



# 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**

State Agency: Department of Justice

A written comment period has been established commencing on October 22, 2021 and closing on December 6, 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 December 6, 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.

changes to section 1280.2 of Chapter 6, Division 2, of Title 3 of the California Code of Regulations.

### **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

#### **DIVISION 2. ANIMAL INDUSTRY CHAPTER 6. DRUGGING OF HORSES**

#### **NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (herein after referred to as "Department") proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

#### **PUBLIC HEARING**

The Department has not scheduled a public hearing on this proposed action. However, the Department 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 before the close of the written comment period.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may be submitted via facsimile (FAX) at (916) 900-5333 or by e-mail to [angelina.velez@cdfa.ca.gov](mailto:angelina.velez@cdfa.ca.gov). The written comment period closes on December 6th, 2021. The Department will consider only comments received at the Department by that time.

Submit comments to:

Angelina Velez  
Department of Food and Agriculture  
Animal Health & Food Safety Services  
Animal Health Branch  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 708-4467 Fax: (916) 900-5333  
E-mail: [angelina.velez@cdfa.ca.gov](mailto:angelina.velez@cdfa.ca.gov)

#### **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by sections 407, 24012, and 24013, Food and Agricultural Code, and to implement, interpret or make specific section 24012 of said Code, the Department is proposing to make

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Existing law, Chapter 8 (commencing with section 24000) of Division 11 of the Food and Agricultural Code authorizes the Department of Food and Agriculture (Department) to ensure the integrity of public horse shows, horse competitions, and horse sales through the control of performance and disposition enhancing medications while limiting their permitted therapeutic usage. The Department's Animal Health Branch, Equine Medication Monitoring Program (EMMP) enforces the requirements of these sections of law.

Existing law, section 24012 of the Food and Agricultural Code requires an event manager to charge, collect, and remit fees to the Department for events registered with the Department, and establishes the authority to set the applicable fees by regulation, in consultation with the advisory committee appointed pursuant to section 24013.5. Fees are collected for each equine being entered in a public show/competition or being consigned to a public sale; fees collected are used to fund the EMMP.

Existing section 1280.2 of Title 3 of the California Code of Regulations specifies the fees for each horse entered per event at horse shows and competitions are \$8.00. This proposal amends section 1280.2 to increase the applicable fees from \$8.00 to \$14.00 for each horse entered in each public event, competition, and sales. As amended, this section also specifies the effective date of the fee increase to begin January 1, 2022.

Benefits of the proposed action: This proposal benefits the equine industry by promoting the safety of the horse and rider in competition and horses at public sales by preventing any potential misuse of drugs or medications that could fraudulently mask a disease, condition, or injury of the horse which could place the rider and/or the horse in jeopardy.

This proposal is necessary to increase fees to ensure continuity of program services which serve to ensure the Department of Food and Agriculture fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

#### **CONSISTENCY EVALUATION**

The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with the Department's existing State regulations regarding

public equine events and sales. There are other State regulations dealing with the proper use of drugs and medications in equines under the California Horse Racing Board (Board) [Division 4 (commencing with section 1400) of Title 4 of the California Code of Regulations] which is separate and distinct from the Department's Equine Medication Monitoring Program. The Department has no jurisdiction over horse racing in the State yet work together with veterinarians of the Board to ensure a consistency of the programs within the State.

**DISCLOSURES REGARDING THE  
PROPOSED ACTION**

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

*Nondiscretionary Costs/Savings to Local Agencies:* None.

*Local Mandate:* None.

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

*Cost Impacts on Representative Private Persons or Businesses:*

The Department is not aware of any cost impacts that representative private persons or businesses would necessarily incur in reasonable compliance with the proposed action. The proposed regulation affects individual and businesses choosing to participate in various equine events held throughout California.

The anticipated compliance requirements as a result of this proposal is as follows:

*Paperwork/reporting requirement:* This proposal increases testing fees collected from persons choosing to participate in equine events and competitions, and equine sales held in California. Current testing fees are \$8 per horse at events; this proposal increases those fees collected to \$14. Existing regulations require the use of various application, registration and reporting forms for participants and hosts of public equine events and sales in the State.

*Business Impact:* The Department has made an initial determination that the proposed regulatory action will not have any significant, statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

**RESULTS OF THE ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS**

The Department of Food and Agriculture (Department) has determined that this regulatory proposal will not have any impact on the creation

of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

The Department has made an initial determination that this regulatory proposal will impact the equine industry in California; will impact persons required to register with the Department any public horse event and sales held in California, and affect persons choosing to participate in public horse events and sales in accordance with Food and Agricultural Code section 24001, 24012, and 24015. The Department's proposal affects small businesses.

This proposal affects individuals and businesses choosing to participate in equine events and public sales throughout California.

The Department is not aware of any specific benefits this proposal will have on the health of California residents, worker safety, or the State's environment.

The Department believes this proposal benefits the welfare of California residents by protecting the economic health of the affected equine industry and serves to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales through the regulation of therapeutic medications.

**SMALL BUSINESS DETERMINATION**

The Department's proposal affects small equine businesses choosing to participate in equine events and public sales throughout California.

**CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought the attention of the Department of Food and Agriculture (Department) would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This proposal is necessary to increase fees to ensure continuity of program services which serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

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

**AVAILABILITY OF INITIAL  
STATEMENT OF REASONS AND  
INFORMATION AND TEXT OF PROPOSAL**

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

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

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

Any person may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may amend 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 the regulations as revised. Please send requests for copies of any modified regulations to the attention of Angelina Velez at the address listed below. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF FINAL  
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the persons named below.

**AVAILABILITY OF  
DOCUMENTS ON THE INTERNET**

Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <https://www.cdfa.ca.gov/ahfs/regulations.html#AHB-rulemaking>.

**CONTACT PERSONS**

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

Angelina Velez  
Department of Food and Agriculture  
Animal Health & Food Safety Services  
Animal Health Branch  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 708-4467  
E-mail: [angelina.velez@cdfa.ca.gov](mailto:angelina.velez@cdfa.ca.gov)

The backup contact person is:

Emily Nietrzeba, DVM, MPH  
Equine Veterinarian  
Department of Food and Agriculture  
Animal Health & Food Safety Services  
Animal Health Branch  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 508-3302  
E-mail: [emily.nietrzeba@cdfa.ca.gov](mailto:emily.nietrzeba@cdfa.ca.gov)

**TITLE 7. BOARD OF PILOT  
COMMISSIONERS FOR THE  
BAYS OF SAN FRANCISCO, SAN  
PABLO, AND SUISUN**

**NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

The Board proposes to amend the following sections of the California Code of Regulations, Title 7, Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun, Article 4. Training Programs, Section 213. Pilot Trainees.

**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, not later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (415) 397-9463 or by e-mail to [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov). The written comment period closes **on December 6, 2021**. The Board will consider only comments received at the Board office by that time. Submit comments to:

Allen Garfinkle, Executive Director  
Board of Pilot Commissioners for the Bays of  
San Francisco, San Pablo, and Suisun  
660 Davis Street  
San Francisco, California 94111

AUTHORITY AND REFERENCE

Authority: Harbors and Navigation Code (HNC) §§ 1154 and 1171.6 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific HNC §§ 1101, 1171, 1171.5, 1171.6, 1175, 1177 and 1178.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

**Existing Law and Effect of Proposed Amendments**

HNC Section 1171.6 requires that the Board adopt, by regulation, the qualifications, standards, and rating criteria for admission of pilot trainees to the training program. It also states that the Board shall administer and conduct the pilot trainee admission selection in accordance with the regulations for admission. Board regulations in Title 7 of the California Code of Regulations, Section 213, states that it is Board policy, through an effective selection process, to provide opportunity for progressive development and advancement of qualified maritime personnel to State licensed pilots in accordance with statutory requirements.

The current trainee training regulations, which was initiated in 1988, and most recently amended in 2016, do not effectively respond to the demographic changes within the national maritime sector, from which qualified Board trainees are drawn. The Board has determined that certain updates, clarifications, and changes are necessary to make the existing trainee training program examination more responsive to demographic changes in the maritime industry.

In summary, the updates, clarifications, and changes are as follows:

- References to the Seafarers Health Improvement Program (SHIPS) will be removed and replaced with the United States Coast Guard (USCG)

*Merchant Mariner Medical Manual*, dated August 2019; this document is incorporated by reference. Per HNC 1171.5(a) the Board may use or exceed the federal standards for licensing pilots. The Board opts to accept federal standards for medical evaluation, which is part of the licensing process. The *Merchant Mariner Medical Manual* revises, updates and combines the medical evaluation guidance previously published in SHIPS.

- Minimum qualifications to participate in the Pilot Trainee Training Program Selection Exam (Exam) is amended to include Chief Mates of a self-propelled vessel in navigation of not less than 1600 gross tons and holds a master's license of any gross tons. This change will give those mariners who have not been promoted to a command position but who have served as Chief Mate (second in command of a vessel) the opportunity to participate in the Exam. This change is necessary as the number of United States ships where command experience is available has diminished substantially over the last decade.
- Persons employed as full-time commercial pilots will receive the opportunity to qualify for the Exam. The current regulations only permit the consideration of commercial pilot experience to satisfy *recency of experience* requirements. These candidates must also have command experience to qualify for the Exam. Allowing experience as a full-time commercial pilot alone (without showing prior command experience) as a minimum qualification to take the Exam is expected to broaden the pool of potential candidates.
- The requirement that two years of experience "while holding a valid federal license as master of towing vessels will be removed. A potential candidate will now be able to gain this work experience prior to, or concurrent with, obtaining this federal license as master of towing vessels.
- Candidates applying for the Exam must show that their work experience used to qualify for the Exam took place recently enough to satisfy existing requirements. To demonstrate recency of experience, candidates must provide documentation of two years Chief Mate experience in the past five years, with one year of it occurring in the past three.
- Recency of experience must also be documented for the commercial pilot candidates. Commercial pilots must show that they were employed for four years prior to application, with at least six months of experience occurring within the last two years just prior to applying.

- Applicants using command of a towing vessel to meet the minimum qualifications must show recency of experience two years within five years prior to applying, with one year of that experience occurring in the last three years.
- Scoring of the applications for the Exam will now include Chief Mate experience points.
- The definition for experience timeframes now includes Chief mate experience. Applicants that meet the minimum qualifications using Chief mate experience will receive up to 35 points. Additionally, “gross tons” are defined as the gross registered tons (GRT) under the Regulatory Measurement System.
- Currently, the Exam ends upon completion of the simulator. In the future a candidate must have a passing score on both the written exam and the simulator exam to proceed to the next step of the exam process.
- An oral interview was added to the Exam process. The interview will be administered by the Board with the assistance of State contractors with psychometric qualifications equivalent to the State of California’s Staff Personnel Program Analyst classification. The interview will be conducted using a panel comprised of Board members and a representative from the California Department of Human Resources (CalHR).
- Scores from each portion of the Exam (experience points, written examination, bridge simulator exercise, and the interview) will be given equal weight for the final selection and ranking on the eligibility list.
- The eligibility list ranking will now include the scores from the interview. This is a new element that is not included in current regulation regarding candidate ranks.

**Anticipated Benefits of the Proposed Regulations**

The objective of the proposed amendments to the Pilot Trainee regulations is to ensure that the Board administers the Exam in a way that will reach more of the most qualified candidates available. The decrease in availability of US flagged ships has significantly decreased the potential trainee candidate pool. The lack of eligible candidates is expected to stymie future Board prospects for having enough licensed pilots to meet the Board’s legal mandate, part of which is to ensure public and environmental safety of Board-regulated waterways. Modifying the Exam so that the changes are in place prior to the next exam date will allow the Board to increase its candidate pool within the next year, potentially increasing the number of pilots within the Board’s jurisdiction.

Additionally, the Board has determined that expanding the minimum qualifications may lead

to an increase in diverse applicants. The Board has found that candidates that meet the current minimum qualifications will not be a diverse (i.e. race, gender, etc.) group. Especially as the persons currently in command positions are not represented by women or people of color. The Board seeks to rectify this by broadening the minimum qualifications to reach a board spectrum of qualified candidates in positions that are currently more representative and diverse.

**Determination of Inconsistency/Incompatibility with Existing State Regulations**

The Board has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations or statutes. After conducting a review for any state regulations that would relate to or affect the regulatory sections proposed to be amended, the Board has concluded that these are the only state regulations that concern the pilot trainee training program.

**DISCLOSURES AND DECLARATIONS REGARDING THE PROPOSED ACTION**

**The Board has made the following determinations:**

- These amendments do not substantively change the Board’s understanding of the associated laws. The proposed regulation modifications are intended to expand the minimum qualifications for applying to take the Exam and add an interview to the exam process. These changes are not expected to result in increased costs or savings to any local agency, school district; will not impact other nondiscretionary costs or savings imposed on local agencies; or effect costs or savings in federal funding to the state. The Board has pre-existing agreements with CalHR, California Maritime Academy and the San Francisco Bar Pilot Association to administer the current Exam. Modifications will be made to these agreements to account for the addition of the interview. Changes to scoring and processing of the exam are not expected to further increase costs.
- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district: None.
- Cost or savings in federal funding to the state: None.
- The amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- The regulated public — individual Exam applicants — are not considered small businesses as defined in Government Code Section 11342.610. The current regulations do not impact small business, and the amendments are not expected to have an effect on small businesses.
- The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on housing cost: None.

**Results of the Economic Impact Analysis/ Assessment**

The Board has concluded that the proposed regulations will not facilitate the creation or elimination of jobs within California. The proposed regulations will not affect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed amendments to the Pilot Trainee regulations will benefit California residents, workers and the state's environment by increasing the number of candidates for the pilot trainee training program, which will increase the number pilots on state waterways.

**CONSIDERATION OF ALTERNATIVES**

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

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, if one is held, or during the written comment period.

**CONTACT PERSON**

Inquiries concerning the proposed administrative action may be directed to:

Name: Brenda Pugh  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

The backup contact person for these inquiries is:

Name: Allen Garfinkle  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

Please direct requests for copies of the proposed text (Express Terms) of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Pugh at the above address.

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

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the above address during normal business hours (9:00 a.m. to 5:00 p.m.). Please contact Brenda Pugh at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. Copies of these items are available upon request from the Board Contact Person designated in this Notice.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the close of the 45-day public comment period, the Board may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Board regarding this proposal, the Board may determine that changes to the proposed regulations are appropriate. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. The Board will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Ms. Pugh at the above email address. The Board will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

AVAILABILITY OF FINAL  
STATEMENT OF REASONS

The Board is required to prepare a Final Statement of Reasons. Once the Board has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Board Contact Person identified in this Notice.

BOARD INTERNET WEBSITE

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Rulemaking, the Initial Statement of reasons, and the text of the regulations in underline and strikeout can be accessed through the Board's website at [www.bopc.ca.gov](http://www.bopc.ca.gov).

**TITLE 10. DEPARTMENT OF  
INSURANCE**

SUMMARY OF DENTAL BENEFITS AND  
COVERAGE DISCLOSURE MATRIX

REG-2019-00010

**This document provides notice of the exact same text of regulation for which notice was provided in our earlier notice in this matter, dated July 30, 2021, and on which the hearing was held on September 22, 2021. This notice is being published for technical reasons only, related to ensuring strict compliance with the notice provisions of the Administrative Procedure Act. It is unnecessary for you to repeat comments you may have transmitted previously to the Department, either at the hearing or in written form, in connection with the subject rulemaking. You are, however, cordially invited to submit new or additional comments on the text dated July 30, 2021, pursuant to the terms of this notice, either in writing or at the additional hearing described herein.**

SUBJECT OF PROPOSED RULEMAKING

The California Department of Insurance ("the Department") proposes to adopt California Code of Regulations ("CCR") Title 10, Chapter 5, Subchapter 2, Article 5.6, section 2239.10 after considering comments from the public. (All references to the CCR in this Notice are references to sections in CCR Title 10.) The Department proposes to adopt this section under the authority granted by California Insurance Code ("CIC") section 10603.04.

The regulations will establish the form, content, and delivery requirements for the Summary of Dental Benefits and Coverage Disclosure Matrix.

PUBLIC HEARING  
(Government Code § 11346.5(a)(1))

The Department will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, orally or in writing, concerning the proposed regulation. While the Department ordinarily prefers in-person participation, due to the unique circumstances of the pandemic, the Department will use a virtual web conferencing format for this hearing as indicated below.

**Date:**

**December 6, 2021**

**Time:**

**10:00 a.m.** If it is necessary for the hearing to exceed two hours, there will likely be a one-hour break from 12:00 noon to 1:00 p.m.

**Location:**

[https://us06web.zoom.us/webinar/register/WN\\_77pZdWtzRWCWPdZjliyBFg](https://us06web.zoom.us/webinar/register/WN_77pZdWtzRWCWPdZjliyBFg)

Participants will be given instructions on how to provide testimony once they have accessed the hearing. The hearing will continue on the date noted above until all testimony has been submitted or until 2:00 p.m., whichever is earlier.

The moderated call-in line to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN COMMENT PERIOD

**Presentation of Written Comments; Contact Persons**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The last day of the public comment period shall be December 6, 2021. Please direct all written comments to the following contact person:

Ethan Lavelle, Attorney III  
California Department of Insurance  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Telephone: (916) 492-3648  
Email: [ethan.lavelle@insurance.ca.gov](mailto:ethan.lavelle@insurance.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact

person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Bruce Hinze, Attorney V / Senior Health Policy  
 Attorney  
 California Department of Insurance  
 1901 Harrison St., 6th Floor  
 Oakland, CA 94612  
 Telephone: (415) 538-4392  
 Email: [bruce.hinze@insurance.ca.gov](mailto:bruce.hinze@insurance.ca.gov)

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

**Deadline for Written Comments**

All written materials must be received by the Department, addressed to the contact person at the address listed above. The last day of the public comment period shall be December 6, 2021. Any written materials received after that time may not be considered.

Please identify the action in any written comments by using the Department’s rulemaking title and control number, **Summary of Dental Benefits and Coverage Disclosure Matrix, Control No. 2019-00010**.

**Comments Transmitted by E-Mail**

The Department will accept written comments transmitted by e-mail provided they are sent to the following two e-mail addresses: [bruce.hinze@insurance.ca.gov](mailto:bruce.hinze@insurance.ca.gov) and [ethan.lavelle@insurance.ca.gov](mailto:ethan.lavelle@insurance.ca.gov).

**Comments sent to other e-mail addresses will not be accepted. Comments sent by e-mail are subject to the deadline set forth above for written comments.**

**AUTHORITY AND REFERENCE**

(Government Code § 11346.5(a)(2); 1 CCR § 14)

The Department proposes the adoption of Title 10, Chapter 5, Subchapter 2, Article 5.6, section 2239.10 pursuant to the rulemaking authority provided by Insurance Code section 10603.04.

The Department’s proposed addition of CCR section 2239.10 will implement, interpret, and make specific the provisions of Insurance Code sections 10133.8, 10290, and 10603.04.

**INFORMATIVE DIGEST**

**Effect of Proposed Action (Government Code § 11346.5(a)(3)(A))**

Insurers that issue, sell, renew, or offer a policy of health insurance that covers dental services in this

state are regulated by the Department of Insurance. Commencing 12 months after regulations are adopted, health insurers that cover dental services are required to use the uniform benefits and coverage disclosure matrix developed by the Department, and to make a completed benefits and coverage disclosure matrix available to an insured or prospective insured for each policy examined or sold. (Ins. Code § 10603.04.) The effect of these requirements is that insurers will have to provide consumers with documents that describe different coverages uniformly.

The proposed regulations will establish the form, content, and delivery requirements for the Summary of Dental Benefits and Coverage Disclosure Matrix. Insurers will have to complete the SDBC for each policy offered or sold that provides dental benefits, and will have to provide the SDBC to policyholders and insureds, or ensure that they are provided, under specific circumstances. The effect of the regulations is that consumers will be able to receive documents that describe coverage of dental benefits uniformly, so they can better understand and compare different coverages to help them decide on the best coverage option for them and to maximize their insurance coverage.

**Comparable Federal Law (Government Code § 11346.5(a)(3)(B))**

After evaluation of current federal regulations and statutes, the Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. There are no existing comparable federal regulations or statutes.

**Policy Statement Overview (Government Code § 11346.5(a)(3)(C))**

The requirements imposed upon health insurers by Senate Bill 1008 are new. Federal and state law require insurers in the health insurance market to provide a uniform Summary of Benefits and Coverage documents (SBC) for their plans. However, the health benefits described in the SBC generally exclude dental (with the exception of pediatric dental office visits). Also, health insurers are not required to provide SBCs for specialized health insurance policies that provide only dental benefits. Prior to SB 1008, there were no state or federal laws requiring insurers to provide consumers with uniform documents detailing their dental health benefit coverage that allow them to easily compare different coverages and select the one that best fits their needs.

Moreover, Insurance Code section 10603.04 sets forth certain information that must be included in the benefits and coverage disclosure matrix “[a]t a minimum.” However, it allows for other information to be included as well. It also states that the document must be made available in specific circumstances, but does not state how it must be made available.

Health insurers are unaccustomed to providing this information in the case of dental benefits, and it is necessary to specify what information must be included in the benefits and coverage disclosure matrix and how it must be provided to consumers. Further, since one purpose of the new requirements is that information be provided uniformly, insurers must be given explicit requirements as to the form and substance of the document. Therefore, these regulations are necessary to ensure that insurers are able to provide consumers the required information detailing dental health benefit coverage in a clear and consistent format, as required pursuant to SB 1008.

**Benefits Anticipated (Government Code § 11346.5(a)(3)(C))**

Adoption of the proposed regulations will result in a benefit to the health and welfare of Californians by providing consumers necessary information, in a clear and transparent format, detailing their dental health benefit coverage. This detailed information should make it easier to compare different health plans and allow consumers to understand and knowledgeably utilize their insurance coverage.

**Consistency or Compatibility with Existing State Regulations (Government Code § 11346.5(a)(3)(D))**

After an evaluation of current regulations, the Department has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. There are no existing comparable regulations.

**OTHER STATUTORY REQUIREMENTS**

(Insurance Code § 10603.04(a),  
Government Code § 11346.5(a)(4))

Insurance Code section 10603.04(a) states that the uniform benefits and coverage disclosure matrix “shall be developed by the department, in conjunction with the Department of Managed Health Care, and in consultation with stakeholders.” The SDBC which is the subject of this emergency regulation was developed in conjunction with the Department of Managed Health Care, after multiple consultations with stakeholders.

The Department evaluated whether there were other requirements prescribed by statute applicable to these regulations by reviewing statutes and regulations relating to this issue, and determined that there were no such requirements.

**LOCAL MANDATE**

(Government Code § 11346.5(a)(5))

The proposed regulations do not impose a mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7

(commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

**FISCAL IMPACT**

(Government Code § 11346.5(a)(6))

This regulation is not expected to create a fiscal impact on the Department, or any other federal, state, or local government agency. It is not expected to result in any other nondiscretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the state.

**ECONOMIC IMPACT ON  
BUSINESS AND THE ABILITY OF  
CALIFORNIA BUSINESSES TO COMPETE**

(Government Code § 11346.5(a)(7))

Adoption of the proposed regulation may have a significant, statewide adverse economic impact directly affecting insurance companies. Health insurance companies would have to create and distribute SDBCs as described in the regulation, and ensure that group policyholders comply with the regulations as well. No other reporting, recordkeeping, or other compliance requirements would result from the proposed action.

The Department has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

**COST IMPACTS ON REPRESENTATIVE  
PERSON OR BUSINESS**

(Government Code § 11346.5(a)(9))

Except for health insurance companies, 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. The cost known to the Department

that a health insurer could incur to comply with the proposed regulation is approximately \$3,500 on average.

STATEMENT OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT  
(Government Code § 11346.5(a)(10))

The results of the Economic Impact Assessment pursuant to Government Code sections 11346.3(b)(1) (A) through (D) are as follows:

- A. The proposed regulations will likely have a minimal effect, a net loss of 1.4 jobs within the State of California. The regulation is expected to affect less than one ten-thousandth of a percent of the total nonfarm employment in California ( $1.4 / 15,008,004 = 0.00001\%$ ).
- B. Given that the average direct cost to an impacted insurer is estimated to be \$3,500 ( $\$173,100 / 50$  firms), it is not anticipated that the proposed regulation will have a significant impact on the creation of new businesses or the elimination of existing businesses in California.
- C. Given that the average direct cost to an impacted insurer is estimated to be \$3,500 ( $\$173,500 / 50$  firms), it is not anticipated that the proposed regulation will have an impact on the ability of businesses located in California to expand. Additionally, the small estimated impact on total output suggests that the regulation will have a minimal impact on the California economy as a whole.
- D. Adoption of the proposed regulations will result in a benefit to the health and welfare of Californians by providing consumers necessary information, in a clear and transparent format, detailing their dental health benefit coverage. This detailed information should make it easier to compare different health plans and allow consumers to maximize their insurance coverage. Compliance with the proposed regulation does not change the job responsibilities of employees in the affected industries in a way that would impact their safety. Thus, the proposed regulation will neither increase nor decrease worker safety. The Department also concludes that there will be no measurable effect on the state's environment.

HOUSING COSTS  
(Government Code § 11346.5(a)(12))

The Department makes an initial determination that the proposed regulations will have no significant effect on housing costs.

BUSINESS REPORT  
(Government Code § 11346.3(d))

The Department finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

IMPACT ON SMALL BUSINESS  
(1 CCR § 4(a) and (b))

The proposed regulation is not expected to have an adverse impact on small business. The regulation is only expected to adversely impact insurance companies, but by law insurance companies are not considered small businesses (Government Code section 11342.610(b)(2)).

ALTERNATIVES INFORMATION  
(Government Code § 11346.5(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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private person and equally effective in implementing the statutory policy or other provision of law.

The Department considered the following alternatives to the proposed regulation:

**a) Require insurers to indicate the amount the health plan would cover, as opposed to consumers**

For the coverage examples listed on the SDBC matrix, the Department considered requiring insurers to list how much the health plan would cover for each of the listed commonly used services. This alternative was rejected because the proposed regulations are meant to give consumers more information so that they can better compare health plans that provide dental benefits. The consumer and health plan combined pay 100 percent of the total bill, so if an individual knew the health plan portion they could calculate the consumer portion. Both the Department and DMHC elected for the more consumer-oriented approach. This alternative would likely result in the same total costs and benefits as the proposed regulation, as the cost-sharing split between health plans and consumers is really just the same data being presented in a different way.

**b) Permit each insurer to determine what data to include in a dental disclosure**

The Department considered allowing insurers to determine what data to include in a dental coverage

disclosure. While insurers would still have to provide much of the same information, as it is required by statute, the Department rejected this alternative because the uniform format is important for helping consumers compare coverages. By having a standard form, it easily allows consumers to compare different coverages and select the one that best fits their needs. This alternative would likely result in the same total costs, but fewer benefits as consumers would not be able to compare plans as effectively.

**AVAILABILITY STATEMENTS**  
(Government Code § 11346.5(a)(16))

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the Initial Statement of Reasons, all the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 300 Capitol Mall, 17<sup>th</sup> Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

**MODIFIED LANGUAGE**  
(Government Code §§ 11346.5(a)(18); 11346.8(c))

If the Department adopts regulations that differ from those that have originally been made available but are sufficiently related to original proposed regulations, the full text of the amended regulations, with the change clearly indicated, will be made available to the public for at least 15 days prior to the date the Department adopts the amended regulations. Interested persons should request a copy of the amended regulations from the contact person listed above.

**AUTOMATIC MAILING**  
(Government Code § 11346.4(a)(1))

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to every person who has filed a request for notice of regulatory actions that encompass life and disability insurance (including health insurance).

**FINAL STATEMENT OF REASONS**  
(Government Code § 11346.5(a)(19))

Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared pursuant to Government Code section 11346.9(a). Requests for the Final Statement of Reasons should be directed to the contact person in this Notice.

**INTERNET ACCESS**  
(Government Code § 11346.5(a)(20))

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Click on "Insurers" then "Legal Information" then "Proposed Regulations" then "Search for Proposed Regulations." When the "Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search for "REG-2019-00010" or by browsing for them by name as "Summary of Dental Benefits and Coverage Disclosure Matrix" regulations.

**TITLE 11. DEPARTMENT OF JUSTICE**

**NOTICE OF PROPOSED AMENDMENTS TO  
THE CONFLICT-OF-INTEREST CODE OF  
THE DEPARTMENT OF JUSTICE**

NOTICE IS HEREBY GIVEN that the Department of Justice ("Department"), pursuant to Government Code section 87306 of the Political Reform Act (Gov. Code, § 81000 et seq.), proposes to amend its conflict-of-interest code. The purpose of the amendments is to implement Government Code sections 87300 through 87302, and section 87306.

Government Code sections 87300 and 87302 require each government agency to adopt a conflict-of-interest code designating the agency personnel who must periodically file a Form 700 Statement of Economic Interests, disclosing certain economic interests. Designated personnel are those who make or participate in making governmental decisions that may foreseeably have a material financial effect on an economic interest. (Gov. Code, § 87302, subdivision (a).)

The Department proposes to amend its conflict-of-interest code to include employee positions that make or participate in making governmental decisions that may foreseeably have a material financial effect on an economic interest, as set forth in Government Code section 87302, subdivision (a). The Department proposes other changes to reflect its current organizational structure.

Any interested person may submit written statements, arguments, or comments related to the proposed amendments by submitting them in writing no later than **December 7, 2021** or at the conclusion of the public hearing, if one is requested, whichever comes later, to the agency contact set forth below. The Department has not scheduled a public hearing on the proposed amendments. However, it will hold a hearing if it receives a written request for a hearing from any interested person, or his or her representative, 15 days before the close of the written comment period.

The Department has prepared a written explanation (Statement of Reasons) for the proposed amendments and has made available the information on which the proposed amendments are based. Copies of the proposed amendments and the information on which the amendments are based are available at <https://oag.ca.gov/meetings/public-participation> or may be obtained by contacting the contact person set forth below.

The Department has determined that the proposed amendments will not impose a cost or savings on any state agency, or school district that is required to be reimbursed under part 7 (commencing with Section 17500) of Division 4 of the Government Code; will not result in any non-discretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

The Department has determined that no alternative considered by the Department would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

All inquiries concerning this proposal should be directed to: Milad Dalju at Department of Justice, 1300 I Street, Sacramento, California 95814, or (916) 210-7264, or [Milad.Dalju@doj.ca.gov](mailto:Milad.Dalju@doj.ca.gov).

**TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION**

**CRIME PREVENTION AND CORRECTIONS**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend sections 3000, 3054, and 3054.1; adopt new sections 3054.2, 3054.3, 3054.7, and 3054.8; renumber and amend existing sections 3054.2, 3054.3, 3054.4, and 3054.5; and repeal existing sections 3054.6 and

3054.7 of Title 15, Division 3, Chapter 1, regarding Religious and Plant-Based Diets.

**PUBLIC COMMENT PERIOD**

The public comment period begins **October 22, 2021** and closes on **December 7, 2021**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rpmc@cdcr.ca.gov](mailto:rpmc@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*

Charles Richey  
Division of Adult Institutions  
(916) 327-1132

**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.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

The proposed regulations introduce plant-based meals in CDCR institutions, consistent with Penal Code section 2084. This statute was amended by Senate Bill 1138, approved by the Governor and filed with the Secretary of State in September 2018, which required the department to make plant-based meals available to inmates. Plant-based meals shall be available at all institutions upon request for inmates with any religious, personal, or ethical dietary need. Participating inmates shall be provided with an entire plant-based meal that contains no meat, poultry, dairy, eggs, or animal products or byproducts.

The proposed regulations expand the term Religious Diet Program to include the terms Personal and Ethical to be applicable to the vegetarian and plant-based diets. The program is now referred to as the Religious Personal Ethical Diet (RPED) Program. This change will provide clarification for the existing RPED Program rules related to inmates withdrawing from or requesting to change their RPED program, and violations of their RPED Program Agreement.

Current language states that inmates who voluntarily withdraw from a RPED program must wait twelve months after the date of the withdrawal to request reinstatement to a RPED, while an inmate in violation of the RPED Program Agreement becomes eligible for reinstatement after only six months. CDCR is proposing language to address this inconsistency by reducing from twelve months to six months the amount of time an inmate must wait before reapplying for a new RPED diet after voluntarily withdrawing from their current RPED diet. Language is also included to clarify that the two specific religious diets, Religious

Meat Alternative and Religious Kosher, shall not be approved for any reason other than religious purposes.

**This action will:**

- Introduce plant-based meals in CDCR institutions as required by Penal Code section 2084. Plant-based meals (containing no meat, poultry, dairy, eggs, or animal products or byproducts) shall be available at all institutions upon request for inmates with any religious, personal, or ethical dietary need.
- Establish the Inmate Meal Tracking System (IMTS) in regulations. The IMTS is a program to document the status and history of inmates on the Religious, Personal, Ethical Diet (RPED) program and to track their history of picking up their meals. The IMTS includes a database which documents which diet the inmate has been approved for, diet request history, and meal contract violations history.
- Address an inconsistency in current regulatory language which states that inmates who voluntarily withdraw from an RPED program must wait twelve months after the date of the withdrawal to request reinstatement to an RPED, while an inmate in violation of the RPED Program Agreement becomes eligible for reinstatement after only six months. New language reduces from twelve months to six months the amount of time an inmate must wait before reapplying for a new RPED diet after voluntarily withdrawing from their current RPED diet.

DOCUMENTS INCORPORATED  
BY REFERENCE

- CDCR Form 3030-A (Rev. 04/21), Religious Meat Alternate or Religious Kosher Diet Program Agreement
- CDCR Form 3030-B (Rev. 04/21), RPED Card
- CDCR Form 3030-C (Rev. 04/21), Religious Personal Ethical Diet Program Agreement — Notice of Non-Compliance
- CDCR Form 3030-D (Rev. 04/21), Religious Personal Ethical Diet Cancellation Request
- CDCR Form 3030-E (Rev. 04/21), Religious Meat Alternate or Religious Kosher Program Interview
- CDCR Form 3030-R (Rev. 04/21), Religious Meat Alternative or Religious Kosher Diet Request
- CDCR Form 3030-V (Rev. 04/21), Vegetarian and Plant-Based Diet Request and Agreement
- CDCR Form 3057 (Rev. 04/21), Religious Kosher Food Distribution Review
- CDCR Form 3058 (Rev. 04/21), Religious Meat Alternate (RMA) Food Distribution Review
- CDC Form 128-B (Rev. 04/74), General Chrono

SPECIFIC BENEFITS ANTICIPATED BY THE  
PROPOSED REGULATIONS

These regulations may benefit the welfare of California residents by allowing inmates to practice their religious beliefs, which may be helpful to rehabilitation, and eventually to reducing recidivism and thereby improving public safety. The proposed regulations will not affect worker safety or the state's environment.

EVALUATION OF INCONSISTENCY/  
INCOMPATIBILITY WITH EXISTING  
LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3) (D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations which concern religious and plant-based diets in CDCR institutions.

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 worker safety or the state's environment. These regulations may benefit the welfare of California residents by allowing inmates to practice their religious beliefs, which may be helpful to rehabilitation, and eventually to reducing recidivism and thereby improving public safety.

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](http://www.cdcr.ca.gov).

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

#### AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

### **TITLE 16. BOARD OF PHARMACY**

#### NOTICE CONCERNING PHARMACY TECHNICIANS

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (Board) is proposing to take the rulemaking action described under the heading Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than December 6, 2021.

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

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

*Authority and Reference:* Pursuant to the authority vested by sections 114.5, 115.4, 115.5, 4005, 4115, and 4202 of the Business and Professions Code, and to implement, interpret or make specific sections 144, 144.5, 163.5, 4007, 4038, 4005, 4115, 4115.5, 4202, 4207, 4400, and 4402 of the Business and Professions Code and section 11105 of the Penal Code, the Board is proposing to amend sections 1793.5 and 1793.6 of Article 11 of Division 17 of Title 16 of the California Code of Regulations and adopt section 1793.65 of Article 11 of Division 17 of Title 16 of the California Code of Regulations as follows:

#### INFORMATIVE DIGEST

##### **A. Informative Digest**

The Board proposes to amend sections 1793.5 and 1793.6 of Article 11 of Division 17 of Title 16 of the California Code of Regulations (CCR) and adopt section 1793.65 of Article 11 of Division 17 of Title 16 of the CCR to update the pharmacy technician application form incorporated by reference (Form 17A-5), update the requirements for schools providing training courses for pharmacy technicians, and add the Board-approved pharmacy technician certification programs in accordance with SB 952 (Anderson, Chapter 150, Statutes of 2016).

##### **B. Policy Statement Overview**

The Board is a state agency vested with the authority to regulate the pharmacy industry, including pharmacies, pharmacists and individuals who work within the pharmacy. The Board's mandate and its mission is to protect the public. Business and Professions Code (BPC) section 4005 authorizes the Board to adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. This rulemaking proposal clarifies and makes specific the requirements that apply to the Board's pharmacy technician application, pharmacy technician training courses and Board-approved certification programs.

The Board regulates individuals licensed as pharmacy technicians who work in pharmacies under the supervision of pharmacists. The Board

has the authority and responsibility to specify the requirements for courses of training or certification programs for those seeking licensure as a pharmacy technician. The Board also has the authority and responsibility to specify pharmacy technician application requirements.

Existing law authorizes the Board to perform a thorough investigation of applications for licensure to determine whether the applicant is qualified for the license being sought and establishes the requirements necessary to qualify for a pharmacy technician license, including education and training requirements. Further, existing law authorizes the Board to approve courses of training and pharmacy technician certification programs as a means to qualify for licensure.

The regulations proposed in this rulemaking action would (1) update requirements for applying for licensure as a pharmacy technician, including modifying the application that is incorporated into the regulation by reference; (2) modify the requirements for qualifying courses of training for pharmacy technicians; and (3) specify which pharmacy technician certification programs are Board-approved pursuant to statute.

**C. Anticipated Benefits of Proposal**

This regulatory proposal ensures the pharmacy technician application is requesting current, relevant, and accurate information about pharmacy technician applicants. This information allows for the Board to make an appropriate licensing decision based on the applicant’s fitness for duty as a licensed pharmacy technician. When licenses are appropriately issued to qualified applicants, California consumers’ health and welfare are benefited in that the pharmacy technicians working throughout California are qualified to meet requirements to ensure safe preparation and handling of prescription medications for the pharmacist’s review prior to dispensing to the consumer.

This rulemaking package ensures that Board regulations are revised to incorporate standards that better protect pharmacy technician students as well as the public. If students are given necessary information regarding their likely denial of licensure prior to committing to or completing the course, it may save them time and money. Requiring more stringent training courses for pharmacy technicians to become licensed will result in more qualified pharmacy technicians to better protect consumers’ health and welfare.

When the Board updates the regulations regarding Board-approved pharmacy technician certification programs, the Board ensures that regulations specify and memorialize the specific pharmacy technician certification programs that have Board approval. With the increase of an additional certification program accepted by the Board, pharmacy technician applicants

can determine which of the two programs is best for them. Additionally, the applicants are not required to take one specific certification program. The benefit to the consumers of California is that their health and welfare may be better served by an increased number of pharmacy technicians available in the industry. When there is an increase in the number of licensed pharmacy technicians, each pharmacy can hire an adequate amount of staff to meet their consumers’ needs.

**D. Consistency and Compatibility with Existing State Regulations**

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

**E. Incorporation by Reference**

This proposal would update CCR section 1793.5 to modify the version of the Board of Pharmacy’s Technician Application (Form 17A–5) that is incorporated by reference (rev ~~1/2021~~ 2/2021).

FISCAL IMPACT ESTIMATES

The Board has made the following initial fiscal impact determinations:

*Fiscal Impact on Public Agencies Including Costs/Savings to State Agencies or Costs/Savings in Federal Funding to the State:* The regulations are anticipated to result in approximately 32 prospective students opting to not enroll in a pharmacy technician educational program and a corresponding reduction in initial license applications submitted to the Board each year.

**Expenditure (savings):** The regulations are anticipated to result in 32 fewer initial registration applications to be submitted to the Board per year.

The Board indicates a Program Technician III takes approximately 1 hour and a Staff Services Analyst 2 hours to complete the licensing workload at a cost of \$197 each application, which would result in workload and costs savings of approximately \$6,304 per year and up to \$63,040 over a ten-year period.

Additionally, the Board is anticipated to realize cost savings related to fewer denied applications being appealed. The Board estimates 40 percent (13) of the 32 initial registration applicants appeal the Board’s decision to deny the application per year.

The Board currently incurs significant workload and costs to fully process and adjudicate an appeal. The average approximate cost per appeal is \$13,908 as follows:

- Office Technician — Administrative (50 minutes — \$48)
- Staff Services Analyst — Investigation & reporting (2 hours — \$132)

- Associate Governmental Program Analyst — Issuance of denial letter (10 minutes — \$13)
- Staff Services Manager I — Final review & decision (10 minutes — \$15)
- Attorney General and Office of Administrative Hearings — Approximate average \$13,700 per case

The Board estimates total annual cost savings (including licensing (32) — \$6,304 per year and appeals (13) — \$180,804 per year) of approximately \$187,108 per year and up to 1.8 million over a ten-year period.

**Revenues (loss):** The regulations will result in 32 fewer pharmacy technician applicants applying for registration and paying \$195 each to the Board, which results in decreased revenues of \$6,240 per year and up to \$62,400 over a ten-year period.

Additionally, the Department of Justice will complete 32 fewer fingerprint checks per year with lost revenues of \$1,568 per year and up to \$15,680 over a ten-year period.

The Board estimates total lost revenue to the state of approximately \$7,800 per year and up to \$78,000 over a ten-year period.

*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.

*Significant Statewide Adverse Economic Impact Directly Affecting Businesses (If Any):*

The Board has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses and/or employees.

*Business Impact:*

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

The Board finds that updating the pharmacy technician license application, revising the pharmacy technician training course requirements, and specifying approved pharmacy technician certification programs, may have a minor statewide adverse economic impact on businesses.

The regulations are anticipated to result in approximately 32 prospective students opting to not enroll in a pharmacy technician educational program and paying tuition fees of \$20,000 per individual, which results in tuition revenue losses of \$640,000 per year and up to \$6.4 million over a ten-year period.

The Board indicates 110 to 125 educational programs will be impacted by the proposed regulations, which would result in an average revenue loss ranging from \$5,120 to \$5,818 per institution per year and up to \$51,200 to \$58,182 over a ten-year period.

Additionally, businesses in the state providing fingerprint services will have approximately 32 fewer fingerprint checks per year. These businesses typically charge \$75 per fingerprint check with \$49 being remitted to the Department of Justice. As a result, these businesses are estimated to incur revenue losses of \$832 per year and up to \$8,320 over a ten-year period.

*Cost Impact on Representative Private Person or Business:*

The regulations are anticipated to result in approximately 32 prospective students opting to not enroll in a pharmacy technician educational program each year.

**Expenditures (savings):** These (32) individuals will save approximately \$20,000 each in tuition and training costs, as well as Board registration fees (\$195), fingerprint check fees (\$75), and National License Database fees (\$8).

The Board estimates total annual savings for these individuals of approximately \$649,000 per year and up to \$6.49 million over a ten-year period.

*Effect on Housing Costs:* None.

## EFFECT ON SMALL BUSINESS

While the Board does not have nor does it maintain data to define if any of its licensees are a “small business” as defined in Government Code section 11342.610, the Board made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small businesses. The Board has determined that the proposed regulation would have little effect on small businesses. Existing law allows a training course as one of the pathways to licensure for pharmacy technicians. The Board is not aware of any small businesses that provide pharmacy technician training programs.

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

*Impact on Jobs/New Businesses:*

The Board concludes that it is:

- (1) Unlikely that the proposal will create or eliminate any jobs within California;
- (2) Unlikely that the proposal will create new, or eliminate existing, businesses in California; and
- (3) Unlikely that the proposal will expand businesses currently doing business within the state.

The Board has determined that the regulatory proposals herein are unlikely to have any impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in the State of California.

This rulemaking proposal clarifies and makes specific the requirements that apply to pharmacy technician application requirements, training courses and qualifications. The Board notes this regulatory proposal allows for the acceptance of an additional pharmacy technician certification.

*Benefits of Regulation:*

This regulatory proposal will benefit the health and welfare of California consumers by ensuring that the Board updates the requirements for the pharmacy technician application, training course, and certification programs and will better protect patients by providing for a better screened, trained, and educated pharmacy technician licensed and working in California.

The benefits to the public include consumer protection for future pharmacy technician training course students, and for the health and welfare of California residents. When a pharmacy technician is properly trained as a result of the training course, the consumers of California may experience fewer compromises in safe handling of prescription medication and medication errors prior to a pharmacist's review.

The regulatory proposal will not affect worker safety and 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 either 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.

Any interested person may present statements or arguments in writing relevant to the above determinations during the written comment period at the address listed for the Contact Person.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed actions and has available all the information upon which the proposals are based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the person designated below as contact person, or by accessing the Board's Web site at <http://www.pharmacy.ca.gov>.

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 Board's Web site [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov).

CONTACT PERSON

Materials regarding this proposal can be found at [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov). Inquiries or comments concerning the proposed rulemaking actions may be addressed to:

Name: Lori Martinez  
Address: 2720 Gateway Oaks Drive,  
Suite 100  
Sacramento, CA 95833  
Phone Number: (916) 518-3078  
Fax Number: (916) 574-8618  
E-Mail Address: [Lori.Martinez@dca.ca.gov](mailto:Lori.Martinez@dca.ca.gov)

The backup contact person is:

Name: Debbie Damoth  
Address: 2720 Gateway Oaks Drive,  
Suite 100  
Sacramento, CA 95833  
Phone Number: (916) 518-3090  
Fax Number: (916) 574-8618  
E-Mail Address: [Debbie.Damoth@dca.ca.gov](mailto:Debbie.Damoth@dca.ca.gov)

**TITLE 17. DEPARTMENT OF  
PUBLIC HEALTH**

COMPATIBILITY MAINTENANCE WITH  
NUCLEAR REGULATORY COMMISSION  
(NRC) REGULATIONS AND PERSONNEL  
DOSIMETER USE IN CERTAIN NON-  
HUMAN USES OF X-RAY EQUIPMENT  
(DPH-20-017)

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

**PUBLIC PROCEEDINGS**

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: Veronica Rollin, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (916) 445-2529, email to [veronica.rollin@cdph.ca.gov](mailto:veronica.rollin@cdph.ca.gov) or use the California Relay Service by dialing 711.

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by December 6, 2021, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments must be submitted as follows:

1. By email to: [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov). It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-20-017" in the subject line, to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All comments, including email or fax transmissions, should include the regulation package identifier, DPH-20-017 "Compatibility maintenance with Nuclear Regulatory Commission (NRC) regulations and personnel dosimeter use in certain non-human uses of x-ray equipment" along with your name and your mailing address or email address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

**AUTHORITY AND REFERENCE**

The Department proposes to adopt, amend, or repeal the regulation sections identified under the authority provided in sections 100275, 114765, 114820, 114975, 115000, 114060, 115091, 131050, 131051 and 131200 of the Health and Safety Code (HSC). This proposal implements, interprets, or makes specific, sections 114740, 114765, 114960, 114965, 114970, 114985, 114990, 115000, 115060, 115091, 115092, 115105, 115110, 115120, 115165, 115230, 115235, 131050, 131051 and 131052 of the HSC.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

*Summary of Proposal*

The California Department of Public Health (Department) proposes to amend, adopt or repeal sections of title 17 of the California Code of Regulations (17 CCR) that:

- Address radioactive material (RAM), in accordance with the United States Nuclear Regulatory Commission's (NRC) regulatory amendments of title 10, Code of Federal Regulations, parts 30; 32; 34; 35; 37; 39; and 71 (10 CFR 30; 32; 34; 35; 37; 39; or 71).
- Allow users of radiation machines (i.e., X-ray machines) for shielded-room radiography and field radiography (non-human uses) to optionally supply equipment operators personnel dosimeters that do not require processing to determine the occupational radiation dose provided the dose

is evaluated promptly after replacement of the dosimeter, or at least quarterly, whichever is more frequent.

These proposed regulations incorporate by reference the January 2021 versions of 10 CFR 20; 30.32(i); 30.72; 32; 35; 35.65; 37; and 71. In addition, federal Department of Transportation (DOT) regulations (Title 49, CFR) cited in 10 CFR 71.5, as of January 1, 2021, are proposed to be incorporated by reference. These proposed regulations also make nonsubstantial corrections.

#### *Background*

Both RAM and X-ray machines are widely used in many industries, including: the healing arts, for diagnostic and therapeutic purposes; industrial radiography, for nondestructive testing of objects to ensure structural integrity; well logging, for the purpose of obtaining information about the well or adjacent formations that may be used in oil, gas, mineral, groundwater, or geological exploration; and, manufacturing and distribution, for designing, building, and supplying radioactive sources for use in medicine and by other industries. The Department issues RAM licenses authorizing, and registers users of X-ray machines for, such uses, and conducts inspections of users to ensure compliance with applicable laws and regulations.

The Radiation Control Law (RCL) (HSC §§ 114960 through 115273) requires that the Department develop programs for licensing and regulating radioactive materials, and for evaluation of hazards associated with use of sources of ionizing radiation. (HSC § 115000(a) & (b).) The Department is the successor of the California Department of Health Services and as such has the authority to license and regulate radioactive material under the California Public Health Act of 2006. (Chapter 241, Statutes of 2006; SB 162, Ortiz.)

In 1962, the State of California ratified and approved an agreement with the United States Atomic Energy Commission, the predecessor of the United States Nuclear Regulatory Commission (NRC), by which the federal agency discontinued its regulatory authority over certain radioactive materials. (HSC § 115230.) By such action, California became an “Agreement State.”

California, as an Agreement State, has regulatory authority over the possession and use of RAM by any person subject to state jurisdiction. A person, as defined in HSC § 114985(c), is “any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, the United States

Department of Energy, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, under prime contract to the United States Department of Energy, or any successor thereto.”

A provision of the agreement between California and the NRC requires that the State “use its best efforts to maintain continuing compatibility between its program and the program of the [United States Atomic Energy] Commission for the regulation of like materials.” (HSC § 115235, art. V.) The NRC’s stated policy is “to evaluate Agreement State programs established pursuant to Section 274 of the Atomic Energy Act (AEA) of 1954, as amended, to ensure they are adequate to protect public health and safety and compatible with NRC’s regulatory program.”<sup>1</sup>

To determine a state’s compatibility, the NRC uses Management Directive 5.9, *Adequacy and Compatibility of Agreement State Programs*, Directive Handbook 5.9. (Reference 1.) This handbook describes the specific criteria and process that are used to determine which NRC program elements should be adopted and implemented by an Agreement State for purposes of maintaining compatibility, and which NRC program elements have a particular health and safety significance. The NRC rates the elements according to the degree of compatibility required. The NRC requires that some elements be adopted by the States in a form identical to the NRC’s. Other elements need not be adopted in identical form, but are still required to meet the “essential objective” of the program element. The NRC’s overall determination of the adequacy and compatibility of an Agreement State’s program is made pursuant to Management Directive 5.6, *The Integrated Materials Performance Evaluation Program (IMPEP)*.<sup>2</sup> The NRC evaluates Agreement States’ programs every four years to determine if a state’s radiation safety program meets the adequacy and compatibility criteria. If California fails to meet those criteria, the NRC may revoke California’s status as an Agreement State and assume direct regulation and control of byproduct, source, and special nuclear material within the State.

In conjunction with the NRC’s IMPEP review every four years, the NRC procedures (SA-200<sup>3</sup>) require

<sup>1</sup>*Adequacy and Compatibility of Agreement State Programs, Management Directive 5.9*, page 1. The document is available at the Nuclear Regulatory Commission, Office of State and Tribal Programs website: <https://scp.nrc.gov/procedures/md0509.pdf> (Reference 1.)

<sup>2</sup>*Integrated Materials Performance Evaluation Program (IMPEP), Management Directive 5.6*. The document is available at the Nuclear Regulatory Commission, Office of State, and Tribal Programs website: <https://scp.nrc.gov/procedures/md0506.pdf> (Reference 2.)

<sup>3</sup>SA-200 is available at <https://scp.nrc.gov/procedures/sa200.pdf> (Reference 3.)

that Agreement States, when adopting regulations required for meeting the adequacy and compatibility determinations, submit proposed regulations to the NRC for review. The NRC then reviews the proposal to ensure that the proposed regulations meet the applicable NRC compatibility category, defined as follows:

**NRC Compatibility Categories<sup>4</sup> (underlined words are defined below)**

**Category A:** Basic radiation protection standard, or related definitions, signs, labels or terms that is necessary for a common understanding of radiation protection principles. The State program element should be essentially identical to that of NRC.

**Category B:** Program element with significant direct transboundary implications. The State program element should be essentially identical to that of NRC.

**Category C:** Program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed need not be the same as NRC provided the essential objectives are met.

**Category D:** Not required for purposes of compatibility.

**Category NRC:** Not required for purposes of compatibility. These are NRC program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or provisions of Title 10 of the Code of Federal Regulations. The State should not adopt these program elements.

**Category Health & Safety (H&S):** Program elements identified as H&S are not required for purposes of compatibility; however, they do have particular health and safety significance. The State should adopt the essential objectives of such program elements in order to maintain an adequate program.

[ ] = A bracket around a category (e.g., [B]) means that the Section may have been adopted elsewhere and it is not necessary to adopt it again.

**Definitions<sup>5</sup>**

**Conflict** means that the essential objectives of regulations or program elements are different and an undesirable consequence is likely to result in another jurisdiction or in the regulation of agreement material on a nationwide basis.

**Essential objective** of a regulation or program element means the action that is to be achieved, modified, or prevented by implementing and following the regulation or program element. In some instances, the essential objective may be a numerical value (e.g.,

restriction of exposures to a maximum value) or it may be a more general goal (e.g., access control to a restricted area).

**Essentially Identical** means the interpretation of the text must be the same, regardless of the version (NRC or Agreement State) that is read.

**Gap** means that the essential objectives of NRC regulations or program elements are absent from the Agreement State program, and an undesirable consequence is likely to result in another jurisdiction or in the regulation of agreement materials on a nationwide basis.

To ensure compliance with the NRC agreement and to maintain compatibility of State regulations, this proposal adopts, amends or repeals existing regulations relating to radioactive material and addresses those changes made by the NRC, as noted in the following volumes of the Federal Register (FR):

- 83 FR 30285 (June 28, 2018)<sup>6</sup>
- 83 FR 33046 (July 16, 2018)
- 84 FR 63565 (November 18, 2019)
- 84 FR 65639 (November 29, 2019)
- 84 FR 66561 (December 5, 2019)
  - This FR changed the effective date from December 30, 2020, specified in 84 FR 65639 (Nov. 29, 2019), to December 30, 2019. The NRC made no regulatory revisions under this FR.
- 85 FR 15347 (March 18, 2020)
- 85 FR 33527 (June 2, 2020)
- 85 FR 36307 (June 16, 2020)
  - This FR confirmed the effective date of June 16, 2020 as specified in 85 FR 15347 (March 18, 2020). The NRC made no regulatory revisions under this FR.
- 85 FR 44685 (July 24, 2020)
  - This FR confirmed the effective date of August 17, 2020 as specified in 85 FR 33527 (June 2, 2020). The NRC made no regulatory revisions under this FR.

This proposal does not adopt any provision designated by the NRC as compatibility category NRC as identified in the above Federal Registers because such provisions are reserved to NRC and may not be adopted by Agreement States.

Pursuant to the RCL, as it pertains to use of X-ray machines in Shielded-Room Radiography (17 CCR § 30330(b)(25)) and Field Radiography (17 CCR 30330(b)(9)), users register (17 CCR § 30108) with

<sup>4</sup>Volume 5, Governmental Relations and Public Affairs, *Adequacy and Compatibility of Agreement State Programs*. April 26, 2018, Directive Handbook 5.9, pp. 4–9. (Reference 1).

<sup>5</sup>*Ibid*, pp. 14–15.

<sup>6</sup>The citation format 83 FR 30285 (June 28, 2018) means the June 28, 2018 publication of Volume 83, commencing at page 30285, of the Federal Register. This short format for any given federal register will be used throughout this document for brevity.

the Department as possessing a reportable source of radiation (17 CCR § 30100(n) & (s)) and are subject to inspection.

Because such use, and its associated hazards, is similar to use of RAM in permanent radiographic installations (17 CCR § 30332.2), industrial radiography (17 CCR § 30330(b)(13)) in general, and outside of such installations (e.g., in the field), this proposal allows, as did the NRC under 85 FR 15347 (March 18, 2020) for Industrial radiography and well logging operations, use of newer, and technologically advanced, personnel dosimeters for shielded-room radiography operations. For field-radiography (17 CCR § 30330(b)(9)), section 30336.1(l) cites to, and relies entirely on, section 30333.2 that is being amended. Though section 30336.1 is not proposed to be amended, the amendment of section 30333.2, by virtue of section 30336.1(l), would allow field-radiography operations to use these newer personnel dosimeters.

The regulations that implement, interpret, and make specific the provisions of the Radiation Control Law are identified in 17 CCR §§ 30100 through 30395. The proposed changes are explained as follows:

Amend **Section 30194, Approval of Applications and Specific Terms and Conditions for Specific Licenses**, to maintain compatibility with the NRC's amendment of 10 CFR 30.34(g), designated by the NRC as compatibility category B requiring Agreement States to adopt an essentially identical provision. (83 FR 33095 (July 16, 2018).) Existing subsection (g) is redesignated subsection (h), without change, to maintain a coherent structure, resulting in no regulatory effect.

Amend **Section 30195, Special Requirements for Issuance of Specific Licenses**, to update the date of incorporation from Jan. 1, 2013 to Jan. 1, 2021 so as to maintain compatibility with the NRC's changes to 10 CFR 35 made under 83 FR 33095 (July 16, 2018) and 85 FR 33527 (June 2, 2020), and to make nonsubstantial changes.

Amend **Section 30195.2, Special Requirements for Issuance of Specific Licenses — Emergency Plans**, to update the date of incorporation from January 1, 2013 to January 1, 2021, and to make nonsubstantial changes. The NRC has made no changes to 10 CFR 30.32(i) and 30.72, incorporated by reference in this section.

Amend **Section 30196, Special Requirements for Issuance of Specific Licenses to Manufacture or Transfer Certain Items Containing Radioactive Material**, to update the date of incorporation from January 1, 2013 to January 1, 2021 so as to maintain compatibility with the NRC's change to 10 CFR 32.72, and to make nonsubstantial changes. The NRC has designated the changes to 10 CFR 32.72 as

compatibility category B (83 FR 33095 (July 16, 2018)), requiring Agreement States to adopt an essentially identical provision.

Amend **Section 30220, Special Requirements for Issuance of Specific Licenses—Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material**, to update the date of incorporation from January 1, 2016 to January 1, 2021 so as to maintain compatibility with the NRC's changes to 10 CFR 37 made under the following Federal Registers, and to make nonsubstantial changes.

- 83 FR 30285 (June 28, 2018)
- 84 FR 63565 (November 18, 2019)
- 84 FR 65639 (November 29, 2019)

Amend **Section 30253, Standards for Protection Against Radiation**, to update the date of incorporation of 10 CFR 20 from January 1, 2013 to January 1, 2021, and to make nonsubstantial changes. The NRC has made no changes to 10 CFR 20, incorporated by reference in this section. Though no regulatory effect occurs due to only the publication date change, a regulatory effect occurs because section 30255(b)(2) requires all radiation users to conspicuously post a current copy of the regulations found in Subchapter 4, Chapter 5, Division 1 of Title 17 of the CCR (i.e., "this regulation" as defined in § 30100(y)). Thus, to comply with section 30255(b)(2), users must post the 2021 edition instead of the 2013 edition. Upon adoption of this proposal, the incorporated edition of 10 CFR 20 will be posted on the Department's website and be available on federal government websites upon publication of the January 1, 2021 edition.

Amend **Section 30336, Requirements for Shielded-Room Radiography**, to allow shielded-room radiography (X-ray machine) users to use electronic personnel dosimeters that do not require processing to determine the radiation dose.

Amend **Section 30348.3, Personnel Monitoring**, to achieve compatibility with the NRC's changes made to 10 CFR 39.65 under 85 FR 15347 (June 16, 2020). The NRC has designated this provision as compatibility category C, requiring agreement states to adopt equivalent regulations meeting the essential objective. This proposal adopts the provisions in an essentially identical manner to maintain consistency with other jurisdictions because well logging operations often cross state and federal jurisdictional boundaries. Maintaining uniformity between the several states reduces unnecessary burden on these operations.

Amend **Section 30373, Transportation Regulations**, to maintain compatibility with NRC's provisions in 10 CFR 71, the federal DOT regulations in 49 CFR cited in 10 CFR 71.5, and to make nonsubstantial changes.

Amend **Section 30394, Application for Participation**, to update reference to California’s agreement with the NRC as specified in the Health and Safety Code, the NRC’s guidelines for reviewing Agreement State radiation control programs, to update the authority and reference citations, and to make nonsubstantial changes.

Amend **Section 30395, Contract Authorizing Participation**, to update the section’s authority and reference citations, resulting in no regulatory effect pursuant to 1 CCR § 100. No changes to the text are proposed.

*Problem Statement*

Existing Department regulations that address radioactive material do not address recent NRC regulatory changes, contain provisions that are out-of-date, and contain incorrect addresses, inconsistencies, and grammatical and capitalization errors.

*Objectives (Goals) of the Regulation*

The broad objectives of this proposed regulatory action are to:

- Ensure that the Department’s regulations are compatible with those of the NRC and the DOT.
- Update and clarify existing regulations.

*Anticipated Benefits*

Anticipated benefits from this proposed regulatory action are:

- Continued protection of the public health and safety, worker safety, and the environment, as provided for by the Legislature in the following provisions: HSC §§ 114705; 114740; 114755; 114965; 114970; 115000; 115230; and 115235.
- Continued compatibility with the standards and regulatory programs of the NRC, as specified in HSC §§ 114965(a),<sup>7</sup> 115000(b), and 115235(article V).
- Continued maintenance of an orderly regulatory pattern within the State, among the States, and between the federal government and the State, as specified in HSC § 114965(b).
- Consistency with the regulatory programs of other States, as specified in HSC § 114965(c).
- An updating and clarification of existing regulations, and a deletion of unnecessary regulations.

*Evaluation as to Whether the Proposed Regulations are Inconsistent or Incompatible with Existing State and Federal Regulations*

The Department evaluated this proposal to determine whether the proposed regulations are inconsistent or incompatible with existing State

regulations. This evaluation included a review of both the Department’s existing general regulations and those regulations specific to the regulatory control of radioactive material. Some inconsistencies in those specific regulations were found, and are addressed in this proposal. An Internet search of other state agency regulations was also performed. It was determined that no other state regulation addressed the same subject matter, and that this proposal was not inconsistent or incompatible with other state regulations. Therefore, the Department has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing State regulations.

**DOCUMENTS INCORPORATED BY REFERENCE**

These proposed regulations incorporate by reference the January 2021 versions of 10 CFR 20; 30.32(i); 30.72; 32; 35; 35.65; 37; and 71. In addition, federal Department of Transportation (DOT) regulations (Title 49, CFR) cited in 10 CFR 71.5, as of January 1, 2021, are proposed to be incorporated by reference. These proposed regulations also make nonsubstantial corrections.

**MANDATED BY FEDERAL LAW OR REGULATIONS**

Not applicable.

**OTHER STATUTORY REQUIREMENTS**

None.

**LOCAL MANDATE**

None.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

**FISCAL IMPACT ESTIMATES**

**Cost to any local agencies or school districts that must be reimbursed pursuant to Section 17561 of Government Code:**

None.

**The cost or savings to any state agency:**

For entities subject to the Radiation Control Law, as described in “Cost Impacts on Representative Person or Business.” For the CDPH, absorbable and averted costs resulting in an overall savings due to averted costs.

<sup>7</sup>This short format “HSC § 131055” for a given Health and Safety Code section will be used throughout this document for brevity.

**Other Nondiscretionary Cost or Savings Imposed on Local Agencies:**

None.

**Costs or Savings in Federal Funding to the State:**

None.

**HOUSING COSTS**

The Department has determined that the proposed regulations would not have an impact on housing costs.

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

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

**STATEMENT OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT (EIA)**

The Department has determined that the proposed regulations would not significantly affect the following:

- A. The creation or elimination of jobs within the state.
- B. The creation of new businesses or the elimination of existing businesses within the state.
- C. The expansion of businesses currently doing business within the state.

The Department has determined that the proposed regulations would significantly affect the following:

- D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. The proposal increases and strengthens the health and welfare of California residents, worker safety, and protection of the State's environment, because it addresses compatibility with the NRC through restructuring, clarifying, and updating existing regulations, as intended by the Legislature, as follows:
  - Continues protection of the public health and safety, worker safety, and the environment, as established by the Legislature in the following provisions: HSC §§ 114705, 114740, 114755, 114965, 114970, 115000, 115230, and 115235.
  - Maintains compatibility with the standards and regulatory programs of the NRC, as specified in HSC §§ 114965(a), 115000(b), and 115235 (article V).

- Maintains consistency with the regulatory programs of other states, as specified in HSC § 114965(c).
- Maintains an orderly regulatory pattern within the State, among the States, and between the federal government and the State, as specified in HSC § 114965(b).
- Initiates and administers programs of surveillance and control of those activities that could lead to the introduction of radioactive materials into the environment, as specified in HSC § 114705.
- Updates and clarifies existing regulations and deletes unnecessary regulations.

**COST IMPACTS ON REPRESENTATIVE  
PERSON OR BUSINESS**

- For the following types of RAM licensees:
  - Medical use and nuclear pharmacy licensees:
    - one-time implementation costs = \$889 per licensee.
    - annual costs = \$112 per licensee.
  - Industrial Radiography = Savings of \$1,684 per licensee.
  - Well Logging = Savings of \$1,684 per licensee.
- For the following X-ray Machine registrants:
  - Shielded-room radiography = Savings of \$302 per registrant.
  - Field Radiography = Savings of \$302 per registrant.
    - If Registrant performs both types of radiography, savings are not cumulative.

**BUSINESS REPORTING REQUIREMENTS**

The Department has determined that this proposed regulation would require businesses to submit a report and that the report is necessary for the health, safety, and welfare of the people of this state.

**EFFECT ON SMALL BUSINESS**

The Department has determined that the proposed regulations affect small business because they will be legally required to comply with the regulation and may incur a detriment from the enforcement of the regulation.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT**

None.

CONSIDERATION OF ALTERNATIVES

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

The Department invites interested persons to present alternatives with respect to the proposed regulation either during the public comment period or at the public hearing (if scheduled).

TECHNICAL, THEORETICAL, AND/  
OR EMPIRICAL STUDIES, REPORTS OR  
DOCUMENTS RELIED UPON

**Reference 1.** *Adequacy and Compatibility of Agreement State Programs*, Management Directive 5.9 as published in Volume 5: Governmental Relations and Public Affairs. <https://scp.nrc.gov/procedures/md0509.pdf> accessed on May 26, 2020:

**Reference 2.** *Integrated Materials Performance Evaluation Program (IMPEP)*, Management Directive 5.6 as published in Volume 5: Governmental Relations and Public Affairs. <https://scp.nrc.gov/procedures/md0506.pdf> accessed on May 26, 2020.

**Reference 3.** NRC Procedure SA-200, *Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements — SA — 200*. <https://scp.nrc.gov/procedures/sa200.pdf> accessed on May 26, 2020.

**Reference 3a.** NRC Procedure SA-201, *Review of State Regulatory Requirements — SA — 201*. <https://scp.nrc.gov/procedures/sa201.pdf> accessed on May 26, 2020.

**Reference 4.** Regulatory Analysis for Final Rule: Amendments to Medical Use of Byproduct Material Regulations (10 CFR Parts 30, 32, and 35) (83 FR 33046 (July 16, 2018)) <https://www.nrc.gov/docs/ML1612/ML16124B034.pdf> accessed July 29, 2020.

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Phillip Scott, of the Radiological Health Branch, at (916) 440-7978 or [Phillip.scott@cdph.ca.gov](mailto:Phillip.scott@cdph.ca.gov).

All other inquiries concerning the action described in this notice may be directed to Veronica Rollin, Office of Regulations, at (916) 445-2529 or to the

designated backup contact person, Hannah Strom-Martin at (916) 440-7371.

**In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-20-017.**

AVAILABILITY STATEMENTS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814, will be the custodian of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 445-2529 (or the California Relay Service at 711), send an email to [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov), or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

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

*Final Statement of Reasons*

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at [www.cdph.ca.gov](http://www.cdph.ca.gov) by clicking on these links, in the following order: Decisions Pending & Opportunities for Public Participation, Proposed Regulations.

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF DEVELOPMENTAL SERVICES

PROPOSED AMENDMENTS TO HOME  
AND COMMUNITY BASED SERVICES  
(HCBS) 1915(c) WAIVER FOR THE  
DEVELOPMENTALLY DISABLED  
(<https://www.dds.ca.gov/initiatives/hcbs/>)

This notice provides information of public interest that the Department of Health Care Services (DHCS) intends to submit a Home and Community Based Services Waiver (HCBS) amendment for federal approval. This is an amendment to the California Medicaid 1915(c) Developmental Disabilities Waiver to implement rate changes funded in the 2021–22 budget act and informed by the 2019 service provider rate study.

Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions (W&I) Code section 4500 et seq., people with developmental disabilities, as defined in W&I Code section 4512(a), are eligible to receive services and supports that meet their individual needs and choices. The Department of Developmental Services (DDS) administers the Lanterman Act.

Pursuant to Welfare and Institutions Code Section 4519.8, the Department of Developmental Services (DDS) submitted a rate study addressing the sustainability, quality, and transparency of community-based services for individuals with developmental disabilities to the Legislature in March 2019. The rate study included proposed rate models and payment methodologies for services. For more information on the rate models, please see: <https://www.dds.ca.gov/rc/vendor-provider/rate-study/>.

The California Budget Act of 2021 (SB-129) provided funding to begin implementation of the rate models as described in the 2019 Rate Study. This proposed HCBS Waiver amendment provides rate increases effective April 1, 2022 for service providers that equals one-quarter of the difference between current rates and fully funded rate models. These changes will not result in any rate decreases.

Full implementation of the rate models will occur by July 1, 2025, with additional incremental changes scheduled for July 1, 2023. Subsequent HCBS waiver amendments will be submitted to address these changes.

All proposed HCBS Waiver amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DHCS plans to submit the proposed waiver amendment to CMS by December 1, 2021 for a proposed effective date of April 1, 2022.

A copy of the proposed waiver amendment will be posted at <https://www.dds.ca.gov/initiatives/hcbs/>. You may also request a copy of the proposed amendment by writing to the mailing or email addresses listed below, or by visiting your local county welfare department.

Comments will be accepted for 30 days from the release date. Any written comments concerning this notice, or the proposed waiver amendment may be sent to:

Department of Developmental Services  
Federal Programs Division  
Attn: Jonathan Hill  
1215 O Street  
Sacramento, California 95814

Comments may also be e-mailed to [federal.programs@dds.ca.gov](mailto:federal.programs@dds.ca.gov). Please indicate ‘HCBS Waiver’ in the subject line or message.

A copy of submitted public comments may be requested in writing at the mailing or email addresses above.

Release Date: October 22, 2021

### DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND  
ENHANCEMENT ACT CONSISTENCY  
DETERMINATION NO. 1653-2021-081-001-R1

**Project:** Aldergrove Marsh Restoration  
Project Phase 1  
**Location:** Arcata, Humboldt County  
**Applicant:** Emily Benvie, City of Arcata

**Background**

*Project Location:* The Aldergrove Marsh Restoration Project Phase 1 (Project) is located at is located at Aldergrove Marsh at the intersection of Aldergrove Road and Ericson Way, Arcata, at a property owned by the City of Arcata, Assessor Parcel Number (APN) 507-461-011, within the North Fork Janes Creek drainage. The Aldergrove Marsh supports populations of amphibians and endemic and migratory bird species.

*Project Description:* Emily Benvie (Applicant) proposes to enhance and restore habitat and public use within the Aldergrove Marsh to provide a net

conservation benefit for wetland and riparian wildlife biodiversity. The Aldergrove Marsh wildlife area is a former log pond that was converted by the City of Arcata in the early 1980's into a deep-water wetland and riparian area to intended to benefit wildlife. Beginning in the early 1990's, the site became infested with invasive canary grass (*Phalaris arundinacea*) and more recently exotic spongeplant (*Limnobium laevigatum*) reducing open water, simplifying aquatic and riparian habitats, and reducing wildlife and public use values.

This project seeks to remediate impacts by removing the invasive plant species. Removal will be accomplished using a long-reach excavator to minimize ground and vegetation disturbance. An airboat may be used to push floating invasive vegetation to areas that cannot be reached with the excavator. The excavator will be equipped with a slotted bucket to remove vegetative material while allowing water to remain in the wetland. Excavated material will be hauled off-site for composting without risk of infesting other areas. Land-based riparian planting efforts will be undertaken after the invasive vegetation is removed. All riparian management will occur during the wet season and will involve planting native plants in suitable locations around the wetland perimeter and existing constructed islands within the wetland. The project will include re-surfacing of the existing gravel path with new compacted gravel to improve public access and use.

*Project Size:* The total area of ground disturbance associated with the Project is approximately 0.6 acres and 300 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

*Project Associated Discharge:* There is expected to be no discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project.

*Project Timeframes:*

Start date: September 2021  
 Completion date: October 2022  
 Work window: July 1 — October 15; excavation  
 October 15 — June 30; riparian planting

*Water Quality Certification Background:* Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California, the Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) No.

1B21153WNHU; CW-875162 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to aquatic species.

*Receiving Water:* Aldergrove Marsh, tributary to North Fork Janes Creek.

*Filled or Excavated Area:*

Permanent area impacted: none  
 Temporary area impacted: 0.6 acres  
 Length temporarily impacted: 300 linear feet  
 Length permanently impacted: none

*Dredge Volume:* None. Invasive aquatic vegetation only.

*Discharge Volume:* None.

*Project Location:* Latitude 40.901574 N. and Longitude -124.068343 W., (NAD 83); APN: 507-461-011.

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

On September 8, 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 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on September 9, 2021, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2021-0909-03) on September 17, 2021. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

**Determination**

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

Specifically, CDFW finds that: (1) The Project purpose is voluntary habitat restoration and the Project is not required as mitigation; (2) the Project is not part of a regulatory permit for a non-habitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order; and (3) the Project meets the eligibility requirements of the State Water Resources

Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects.

**Avoidance and Minimization Measures**

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Construction–period Water Quality Protection; (2) Post–construction and Water Quality Protection Requirements; (3) General Program Conditions for Vegetation Management; and (4) General Measures to Avoid Impacts on Biological Resources. The specific avoidance and minimization requirements are found in an attachment to the NOI.

**Monitoring and Reporting**

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

**Notice of Completion**

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

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

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

**Project Authorization**

Pursuant to Fish and Game Code section 1654, CDFW’s approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter

6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

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

**NOTICE OF AVAILABILTY OF  
INDEX OF PRECEDENTIAL  
DECISIONS**

**OCCUPATIONAL SAFETY AND  
HEALTH APPEALS BOARD**

Notice is hereby given, pursuant to subdivision (c) of Section 11425.60 of the Government Code, that the California Occupational Safety and Health Appeals Board (“Board”) maintains an index of precedential decisions. The index is available to the public at: [https://www.dir.ca.gov/oshab/DAR\\_Decisions.html](https://www.dir.ca.gov/oshab/DAR_Decisions.html). The index is available to the public by annual e–mail subscription from the Board. The index and text of the precedential decisions can also be viewed by appointment at the Board’s office. For subscription or additional information, or to schedule an appointment to view precedential decisions, contact:

Aaron Jackson, Staff Counsel  
California Occupational Safety and Health  
Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
Phone: (916) 274–5751  
Email: [ajackson@dir.ca.gov](mailto:ajackson@dir.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.

California Gambling Control Commission  
File # 2021-0927-02  
Commission Fees Modernization Project

In this emergency action, the Commission amends its regulations to update various fees for permit and license applications.

Title 04  
Amend: 12108, 12112, 12114, 12261, 12264, 12272, 12274, 12276, 12278, 12309, 12470, 12472  
Filed 10/07/2021  
Effective 10/07/2021  
Agency Contact:  
Alexander Hunter (916) 263-1301

California Debt Limit Allocation Committee  
File # 2021-0929-04  
Readopt for Title 4, Section 5000 and 5180 to add clarity to the competitive application process

This second emergency readoption (2021-0625-03EE) rulemaking by the California Debt Limit Allocation Committee amends regulations relating to the Qualified Residential Rental Project (QRRP) Program.

Title 04  
Amend: 5000, 5180  
Filed 10/07/2021  
Effective 10/13/2021  
Agency Contact: Emily Burgos (916) 651-8484

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

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit [www.oal.ca.gov](http://www.oal.ca.gov).