Canyon Spray Area capping
- Phase 4: Pond 18 closure, Pond A–5 conversion to retention basin, and PCB landfill capping
- Phase 5: A–Series pond closure and conversion to evaporation pond(s), liquid treatment plant upgrade and hotspot remediation
- Phase 6: Habitat mitigation projects
- Phase 7: Ongoing Operations, Maintenance, and Monitoring Activities

The Project activities described above are expected to incidentally take¹ California tiger salamander (*Ambystoma californiense*) (Covered Species) within the West Santa Maria/Orcutt Distinct Population Segment of Santa Barbara County. In particular, California tiger salamander could be incidentally taken as ground disturbing activities could affect the Covered Species by crushing or burying individuals during grading, compaction, and capping activities. Burrow excavation may result in the injury or mortality of Covered Species sheltering in burrows. Equipment access and foot traffic may result in mortality or injury to Covered Species individuals by vehicle strikes or trampling. Closure and conversion of onsite ponds will result in the loss of aquatic breeding and nonbreeding habitat that could provide water and moisture for overwintering and/or breeding covered species. Noise or vibration generated by construction equipment may result in disruption of normal sheltering and feeding behavioral patterns of the covered species. This disruption could cause individuals to leave or avoid suitable habitat and may increase the potential for predation, desiccation, competition for food and shelter, or strike by vehicles. Capture and relocation of covered species may cause injury or mortality

during capture and relocation activities as a result of improper handling, containment, transport, or release into unsuitable habitat.

Covered Species is designated as an endangered species pursuant to the Federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

Covered Species individuals are documented as present at the Project site and there is suitable Covered Species habitat within and adjacent to the Project site. Because the Project has the potential to result in a reduction in reproduction, has a potential to contribute to the loss of individual Covered Species, and the project includes the removal of treatment ponds that may function as marginal aquatic habitat, the United States Fish & Wildlife Service (Service) determined that Covered Species is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of Covered Species.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the EPA consulted with the Service as required by the ESA. On June 04, 2021, the Service issued a Biological and Conference Opinion (Service file No. 08EVEN00–2021–F–0137) (BO) to the EPA. The BO describes the Project, requires the EPA to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

The Service anticipates that some individuals of the Covered Species could be taken as a result of the Project. The Service cannot quantify the precise number of Covered Species that may be taken as a result of the Project because Covered Species move over time; for example, animals may have entered or departed the action area since the time of preconstruction surveys. Other individuals may not be detected due to their cryptic nature, small size, and low mobility. The Environmental Baseline and Effects Analysis sections of the Biological and Conference Opinion indicates that adverse effects to Covered Species will likely be low given the nature of the Project activities, and, therefore, the Service anticipates that take of Covered Species will also be low. The Service also recognizes that for every Covered Species found dead or injured, other individuals may be killed or injured that are not detected.

For estimating the number of Covered Species that will be taken by capture, the Service did not predict how many may be encountered as individuals may not be detected due to their cryptic nature, small size, and low mobility. The Service anticipates that the Covered Species presence may increase over time

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

as the mitigation ponds are constructed and become populated with the species. For this reason, the Service anticipates that the number of individuals of the Covered Species captured and relocated may increase over time, and this would be a positive indication of the local population health. While the benefits of relocation (i.e., minimizing mortality) outweigh the risk of capture, the Service must provide a limit for take to ensure injury or death from these activities is commensurate with what was analyzed in the effects analysis of the Biological and Conference Opinion. For take due to capture, the Service anticipates that all Covered Species found within the construction footprint will be captured, and that some injury or mortality will occur as a result of unpredictable circumstances. Because the Service is unable to reasonably anticipate the actual number of Covered Species that will be captured, the Service is using injury or mortality during capture as a measure of anticipated take.

Therefore, the Biological and Conference Opinion states that under the following circumstances the EPA must contact the Service immediately to reinstate formal consultation:

- If 4 Covered Species adults or juveniles are found dead or wounded during the phases of construction;
- If 2 Covered Species adults or juveniles during any given year are found dead or wounded during post-construction operations, maintenance, and monitoring activities;
- If more than 4 percent of captured Covered Species larvae are killed or wounded per sampling or relocation event; or,
- If 2 Covered Species adults or juveniles are killed or wounded during all capture and relocation efforts.

The ITS also requires the EPA to implement and adhere to measures contained within the Project Biological Assessment (BA).

On June 7, 2021, the Director of the Department of Fish and Wildlife (CDFW) received a notice from the EPA requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and its associated BO are consistent with CESA for purposes of the Project and the Covered Species. (Cal. Reg. Notice Register 2021, No. 25-Z, p. 801.)

Determination

CDFW has determined that the ITS and its associated BO are consistent with CESA as to the Project and Covered Species because the mitigation measures contained in the ITS and its associated BO, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically,

CDFW finds that: (1) take of Covered Species will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS and its associated BO, will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of the Covered Species. The mitigation measures in the ITS and its associated BO include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) *Habitat Mitigation Ponds Construction.* The Project includes the creation of three habitat mitigation ponds that may function as breeding habitat in the action area, a one-time fixed payment for a breeding pond construction offsite, and revegetating disturbed areas on Site with appropriate native vegetation, which will benefit recovery.
- 2) *GUAD-4R Pond Financial Contribution.* The EPA will provide a one-time fixed financial contribution of \$231,500 (\$199,500 towards construction plus a \$32,000 endowment to support the long-term operation and maintenance), to the Santa Barbara County Land Trust to fund construction and maintenance of a new off-site pond on the Betteravia Farms property. Betteravia Farms is located approximately 2 miles northwest of the Site. The pond (GUAD-4R) will be 0.84 acres, and it has the potential to be California tiger salamander and western spadefoot breeding habitat.
- 3) *Casmalia Creek Cattle Exclusion Fencing.* The EPA will place cattle fencing along Casmalia Creek to protect the creek and immediate surrounding area to facilitate restoration of streambank habitat. Casmalia Creek borders the Site to the west (Figure 1). Casmalia Creek offers suitable habitat for California red-legged frog and western spadefoot. Cattle fencing will be installed along a 1,000-foot long segment of Casmalia Creek and surround an approximately 1,000-foot by 250-foot area. Per the EPA and Service agreement, a maximum of 2,500 feet of cattle fencing will be installed to protect the stream segment from impacts associated with grazing cattle. The exact location of the fencing will be determined during the mitigation project planning and design phase. The EPA will work with the Service and CDFW to develop a mitigation plan that will prescribe the necessary measures to account for the long-term operations and maintenance of the cattle fencing.

- 4) *Area Work Plans.* The EPA will coordinate with the Casmalia Steering Committee, Service, and CDFW to develop a list of acceptable minimization measures for each major element of work. The Casmalia Steering Committee will develop work plans for each major work element. Each individual work plan will specify the most appropriate minimization measures from a pick list for the specific activities in each phase of the Selected Remedy. The individual work plans will provide additional details on the implementation of each minimization measure selected. EPA will coordinate with the Service and CDFW for review and comment on each work plan. The pick list options include bullets 5–33 below.
- 5) *Biological Monitor.* The EPA will request Service and CDFW approval (Service–approved) of any biologist it wishes to employ as a Service–approved biologist at least 30 days prior to the start of any activities. In the request, the EPA will include the names of the biologist(s), qualifications, references, for which species the biologist(s) is requesting authorization to monitor, and what monitoring activities the biologist(s) will complete.
- 6) *Seasonal Avoidance.* The EPA will schedule project activities to minimize adverse effects to the Covered Species and their habitat. Disturbance to upland habitat will be confined to the dry season, generally May 1 through October 31 (or the first measurable fall rain of 1” or greater) because that is the time period when the Covered Species are less likely to be moving through upland areas. However, if seasonal avoidance is not possible, grading, and other disturbance in pools and ponds will occur only when they are dry, typically between July 15 and October 31. Work within a pool or wetland may begin prior to July 15 if the pool or wetland has been dry for a minimum of 30 days prior to initiating work.
- 7) *Rain Event Limitations.* No construction activities will occur during rain events or within 24 hours following a rain event. Prior to construction activities resuming, a Service–approved biologist will inspect the project area and all equipment/materials for the presence of Covered Species. Construction may continue 24 hours after the rain ceases if no precipitation is forecasted within 24 hours. If rain exceeds 0.5 inches during a 24–hour period, work will cease until no further rain is forecasted. The Service may approve modifications to this timing on a case–by–case basis.
- 8) *Pre–construction Survey.* No more than 24 hours prior to the date of initial ground disturbance and vegetation clearing, a Service–approved biologist with experience in the identification of all life stages of the Covered Species will conduct a pre–construction survey at the project site. The survey will consist of walking the project limits and within the project site to determine possible presence of the species. The Service–approved biologist will investigate all areas that could be used by Covered Species for feeding, breeding, sheltering, movement, and other essential behaviors, such as small woody debris, refuse, burrows, etc.
- 9) *Daily Clearance Surveys.* The Service–approved biologist(s) will conduct clearance surveys at the beginning of each day and regularly throughout the workday when activities that may result in take of a Covered Species are occurring. In general, activities to be performed by a Service–approved biologist(s) are limited once the area of interest is cleared of species, exclusion fencing has been erected, and the area inside the fencing has been surveyed as described in measures 6 and 7. Upon completion of initial clearance, Service–approved individual(s) will periodically (minimum twice per week) visit the site throughout the construction period. During periods of rain or heavy fog/dew, the Service–approved individual(s) will conduct daily pre–activity surveys to ensure that no Covered Species have migrated into the work area. No construction work will be initiated until the Service–approved individual(s) determines that the work area is clear of special Covered Species.
- 10) *Environmentally Sensitive Areas.* Prior to the start of construction, Environmentally Sensitive Areas (ESAs) — defined as areas containing sensitive habitats adjacent to or within construction work areas for which physical disturbance is not allowed — will be clearly delineated using high visibility orange fencing. The ESA fencing will remain in place throughout the duration of the Project, while construction activities are ongoing, and will be regularly inspected and fully maintained at all times. The final project plans will depict all locations where ESA fencing will be installed and will provide installation specifications.
- 11) *Wildlife Exclusion Fencing.* Prior to the start of construction, Wildlife Exclusion Fencing (WEF) will be installed at the edge of the project footprint in all areas where Covered Species could enter the construction area. The onsite Project Manager and the Service–approved biologist will determine the location of the fencing prior to the start of staging or surface–disturbing activities.

- 12) *Entrapment Prevention*. To prevent inadvertent entrapment of animals during construction, all excavated, steep-walled holes or trenches more than 6 inches deep will be covered with plywood or similar materials at the close of each working day or provided with one or more escape ramps constructed of earth fill or wooden planks. The Service-approved biologist will inspect all holes and trenches at the beginning of each workday and before such holes or trenches are filled. All replacement pipes, culverts, or similar structures stored in the Action Area overnight will be inspected before they are subsequently moved, capped, and/or buried. If at any time a Covered Species is discovered, the onsite Project Manager and Service-approved biologist will be notified immediately, and the Service-approved biologist will implement the species observation and handling protocol. If handling is necessary, work will be suspended until the appropriate level of coordination is complete.
- 13) *Entrapment Prevention*. To prevent inadvertent entrapment of animals during construction, all excavated, steep-walled holes or trenches more than 6 inches deep will be covered with plywood or similar materials at the close of each working day or provided with one or more escape ramps constructed of earth fill or wooden planks. The Service-approved biologist will inspect all holes and trenches at the beginning of each workday and before such holes or trenches are filled. All replacement pipes, culverts, or similar structures stored in the Action Area overnight will be inspected before they are subsequently moved, capped, and/or buried. If at any time a Covered Species is discovered, the onsite Project Manager and Service-approved biologist will be notified immediately, and the Service-approved biologist will implement the species observation and handling protocol. If handling is necessary, work will be suspended until the appropriate level of coordination is complete.
- 14) *Encounters with Species*. Each encounter with a Covered Species will be treated on a case-by-case basis. If any life stage of a Covered Species is found and these individuals may be killed or injured by work activities, the following will apply:
- a. If Covered Species are detected in the Action Area, work activities within 50 feet of the individual that may result in the harm, injury, or death to the animal will cease immediately and the onsite Project Manager and Service-approved biologist will be notified. Based on the professional judgment of the Service-approved biologist, if project activities can be conducted without harming or injuring the animal, it may be left at the location of discovery and monitored by the Service-approved biologist. All project personnel will be notified of the finding and at no time will work occur within 50 feet of a Covered Species without a Service-approved biologist present.
 - b. To the maximum extent possible, contact with the individual Covered Species will be avoided and it will be allowed to move out of the hazardous situation of its own volition. This procedure applies to situations where a Covered Species is encountered while it is moving to another location. It does not apply to animals that are otherwise exposed or in areas where there is not sufficient adjacent habitat to support the species if the individual moves away from the hazardous location. Such individuals must be relocated per measure 15 below.
- 15) *Species Observations and Handling Protocol*. If a Covered Species does not leave the work area, the Service-approved biologist will implement the species observation and handling protocol outlined below. Only Service-approved biologists will participate in activities associated with the capture, handling, relocation, and monitoring of Covered Species.
- 16) *Environmental Awareness Training*. Prior to the start of construction, a Service-approved biologist with experience in the ecology of the Covered Species as well as the identification of all its life stages will conduct a training program for all construction personnel including contractors and subcontractors. Interpretation for non-English speaking workers will be provided. All construction personnel will be provided a fact sheet conveying this information. The same instruction will be provided to any new workers before they are authorized to perform project work.
- 17) *Disease Prevention and Decontamination Procedures*. To ensure that diseases are not conveyed between work sites by the Service-approved biologist, the fieldwork code of practice developed by the Declining Amphibian Populations Task Force will be followed at all times.
- 18) *Pump Screens*. If a water body is to be temporarily dewatered by pumping, intakes will be completely screened with wire mesh not larger than 5 millimeters and the intake will be placed within a perforated bucket or other

- method to attenuate suction to prevent Covered Species from entering the pump system. Pumped water will be managed in a manner that does not degrade water quality and upon completion be released back into the water body, or at an appropriate location in a manner that does not cause erosion. No re-watering of the water body is necessary if sufficient surface or subsurface flow exists to fill it within a few days, or if work is completed during the time of year the water body will have dried naturally. To avoid effects to eggs and larvae, work within seasonal ponds will be conducted when the pond has been dry naturally for at least 30 days.
- 19) *Hand Clearing Vegetation.* Vegetation will be cleared by hand in areas where Covered Species are suspected to occur. This minimization measure is only warranted for work occurring within and immediately adjacent to pond features. All cleared vegetation will be removed from the project footprint to prevent attracting animals to the project site. A Service-approved biologist(s) will be present during all vegetation clearing and grubbing activities. Prior to vegetation removal, the Service-approved biologist(s) will thoroughly survey the area for Covered Species. Once the Service-approved biologist(s) has thoroughly surveyed the area, clearing and grubbing may continue without further restrictions on equipment; however, Service-approved biologist(s) will remain onsite to monitor for Covered Species until all clearing and grubbing activities are complete.
 - 20) *Wildlife Passage for Road Improvement.* When constructing a road improvement, wherever possible, enhance or establish wildlife passage for the Covered Species across roads, highways, or other anthropogenic barriers. This includes upland culverts, tunnels, and other crossings designed specifically for wildlife movement, as well as making accommodations in curbs, median barriers, and other impediments to terrestrial wildlife movement at locations most likely beneficial to the Covered Species.
 - 21) *Accidental Spills, SWPPP, Erosion Control, and BMPs.* Prior to the onset of work, a plan will be in place for prompt and effective response to any accidental spills. All workers will be informed of the importance of preventing spills and of the appropriate measures to implement if a spill occurs. Storm-water pollution prevention plans (SWPPP) and erosion control best management practices (BMPs) will be developed and implemented to minimize any wind- or water-related erosion. These provisions will be included in construction contracts for measures to protect sensitive areas and prevent and minimize stormwater and non-storm-water discharges.
 - 22) *Site Restrictions.* The following site restrictions will be implemented to avoid or minimize effects on the listed species and its habitat:
 - a. A speed limit of 15 miles per hour (mph) in the project footprint in unpaved areas will be enforced to reduce dust and excessive soil disturbance.
 - b. Construction and ground disturbance will occur only during daytime hours and will cease no less than 30 minutes before sunset and may not begin again earlier than 30 minutes after sunrise.
 - c. Except when necessary for driver or pedestrian safety artificial lighting at a project site will be prohibited during the hours of darkness.
 - d. Routes and boundaries of roadwork will be clearly marked prior to initiating construction or grading.
 - e. Any borrow material will be certified to be non-toxic and weed free.
 - f. All food and food-related trash items will be enclosed in sealed trash containers and properly disposed of offsite.
 - g. No pets will be allowed anywhere in the Action Area during construction.
 - 23) *Suitable Erosion Control Materials.* To prevent Covered Species from becoming entangled, trapped, or injured, erosion control materials that use plastic or synthetic monofilament netting will not be used within the Action Area. This includes products that use photodegradable or biodegradable synthetic netting, which can take several months to decompose. Acceptable materials include natural fibers such as jute, coconut, twine or other similar fibers. Following site restoration, erosion control materials, such as straw wattles, will not block movement of the Covered Species.
 - 24) *Limitation on Insecticide/Herbicide Use.* Insecticides or herbicides will not be applied at the project site during construction where there is the potential for these chemical agents to enter creeks, streams, water bodies, or uplands that contain habitat for the Covered Species.
 - 25) *Limitation on Rodenticide Use.* No rodenticides will be used at the project site during construction or long-term operational maintenance in areas that support suitable upland habitat for the Covered Species.

- 26) *Invasive Non-Native Plant Species Prevention.* The Service-approved biologist will ensure that the spread or introduction of invasive non-native plant species, via introduction by arriving vehicles, equipment, imported gravel, and other materials, will be avoided to the maximum extent possible. When practicable, invasive non-native plants in the Project area will be removed and properly disposed of in a manner that will not promote their spread. Areas subject to invasive non-native weed removal or disturbance will be replanted with appropriate mix of fast-growing native species. Invasive non-native plant species include those identified in the California Invasive Plant Council's (Cal-IPC) Inventory Database, accessible at: www.cal-ipc.org/ip/inventory/index.php.
- 27) *Removal of Diversion and Barriers to Flow.* Upon completion of construction activities, any diversions or barriers to flow will be removed in a manner that will allow flow to resume with the least disturbance to the substrate. Alteration of creek beds will be minimized to the maximum extent possible; any imported material will be removed from stream beds upon completion of the project.
- 28) *Invasive Animal Species.* Service-approved biologists will permanently remove, from within the Project area, any individuals of non-native species, such as bullfrogs (*Rana catesbeiana*), crayfish, and centrarchid fishes, to the maximum extent possible. These are expected to most likely occur near or around pond features. The work party conducting work under EPA direction is responsible for ensuring that these activities are in compliance with the California Fish and Game Code. No conversion of seasonal breeding aquatic habitat to perennial aquatic breeding habitat is allowed under this Biological and Conference Opinion. Creating new perennial water bodies in the vicinity of Covered Species populations where the ponds could be colonized by predators will also be avoided. Larval mosquito abatement efforts will be avoided in occupied breeding habitat for the Covered Species at the site.
- 29) *Restore Contours of Temporarily Disturbed Areas.* Habitat contours will be returned to their original configuration at the end of project activities in all areas that have been temporarily disturbed by activities associated with the project, unless the work party conducting work under EPA direction and the Service determine that it is not feasible or modification of original contours will benefit the Covered Species.
- 30) *Use of Native Plants for Revegetation.* Plants used in revegetation will consist of native riparian, wetland, and upland vegetation suitable for the area. Locally collected plant materials will be used. This measure will be implemented in all areas disturbed by activities associated with the project, unless the work party conducting work under EPA direction and the Service determine that it is not feasible or practical.
- 31) *Practices to Prevent Pathogen Contamination in Revegetation and Restoration.* The work party conducting work under EPA direction will refer to the Working Group for Phytophthora in Native Habitats restoration design considerations and practices to help prevent pathogen contamination in revegetation and restoration in order to address the risk of introduction and spread of Phytophthora and other plant pathogens in site plantings.
- 32) *Pre-Construction Burrow Surveys.* Rodent burrows will be avoided to the maximum extent possible. Burrows that cannot be avoided and fall within the project right-of-way, but not subject to ground disturbing activities (e.g., grading, disking, excavating, etc.) should be protected using steel plates or plywood to avoid collapsing the burrows. Plates and plywood should only be used on burrows that may be run over by equipment. Plates and plywood will not be left in place when a significant rain event is forecasted within 24 hours or if work is scheduled to cease for 3 consecutive days during the rainy season. Burrow excavation should only occur on burrows that are located within areas that are subject to ground disturbing activities. The work party conducting work under EPA direction will retain Service-approved biologist(s) to oversee burrow excavation. The biologist(s) will be allowed sufficient time to excavate burrows and relocate special status species to a suitable relocation site. Burrow excavation may be performed using hand tools or via gentle excavation using construction equipment, under the direct supervision of a Service-approved biologist(s), until it is certain that the burrows are unoccupied, or the burrow occupant navigates to areas that are not subject to ground disturbing activities.
- 33) *Species-Specific Conservation Strategies.* The Service has an existing conservation strategy for Santa Barbara Distinct Population Segment of the California tiger salamander. The strategy provides guidance when assessing land use and project development impacts and works to strategically identify our preferred approaches to offset unavoidable impacts through compensatory

mitigation. The EPA is proposing compensatory mitigation, in accordance with the conservation strategy, to offset the loss in reproductive value resulting from project impacts.

Monitoring and Reporting Measures

- 1) Any Covered Species observation data should be reported to the California Natural Diversity Database within 10 days.
- 2) A Service and CDFW approved biologist(s) (Service-approved) will be onsite during all activities that may result in take of a Covered Species.
- 3) The EPA must report the progress of the action and its impact on the Covered Species to the Service as specified in the ITS and its associated BO. The EPA will provide a written report no more than 90 days after each Selected Remedy work phase is completed. This reporting is not in lieu of reporting required immediately upon the take of Covered Species as described in the Disposition of Dead or Injured Specimens section below. Each report should at a minimum include the following:
 1. The type of activities that occurred in the action area (e.g., construction activities, monitoring, surveying, etc.)
 2. The location of these activities.
 3. Description of the habitat in which these activities occurred.
 4. The number of Covered Species captured and relocated.
 5. The locations from which Covered Species were moved and where they were relocated to.
 6. The results of any surveys conducted for any Covered Species.
 7. An analysis of the effectiveness of the avoidance and minimization measures and recommendations for future measures.
 8. Any other pertinent information.

The ITS and its associated BO require the EPA to submit monitoring reports to the Service no more than 90 days after each Project work phase is completed. Although not a condition of the ITS and its associated BO, CDFW requests a copy of the monitoring reports as well. The reports should include dates construction occurred and the success of revegetation and restoration.

Financial Security

EPA has ensured that there will be adequate funding for the mitigation measures. See April 6, 2021, letter from Edwin Poalinelli, Section Manager of the United States Environmental Protection Agency’s Superfund and Emergency Management Division, to Erinn

Wilson, Environmental Program Manager of the California Department of Fish and Wildlife, South Coast Region (Attachment 1). Funding for the remedy, including the mitigation measures, has been deposited into the Escrow Account that is currently valued in excess of \$122 million.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of the Covered Species, provided the EPA implements the Project as described in the ITS and its associated BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and its associated BO. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the ITS or its associated BO, the EPA shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & Game Code, §§ 2080.1, 2081, subdivisions (b) and (c)).

CDFW’s determination that the Service’s ITS and its associated BO are consistent with CESA is limited to the species listed as Covered Species herein.

DEPARTMENT OF FISH AND WILDLIFE

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080–2021–007–02**

Project: State Route (SR) — 162 Butte City Bridge Replacement Project
Location: Glenn County
Applicant: California Department of Transportation

Background

The California Department of Transportation (Applicant) proposes to replace the existing Sacramento River Butte City Bridge and existing connecting viaduct, between post miles 73.6 to 78.6, in a new northern alignment. The Butte City Bridge Replacement Project (Project) includes bridge and viaduct construction 50 feet north of the existing structures and demolition of the existing structures. The Applicant will replace the existing steel and concrete bridge with a pre-stressed concrete box girder superstructure with cast-in-steel-shell pile/extension columns that will be driven in-water or directly adjacent (within 17 feet of the water) with the aid of a trestle and falsework sitting on a temporary pad. The Applicant will replace the viaduct with a typical slab

on pile extension similar to the bridge construction minus the need for in-water work and a trestle. The demolition of the existing bridge and viaduct will be done after the construction of the new structures with the aid of a trestle and a catchment device to collect all demolition debris. All existing structures will be removed to three feet below finished grade or completely removed if possible. In-water work will be required for the bridge work of the above-mentioned activities. The work area within the river channel will be dewatered through the placement of dewatered casings for attenuation of the piledriving. In-water work activities (dewatering, pile driving, excavation) will only occur between June 1 and October 15. The trestle, falsework, and pad are expected to remain in the channel through two winter seasons. Construction is tentatively scheduled to start as early as 2021 and will require four seasons of work with approximately 772 working days.

The Project activities described above are expected to incidentally take¹ both winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and spring-run Chinook salmon (*Oncorhynchus tshawytscha*) of the Sacramento River drainage, and evolutionarily significant unit, where those activities take place within the Sacramento River. In particular, Chinook salmon could be incidentally taken as a result of the sedimentation and turbidity, pile driving, dewatering and potential fish entrainment, shading created by the bridge, and the possibility of deleterious materials entering the waterway at the Project area. Winter-run Chinook salmon is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). Sacramento River spring-run Chinook salmon is designated as a threatened species pursuant to the ESA and a threatened species pursuant to CESA (See Cal. Code Regs., title 14, § 670.5, subdivision (a)(2)(M) and subdivision (b)(2)(C).)

Winter-run Chinook salmon individuals are documented as present 32 miles north and 67 miles south of the Project area and there is suitable winter-run Chinook salmon migratory habitat within and adjacent to the Project area. Sacramento River spring-run Chinook salmon individuals are documented as present 17 miles north and 19 miles south of the Project area and there is suitable Sacramento River spring-

run Chinook salmon migratory and rearing habitat within and adjacent to the Project area. Because of the proximity of the nearest documented Chinook salmon, dispersal patterns of Chinook salmon, and the presence of suitable Chinook salmon habitat within or adjacent to the Project area, the National Marine Fisheries Service (Service) determined that both the winter-run Chinook salmon and the Sacramento River spring-run Chinook salmon are reasonably certain to occur within the Project area and that Project activities are expected to result in the incidental take of both the winter-run Chinook salmon and the Sacramento River spring-run Chinook salmon.

According to the Service, the Project will result in the temporary loss of 0.452 acre of aquatic and 0.56 acre of riparian Chinook salmon habitat, totaling 1.012 acres of temporary habitat loss. Construction of the Project will result in the permanent loss of 0.003 acre of aquatic and 0.37 acre of riparian Chinook salmon habitat, as well as 0.475 acre of aquatic migratory Chinook salmon habitat from bridge shading, totaling 0.848 acre of permanent habitat loss.

Because the Project is expected to result in take of species designated as threatened and endangered under the federal ESA, the Applicant consulted with the Service as required by the ESA. On May 17, 2021, the Service issued a biological opinion (Service file No. WCRO-2021-00556) (BO) to the Applicant. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The take exemption conferred by this ITS is based upon the proposed action occurring as described in the BO and in more detail in the California Department of Transportation 2021 Biological Assessment (BA).

The ITS also requires the Applicant to implement and adhere to measures contained within the Project's BA and the Habitat Restoration Plan (HRP).

On June 4, 2021, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and its associated BO are consistent with CESA for purposes of the Project and both winter-run Chinook salmon and spring-run Chinook salmon of the Sacramento River drainage. (Cal. Reg. Notice Register 2021, No. 25-Z, p. 802.)

Determination

CDFW has determined that the ITS and its associated BO are consistent with CESA as to the Project and both winter-run Chinook salmon and spring-run Chinook salmon of the Sacramento River drainage because the mitigation measures contained in the ITS and its associated BO meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-

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

listed species. Specifically, CDFW finds that: (1) take of both winter-run Chinook salmon and spring-run Chinook salmon of the Sacramento River drainage will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of either winter-run Chinook salmon or spring-run Chinook salmon of the Sacramento River drainage. The mitigation measures in the BO and ITS include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) Before any work occurs in the Project area, including grading and tree removal, the Applicant will retain a qualified biologist familiar with the resources to be protected to conduct a contractor/worker environmental awareness training for construction personnel. The awareness training will be provided to all construction crew and contractors to brief them on the need to avoid and minimize effects to sensitive biological resources (e.g., jurisdictional waters, special-status species, roosting bats, and nesting birds) within construction areas and the penalties for not complying with applicable state and Federal laws and permit requirements. The biologist will inform all construction personnel about the life history and habitat requirements of special-status species with potential for occurrence onsite, the importance of maintaining habitat, and the terms and conditions of the BO or submitted to the Applicant, and other overseeing agencies (i.e., CDFW, United States Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS)), as appropriate. The environmental training will cover general restrictions and guidelines that must be followed by all construction personnel to reduce or avoid effects on sensitive biological resources during Project construction. The training also will include identifying the best management practices written into construction specifications for avoiding and minimizing the discharge of construction materials or other contaminants into jurisdictional waters.
- 2) To reduce sound impacts, the Applicant shall implement the following measures:
 - a. Attenuation measures shall be used during impact pile driving to control and dampen underwater pressure wave propagation. Effective attenuation measures include:
 - i. Use of a bubble curtain around the pile.
 - ii. Use of a dual-casing isolation system.
 - iii. Use of a cushion block between the hammer and the pile.
 - b. Pile driving shall not be conducted at night when migration is most prevalent.
- 3) The initial strikes of all in-water piles, or piles that occur within 200 linear feet of the water's edge in the active channel in which injurious sound levels to listed species could reach the water, will occur at less than full impact force for a period of 15 seconds followed by 30 seconds of no activity. This action will be repeated two additional times and impact will be gradually brought up to full force blows to reduce the initial sound level and provide warning blows to allow fish adequate time to leave the Project area.
- 4) The in-water work window is June 1 to October 15, which is expected to avoid the timing of most Chinook salmon in the Sacramento River. Therefore, it is recommended that any work occurring below the ordinary high water mark (OHWM) of the Sacramento River within the Project area, including barge operation, cofferdam installation and removal, and removal and installation of piles and the new fender system, would occur between this work window of each construction season, unless earlier or later dates are approved by CDFW, USFWS, and NMFS. By requiring contractors to adhere to these dates for in-channel construction, the Applicant would avoid and minimize Project effects on listed fish species. If night work is necessary, lighting will be selectively placed, shielded, and directed away from the river. Night work will be restricted to activities that are not in-water to ensure listed fish are allowed to migrate upstream and downstream.
- 5) During dewatering activities, a qualified fish biologist shall be present onsite to make observations, and capture/relocate fish. Only fish biologists trained in salmonid capture and relocation shall remove and relocate fish during dewatering activities.
- 6) The extent of the cofferdam footprints would be limited to the minimum necessary to support construction activities. Sheet piles used for cofferdams would be installed and removed using a vibratory pile driver. Cofferdams would be installed and removed only during the proposed in-water work window (June 1 – October 15). Cofferdams would not be left in place over winter where they could be overtopped by winter/spring flows and when juveniles of listed species are most likely to be present in the construction area. All water pumps used during dewatering

of cofferdams would be adequately screened according to CDFW and NMFS guidelines for fish screens. Cofferdam de-watering and fish capture/relocation from within cofferdams would commence immediately following cofferdam closure.

- 7) Applicant shall visually monitor the waterway in the Project area during operations for any affected fish, including, but not limited to, Sacramento River spring-run Chinook salmon and winter-run Chinook salmon. Observation of affected fish shall be reported to NMFS at (916) 930-3600 within 24 hours of the incident. Operations shall be halted immediately until Applicant coordinates with NMFS to determine the cause of the incident and whether any additional protective measures are necessary to protect listed salmonids. Any protective measures that are determined necessary to protect listed salmonids shall be implemented as soon as practicable within 72 hours of the incident. Affected fish are defined as:
 - a. Dead or injured fish at the water surface;
 - b. Showing signs of erratic swimming behavior or other obvious signs of distress;
 - c. Gasping at the water surface; or
 - d. Showing signs of other unusual behavior.

A follow-up written notification shall also be submitted to NMFS which includes the date, time, and location that the carcass or injured specimen was found, a color photograph, the cause of injury or death, if known, and the name and affiliation of the person who found the specimen. Written notification shall be submitted to NMFS. Any dead specimen(s) shall be placed in a cooler with ice and held for pick up by NMFS personnel or an individual designated by NMFS to do so.

- 8) The removal of existing riparian and native vegetation shall be minimized; where feasible the root system of removed trees shall remain intact.
- 9) Permanent impacts on critical habitat (bank and substrate below the OHWM and water column habitat), totaling 0.003 acre will be mitigated through the removal of 0.477 acres of fenders and existing piers from the river.
- 10) Applicant shall compensate for the permanent loss of 0.37 acre of riparian habitat and 0.475 acre of permanent shading of riverine habitat and the temporary loss of 0.56 acre of riparian habitat through the onsite restoration of 4 acres of riparian habitat along the Sacramento River. The parcel the Applicant is proposing to restore, as mitigation for the Project, is currently owned by California State Parks and Recreation. Restoration efforts will start prior to and concurrent with

construction as funding security for the ITS and its associated BO and the consistency determination as well as acknowledgments from state and federal agencies involved in the title transfer. All restoration plan details can be found in the HRP. Title to the parcel shall be transferred to USFWS and incorporated into the USFWS refuge system. The parcel will be managed consistent with the Sacramento National Wildlife Refuge Comprehensive Conservation Plan (USFWS 2005). Confirmation of the title transfer of the State Parks' parcel to USFWS possession for inclusion into the Sacramento National Wildlife Refuge Complex for long-term management for the conservation of threatened and endangered species shall be submitted to NMFS and CDFW.

Monitoring and Reporting Measures

- 1) A minimum of 60 days prior to the start of Covered Activities, an acoustic monitoring plan to evaluate sound levels during pile driving activities shall be prepared by the designated hydroacoustic monitor specialist who shall possess the same authority as a Contractor Supplied Biologist and have the ability to direct the resident engineer to stop work as necessary by the conditions of this Consistency Determination. The acoustic monitoring plan and hydroacoustic monitoring specialist must be approved in writing by NMFS and CDFW before pile design activities can proceed. The acoustic monitoring plan must be implemented during all impact pile driving activities, including near water piles within 200 feet of the edge of the water in the active channel. At minimum, the monitoring plan will include the details in Caltrans 2021 BA section 4.1.1.1. (BA, p. 51-53).
- 2) If flowing water is present or reasonably anticipated, Applicant shall submit for written approval a detailed dewatering plan to NMFS and CDFW no later than 60 business days prior to commencing dewatering. The Applicant and/or their contractors may not commence dewatering activities without written approval from NMFS and CDFW. During all dewatering activities, the qualified biologist will monitor within dewatering areas and within adjacent river reaches to ensure no aquatic species are stranded or in distress. The applicant will take immediate remedial actions if any conditions causing or contributing to stress and/or injury of listed species are observed. After any water diversion structures are in place and before dewatering is initiated, qualified fish biologists who have authorization from NMFS and CDFW will be on-site to capture and relocate fish from areas to

be dewatered. During dewatering, water will be incrementally diverted from the cofferdam, with diversion progressively increasing over a four-hour period in the following increments: 50%, 75%, 90%, and 100%. Incremental reduction in flow allows fish that elude initial capture to move to deeper habitats where they can be captured and relocated before affected stream segments are completely dewatered. The biologists will relocate fish to suitable habitat outside of the construction area. The methods of removal and relocation of fish captured during the dewatering of the construction areas will be implemented in close coordination with NMFS and CDFW.

- 3) A fish relocation plan shall be submitted at least 60 days in advance of construction to NMFS and CDFW for review and approval prior to the start of in-water work. The plan would include a description of any anticipated fish relocation activities, including the number, frequency, and environmental or construction conditions that may trigger the need for fish relocation actions. A fish capture and relocation report would be prepared and submitted to CDFW, NMFS, and USFWS within 5 business days following completion of the fish relocation.
- 4) Applicant shall submit annual mitigation monitoring reports for 5 years post-construction to monitor the performance of the restoration effort as described in Section 1.4 of the BO. Details on report contents and scheduling can be found in the HRP Section 7. After the Applicant has submitted the final report at the end of monitoring to NMFS and CDFW, the Applicant shall submit a request to the appropriate regulatory agencies for a letter of concurrence stating that mitigation responsibilities have been met. The letter of concurrence report details may be found in section 7.6 and 7.7 of the HRP.
- 5) Applicant shall provide a report of Project activities to NMFS and CDFW by December 31 of each construction year. The report shall include at a minimum:
 - a. A summary of all monthly compliance reports and annual status reports,
 - b. A description of each of the implemented mitigation measures and when each was implemented,
 - c. All available information about Project-related incidental take of listed species,
 - d. Information about other Project impacts on listed species,
 - e. Beginning and end dates of Project activities,
 - f. An assessment of the effectiveness of this

BO conservation measures in minimizing and fully mitigating Project impacts on listed species and habitat,

- g. Recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future Projects and,
- h. Any other pertinent information.

The ITS and its associated BO require the Applicant to submit mitigation monitoring reports to the Service and CDFW annually. Although not a condition of the BO, CDFW requests that a copy of each of the annual mitigation monitoring reports be submitted prior to March 1 of the following year. In addition, although not a condition of the BO, CDFW requests to be contacted and consulted at (916) 358-2900 while referencing the Consistency Determination No. 2080-2021-007-02 if Chinook salmon affected by the Project activities are observed or incidentally taken.

Financial Security

- 1) The Applicant shall complete planting of 1.1 acres of riparian habitat with a minimum of 308 plants with irrigation prior to the commencement of Project activities as funding security. (HRP, p. 12 & Appendix A)

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of both the winter-run Chinook salmon and the spring-run Chinook salmon of the Sacramento River drainage, provided the Applicant implements the Project as described in the ITS and its associated BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITS and its associated BO. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the ITS and its associated BO, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & Game Code, §§ 2080.1, 2081, subdivisions (b) and (c)).

CDFW's determination that the Service ITS and its associated BO are consistent with CESA is limited to both the winter-run Chinook salmon and the spring-run Chinook salmon of the Sacramento River drainage.

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**PUBLIC NOTICE REQUIREMENT FOR
ISSUANCE OF TREATED WOOD
WASTE VARIANCES**

For the week of April 26, 2021, the Department of Toxic Substances Control (DTSC) issued variances for the management of treated wood waste. The variances were issued pursuant to Health and Safety Code section 25143(b)(1) and California Code of Regulations, title 22, section 66260.210.

The variances authorize the recipients to manage treated wood waste, that is a California hazardous waste, in accordance with a set of alternative management standards. The variances are effective for six months and may be extended once for an additional six months.

The variance recipients are listed by variance type, and the information provided includes the variance identification number, recipient name, and recipient location.

Recipients of Handler-Transporter Variance

- TWW-2021-HT-00323, Solid Wastes of Willits, Inc., 15000 Prairie Way, Mendocino, CA 95460
- TWW-2021-HT-00411, Solid Wastes of Willits, Inc., 351 Franklin Avenue, Willits, CA 95490
- TWW-2021-HT-00412, Solid Wastes of Willits, Inc., 40855 Fish Rock Road, Gualala, CA
- TWW-2021-HT-00369, Santa Clara County Roads and Airports Department, 11030 Doyle Road, San Jose, CA 95129

Recipients of Large Quantity Generator/Self-transporter Variances

- TWW-2021-LG-00272, Skanska-Traylor-Shea, 8401 Wilshire Blvd, Beverly Hills, CA 90211; 6010 Wilshire Blvd, Los Angeles, CA 90036; 711 S. La Brea Avenue, Los Angeles, CA 90036; 3839 Wilshire Blvd, Los Angeles, CA 90010
- TWW-2021-LG-00382, Port San Luis Harbor District, 3950 Avila Beach Drive, Avila Beach, CA 93424
- TWW-2021-LG-00326, San Francisco Municipal Agency (SFMTA), 48th Avenue and Taraval Street, San Francisco, CA 94116
- TWW-2021-LG-00371, Fremont Fence Inc., 8040 Wells Avenue, Newark, CA 94560
- TWW-2021-LG-00399, Mobile Modular, 11450 Mission Blvd, Mira Loma, CA 91752
- TWW-2021-LG-00413, East Bay Municipal Utility District, 9040 Seneca Street, Oakland, CA 94605

Recipients of Small Quantity Generator/Self-transporter Variances

- TWW-2021-SG-00355, City of Capitola, 430 Kennedy Drive, Capitola, CA 95010
- TWW-2021-SG-00389, McDunn Construction, Inc., 1403 Addison Street, Berkeley, CA 94708
- TWW-2021-SG-00271, APS West Coast, 1007 Bayshore Road, Benicia, CA 94520
- TWW-2021-SG-00396, Michael G McKim Company, 5600 Oak Knoll Road, El Sobrante, CA 94803
- TWW-2021-SG-00406, North Coast Village HOA, 999 N. Pacific Street, Oceanside, CA 92054

Recipients of Transporter Variances

- TWW-2021-TR-00262, 123 Junkaway, 1515 Capitola Road, Suite M, Santa Cruz, CA 95062
- TWW-2021-TR-00329, Villalobos Transportation & Ag Cleanup Inc., 3603 Strawberry Meadow Court, Bakersfield, CA 93313
- TWW-2021-TR-00341, Rust and Sons Trucking, 15315 Old Highway 80, El Cajon, CA 92021
- TWW-2021-TR-00346, Clark Vineyard Management Inc., P.O. Box 352, St. Helena, CA 94574
- TWW-2021-TR-00354, Blevins Construction Inc., 75 Carlson Road, Salinas, CA 93907
- TWW-2021-TR-00367, Intrinsic Transportation, Inc., 3250A Dutton Avenue, Santa Rosa, CA 95407
- TWW-2021-TR-00385, County of Lake, 255 North Forbes Street, Lakeport, CA 95453
- TWW-2021-TR-00387, Farrar Construction Inc, 581 Gossage Avenue, Petaluma, CA 94952
- TWW-2021-TR-00397, Ponder Environmental Services, Inc., 4563 E. 2nd Street, Benicia, CA 94510
- TWW-2021-TR-00407, Greg's Trucking Service, Inc., 2045 Detroit Drive, San Mateo, CA 94404
- TWW-2021-TR-00360, GH Ramirez & Bros Landscaping Inc., P.O. Box 1854, Marina, CA 93933
- TWW-2021-TR-00409, RA Hauling Inc., 34052 Doheny Park Road Space 8, Capistrano Beach, CA 92624

Recipients of Emergency Response Variances

- TWW-2021-ER-00393, Goodfellow Teichert Odin, a Joint Venture
- TWW-2021-ER-00398, FORGEN DRC Joint Venture, Mono County; Tulare County; Los Angeles County; Fresno & Madera counties

For additional information, contact Ryan Batty of the Department of Toxic Substances Control at (916) 823-7617 or by e-mail at Ryan.Batty@dtsc.ca.gov.

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**PUBLIC NOTICE REQUIREMENT FOR
ISSUANCE OF TREATED WOOD
WASTE VARIANCES**

For the week of May 3, 2021, the Department of Toxic Substances Control (DTSC) issued variances for the management of treated wood waste. The variances were issued pursuant to Health and Safety Code section 25143(b)(1) and California Code of Regulations, title 22, section 66260.210.

The variances authorize the recipients to manage treated wood waste, that is a California hazardous waste, in accordance with a set of alternative management standards. The variances are effective for six months and may be extended once for an additional six months.

The variance recipients are listed by variance type, and the information provided includes the variance identification number, recipient name, and recipient location.

Recipients of Disposal Facility Variance

- TWW-2021-DF-00306, California Street Landfill, 2151 Nevada Street, Redlands, CA 92373

Recipients of Handler-Transporter Variance

- TWW-2021-HT-00433, Burrtec Waste Industries, 13373 Napa Street, Fontana, CA 92335; 1830 Agua Mansa Road, Riverside, CA 92509
- TWW-2021-HT-00273, Humboldt Waste Management Authority, 1059 W. Hawthorne Street, Eureka, CA 95501
- TWW-2021-HT-00422, South Tahoe Refuse Co., 2140 Ruth Avenue, South Lake Tahoe, CA 96150
- TWW-2021-HT-00455, Advance Disposal Co., 17105 Mesa Street, Hesperia, CA 92345

Recipients of Large Quantity Generator/Self-transporter Variances

- TWW-2021-LG-00405, Bidart Bros., 8829 Sandrini Road, Bakersfield, CA 93313
- TWW-2021-LG-00428, Pacific Shops, Inc., 1815 Clement Avenue, Alameda, CA 94501
- TWW-2021-LG-00365, Port of San Francisco, Pier 92, San Francisco, CA 94124, Pier 52, San Francisco, CA 94158

- TWW-2021-LG-00372, California Waste Services LLC, 621 West 152nd Street, Gardena, CA 90247
- TWW-2021-LG-00380, Southern California Gas Company, 750 Industrial Way, San Luis Obispo, CA 93401; 2424 East Olympic Boulevard, Los Angeles, CA 90021

Recipients of Small Quantity Generator/Self-transporter Variances

- TWW-2021-SG-00378, Custom House, 2757 Indigo Circle, Morro Bay, CA 93442; 9150 Santa Rita Road, Cayucos, CA 93430
- TWW-2021-SG-00394, Engineered Soil Repairs, Inc., 1267 Springbrook Road, Walnut Creek, CA 94597
- TWW-2021-SG-00437, GCI General Contractors, 444 De Haro Street, San Francisco, CA 94107
- TWW-2021-SG-00451, Pierson Company, 1200 W. Harris St, Eureka, CA 95503
- TWW-2021-SG-00332, Contra Costa County Public Works, 2475 Waterbird Way, Martinez, CA 94553
- TWW-2021-SG-00390, East Bay Municipal Utility District (EBMUD), 15083 Camanche Parkway S., Valley Springs, CA 95252
- TWW-2021-SG-00421, Granite Construction Company, 5335 Debbie Road, Santa Barbara, CA 93111
- TWW-2021-SG-00313, Richmond American Homes, 4162 Affirmed Drive, Olivehurst, CA 95961
- TWW-2021-SG-00339, Lockheed Martin Space, 1111 Lockheed Martin Way, Sunnyvale, CA 94089

Recipients of Transporter Variances

- TWW-2021-TR-00395, J. Torres Co. Inc., 5810 S. Union Avenue, Bakersfield, CA 93307
- TWW-2021-TR-00415, Citywide Fibers, Inc., 1151 Quesada Avenue, San Francisco, CA 94124
- TWW-2021-TR-00416, OFRS, Inc., 1875 Freeman Avenue, Signal Hill, CA 90755
- TWW-2021-TR-00419, Carmel Building & Design, Inc., 26350 Carmel Rancho Lane, Suite 105, Carmel, CA 93923
- TWW-2021-TR-00431, City of Santa Clara, 1700 Walsh Avenue, Santa Clara, CA 95050
- TWW-2021-TR-00350, Bertolotti Disposal, Inc., P.O. Box 127, Ceres, CA 95307
- TWW-2021-TR-00464, Henningsen Construction Co., Inc., P.O. Box 7477, Spreckels, CA 93962-7477

- TWW-2021-TR-00467, Arroyo Landscaping, 291 Snyder Avenue, Aromas, CA 95004
- For additional information, contact Ryan Batty of the Department of Toxic Substances Control at (916) 823-7617 or by e-mail at Ryan.Batty@dtsc.ca.gov.

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**PUBLIC NOTICE REQUIREMENT FOR
ISSUANCE OF TREATED WOOD
WASTE VARIANCES**

For the week of May 10, 2021, the Department of Toxic Substances Control (DTSC) issued variances for the management of treated wood waste. The variances were issued pursuant to Health and Safety Code section 25143(b)(1) and California Code of Regulations, title 22, section 66260.210.

The variances authorize the recipients to manage treated wood waste, that is a California hazardous waste, in accordance with a set of alternative management standards. The variances are effective for six months and may be extended once for an additional six months.

The variance recipients are listed by variance type, and the information provided includes the variance identification number, recipient name, and recipient location.

Recipients of Handler-Transporter Variance

- TWW-2021-HT-00449, Humboldt Sanitation, 2585 Central Avenue, McKinleyville, CA 95519

Recipients of Large Quantity Generator/Self-transporter Variances

- TWW-2021-LG-00400, Asbestos Services, Inc., 31900 Hudson Ranch Road, Maricopa, CA 93257
- TWW-2021-LG-00190, Amtrak, 2468 E. 16th Street, Los Angeles, CA 90021
- TWW-2021-LG-00270, City of Santa Cruz, Assessor's Parcel # 004-311-20, 21 Municipal Wharf, Santa Cruz, CA 95060
- TWW-2021-LG-00463, Elliott Drilling Services, Inc., 1342 Barham Drive, San Marcos, CA 92078
- TWW-2021-LG-00466, Peninsula Corridor Joint Power Board, 2 Napoleon Street, San Francisco, CA 94124
- TWW-2021-LG-00470, San Rafael Yacht Harbor, 557 East Francisco Boulevard, San Rafael, CA 94901
- TWW-2021-LG-00450, Humboldt Sanitation, 2585 Central Avenue, McKinleyville, CA 95519

Recipients of Small Quantity Generator/Self-transporter Variances

- TWW-2021-SG-00364, Coggins Fence & Supply, Inc., 99 Bellevue Avenue, Santa Rosa, CA 95407
- TWW-2021-SG-00401, WC Taylor Ranch LLC, 3717 Park Ridge Lane, San Luis Obispo, CA 93420
- TWW-2021-SG-00446, Channel Lumber Co./Adobe Lumber Co., 150 South Napa Junction Road, American Canyon, CA 94503; 100 W. Cutting Boulevard, Richmond, CA 94804
- TWW-2021-SG-00453, Avila Brothers, Inc. dba Avila Construction Company, 12 Thomas Owens Way, Monterey, CA 93940
- TWW-2021-SG-00475, Blue Spruce Landscape and Construction Inc., 250 Cervantes Road, Portola Valley, CA 94028
- TWW-2021-SG-00476, Hans Herkert Farms, 930 14th Street, Colusa, CA 95932

Recipients of Transporter Variances

- TWW-2021-TR-00295, Price Disposal Inc., 8665 S. Union Avenue, Bakersfield, CA 93307
- TWW-2021-TR-00384, Bjork Construction Co., Inc., 4420 Enterprise Place, Fremont, CA 94538
- TWW-2021-TR-00386, Thomas Refuse Service, Inc., 2000 Chain Avenue, Lake Isabella, CA 93240
- TWW-2021-TR-00425, Randle Cookson General Contractor, 830 Chianti Way, Oakley, CA 94561
- TWW-2021-TR-00427, Central Coast Fence Inc., 540 S 4th Street, Grover Beach, CA 93433
- TWW-2021-TR-00432, Ecology Auto Parts, Inc., 14150 Vine Place, Cerritos, CA 90703
- TWW-2021-TR-00438, Marine Express, 2102 Kelley Court, Pittsburg, CA 94565
- TWW-2021-TR-00441, Millsap Degnan Associates Inc., 4280 Redwood Highway, Suite 10, San Rafael, CA 94903
- TWW-2021-TR-00454, Venegas Company Inc., 481 Geni Court, Walnut Creek, CA 94597
- TWW-2021-TR-00457, Christopher Stoehr Construction Co., 1732 Francisco Street Apt. A, Berkeley, CA 94703
- TWW-2021-TR-00460, De La Torre Trucking, LLC, 8338 Tubbs Road, Winters, CA 95694
- TWW-2021-TR-00462, Team North Construction Services, Inc., 150 Executive Park Boulevard #3150, San Francisco, CA 94134
- TWW-2021-TR-00482, I.H.S. Construction, Inc., P.O. Box 3338, Clearlake, CA 95422

- TWW-2021-TR-00490, ASG Complete Landscape & Maintenance Inc., 455 Harbor Boulevard, Belmont, CA 94002
- TWW-2021-TR-00491, Lister Construction, Inc., 896 Aldridge Road, Suite B, Vacaville, CA 95688
- TWW-2021-TR-00493, FNF Roll Off Service, 10420 E. Manning Avenue, Selma, CA 93662

For additional information, contact Ryan Batty of the Department of Toxic Substances Control at (916) 823-7617 or by e-mail at Ryan.Batty@dtsc.ca.gov.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

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

Department of Housing and Community Development
 File # 2021-0615-01
 Prohousing Designation Program

In this emergency action, the Department adopts regulations to establish the Prohousing Designation Program. The regulations set forth an application process, evaluation criteria, designation criteria requirements, and a process to revoke prohousing designations.

Title 25
 Adopt: 6600, 6601, 6602, 6603, 6604, 6605, 6606, 6607
 Filed 06/25/2021
 Effective 06/25/2021
 Agency Contact: David Navarrete (916) 776-7490

Department of Housing and Community Development
 File # 2021-0615-03
 MP/SOP Permit to Operate Penalty Fees Waiver – State of Emergency

This emergency regulatory action creates a waiver application process and criteria for the waiver of penalties for late payment of permit-to-operate fees

due to economic hardship experienced by mobilehome park and special occupancy park permit holders.

Title 25
 Amend: 1002, 1009, 2002, 2009
 Filed 06/24/2021
 Effective 06/24/2021
 Agency Contact: Ruth Ibarra (916) 263-3262

Occupational Safety and Health (Cal-OSHA) Division
 File # 2021-0615-05
 Definition of “Normal Consumption”

The Division of Occupational Safety and Health (Division) filed this emergency action to implement, interpret, and make specific the policy set forth in Labor Code section 6403.3, which was enacted in A.B. 2537 (Stats.2020, ch. 313; eff. Jan. 1, 2021) to address the shortage of personal protective equipment (PPE) for front-line health care workers resulting from the COVID-19 pandemic and to protect these healthcare workers from further spread of COVID-19 as well as ensure adequate supply of PPE to prepare for the future. Specifically, the Division clarified the meaning of “normal consumption” of PPE and provided a straightforward and understandable formula for calculating “three months of normal consumption” of PPE as used in Labor Code section 6403.3.

Title 08
 Adopt: 340.70
 Filed 06/25/2021
 Effective 07/26/2021
 Agency Contact: Lisa Brokaw (510) 286-7000

Department of Social Services
 File # 2021-0621-01
 Repeal of the Consecutive Day Rule in Homeless Assistance

This action by Department of Social Services re-adopts their emergency rulemaking action that removes, from section 44-211 of the Manual of Policies and Procedures, all provisions which require that the 16 days of temporary shelter payments, which eligible families are granted in a 12-month period, be used on consecutive days. Senate Bill 80 (Chapter 27 of 2019) repealed that requirement and replaced it with a provision that allows for 16 cumulative days of temporary shelter payments in a 12-month period. This action is a deemed emergency and is not subject to review by the Office of Administrative Law and is being filed with the Secretary of State pursuant to Section 136(b) of Senate Bill 80.

Title MPP
Amend: 44–211
Filed 06/29/2021
Effective 06/29/2021
Agency Contact: Everardo Vaca (916) 657–2363

CalSavers Retirement Savings Board
File # 2021–0617–01
CalSavers Retirement Savings Program Regulations
Amendments

The CalSavers Retirement Savings Board submitted this deemed emergency reoption (2020–0821–06E) to amend the CalSavers Retirement Savings Program to add a new default investment fund for participants born January 1, 2003 to December 31, 2007; remove a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; clarify the tax–qualified retirement plans that, if offered by an employer, would render them exempt; and make other minor changes.

Title 10
Amend: 10000, 10001, 10002, 10003, 10004, 10005, 10006
Filed 06/28/2021
Effective 06/30/2021
Agency Contact: Eric Lawyer (916) 838–2869

Department of Developmental Services
File # 2021–0615–08
Children’s Community Crisis Home

This emergency rulemaking action by the Department of Developmental Services updates the facility program plan requirements, staff training and continuing education requirements, and individual behavior supports plan requirements for Community Crisis Homes licensed as adult residential facilities and group homes. This emergency action also updates Form DS 6023 and Form DS 6024, which pertain to rate development for Community Crisis Homes.

Title 17
Adopt: 59009.5, 59010.1, 59010.2, 59010.3, 59010.4, 59010.5
Amend: 59000, 59002, 59006, 59007, 59008, 59009, 59010, 59012, 59022, 59050, 59072
Filed 06/25/2021
Effective 06/25/2021
Agency Contact: Amy Whiting (916) 799–2697

Department of Justice
File # 2021–0521–03
Department of Financial Protections and Innovation
Bond Form

This action by Department of Justice amends section 31.29, Debt Collection Licensing Act Licensee Bond,

in the title 11 listing of approved surety bonds for the Department of Financial Protection and Innovation.

Title 11
Amend: 31.29
Filed 06/29/2021
Effective 06/29/2021
Agency Contact: Sarah L. Fabian (510) 879–0272

Division of Workers’ Compensation
File # 2021–0526–02
Medical Treatment Utilization Schedule (MTUS)

This action, which is exempt from the Administrative Procedure Act pursuant to Labor Code section 5307.27(a), adopts a regulation that incorporates by reference a Coronavirus (COVID–19) Guideline into the Medical Treatment Utilization Schedule (MTUS).

Title 08
Adopt: 9792.24.7
Filed 06/28/2021
Effective 06/28/2021
Agency Contact: John Cortes (510) 286–0519

California Highway Patrol
File # 2021–0304–02
Hi–Lo Audible Warning Sound

This action adopts criteria for the performance and use of a Hi–Lo audible warning sound on emergency vehicles pursuant to Vehicle Code 27002.

Title 13
Adopt: 1029.1, 1029.2, 1029.3, 1029.4
Filed 06/24/2021
Effective 06/24/2021
Agency Contact: Kasonja Pochop (916) 843–3400

Commission on Peace Officer Standards and Training
File # 2021–0512–03
Training Standards for Basic Course Presenters

This action requires newly appointed Directors and Coordinators of the basic courses to complete the Director/Coordinator Orientation Program, via the POST Learning Portal, prior to performing the duties of a Director/Coordinator, adds language to the training standards for Scenario Managers, and adopts the topics covered in the Director/Coordinator Orientation Program.

Title 11
Amend: 1071, 1083
Filed 06/24/2021
Effective 10/01/2021
Agency Contact: Cheryl Smith (916) 227–0544

Commission on Peace Officer Standards and Training
 File # 2021-0519-05
 Regulation 1005 — Perishable Skills Program
 (LEDS)

The Commission on Peace Officer Standards and Training filed this rulemaking action to remove language from a regulation that allows the use of Law Enforcement Driving Simulators (LEDS) as an approved method of instruction to fulfill the Driver Training/Awareness Perishable Skills requirement.

Title 11
 Amend: 1005
 Filed 06/29/2021
 Effective 06/29/2021
 Agency Contact: Steve Harding (916) 227-5426

Department of Food and Agriculture
 File # 2021-0405-01
 Spotted Lanternfly Quarantine

In this regular rulemaking, the Department of Food and Agriculture (the “Department”) is establishing an exterior quarantine for the spotted lanternfly. The regulations include definitions and criteria for designating an area under quarantine. Additionally, the Department is identifying and placing restrictions on the articles and commodities covered by these regulations.

Title 03
 Adopt: 3287
 Filed 06/28/2021
 Effective 06/28/2021
 Agency Contact: Rachel Avila (916) 403-6813

Department of Public Health
 File # 2021-0405-02
 Medical Information Breach

This action establishes standards for identifying breaches of patient medical information and assessing administrative penalties against health care facilities responsible for those breaches.

Title 22
 Adopt: 79900, 79901, 79902, 79903, 79904, 79905
 Filed 06/28/2021
 Effective 07/01/2021
 Agency Contact: Linda M. Cortez (916) 440-7807

Fish and Game Commission
 File # 2021-0521-02
 Waterfowl

This action by the Fish and Game Commission adjusts the dates for the 2021-2022 season for various California waterfowl hunting zones.

Title 14
 Amend: 502
 Filed 06/29/2021
 Effective 06/29/2021
 Agency Contact: David Haug (916) 653-4899

Office of Environmental Health Hazard Assessment
 File # 2021-0519-04
 Proposition 65 Dichloroacetic Acid NSRL

This action adds exposure to dichloroacetic acid at a level of 17 micrograms per day to a regulation that establishes specific regulatory levels for cancer-causing chemicals that pose no significant risk.

Title 27
 Amend: 25705
 Filed 06/24/2021
 Effective 10/01/2021
 Agency Contact:
 Esther Barajas-Ochoa (916) 322-2068

Office of the State Fire Marshal
 File # 2021-0517-02
 Fire & Life Safety — Plans & Specifications

In this rulemaking action the Office of the State Fire Marshal is making clear that all building plans and specifications for state owned, specified state occupied, and state institution buildings and facilities, or portions thereof must be submitted to the State Fire Marshal for review and approval. This action also removes the State Fire Marshal as the one to review and approve plans and specifications for the construction, alteration or addition to any building owned, leased or rented by any public school district and adds the Division of the State Architect as the appropriate entity to receive plans and specifications.

Title 19
 Amend: 3.28
 Filed 06/29/2021
 Effective 10/01/2021
 Agency Contact: Diane Arend (916) 568-2917

Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
 File # 2021-0407-02
 Speech-Language Pathology and Audiology Fees

This action by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board amends various fees for speech-language pathologists, speech-language pathology assistants, and dispensing and non-dispensing audiologists.

Title 16
Amend: 1399.157, 1399.170.13, 1399.170.14
Filed 06/29/2021
Effective 07/01/2021
Agency Contact:
Heather Olivares (916) 263-2333

**PRIOR REGULATORY
DECISIONS AND CCR
CHANGES FILED WITH THE
SECRETARY OF STATE**

State Teachers Retirement System
File # 2021-0514-02
Public Comment

This action by the State Teachers' Retirement System adopts regulations governing public comment procedures for meetings subject to the Bagley-Keene Open Meeting Act (Gov. Code, sec. 11120 et seq.).

Title 05
Adopt: 20511
Filed 06/29/2021
Effective 10/01/2021
Agency Contact: Sal Sanchez (916) 414-1984

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.