



# 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**

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

**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

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

**CONFLICT-OF-INTEREST CODES**

**AMENDMENT**

Multi-County: Bay Area Water Supply & Conservation Agency

A written comment period has been established commencing on December 31, 2021 and closing on February 14, 2022. 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 February 14, 2022. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

**COST TO LOCAL AGENCIES**

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

**EFFECT ON HOUSING  
COSTS AND BUSINESSES**

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

**AUTHORITY**

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

**REFERENCE**

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

**CONTACT**

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

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

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from

the Commission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

**TITLE 2. SECRETARY OF STATE**

TITLE 2. ADMINISTRATION  
DIVISION 7. SECRETARY OF STATE  
CHAPTER 8.5. BUSINESS ENTITY NAMES  
AMENDING SECTION 21005

CHAPTER 9. BUSINESS PROGRAMS  
AMENDING SECTIONS 21903, 21904, 21905  
ADOPTING SECTION 21902.5  
REPEALING SECTION 21905.5

CHAPTER 13. UNIFORM  
COMMERCIAL CODE  
ARTICLE 5. INFORMATION REQUEST AND  
SEARCH RESPONSE  
AMENDING SECTION 22601.5

Notice is hereby given that the Secretary of State (SOS) intends to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: December 31, 2021, through February 14, 2022.

**PROPOSED REGULATORY ACTION**

The Secretary of State proposes the following regulatory action:

Amend provisions of Title 2 California Code of Regulations sections 21005, 21903, 21904, 21905 and 22601.5, repeal section 21905.5 and adopt section 21902.5 to reflect the changes and revisions of several paper-driven filing processes to online filing functionalities. The proposed changes will clarify definitions, amounts of fees charged, electronic signatures, the requirements for paper and online filings, and clarify ambiguities in anticipation of the California Business Connect (CBC) project's "Go-Live" date on March 31, 2022.

**AUTHORITY AND REFERENCE**

Authority cited: Corporations Code sections 8, 17, 17.1, 110, 201, 2106, 2601, 5008, 5122, 7122, 9122, 10010, 10013, 12214, 12302, 13409, 15901.08, 15901.09, 15909.05, 17701.08, 17701.09 and 17708.02. Government Code section 12182. Commercial Code section 9526. Civil Code section 1633.2(h).

Reference cited: Corporations Code sections 8, 17, 17.1, 110, 167, 171, 201, 2101, 2106, 2601, 5008, 5122, 6910, 7122, 8910, 9122, 12302, 13409, 15901.02, 15901.08, 15901.09, 15909.02, 15909.05, 17701.02, 17701.08, 17701.09, 17708.02 and 17708.05. Government Code section 12182. Commercial Code section 9526. Civil Code section 1633.2(h).

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

The Secretary of State proposes to amend sections 21005, 21903, 21904, 21905 and 22601.5, adopt section 21902.5 and repeal section 21905.5 of Title 2 of the California Code of Regulations, which implement, interpret or make specific sections of the Corporations Code sections 8, 17, 17.1, 110, 167, 171, 201, 2101, 2106, 2601, 5008, 5122, 6910, 7122, 8910, 9122, 12302, 13409, 15901.02, 15901.08, 15901.09, 15909.02, 15909.05, 17701.02, 17701.08, 17701.09, 17708.02 and 17708.05. Government Code section 12182. Commercial Code section 9526. Civil Code section 1633.2(h). These sections concern the amounts of fees charged, the types of services offered, electronic signatures and requirements for paper and online filings. The proposed amendments are intended to coincide with the California Business Connect (CBC) project's "Go-Live" date on March 31, 2022.

The specific benefits anticipated by the proposed amendment of these regulations includes changes coinciding with the implementation of the California Business Connect project which would make it easier to conduct business in California as filings are more streamlined and efficient with the transition to automated and online filings. Amending the regulations will help persons and businesses submit documents for filing online with easier understandable fees and processing times. The amended regulations would clarify any ambiguous fees for businesses.

The purpose of the proposed amendments is to reflect the Secretary of State's goal of transitioning from several paper-driven filing processes to online filing functionalities. These amendments allow the public to submit business documents online which are then reviewed by the Secretary of State's staff in a more timely and efficient manner.

The public may now electronically sign documents submitted online, which reduces the need of printing

and scanning. Expedited services are now enhanced for online filings as the processes will be streamlined for quicker reviews. As customers have control over when they want to submit a document and when they want a document to be precleared before filing, the filing dates will now be in the control of the customer.

Other proposed amendments also clarify when a document is being reviewed for a name availability to clear any ambiguities to customers as to when the final determination is made for the availability of the proposed name. As business filings are transitioning towards the more efficient online processes, the time between a name reservation and the submitted document for review will be shorter and the proposed amendment clarifies that a final determination for the name availability is made when the document is submitted for review rather than when the name reservation was made. The amendment would reduce confusion and possible rejections and document returns.

The additional amendments would also eliminate outdated services that are no longer offered as more and more documents are being made available online for customers to view or request through a self-service method. Copy fees and service fees are also revised to reflect the most current available services. Amendments would also remove any redundant and excess fees as the increase in online filings will create a larger electronic database for customers to request copies more efficiently. The amendment to revise the requirement for Uniform Commercial Code (UCC) search requests to “city and state” would also assist the public and the Secretary of State to process search requests at a more efficient manner and to reduce the search turnaround times.

All these proposed amendments would further the goal to make it easier to do business in California and transition from antiquated processes to more modern procedures.

The Secretary of State has considered any other related regulations and statutes on this matter and has determined that this proposed amendment is not inconsistent or incompatible with existing regulations and statutes. The Secretary of State is the only state office responsible for the filing documents pursuant to the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, the Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act.

Specifically, through this proposed rulemaking, the Secretary of State proposes to amend California Code of Regulations, Title 2, in the following respects:

- 1) Changes to Subsection 21005(b) as it updates the ambiguity of when a final determination of a proposed name is made when there has been a name reservation. The phrase “has been reviewed by” will make clear that a final determination is made during the time the document submitted is being reviewed by the SOS for filing and not the time when the document is submitted for filing or when the name reservation was made.
- 2) Adoption of Section 21902.5 allows customers to sign documents submitted online to the SOS electronically to make it easier for customers to execute documents without needing to scan wet signatures.
- 3) Changes to Subsection 21903(c)(3) as it adds the term “requests” and replaces the word “certificate” to “name.” This would clarify the ambiguity that name reservations fees are also processing fees, consistent with all other handling fees charged, and is charged per name request for a name reservation, rather than the actual name reservation certificate.
- 4) Changes to Subsection 21903(c)(7) as it removes the phrase “and certificates of incumbency.” This would remove an outdated term that is no longer used.
- 5) Deletion of Subsection 21903(c)(8) as it removes a method of transmission that is no longer provided.
- 6) Deletion of Subsection 21903(c)(9) as it removes a method of requests that is no longer provided.
- 7) Deletion of Subsection 21903(c)(10) as it removes a method of requests that is no longer provided.
- 8) Changes to Subsection 21903(d) as it deletes the phrase “certificates, or requests for certified or uncertified copies as to the same debtor, corporation or other business entity, or for” to clear any ambiguities and simplify the copying fees in this section.
- 9) Changes to Subsection 21904(a)(6) as it adds the phrase “within the last 6 months” and the phrase “Any change to the entity record invalidates the precleared document” to add a date limit and make clear any changes to the entity record would invalidate the precleared document to prevent precleared documents from being returned when an entity’s record has changed from when the preclearance was approved and when it has been submitted for filing.
- 10) Changes to Subsection 21904(c)(1) as it deletes the phrase “or submit electronically through the Secretary of State’s designated website” for preclearance documents to permit only preclearance paper filings to allow Secretary of State’s staff to determine, in writing, a precleared

- document conforms to law to ensure no delays from any online submissions.
- 11) Deletion of Subsection 21904(c)(1)(C) as different classes of preclearance service are no longer offered.
  - 12) Changes to Subsection 21904(c)(1)(D) as it adds “Requisite Secretary of State prescribed cover sheet including a” to ensure all preclearance requests are made on a uniform cover sheet with all the required information and is renumbered as the existing Section 21904(c)(1)(C) is being deleted.
  - 13) Changes to Subsection 21904(c)(1)(E) as the existing Section 21904(c)(1)(D) is being renumbered.
  - 14) Changes to Subsection 21904(c)(6) to add the phrase “for a 4 hour expedite” as 4 hour expedites are more time sensitive and the preclearance response would accelerate the review process to ensure the document is reviewed before the 4 hour deadline.
  - 15) Changes to Subsection 21904(c)(7) as it deletes the phrase “The classes of preclearance service for an eligible document submitted pursuant to subsection (C) of paragraph (1) of subdivision (c) are the following:” as the four classes of service are revised to only one service, a 24–hour response. 72–hour, 5 business day and 10 business day, services will no longer be offered.
  - 16) Changes to Subsection 21904(c)(7)(A) as it deletes the phrase “Class I service: a” as the four classes of service are revised to only one service, a 24–hour response. 72–hour, 5–business day and 10–business day services will no longer be offered and the subsection is renumbered to Subsection 21904(c)(7) as the additional subsections regarding the services are deleted.
  - 17) Deletion of Subsection 21904(c)(7)(B) as the four classes of service are revised to only one service.
  - 18) Deletion of Subsection 21904(c)(7)(C) as the four classes of service are revised to only one service.
  - 19) Deletion of Subsection 21904(c)(7)(D) as the four classes of service are revised to only one service.
  - 20) Changes to Subsection 21904(c)(8) as it deletes the fees for the three other classes of services as they are no longer offered.
  - 21) Changes to Subsection 21904(c)(9) which replaces the reference to Subsection (D) to Subsection (C) as Subsection 21904(c)(1)(D) is being renumbered to Subsection 21904(c)(1)(C).
  - 22) Deletion of Subsection 21904(c)(9)(B) as the telephone facsimile delivery will no longer be offered.
  - 23) Changes to Subsection 21904(c)(9)(C) as the existing Section 21904(c)(9)(B) is being deleted.
  - 24) Changes to Subsection 21904(c)(9)(D) as the existing Section 21904(c)(9)(C) is being renumbered.
  - 25) Changes to Subsection 21904(c)(9)(E) as the existing Section 21904(c)(9)(D) is being renumbered.
  - 26) Deletion of Subsection 21904(c)(10) as the four classes of service are revised to only one service. Online submissions are no longer offered.
  - 27) Deletion of Subsection 21904(c)(11) as the four classes of service are revised to only one service. Online submissions are no longer offered.
  - 28) Changes to Subsection 21904(d)(2)(B) as two copies of the document are no longer required. Only the preclearance approval number is required to save on excess paper.
  - 29) Changes to Subsection 21904(d)(2)(C) as it replaces the phrase “Copy of the preclearance response”, as it is no longer required, to “The preclearance document is required if submitting for a 4 hour expedite,” as 4 hour expedites are more time sensitive and the preclearance response would accelerate the review process to ensure the document is reviewed before the 4 hour deadline.
  - 30) Changes to Subsection 21904(d)(3) as it adds the term “completed” to clarify any ambiguities as precleared documents are not required to be completed but documents submitted for review are required to be completed.
  - 31) Deletion of Subsection 21905(c)(1)(B) as two copies are no longer required to save on excess paper.
  - 32) Changes to Subsection 21905(c)(1)(C) as 21905(c)(1)(B) is being deleted.
  - 33) Changes to Subsection 21905(c)(1)(D) as the existing 21905(c)(1)(C) is being renumbered and deletes the term “Written” as the request may not be written on paper and adds the phrase “personally delivered” and “must be on a Secretary of State prescribed cover sheet” to ensure all requests for a 4 hour expedite are on a uniform form with all the required information.
  - 34) Changes to Subsection 21905(c)(1)(E) as the existing 21905(c)(1)(D) is being renumbered.
  - 35) Changes to Subsection 21905(c)(1)(F) as the existing 21905(c)(1)(E) is being renumbered.
  - 36) Changes to Subsection 21905(c)(1)(G) as the existing 21905(c)(1)(F) is being renumbered.
  - 37) Changes to Subsection 21905(c)(1)(H) as existing 21905(c)(1)(G) is being renumbered.

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| <p>38) Changes to Subsection 21905(e)(1) as it adds the phrase “the eligible document was personally delivered to the Secretary of State” to require all 4 hour expedites are submitted personally rather than online due to the time sensitive nature of the service.</p> <p>39) Changes to Subsection 21905(i) as it replaces the reference to Subsection (F) to Subsection (E) as Subsection 21905(c)(1)(F) is being renumbered to Subsection 21905(c)(1)(E).</p> <p>40) Deletion of Section 21905.5 as requests for a specific filing date are no longer offered. The filing date will be consistent with statute for when the document is submitted for filing or if an applicable request for a future filing date is made.</p> <p>41) Changes to Subsection 22601.5 as it replaces the term “address” with “city and state” to clear any ambiguities regarding the definition of address.</p> | <p>2. <b>Costs or savings to any state agency:</b> None beyond those budgeted or expected to be budgeted for the Secretary of State.</p> <p>3. <b>Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:</b> None.</p> <p>4. <b>Other nondiscretionary costs or savings imposed on local agencies:</b> None.</p> <p>5. <b>Costs or savings in federal funding to the state:</b> None.</p> <p>6. <b>Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:</b> None.</p> <p>7. <b>Cost impacts on a representative private person or businesses:</b> The Secretary of State anticipates negligible overall cost savings to private persons and businesses. The proposed changes to the regulations will help persons and businesses determine the applicable fees and services offered in person and online. This should result in fewer documents being submitted in person and more documents submitted online, which will save those individuals and businesses time and money. The net result is expected to be neutral or result in a very small savings to applicants.</p> <p>8. <b>Adoption of these amendments will not:</b></p> <p>(A) create or eliminate jobs within California;</p> <p>(B) create new businesses or eliminate existing businesses within California; or</p> <p>(C) affect the expansion of businesses currently doing business within California.</p> <p>9. <b>Significant effect on housing costs:</b> None.</p> <p>10. <b>Effect on small business:</b> None. The proposed amendments do not impose any mandatory fees on small businesses or require any forms or reports be prepared or filed by any business.</p> |
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**WRITTEN COMMENT PERIOD**

Any interested person, or the interested person’s authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes on February 14, 2022. The Secretary of State will consider only comments received at the Secretary of State’s office by that time. Submit comments to:

Lauro Feliciano, Attorney  
 Secretary of State  
 1500 11<sup>th</sup> Street, Third Floor  
 Sacramento, CA 95814  
 Telephone: 916–695–1290

The backup contact person for comment submission is:

Janessa Huez, Assistant Chief Counsel  
 Secretary of State  
 1500 11<sup>th</sup> Street, Third Floor  
 Sacramento, CA 95814  
 Telephone: 916–695–1242

All inquiries regarding this proposed rulemaking, including requests for obtaining the Final Statement of Reasons, should be directed to Lauro Feliciano at the address listed above.

**DISCLOSURES REGARDING THE  
 PROPOSED ACTION**

The Secretary of State has made the following initial determinations:

- Mandate on local agencies and school districts:** None.

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

The proposed regulatory amendments reflect the changes and revisions of several paper-driven filing processes to online filing functionalities. The proposed changes will clarify definitions, amounts of fees charged, the requirements for paper and online filings, and clarify ambiguities. Accordingly, no jobs in California will be created or eliminated, no new businesses in California will be created or existing businesses eliminated, and no existing businesses in California will be expanded or eliminated. Additionally, there are no anticipated benefits of the regulation pertaining to the health and welfare of the



California residents, to worker safety, or the state's environment.

#### CONSIDERATION OF ALTERNATIVES

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

The Secretary of State invites persons to present statements or arguments with respect to alternatives to the proposed amendments during the written comment period.

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

The Secretary of State will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, the regulations as proposed, and the Initial Statement of Reasons. The rulemaking file includes all the information upon which the proposed action is based. Copies are posted on the Secretary of State's website at <http://www.sos.ca.gov/admin/regulations/proposed/> and may also be obtained from the contact person indicated above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Secretary of State may adopt the proposed regulations substantially as described in this Notice of Proposed Rulemaking. If the Secretary of State 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 Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact person indicated above. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

#### AVAILABILITY OF RULEMAKING DOCUMENTS AND THE FINAL STATEMENT OF REASONS

Copies of rulemaking documents can be accessed through the Secretary of State's website at <http://www.sos.ca.gov/admin/regulations/proposed/>. Upon completion, the Final Statement of Reasons will be posted on the Secretary of State's website or obtained from the contact person indicated above.

#### TITLE 14. FISH AND GAME COMMISSION

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 713, 1050, 6651, 6653, 6653.5, 6700 and 6701 of the Fish and Game Code and to implement, interpret or make specific sections 51, 713, 1050, 6650, 6651, 6652, 6653, 6653.5, 6654, 6656, 6700, 6701, 6701.5, 6702, 6703, 6704, 6705, 6706, 6707 and 6680 of said Code, proposes to amend sections 165, and 165.5, and Appendix A, and add Section 705.1, Title 14, California Code of Regulations (CCR), regarding the commercial harvesting of kelp and other aquatic plants.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Bull kelp (*Nereocystis luetkeana*) is a species of marine algae which forms the foundational physical structure of diverse marine habitats that provide a variety of ecosystem services and support numerous fisheries, cultural and ceremonial traditions, and diving and fishing tourism. Bull kelp is an annual species, meaning the individuals live and reproduce within a lifetime of one year, although some individuals may live into a second year. The reproductive material of a bull kelp individual is located on its blades, near the surface of the water.

Historically, bull kelp populations on the north coast have exhibited natural interannual spatial and temporal variability. However, beginning in 2014, bull kelp populations in Mendocino and Sonoma counties declined dramatically outside of the range of normal variability due to elevated sea surface temperature, poor nutrient availability and drastic increases in purple sea urchin (*Strongylocentrotus purpuratus*) populations. Maximum annual bull kelp canopy area has remained below the 1984–2013 average from 2014 through the fourth quarter of 2020.

Current uses for harvested bull kelp are for human consumption and to feed aquacultured abalone. Existing commercial harvest regulations allow those harvesting for human consumption to take the entire

individual, and harvesters taking kelp for other purposes are allowed to cut up to four feet below the surface of the water. Because bull kelp reproductive material is on the part of the individual nearest to the surface, all harvest methods result in less available reproductive material. This has the potential to affect the number of future generations of bull kelp.

Due to the dramatic reduction in the north coast bull kelp population and the lack of scientific data to explain whether commercial harvest does or does not have an impact on the current kelp population, the California Department of Fish and Wildlife (Department) has determined that a precautionary management approach is warranted and is recommending amendments to harvest regulations in the interest of maintaining the bull kelp population that remains. The Department recommends temporarily amending commercial harvest regulations to limit bull kelp take on the north coast. These harvest limits would sunset in three to five years, as determined by the Commission, to allow for the drafting and potential adoption of a comprehensive, statewide Kelp Restoration and Management Plan (KRMP).

Additionally, the Department recommends regulations which apply to all commercial marine algae harvesters regardless of the species harvested, to update harvest logs, improve enforceability, and overhaul existing regulatory language to make corrections and better describe specific harvesting requirements. These regulations will not have a sunset date.

#### CURRENT COMMERCIAL HARVEST REGULATIONS

Section 165, Title 14, CCR, outlines the licensing and harvesting provisions for the commercial harvest of kelp and other aquatic plants. Relevant to this rulemaking, Section 165 includes the Kelp Harvesting License and associated fee, harvest royalty fee requirements, requirements for harvest reporting, geographical limitations for giant and bull kelp harvest, and prohibitions on the disturbance of certain aquatic plants.

Current regulations Section 165.5, Title 14, CCR, define the procedures to lease administrative kelp beds for the exclusive right to harvest kelp. Section 165.5 also spatially describes the 87 administrative kelp beds under the following management categories: open, closed, leasable, and lease only. The designations were designed for optimal harvest while ensuring sustainable management of the resource and the species that depend upon kelp.

#### PROPOSED TEMPORARY COMMERCIAL HARVEST REGULATIONS

The Department is recommending temporary prohibitions or limits to kelp harvest in four north coast counties: Sonoma, Mendocino, Humboldt, and Del Norte. The interim management measures are intended to protect the bull kelp resource while allowing for the Department, Tribes, industry, and interested stakeholders to collaboratively work towards developing the KRMP, a comprehensive management framework for giant and bull kelp.

The proposed regulations for Del Norte, Humboldt, Mendocino, and Sonoma counties would have a sunset date of three to five years, as determined by the Commission. The following summarize the Department-proposed options for Commission consideration:

Subsection 165(c)(9)(A):

Subsection 165(c)(9)(A) Option 1: Bull kelp harvest closure in Sonoma and Mendocino counties regardless of intended use of harvested kelp.

Subsection 165(c)(9)(A) Option 2: Annual overall bull kelp harvest quota from 1 pound to 2,000 pounds (1 ton) wet weight for Sonoma and Mendocino counties, combined, between January 1–December 31. Harvest is limited for human consumption only.

Subsection 165(c)(9)(B): The proposed regulations include an annual overall bull kelp harvest not to exceed an annual quota of 4 tons (8,000 lbs.) wet weight for Del Norte and Humboldt counties combined.

To allow the Department to monitor the harvest and avoid exceeding the annual harvest quota, in addition to the currently required monthly harvest reports, subsection (c)(9)(C) lists options for weekly reporting via email of bull kelp harvest.

Subsection 165(c)(9)(C) Option 1: *If subsection (c)(9)(A) Option 1 is adopted by the Commission, weekly reporting of bull kelp harvest for Del Norte and Humboldt counties.*

Subsection 165(c)(9)(C) Option 2: *If subsection (c)(9)(A) Option 2 is adopted by the Commission, weekly reporting of bull kelp harvest in Del Norte, Humboldt, Mendocino, and Sonoma counties.*

Subsection 165.5(c) specifies an option for the Commission decision:

Option: Temporarily closes the three lease only administrative kelp beds 308, 309, and 312 in Mendocino, Humboldt, and Del Norte counties.

As an alternative to the temporary closure, the Department is also proposing an option for a temporary hiatus on accepting lease applications for the lease only administrative kelp beds. The hiatus would be an

administrative action and as such, would not be written into regulation. The Department recommends that the temporary hiatus also have a sunset date of three to five years, to be determined by the Commission.

#### ADDITIONAL PROPOSED COMMERCIAL HARVEST REGULATIONS

Additional amendments are proposed that apply to all commercial algae harvesters and will not have a sunset date. Non-substantive and structural changes are proposed throughout sections 165 and 165.5 to improve specificity of language and correct typographical errors. Additional substantive proposed amendments include:

Modifications to the Kelp Harvesting Application form (DFW 658). The application form will be modified to include a Drying Permit option to comply with subdivision 6653.5(b) of the Fish and Game Code and renamed the Kelp Harvesting License and Drying Application. Further edits to DFW 658 will include standard language used on other licenses.

The Kelp Harvester's Monthly Report will be consolidated from two separate forms, FG 113 (January 1, 1997), and FG 114 (Rev. 1/07), into a single double-sided form Commercial Kelp Harvester's Monthly Report DFW 113 (REV. 11/01/21). The new form will add reporting requirements including the number of individuals harvesting, separate weights for bull and giant kelp harvest, the central latitude/longitude coordinates of bull kelp harvest locations, and listing the business name and individual harvester name to distinguish between the business and business contact. In addition, the new form will have Department contact information so that harvesters can reach readily available Department personnel with harvest report questions. Additional minor editorial changes are being made to remove redundancy, update Department information, and ensure consistency with regulatory text.

The regulation amendment will introduce the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report as form DFW 113A (New 11/01/21). This will provide a uniform way to report information already stipulated in current regulations, as well as new information similar to that required in the new version of DFW 113 (REV. 11/01/21) including the central latitude/longitude coordinates of bull kelp harvest locations.

The Release of Property form DFW 1108 (New 11/01/21) is introduced in this regulation amendment. The Release of Property form ensures that any inadvertent excess bull kelp harvested in the counties with annual quotas is not wasted.

Finally, Section 705.1, Title 14, CCR, is proposed to be added. This section will incorporate by reference

the Commercial Kelp Harvesting License and Drying Application, the Commercial Kelp Harvesters Monthly Report DFW 113 (REV. 11/01/21), the Commercial Edible Seaweed/Agarweed Aquatic Plant Harvester's Monthly Report DFW 113A (New 11/01/21) and the Release of Property form DFW 1108 (New 11/01/21). The current Commercial Kelp Harvester License fee, which was established in Fish Game Code Section 6651 and is annually updated pursuant to Section 713 of the Fish and Game Code, will be listed in this section.

#### BENEFITS OF THE PROPOSED REGULATIONS

The goal of the regulation change is to protect and maintain the remaining bull kelp along the north coast to the maximum extent possible, and to support ongoing restoration efforts to improve the resource in future years. This will benefit the State of California by ensuring the continuance of the ecosystem services, fisheries, cultural and ceremonial traditions, and diving and fishing tourism supported by bull kelp. In addition, the sunset date will provide time to draft and potentially adopt the KRMP that will provide a comprehensive management framework for giant and bull kelp.

Additional benefits of the proposed regulations include providing Drying Permit compliance with the Fish and Game Code, providing harvesters with better defined and more precise reporting tools, and improving the Department's ability to manage this resource.

#### EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the commercial take of kelp and other marine algae, lease of kelp beds for exclusive harvest of *Macrocystis* and *Nereocystis*, Kelp Harvester's license, and monthly harvest reports. Furthermore, the proposed addition to refer harvesters for human consumption to the California Department of Public Health will ensure harvesters are aware of the regulatory agency for food manufactured and processed food for human consumption.

PUBLIC PARTICIPATION

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Sacramento, California, on Wednesday, February 16, 2022, at 8:30 a.m., or as soon thereafter as the matter may be heard. The specific location for this meeting is still being determined. As soon as this information is available, but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing an exact location. The continuation notice will also be published in the California Regulatory Notice Register and published on the Commission’s website.

It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on February 3, 2022, at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on February 14, 2022.** All comments must be received no later than February 16, 2022, at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244–2090.

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at [www.fgc.ca.gov](http://www.fgc.ca.gov). The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller–Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above–mentioned documents and inquiries concerning the regulatory process to Melissa Miller–Henson or Sherrie Fonbuena at [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number. **Environmental Scientist, Rebecca Flores Miller, Department of Fish and Wildlife, (via email to [kelp@wildlife.ca.gov](mailto:kelp@wildlife.ca.gov)), has been designated to respond to questions on the substance of the proposed regulations.**

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days

prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

IMPACT OF REGULATORY ACTION/  
RESULTS OF THE ECONOMIC  
IMPACT ASSESSMENT

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states.

The Department reviewed reported bull kelp harvest from all edible seaweed harvesters in Mendocino and Sonoma counties as well as Del Norte and Humboldt counties for all years on record. Within a seven–year time frame prior to the 2014 bull kelp decline (2007–2013), bull kelp represented about 11% (14,084 out of 131,384 pounds) of total edible seaweed take in Mendocino and Sonoma counties combined for nine permittees. For the seven years following the decline (2014–2020), bull kelp harvest represented about 3% (4,441 out of 129,437 pounds) of the total edible seaweed harvested for the six permittees who harvested during that time frame.

In Del Norte and Humboldt counties combined, bull kelp represented 12% (6,191 out of 49,758 pounds) of total edible seaweed take for three permittees between 2007–2013. In contrast, bull kelp take was 34% (23,522 out of 68,709 pounds) of the total edible seaweed harvested by two permittees from 2014–2020 in the same two counties. Considering bull kelp harvest in Del Norte and Humboldt counties was greater proportionally, and canopy area did not decline dramatically compared to Mendocino and Sonoma counties during that timeframe, the Department determined capping harvest in Del Norte and Humboldt counties would maintain

current use and harvest post 2014. Commercial harvesters in Mendocino and Sonoma counties have indicated they would not shift harvest to Del Norte and Humboldt counties.

Commercial harvest of wild marine algae is not allowed in nearby states of Oregon and Washington. Therefore, the industry is not competing with nearby markets for harvested kelp.

Finally, all other proposed regulatory amendments, including the requirement of a GPS unit to report the central latitude and longitude coordinates of bull kelp harvest, will have no impact on California businesses, including their ability to compete with businesses in other states.

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

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California.

The Commission does not anticipate any benefits to health and welfare of California residents or worker safety.

The Commission anticipates benefits to the state’s environment in the sustainable management of this resource. As a foundational species forming the physical structure of kelp forest habitats, bull kelp supports fisheries, cultural and ceremonial traditions, and tourism.

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

The proposed weekly reporting requirement for bull kelp harvest from the current monthly requirement would introduce additional time that is estimated to be about \$243.88 annually per harvester, or \$2,438 for the 10 active harvesters. Additionally, if the harvester does not already have GPS capability, the business would need to incur the costs (up to approximately \$200 one-time cost) of obtaining GPS capability to provide the central latitude and longitude locations of bull kelp harvest.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Weekly reporting and the reporting of harvest coordinates will require some increase in work effort for staff within the Department totaling

approximately \$8,333, or \$4,268 if a closure is chosen for Mendocino and Sonoma counties. In addition, if the bull kelp harvest closure option is chosen for Mendocino and Sonoma counties, then royalty fee revenue is anticipated to decline by an estimated \$8.88. The royalty fee per wet pound is \$0.012 x 740 pounds (2014–2020 Mendocino and Sonoma) average harvest = \$8.88.

Management of bull kelp harvest quota and reporting of harvest coordinates will result in new duties for the Department. Management tasks in counties with a harvest quota will include: weekly compiling and tracking of harvest and posting status updates on the Department webpage, comparison of weekly to monthly reporting and communications with license holders as needed if discrepancies occur in the reports, determining status of harvest toward the quota as needed, drafting and emailing notices to license holders prior to implementation of restrictions triggered by the quota, posting notice of temporary closure or closures on the Department webpage, and ensuring any harvest in excess of any established quota is forfeited to the Department through a Release of Property form. Reporting of bull kelp harvest coordinates will require the Department to modify the current harvest database and enter coordinates into the harvest database, and verify coordinates reported by harvesters to determine county of harvest.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

- (h) Effect on Housing Costs:

None.

**EFFECT ON SMALL BUSINESS**

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

**CONSIDERATION OF ALTERNATIVES**

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

**TITLE 16. ARCHITECTS BOARD**

**PUBLIC PRESENTMENTS AND  
ADVERTISING REQUIREMENTS**

**NOTICE IS HEREBY GIVEN** that the California Architects Board (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

**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 their authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

**COMMENT PERIOD**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be received by the Board at its office not later than 5:00 p.m. on **Tuesday, February 15, 2022**, or must be received by the Board at the hearing, should one be scheduled.

**AUTHORITY AND REFERENCE**

Pursuant to the authority vested by Business and Professions Code (BPC) sections 137 and 5526, and to implement, interpret or make specific Sections 137 and 5500.1 of the BPC, the Board is considering

adopting section 135 in Article 5 of Division 2 of Title 16 of the California Code of Regulations<sup>1</sup> (CCR).

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

BPC section 5526 authorizes the Board to adopt rules and regulations as may be necessary and proper. BPC section 137 authorizes agencies within the Department of Consumer Affairs, including the Board, to promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public. The Board is proposing to adopt CCR section 135 to establish the requirements to be followed by licensees when advertising, soliciting, or other presentments to the public are made.

Architect license numbers are not currently required to be provided to the public on advertising, soliciting, or other presentments. This omission may result in unlicensed individuals contracting with consumers for architecture services that the individual is not professionally qualified or licensed to perform. In addition, consumers are unable to check the license number of the architect to determine if the license is in good standing before consulting or contracting with that architect. To address these issues, the Board included in its 2019–2021 Strategic Plan an objective to “Collaborate with websites to restrict advertisements from unlicensed entities.” At the Board’s December 11, 2020 meeting, the Board voted to approve proposed language for a new CCR section 135 to require that licensees include their license number in all advertising, soliciting, or other presentments to the public.

The Board is proposing the following:

- Adopt CCR section 135, subdivision (a), to require architects to include their name and license numbers in all forms of advertising, soliciting, or other presentments to the public in connection with the rendition of architectural services by the Architects Practice Act, including but not limited to any advertisement, card, letterhead, telephone listing, or Internet website, written solicitation to a prospective client or clients, or contract proposal.
- Adopt CCR section 135, subdivision (b), to set advertising compliance standards for architects at a business entity that contains or employs two or more architects. Such compliance shall be deemed satisfied if the advertisements, solicitations, or presentments to the public include the name and

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<sup>1</sup>All CCR references are to title 16 unless otherwise noted.

license number of at least one architect who is (1) in management control of the business entity, and (2) the owner, a part-owner, an officer, or an employee of the business entity.

- Adopt CCR section 135, section 135, subdivision (c), to define the term “management control” to have the same meaning it has in 16 CCR 134.

Protection of the public health, safety and welfare is the Board’s highest priority in exercising its licensing, regulatory, and disciplinary functions. The proposal would better protect the public by requiring an architect licensee, or a licensee within a business entity as specified above, to include their license number in all advertising, soliciting, or other presentments to the public to ensure the public knows they are engaging the services of a licensed architect. With the license number information, consumers will be better informed of who is and who is not a licensed architect. Consumers will also be able to use the license number to search the Board’s website to confirm whether the advertising individual is licensed and qualified to provide architectural services.

#### CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: The proposed regulations do not result in any fiscal impact to the state, including costs or savings to state agencies or costs or savings in federal funding to the state.

The Board notes, most licensees are already in partial or full compliance as a common professional practice standard and anticipates all licensees to be in compliance upon full implementation. As a result, the Board does not anticipate any workload or costs resulting from the proposed regulations.

The Board may receive inquiries (by phone or email) from licensees regarding compliance, but the Board already maintains staffing resources for these purposes. As a result, no additional costs are anticipated.

The Board may also receive consumer complaints (by phone or email) related to non-compliance. In these circumstances the Board would contact the licensee (by phone and/or email) to remind and educate the licensee of the requirements. However, the

Board anticipates full compliance as licensees adopt the requirements as standard professional practice.

In the event a non-compliant licensee continues to operate without complying with the regulations, the Board is authorized to issue a citation and fine up to \$5,000. However, because any one-time update costs are estimated to be no more than \$100, the Board anticipates these licensees will opt for compliance, in lieu of receiving a citation and fine.

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

*Local Mandate:* None.

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

*Business Impact:* The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations should not significantly impact advertising budgets. The Board licenses approximately 22,000 architects. Those businesses impacted by this regulation would be limited to architecture businesses with licensed architects. The narrow scope of who this regulation impacts also minimizes the impact on business and competition in the state generally.

*Cost Impact on Representative Private Person or Business:* While the exact costs are unknown, the Board is aware there may be minor costs of no more than \$100 a representative private person or business would incur in reasonable compliance with the proposed action to reprint or edit some presentments and advertising materials with their name and architect license number.

*Effect on Housing Costs:* None.

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation may affect small businesses as there may be a minor cost of no more than \$100 for businesses to reprint or edit advertising, soliciting, or other presentments to the public to include the architects’ name and license number.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

##### *Impact on Jobs/Businesses*

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

*Business Reporting Requirements*

The proposed regulatory action does not require businesses to file a report with the Board.

BENEFITS OF REGULATION

The Board has determined that this regulatory proposal will benefit the health, safety, and welfare of California consumers. By providing consumers with an architect's name and license number in all advertising, soliciting, or other presentments to the public, consumers will be able to use the license number to identify licensed professionals and search the Consumer Affairs Systems database through the Board's website to confirm whether the advertising individual is the individual associated with the license number. The proposal does not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from Idris Ahmed 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. Please send requests for copies of any modified regulations to the attention of Idris Ahmed at the address indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available, if modifications are made.

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

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

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

CONTACT PERSON

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

Name: Kimberly McDaniel  
Address: 2420 Del Paso Road,  
Suite 105  
Sacramento, CA 95834  
Telephone Number: (916) 575-7221  
Fax Number: (916) 575-7283  
E-Mail Address: [kimberly.mcdaniel@dca.ca.gov](mailto:kimberly.mcdaniel@dca.ca.gov)

The backup contact person is:

Name: Idris Ahmed  
Address: 2420 Del Paso Road,  
Suite 105  
Sacramento, CA 95834  
Telephone Number: (916) 575-7207  
Fax Number: (916) 575-7283  
E-Mail Address: [Idris.ahmed@dca.ca.gov](mailto:Idris.ahmed@dca.ca.gov)



*Website Access:* Materials regarding this proposal can be found at [https://www.cab.ca.gov/news/laws/proposed\\_regulation.shtml](https://www.cab.ca.gov/news/laws/proposed_regulation.shtml).

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

**TITLE 16. DENTAL BOARD**

**NOTICE IS HEREBY GIVEN** that the Dental Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. 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 by **5:00 p.m., Tuesday, February 15, 2022.**

**PUBLIC HEARING**

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.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

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 the 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 Business and Professions Code (BPC) sections 1614, 1634.2, 1635.5, 1724, 1724.5, and 1646.2, and to implement, interpret or make specific BPC sections 27, 108, 1611.5, 1632, 1634.1, 1646.1, 1646.2, 1646.3, 1646.4, 1646.6, 1646.9, 1647.2, 1647.3, 1646.5, 1647.6, 1646.7, 1646.9, 1647.2, 1647.3, 1647.5, 1647.7, 1647.8, 1647.18, 1647.19, 1647.20, 1647.22, 1647.23, 1647.24, 1647.30, 1647.31, 1647.32, 1647.33, 1682, 1715, 1716.1, 1718.3, 1724, 1724.5, 1750.4, 1750.5, 1752.4, and 2827, the Board is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

The Dental Board of California (Board) licenses and regulates dentists, registered dental assistants (RDA), and registered dental assistants in extended functions (RDAEF). In addition, the Board is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Board assures the initial and continued competence of its licensees through licensure, investigation of complaints against its licensees, and discipline of those found in violation of the Dental Practice Act, monitoring licensees whose licenses have been placed on probation, and managing the Diversion Program for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

The Dental Practice Act ("Act") governs the use of general anesthesia, conscious sedation, and oral conscious sedation for pediatric and adult patients. SB 501 (Glazer, Chapter 929, Stats. of 2018), beginning January 1, 2022, establishes new provisions governing the use of deep sedation and general anesthesia for dental patients. (BPC §§ 1646 et seq.) As enacted, SB 501 (Glazer, Chapter 929, Stats. of 2018), beginning January 1, 2022, establishes new provisions in the Act governing the use of deep sedation and general anesthesia, moderate sedation, and pediatric minimal sedation for dental patients in Article 2.75 (commencing with Section 1646 of the Business and Professions Code (BPC)), Article 2.84 (commencing with Section 1647 of the BPC), and Article 2.87 (commencing with Section 1647.30 of the BPC) of the Act. Among other requirements, the Act will require dentists to possess either a current license in good standing and a general anesthesia permit, or other specified credentials in order to administer or order the administration of deep sedation or general anesthesia on an outpatient basis. (BPC §§ 1646.1 and 1646.2.) The Act will also authorize a licensed physician and surgeon to administer deep sedation or general anesthesia if that physician and surgeon meets certain requirements, including holding a valid general anesthesia permit and a pediatric endorsement, if applicable. (BPC § 1646.9.)

The Act will require dentists to possess a pediatric endorsement of their general anesthesia permit to administer or order the administration of deep sedation or general anesthesia to patients under 7 years of age and will require dentists to be present in the dental office during the ordering and administration of general anesthesia or deep sedation. (BPC § 1646.1, subdivision (b).) The Act requires the presence of the

operating dentist and at least 2 additional personnel for patients under 13 years of age for procedures involving deep sedation or general anesthesia and requires that certain personnel be present throughout the procedure and to maintain current certification in pediatric life support and airway management, as specified. (BPC § 1646.1, subdivision (d).) Dentists applying for a pediatric endorsement for the general anesthesia permit will have to provide proof of successful completion of an accredited or equivalent residency training program, and a certain number of cases of deep sedation or general anesthesia for patients under 7 years of age, along with current certification in specific life support training. (BPC § 1646.2, subdivision (c).)

Presently, the Act prohibits a dentist from administering or ordering the administration of conscious sedation, as defined, on an outpatient basis unless the dentist meets certain licensing criteria. (BPC § 1647.19.) Effective January 1, 2022, changes to the Act under SB 501 will repeal existing provisions relating to the use of conscious sedation. The term “conscious sedation” will be replaced with “moderate sedation,” meaning a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands and meets other criteria. (BPC § 1647.1.) The Act will authorize dentists to administer or order the administration of moderate sedation on an outpatient basis to a dental patient if the dentist meets specified licensing criteria and has applied to the Board, submitted an application fee, and shown successful completion of training in moderate sedation. (BPC § 1647.2.)

The Act will require a dentist who orders the administration of moderate sedation to be physically present in the treatment facility while the patient is sedated and would require the presence of additional specified personnel for sedation of patients 13 years of age or younger. (BPC § 1647.2, subdivision (c)(1).) Training in the administration of moderate sedation will be acceptable if it consists of a certain number of instructional hours and completion of cases and complies with certain guidelines for teaching pain control and sedation. (BPC § 1647.3, subdivision (c).) The Act will require a dentist to obtain a pediatric endorsement on the moderate sedation permit prior to administering moderate sedation to a patient under 13 years of age, except as specified, and will require a dentist to obtain specified training and apply on a form prescribed by the Board to receive a pediatric endorsement. (BPC § 1647.3, subdivision (d).)

The Act also requires, as a condition of renewal, under amendments enacted by SB 501 (Chapter 929, Stats. of 2018), and effective January 1, 2022, that specified permit holders establish continuing competency to administer general anesthesia,

deep sedation (“anesthesia”) or moderate sedation (“sedation”) by completing 20 cases of anesthesia or sedation for specified pediatric populations within the 24-month period immediately preceding each permit renewal period (BPC §§ 1646.2, 1647.3.) Existing regulations do not specify how the Board will determine compliance with these new requirements. This proposal would specify these compliance requirements for permit holders who seek to administer anesthesia and sedation as provided under the Act.

The Act will establish new requirements for dentists administering or ordering the administration of minimal sedation, defined as a drug-induced state during which patients respond normally to verbal commands. (BPC § 1647.30.) Dentists may administer or order the administration of minimal sedation on pediatric patients under 13 years of age if the dentist possesses specified licensing credentials and follows certain procedures. (BPC § 1647.31.) Any dentist who desires to administer or order the administration of minimal sedation must apply on a form prescribed by the Board and submit an application fee. (BPC § 1647.32.)

In addition to the foregoing changes, SB 501 amended, added to, and repealed portions of Business and Professions Code sections 1601.8, 1646–1646.10, 1647–1647.9.5, 1682, 1724, and 1750.5. The Board needs to make significant regulatory updates to the current anesthesia and sedation permit program regulations to implement the foregoing statutory changes and ensure minimum standards for the professions are met, including adding new forms, permit requirements, and fees, making revisions to renewal requirements, onsite inspection and evaluation standards, facility and equipment standards, Board-approved educational requirements for dentists and dental sedation assistants; and, repealing oral conscious sedation references and case documentation requirements.

In this rulemaking proposal, the Board proposes to:

- Adopt section 1017.1 and a new title “Continued Competency Requirements for Renewal of Permits with Pediatric Endorsements,” to replace a prior repealed regulation entitled “Processing Times.” This change would prescribe the requirements to maintain continued competency in the administration of deep sedation, general anesthesia, and moderate sedation to patients under the age of 13 by prescribing the documentation or written confirmation general anesthesia and moderate sedation permit holders with pediatric endorsements must provide the Board at license renewal.
- Amend section 1021 to (1) provide grammatical changes and other non-substantive changes to add references to the “Business and Professions Code” or the “Code” to existing subsections (a)–

(p); (2) strike references to “conscious sedation” and replace with references to “moderate sedation” in subsections (q), (s), and (u) (re-lettered from current (t)); and (3) establish fees for the following:

(q) an application for general anesthesia (dentist or physician) or moderate sedation permit (\$524),

(s) application for pediatric minimal sedation permit (\$459),

(t) pediatric minimal sedation permit renewal (\$182),

(ae) application for adult oral conscious sedation certificate (\$459),

(af) adult oral conscious sedation certificate renewal (\$168),

(ag) application for pediatric endorsement for general anesthesia permit (dentist or physician) (\$532); and,

(ah) application for pediatric endorsement for moderate sedation permit (\$532).

- Amend section 1043 to add the words “deep sedation” wherever the words “general anesthesia” are used, and strike the word “conscious” wherever it is used and replace it with “moderate” before the word “sedation” in the definitions section applicable to deep sedation and moderate sedation. This proposal would also capitalize the “C” in “code” throughout this section.
- Amend section 1043.1 to establish permit application requirements for general anesthesia permits (which will include deep sedation) and moderate sedation permits and the requirements to pay a fee to process those applications as set forth in Section 1021. The regulation will incorporate by reference the “Application for General Anesthesia Permit” Form GAP-1 (New 05/2021) and “Application for Moderate Sedation Permit” Form MSP-1 (New 05/2021). The regulation will incorporate by reference a “Certification of Moderate Sedation Training” Form MSP-2 (New 05/2021) which must accompany the “Application for Moderate Sedation Permit.” The regulation will also require applicants who wish to administer or order the administration of deep sedation or general anesthesia to patients under seven years of age to separately apply for a pediatric endorsement to their permit and receive approval from the Board. The regulation will require applicants who wish to administer or order the administration of moderate sedation to patients under 13 years of age to separately apply for a pediatric endorsement to their permit and receive approval from the Board.

- Amend section 1043.2 to establish the number and qualifications of evaluators required to evaluate applicants for the issuance or renewal of general anesthesia and moderate sedation permits. Proposed amendments to section 1043.2(a) would require two or more persons for each evaluation team for the first evaluation or in the event an applicant has failed an evaluation; all subsequent evaluations would only require one evaluator. Proposed amendments to subsections (b) and (c) would add the words “deep sedation” wherever the words “general anesthesia” are used, and strike the word “conscious” wherever it is used and replace it with “moderate” before the word “sedation.” This proposal would also capitalize the “C” in “code” in subsection (b). In subsection (d), this proposal would require evaluators to possess a current, active, and unrestricted license from the Board or, the Medical Board of California for applicants qualifying under Section 1646.9 of the Code. For purposes of this section, “unrestricted” would mean not subject to any disciplinary action such as revocation, suspension, or probation.

- Amend section 1043.3 to revise facilities, equipment, records, and drug requirements for dental offices administering general anesthesia, deep sedation, or moderate sedation to adult and pediatric patients. This proposal would add the words “deep sedation” wherever the words “general anesthesia” are used and strike the word “conscious” wherever it is used and replace it with “moderate” before the word “sedation.”

Subsection (a): The office facilities and equipment maintenance requirement to be in “good operating condition” will be struck and replaced with a requirement that equipment be maintained, tested and inspected according to manufacturer specifications. For pediatric patients, equipment, medication and resuscitative capabilities would be required to be appropriately sized for use on pediatric patients.

Subsection (a)(7)(K): Existing requirements will be struck and replaced with a requirement that patients receiving moderate sedation, deep sedation or general anesthesia shall have ventilation continuously monitored during the procedure by at least two of three specified methods.

Subsection (b)(3): This new subsection would require that records include: the category of the provider (as defined in BPC § 1680(z)(3)) responsible for sedation oversight, the category of the provider delivering sedation, the category of the provider monitoring the patient during

sedation, and whether the person supervising the sedation performed one or more of the procedures.

Subsection (b)(4): This proposal would revise the current requirements to include written consent of the patient’s conservator, or the informed consent of a person authorized to give such consent for the patient pursuant to BPC section 1682(e).

- Amend section 1043.4 to add the words “deep sedation” wherever the words “general anesthesia” are used and strike the word “conscious” wherever it is used and replace it with “moderate” before the word “sedation”. This proposal would also capitalize the “C” in “code” wherever it occurs in this section.
- Amend sections 1043.5 and 1043.7 to replace “conscious” with “moderate” as SB 501 eliminates the use of term “conscious.” This proposal would also capitalize the “C” in “code” wherever it occurs in section 1043.5.
- Amend section 1043.6 to prescribe the grades evaluators will be required to use to recommend to the Board for inspections and evaluations of applicants for the general anesthesia and moderate sedation permits, which would include: (1) “Passed Evaluation” (met all required components of the onsite inspection and evaluation), (2) “Conditional Approval” (for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping and must submit written proof, as specified, of correcting the deficiencies within fifteen (15) days of receiving notice), (3) “Failed Simulated Emergency” (Permit holder failed one or more simulated emergency scenario(s) required for the on-site inspection and evaluation); or, (4) “Failed Evaluation” (Permit holder failed due to multiple deficient components required for the on-site inspection and evaluation or failed to comply with the conditions for issuance of a conditional approval as specified).

The proposal would delete references to appeal procedures to the full board after failing an evaluation and also the process for requesting an independent reevaluation upon payment of an additional evaluation fee.

This proposal would require applicants (who have failed two previous inspections) to successfully complete remedial education in a subject within the scope of the onsite inspection and evaluation as determined by the Board prior to being retested if a third onsite inspection and evaluation is granted or prior to the issuance of a new permit. The proposal would also make other technical changes to add a relevant cross-reference to Section 1646.9(d) (relating to physician and

surgeon qualifications) and capitalize the “C” in Code wherever it appears in this section.

- Amend section 1043.8 to replace “conscious” with “moderate” and cross-reference section 1017 and 1017.1’s continuing competency requirements, and section 1021 for the required fees for the permits.
- Adopt section 1043.8.1 to establish the requirements for completed applications for pediatric endorsements to the general anesthesia and moderate sedation permits. The regulation will incorporate by reference the “Documentation of Deep Sedation and General Anesthesia or Moderate Sedation Cases for Pediatric Endorsement” Form PE-1 (New 05/2021). The section would require an applicant for a pediatric endorsement who seeks to use general anesthesia or moderate sedation in the treatment of pediatric patients under 13 years of age or seven years of age to submit to the Board information to document each of the 20 cases of deep sedation and general anesthesia or moderate sedation required by Sections 1646.2 and 1647.3 of the Code on Form PE-1.

This section would further authorize the Board to require, upon request by the Board in any investigation of the information provided on Form PE-1, that applicants also provide documentation or patient records for each deep sedation and general anesthesia or moderate sedation pediatric case listed on Form PE-1, including preoperative evaluation, medical history, monitoring of vital signs throughout the procedure, and condition at discharge.

Finally, this proposal would require applicants to submit legible copies of the information required by this section with pediatric patient identifying information redacted.

- Adopt Article 5.1 and title “Pediatric Minimal Sedation” to establish a new article for the regulations relating to the pediatric minimal sedation permit.
- Adopt section 1043.9 to establish definitions for Article 5.1 relating to the pediatric minimal sedation permit, including definitions for “another sedation permit”, “outpatient basis”, and “pediatric patient,” as specified.
- Adopt section 1043.9.1 to establish who must apply for the pediatric minimal sedation permit for the purposes of BPC section 1647.31 and 1647.32. The regulation will incorporate by reference the “Application for Pediatric Minimal Sedation Permit” PMSP-1 (New 05/2021) and the “Certification of Pediatric Minimal Sedation Training” Form PMSP-2 (New 05/2021) that

must accompany the application and applicable fee as set by Section 1021. This proposal would create an exemption for a licensed dentist who desires to administer or order minimal sedation if they possess another sedation permit from the Board (as defined in section 1043.9). This section would also require that the office in which the pediatric minimal sedation is administered meet the facilities and equipment standards set forth in Section 1043.9.2.

- Adopt section 1043.9.2 to establish the facility, equipment (including ancillary equipment as specified), emergency cart or kit, emergency drugs, and records requirements applicable to facilities in which pediatric minimal sedation is administered to patients.
- Amend section 1044 to delete references to superseded articles and references to oral conscious sedation for minors, and clarify definitions applicable to “outpatient basis” (means “outpatient setting” as referenced in Health and Safety Code section 1248) in regulations in Article 5.5, for oral conscious sedation.
- Amend section 1044.1 to delete current references to current forms for applications for certificates for adult (OCS–1 Rev. 01/05) or minor (OCS–3 Rev. 03/07) conscious sedation and establish and incorporate by reference the “Application for Use of Oral Conscious Sedation on Adult Patients” Form OCS–C (New 05/2021). This proposal would also remove references to requirements for dentists who possess only an adult oral conscious sedation permit and oral conscious sedation certificate for minor patients references. This proposal would also replace the word “conscious” with the word “moderate” before the words “sedation permit.”
- Amend section 1044.2 to make non–substantive, clarifying amendments including to remove an outdated reference to section 16147.12(b), add a reference to “of the Code” (short form reference for Business and Professions Code) and capitalize the “B” in the word “board.”
- Amend section 1044.3 to eliminate reference to the administration of and program coursework related to oral conscious sedation on minors since this is now replaced by pediatric minimal sedation. This section would further be amended to shorten a reference to the Business and Professions Code to “Code,” strike a reference to “conscious” sedation and replace it with “moderate” sedation, and strike a reference to “the American Academy of Pediatric Dentistry.”
- Repeal section 1044.4 relating to requirements for documentation of 10 cases of oral conscious

sedation based on its reference to an outdated experience pathway for applicants administering oral conscious sedation.

- Amend section 1044.5 to revise facility, equipment, records, and drug requirements applicable to facilities in which oral conscious sedation is administered to patients. This proposal would add requirements for all equipment to be maintained, tested, and inspected according to the manufacturers’ specifications. This proposal would add requirements for obtaining the patient’s conservator, or the informed consent of a person authorized to give such consent for the patient and strike a reference to “the parent or legal guardian of the patient” (as this section no longer pertains to minors).
- Amend section 1070.8 to revise course requirements for the dental sedation assistant permit to include references to deep sedation, moderate sedation (and striking references to “conscious sedation”) and adding a requirement that didactic instruction include resuscitation of pediatric patients. The proposal would also include minor, technical and grammatical changes to the text for consistency of use of terms throughout the Division.

#### ANTICIPATED BENEFITS OF PROPOSED REGULATIONS

This regulatory proposal will afford maximum protection to pediatric patients who receive sedation and anesthesia services in California. The regulations will create an orderly process for applicants to obtain pediatric endorsements to the general anesthesia permit and moderate sedation permits. The application process will ensure that the Board grants permits and endorsements to only those applicants who are qualified to provide sedation and anesthesia services. The renewal process will ensure permit holders possess continued competency in the administration of deep sedation or general anesthesia, by requiring general anesthesia permit holders to submit documentation of completion of twenty (20) cases of general anesthesia to pediatric patients in order to maintain continued competency. This proposal will also require moderate sedation permit holders to submit documentation of completion of twenty (20) cases of moderate sedation to pediatric patients in order to maintain continued competency. Pediatric patients are our state’s most vulnerable patients and these requirements will ensure dentists possess competency at the time of renewal.

The adoption of the forms incorporated by reference in this proposal will assist staff in ensuring an applicant meets the training requirements for the administration of general anesthesia, deep sedation,

moderate sedation, pediatric minimal sedation, oral conscious sedation for adults and training requirements applicable to pediatric endorsements.

The amendments to the regulations governing onsite inspections and evaluations will ensure that evaluators are properly qualified and utilize appropriate standards. The regulations will provide clarity to regulated professionals about how these evaluations are graded and passing evaluations, and how to remedy areas in which they receive failing grades.

The fees established and amended in this proposal will ensure the Board has sufficient resources to process applications and ensure applicants meet legal requirements for permits and endorsements.

This proposal will also amend faculty and course requirements for dental sedation assistant permit courses including instruction requirements. These amendments will ensure those obtaining this permit will be properly trained in all categories of anesthesia and sedation established by SB 501, and will properly monitor patients during procedures.

**DETERMINATION OF INCONSISTENCY/  
INCOMPATIBILITY WITH  
EXISTING REGULATION(S)**

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

**INCORPORATION BY REFERENCE**

The following forms have been incorporated by reference:

1. "Application for General Anesthesia Permit" Form GAP-1 (New 05/2021)
2. "Application for Moderate Sedation Permit" Form MSP-1 (New 05/2021)
3. "Certification of Moderate Sedation Training" Form MSP-2 (New 05/2021)
4. "Documentation of Deep Sedation and General Anesthesia or Moderate Sedation Cases for Pediatric Endorsement" Form PE-1 (05/2021)
5. "Application for Pediatric Minimal Sedation Permit" PMSP-1 (New 05/2021)
6. "Certification of Pediatric Minimal Sedation Training" Form PMSP-2 (New 05/2021)
7. "Application for Use of Oral Conscious Sedation on Adult Patients" Form OCS-C (New 05/2021)

**DISCLOSURES REGARDING  
PROPOSED ACTION**

**FISCAL IMPACT ESTIMATES**

**Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**

The Board anticipates workload will be greatest in the first two years of implementation as existing and new applicants transition to the new permit types.

Permit application workload costs are estimated to range from approximately \$141,000 to \$447,000 per year and up to \$2.5 million over a ten-year period.

Permit application revenue is estimated to range from approximately \$141,000 to \$447,000 per year and up to \$2.5 million over a ten-year period.

Please see the Initial Statement of Reasons for further detail.

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

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

**Local Mandate:** None.

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

**Business Impact:**

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

This regulation may have an economic impact on businesses, specifically, the Board's licensees, permitholders and applicants. The proposal would: (1) increase the fee for an application for the general anesthesia permit (for dentist and physician licensees) to \$524, (2) increase the fee for an application for a moderate sedation permit to \$524, (3) set a new fee for an application for pediatric minimal sedation permit at \$459, (4) set a new pediatric minimal sedation permit renewal fee at \$182, (5) increase the fee for an application for adult oral conscious sedation certificate to \$459, (6) set a new fee for the application for pediatric endorsement for general anesthesia permit at \$532; and, (7) set a new fee for the pediatric endorsement for moderate sedation permit at \$532. To the extent these applicants apply for such permits, or licensees opt to renew their licenses and permits, the proposed regulations will impact them.

Licensees who seek to administer general anesthesia and moderate sedation to pediatric patients may incur costs to provide the Board documentation showing

completion of required cases at the time of renewal. However, those costs are anticipated to be minimal considering the number of cases required to be documented.

There is no cost to California businesses except for those of dental offices in which deep sedation, general anesthesia, moderate sedation, pediatric minimal sedation, and oral conscious sedation for adult patients is administered. The cost includes application and renewal fees which are minimal in comparison with the income of such individuals. According to online data, the annual salary of a dentist who practices in California averages \$169,000 per year. In addition, these fees represent incremental increases compared with what is currently being charged by the Board for the same services (increases of \$24, \$91, \$532, and \$14).

**Cost Impact on Representative Private Person or Business:**

The Board has determined that the following individuals may be affected by the proposed changes to the Board's anesthesia and sedation permit program.

Applicants and existing permit holders of the general anesthesia, moderate sedation, pediatric minimal sedation, or oral conscious sedation for adult's permits, and pediatric endorsement for general anesthesia or moderate sedation permit holders that pay initial application and renewal fees.

Licensees who seek to administer general anesthesia and moderate sedation to pediatric patients may incur costs to provide the Board documentation showing completion of required cases at the time of renewal. However, those costs are anticipated to be minimal considering the number of cases required to be documented.

The proposed regulations are anticipated to result in an economic impact to permit holders ranging from approximately \$141,000 to \$447,000 per year and up to \$2.5 million over a ten-year period.

Please see the Initial Statement of Reasons for further detail.

**Effect on Housing Costs:** None.

**EFFECT ON SMALL BUSINESS**

The Board has determined that the proposed regulations would not affect small businesses. Although small businesses owned by licensees of the Board and small businesses that employ licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable as described in the above Business Impact statement. The Board does not maintain data relating to the number of percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

**RESULTS OF ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS**

**Impact on Jobs/Businesses:**

The Board has made the initial determination that this regulatory proposal will not have a significant impact on the creation of jobs or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it would only impact individual applicants who are applying for the permits and/or endorsements. Applicants and existing permit holders of the general anesthesia, moderate sedation, pediatric minimal sedation, or oral conscious sedation for adult's permits, and pediatric endorsement for general anesthesia or moderate sedation permit holders will pay initial application and renewal fees. However, these fees are minimal in comparison to the income of such individuals and represent incremental increases compared with what is currently being charged by the Board for the same services (increases of \$24, \$91, \$532, and \$14). The Board does not anticipate that this proposal will create or eliminate existing businesses in which anesthesia or sedation is administered as the cases required to document competency for the renewal of the general anesthesia and moderate sedation permits are minimal.

**Benefits of Regulation:**

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents:

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will further increase the priority of the Board which is the protection of the public. The adoption of the new permits and endorsements ensures that individual applicants will be current and up to date with the latest in sedation and anesthesia process/methods to ensure that they can perform procedures on consumers consistent with minimum standards for safety and care. The proposal will also benefit the health and welfare of California residents by verifying continued competency is maintained by general anesthesia and moderate sedation permit holders.

This regulatory proposal does not affect worker safety because the regulations pertain to the Board's adoption of new anesthesia/sedation permits and endorsements and would only impact individual applicants who are applying for the permits and/or endorsements and is not related to worker safety.

This regulatory proposal does not affect the state's environment because the regulations pertain to the Board's adoption of new anesthesia/sedation permits and endorsements, and this proposal is not relevant to the state's environment.

INITIAL STATEMENT OF  
REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based, which may be obtained from the contact person identified in this notice.

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 at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at [https://www.dbc.ca.gov/about\\_us/lawsregs/proposed\\_regulations.shtml](https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml).

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

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

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

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations.

CONTACT PERSON

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

Name: Jessica Olney,  
Staff Services Manager I  
Dental Board of California  
Address: 2005 Evergreen Street,  
Suite 1550  
Sacramento, CA 95815  
Telephone Number: (916) 263-2373  
Fax Number: (916) 263-2140  
E-Mail Address: [Jessica.Olney@dca.ca.gov](mailto:Jessica.Olney@dca.ca.gov)

The backup contact person is:

Name: Sarah Wallace,  
Interim Executive Officer  
Dental Board of California  
Address: 2005 Evergreen Street,  
Suite 1550  
Sacramento, CA 95815  
Telephone Number: (916) 263-2187  
Fax Number: (916) 263-2140  
E-Mail Address: [Sarah.Wallace@dca.ca.gov](mailto:Sarah.Wallace@dca.ca.gov)

WEBSITE ACCESS

Materials regarding this proposal can be found at the Board's Website at [https://www.dbc.ca.gov/about\\_us/lawsregs/proposed\\_regulations.shtml](https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml).

**TITLE 17. AIR RESOURCES BOARD**

NOTICE OF PUBLIC HEARING  
TO CONSIDER PROPOSED 2021  
AMENDMENTS TO AREA  
DESIGNATIONS FOR STATE AMBIENT  
AIR QUALITY STANDARDS

The California Air Resources Board (CARB or Board) will conduct a public hearing at the date and time noted below to consider approving for adoption the proposed 2021 amendments to Area Designations for State Ambient Air Quality Standards.

Date: February 24, 2022  
Time: 9:00 a.m.

This public meeting may continue at 8:30 a.m., on February 25, 2022. Please consult the public agenda, which will be posted ten days before the February 24, 2022 Board Meeting, for important details, including, but not limited to, the day on which this item will be considered and any appropriate direction regarding a possible remote-only Board Meeting. If the meeting is to be held in person — in addition to remote access — it will be held at the California Air Resources Board, Byron Sher Auditorium, 1001 I Street, Sacramento, California 95814.



**WRITTEN COMMENT PERIOD AND  
SUBMITTAL OF COMMENTS**

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing during the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on December 31, 2021. Written comments not submitted during the hearing must be submitted on or after December 31, 2021 and received **no later than** February 14, 2022. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

**Postal mail:**

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

**Electronic submittal:**

<https://www.arb.ca.gov/lispub/comm/bclist.php>

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

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

**AUTHORITY AND REFERENCE**

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 39600, 39601, 39608, and 40925.5. This action is proposed to implement, interpret, and make specific sections 39608 and 40925.5.

**INFORMATIVE DIGEST OF  
PROPOSED ACTION AND POLICY  
STATEMENT OVERVIEW  
(Gov. Code, § 11346.5, subdivision (a)(3))**

**Sections Affected:**

Proposed amendment to California Code of Regulations, title 17, sections 60203, 60205, and 60210.

**BACKGROUND AND EFFECT OF THE  
PROPOSED REGULATORY ACTION**

CARB is charged with the responsibility of adopting ambient air quality standards in consideration of the public health, safety, and welfare (Health and Safety Code [H&SC] section 39606). To date, CARB has adopted State ambient air quality standards (State standards) for ten pollutants, set forth in California Code of Regulations, title 17, section 70200. The designation criteria are set forth in California Code of Regulations, title 17, sections 70300 through 70306, and appendices 1 through 3 thereof. Based on these designation criteria, H&SC section 39608 further requires CARB to establish and annually review area designations for State standards.

CARB may also consider other changes to the sections affected, as listed above in this notice, or other sections within the scope of this notice, during the course of this rulemaking process.

**OBJECTIVES AND BENEFITS OF THE  
PROPOSED REGULATORY ACTION**

During the annual review, CARB determines whether changes to the existing area designations are warranted based on an evaluation of recent air quality data. The proposed amendments to the area designations classify the air quality in communities as to whether it meets the State standards. Depending on the proposed changes to an area's designation, the local air quality management district or air pollution control district (district) may be required to adopt and submit a plan to correct for deficiencies in meeting the State standards for ozone, carbon monoxide, nitrogen dioxide (NO<sub>2</sub>), and sulfur dioxide. Districts may modify the emissions reduction strategy or alternative measure of progress in the plan if the district demonstrates to CARB's satisfaction that the modified strategy is at least as effective in improving air quality as the strategy in the plan.

The annual review and update of the area designations gives the public, businesses, and government an indication of whether the health-based standards are being met. This information allows the public to make more educated decisions regarding personal health and residency, as well as participation in outdoor activities. In addition, businesses and government are given the opportunity to make informed decisions regarding worker health and safety.

**Objectives:**

This year's review of the area designations is based on air quality data from 2018 through 2020. The proposed amendments provide for the following changes:

- NO<sub>2</sub> Area Designations (section 60203);

- Redesignate the CA 60 Near-Road Portion of San Bernardino, Riverside, and Los Angeles Counties in South Coast Air Basin as Attainment.
- PM<sub>10</sub> Area Designations (section 60205); and
  - Redesignate Mendocino County in the North Coast Air Basin as Attainment.
- PM<sub>2.5</sub> Area Designations (section 60210).
  - Redesignate Santa Barbara County in the South Central Coast Air Basin as Attainment.

**Benefits:**

*Environmental Justice.* Some communities experience higher exposures to air pollutants, and it is a priority of CARB to ensure that full protection is afforded to all Californians. Though the proposed amendments to the area designations do not contain any requirements for action, the area designations are designed to identify areas with unhealthy air quality, based on the most recently available complete data, and can help better inform actions to improve air quality. CARB’s designations provide members of these communities with updated information about the air quality of their communities which, as stated, allows them to make more educated decisions regarding personal health and residency, as well as participation in outdoor activities.

*Safeguarding the quality of the physical environment.* An area’s designation status provides a classification that assists local districts in more accurately assessing local air quality. As discussed above, depending on the proposed changes to an area’s designation, a district may be required to adopt and submit a plan to correct for deficiencies in meeting the State standards for ozone, carbon monoxide, nitrogen dioxide, and sulfur dioxide. As a result, indirect benefits to the quality of the physical environment may result if the district adopts or amends its regulations with a goal toward achieving the State standards.

*Encouraging a regional approach to the State ambient air quality, whenever possible.* The proposed designations by discrete areas allow each local district to assess the air quality of individual areas and address their unique situations and needs. This approach allows each local district to identify the most cost-effective, efficient, and acceptable approach to achieve the State standards.

*Consistency with the State goal of providing a decent home and suitable living environment.* The annual review and update of the area designations gives local districts an updated and more accurate indication of whether the health-based standards are being met. This information allows local districts to make informed decisions regarding appropriate actions to meet the State standards.

*Protection of worker safety.* The annual review and update of the area designations gives the public, businesses, and government an updated and more accurate indication of whether the health-based standards are being met. This information also allows businesses and government the opportunity to make better informed decisions regarding worker health and safety.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal or local regulations that address area designations for the State standards.

AN EVALUATION OF INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS (Gov. Code, § 11346.5, subdivision (a)(3)(D))

The proposed changes, as well as the process for affecting those changes, to the area designations are consistent and compatible with existing State regulations.

In proposing the designation changes, CARB has considered the data for record (defined in the California Code of Regulations, title 17, section 70301(a)),<sup>1</sup> which meet the representativeness and completeness criteria. The representativeness criteria are set forth in Appendix B to the Initial Statement of Reasons and in the California Code of Regulations, title 17, Division 3, Chapter 1, Subchapter 1.5, Article 3, Appendix 1. The completeness criteria are also set forth in Appendix B to the Initial Statement of Reasons and in the California Code of Regulations, title 17, Division 3, Chapter 1, Subchapter 1.5, Article 3, Appendix 3.

In addition, CARB has considered the criteria for designating areas as Nonattainment (California Code of Regulations, title 17, section 70303), Nonattainment–transitional for pollutants other than ozone (California Code of Regulations, title 17, section 70303.1), Nonattainment–transitional for ozone (California Code of Regulations, title 17, section 70303.5), and

<sup>1</sup> California Code of Regulations, title 17, section 70301(a) provides: “Except as otherwise provided in this article, designations shall be based on ‘data for record.’ (1) Data for record are those data collected by or under the auspices of the state board or the districts for the purpose of measuring ambient air quality, and which the Executive Officer or his or her delegate has determined comply with the siting and quality assurance procedures established in Part 58, Title 40, Code of Federal Regulations or other equivalent procedures. (2) Any other data which are provided by a district or by any other person will be data for record if the Executive Officer or his or her delegate determines within 90 days of submittal of complete supporting documentation that the data comply with the siting and quality assurance procedures established in Part 58, Title 40, Code of Federal Regulations or other equivalent procedures....”

Attainment (California Code of Regulations, title 17, section 70304) in making these proposed designations.

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

**DISCLOSURES REGARDING THE  
PROPOSED REGULATION**

**FISCAL IMPACT/LOCAL MANDATE  
DETERMINATION REGARDING THE  
PROPOSED ACTION**

(Gov. Code, § 11346.5, subdivisions (a)(5)&(6))

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

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

**HOUSING COSTS**

(Gov. Code, § 11346.5, subdivision (a)(12))

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

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

(Gov. Code, §§ 11346.3, subdivision (a), 11346.5, subdivision (a)(7), 11346.5, subdivision (a)(8))

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

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

(Gov. Code, § 11346.5, subdivision (a)(10))

**Non–Major Regulation: Statement of the Results of  
the Economic Impact Assessment (EIA):**

*Effect on Jobs/Businesses:*

The Executive Officer has determined that the proposed regulatory action **would not** affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the Initial Statement of Reasons (ISOR).

The area designations are labels that describe the healthfulness of the air quality in each area. Because these regulations by themselves are labels of an area’s air quality, they do not contain any specific requirements for action, but may trigger or suspend the review, adoption, and submittal of a triennial plan by a local district. As a result, in most cases they have no specific, direct economic impact. In general, this regional approach to categorizing air quality allows each district to identify the most cost–effective and efficient approach to achieve the ambient air quality standards.

In addition, the annual review and update of the area designations gives the public an indication of whether the health–based standards are being met, thereby allowing the public to make more educated decisions regarding personal health and residency, as well as participation in outdoor activities. These personal health and residency decisions may translate into cost savings from reduced medical expenses, hospitalizations, and time off from work, as well as improved psychological benefits. It also allows businesses and government the opportunity to make informed decisions about worker health and safety. These business and government decisions may also translate into cost savings from reduced workers’ expenses such as medical expenses, hospitalizations, time off from work, and worker’s compensation, as well as improved worker morale.

*Benefits of the Proposed Regulation:*

The objective of the proposed regulatory action is to review and update the area designations which give the public, businesses, and government, an indication of whether the health–based standards are being met.

A summary of these benefits is provided, please refer to “Objectives and Benefits”, under the Informative Digest of Proposed Action and Policy Statement

Overview Pursuant to Government Code section 11346.5, subdivision (a)(3) discussion above.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**  
(Gov. Code, § 11346.5, subdivision (a)(9))

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. CARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. CARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON SMALL BUSINESS**  
(Cal. Code Regs., title 1, § 4, subdivisions (a) and (b))

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the proposed regulatory actions are labels of an area's air quality; they do not contain any specific requirements for action, other than triggering the review, adoption, and submittal of a triennial plan by the local district. As a result, they have no specific, direct impact on small businesses.

**CONSIDERATION OF ALTERNATIVES**  
(Gov. Code, § 11346.5, subdivision (a)(13))

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

**ENVIRONMENTAL ANALYSIS**

CARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulation and concluded that this is exempt pursuant to CEQA Guidelines §15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action may result in significant adverse impact on the environment. A brief

explanation of the basis for reaching this conclusion is included in Section VI of the ISOR.

**SPECIAL ACCOMMODATION REQUEST**

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

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

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

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

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

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) o (916) 322-5594 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo.

TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

**AGENCY CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Jenette Kwong, Air Resources Engineer, Air Quality Analysis Section, at (279) 208-7626 or (designated back-up contact) Theresa Najita, Air Pollution Specialist, Central Valley Air Quality Planning Section, at (279) 842-9813.

**AVAILABILITY OF DOCUMENTS**

CARB staff has prepared a Staff Report: Initial Statement of Reasons for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed 2021 Amendments to Area Designations for State Ambient Air Quality Standards.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB's website listed below, on or after December 28, 2021. Please contact Bradley Bechtold, Regulations Coordinator, at [bradley.bechtold@arb.ca.gov](mailto:bradley.bechtold@arb.ca.gov) or (916) 322-6533 if you need physical copies of the documents. Because of current travel, facility, and staffing restrictions, the California Air Resources Board's offices have limited public access. Pursuant to Government Code section 11346.5, subdivision (b), upon request to the aforementioned Regulations Coordinator, physical copies would be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Bradley Bechtold, Regulations Coordinator, (279) 208-7266. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

#### HEARING PROCEDURES

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

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

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

#### FINAL STATEMENT OF REASONS AVAILABILITY

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

#### INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2022/sad2022>

#### TITLE 22/MPP. DEPARTMENT OF SOCIAL SERVICES

ORD #0619-11

#### CALWORKS HOMELESS ASSISTANCE, DOMESTIC ABUSE, FAMILY REUNIFICATION, AND NATURAL DISASTERS

The California Department of Social Services (hereafter known as the Department) hereby gives notice of the proposed regulatory action(s) described below. A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the public comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of Social Services  
Office of Regulations Development  
744 P Street, MS 8-4-192  
Sacramento, CA 95814  
Tel: (916) 657-2856, Fax: (916) 653-7395  
Email: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

Statements or arguments relating to the proposals may be submitted in writing, e-mail, or by facsimile to the address/number listed above. All comments must be received by February 15, 2022.

Following the public comment period, the Department may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who submit written comments during the public comment period, and all persons

who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed above. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at CDSS Regulations in Progress (<https://www.cdss.ca.gov/inforesources/letters-regulations/legislation-and-regulations/regulations-home-page/regulations-in-process>). Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed above. Following the public comment period, copies of the Final Statement of Reasons will be available at the above address

## CHAPTERS

CDSS Manual of Policies and Procedures, Eligibility and Assistance Standards Manual, Sections 40–105 (Applicant and Recipient Responsibility), 40–190 (County Responsibility), 42–407 (Evidence of Residence Intention), 42–715 (Domestic Abuse Protocols and Training Standards), 44–211 (Special Needs in CalWORKs), and 82–812 (Temporary Absence).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations implement the changes to the California Work Opportunity and Responsibility to Kids (CalWORKs) homeless assistance program enacted by Assembly Bill (AB) 557 (Chapter 691, Statutes of 2017); AB 236 (Chapter 545, Statutes of 2017); AB 607 (Chapter 501, Statutes of 2017); and AB 960 (Chapter 444, Statutes of 2019). These bills also added additional examples of good cause in CalWORKs to maintain residency when living out of state due to a natural disaster, and good cause for not meeting the CalWORKs immunization and school attendance requirements when the family is in a domestic abuse situation.

In large part, these regulations implement a new, expanded, once-in-a-lifetime temporary homeless assistance program for CalWORKs applicants who are actively fleeing domestic abuse, as provided by AB 557. These regulations provide that a CalWORKs applicant who signs a sworn statement that they are fleeing past or present domestic abuse will be deemed to be homeless and eligible for up to 32 days of temporary homeless assistance payments, notwithstanding any income and assets attributable to the alleged abuser.

These regulations require that the homeless assistance payments be granted immediately after the family's application and are issued in 16-day increments. Being in a domestic violence situation has also been added as an example of good cause for not meeting the CalWORKs immunization and school attendance requirements.

These regulations also implement the expansion of temporary homeless assistance eligibility to CalWORKs families that have had their only child, or all children, removed from the home and have an active Family Reunification case, provided they are otherwise eligible and temporary homeless assistance will aid in reunification. These regulations make an exception to the CalWORKs residency requirements and allow homeless assistance benefits to be issued in one lump sum when a family has been the victim of a state or federally declared natural disaster. Lastly, these regulations remove the requirement that in order to receive homeless assistance benefits, a family must rent from someone in the business of renting with a history of renting, and instead allow these families to rent from anyone with whom they have a valid lease, sublease, or shared housing agreement.

The benefits anticipated from this regulatory action include increasing the safety of CalWORKs applicants that are fleeing domestic abuse by authorizing up to 32 days of shelter payments while disregarding income and assets that are attributable to the abuser. This change could both increase the immediate safety of a fleeing victim of domestic abuse as well as decrease the likelihood that the victim will go back to their abuser because they have nowhere else to go. This regulatory action also benefits CalWORKs families that are involved in the child welfare system by allowing this population to be eligible for temporary homeless assistance benefits when it will aid in family reunification. Homelessness creates challenges to family reunification, so this change may increase the likelihood that families will be reunified. This regulatory action will also increase the availability of permanent homeless assistance by expanding who is an allowable provider of housing for homeless CalWORKs families. Lastly, this regulatory action benefits CalWORKs recipients that become homeless as a direct result of a state or federally declared natural disaster, by expanding eligibility, reducing verification burdens, and paying these benefits in larger increments of time.

CDSS considered other possible related regulations in this area, and we found that these are the only regulations dealing in this subject area (CalWORKs homeless assistance). Therefore, CDSS finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 557,

AB 236, AB 607, and AB 960 as well as with existing state regulations.

Expansion of Housing Providers (AB 960) in FY 2019–20 and \$361,000 in FY 2020–21.

**COST ESTIMATE**

**LOCAL MANDATE STATEMENT**

1. **Costs or Savings to State Agencies:** These regulations will not result in additional cost above what is already budgeted. The 2020 May Revision Budget includes \$480,000 for CalWORKs Domestic Abuse Homeless Assistance (AB 557) in FY 2019–20 and \$496,000 in FY 2020–21. The 2019–20 Governor’s Budget includes \$96,000 for Family Reunification (AB 236) in FY 2019–20. Beginning FY 2020–21, the cost for Family Reunification is reflected in the base CalWORKs expenditure trends. There is no assistance cost associated with AB 607. The 2020 May Revision Budget includes \$78,000 for Expansion of Housing Providers (AB 960) in FY 2019–20 and \$161,000 in FY 2020–21. Please note that federal funds also flow through the counties and estimates can be found in section 4.
2. **Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500–17630:** None.
3. **Nondiscretionary Costs or Savings to Local Agencies:** These regulations will not result in additional cost above what is already budgeted. The 2020 May Revision Budget includes \$38,000 for CalWORKs Domestic Abuse Homeless Assistance (AB 557) in FY 2019–20 and FY 2020–21. The 2019–20 Governor’s Budget includes \$7,000 for Family Reunification (AB 236) in FY 2019–20. Beginning FY 2020–21, the cost for Family Reunification is reflected in the base CalWORKs expenditure trends. There is no assistance cost associated with AB 607. The 2020 May Revision Budget includes \$6,000 for Expansion of Housing Providers (AB 960) in FY 2019–20 and \$12,000 in FY 2020–21. Please note that federal and state funds also flow through the counties and estimates can be found in sections 1 and 4.
4. **Federal Funding to State Agencies:** These regulations will not result in additional cost above what is already budgeted. The 2020 May Revision Budget includes \$1,080,000 for CalWORKs Domestic Abuse Homeless Assistance (AB 557) in FY 2019–20 and \$1,064,000 in FY 2020–21. The 2019–20 Governor’s Budget includes \$224,000 for Family Reunification (AB 236) in FY 2019–20. Beginning FY 2020–21, the cost for Family Reunification is reflected in the base CalWORKs expenditure trends. There is no assistance cost associated with AB 607. The 2020 May Revision Budget includes \$183,000 for

These regulations do constitute a mandate on local agencies, but not on local school districts. There are state mandated local costs that require reimbursement, which is provided in the Budget Act to cover any costs that local agencies may incur.

**STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the fact that the changes presented in these regulations expand available homeless assistance benefits to CalWORKs applicants and recipients and will not have any impact on businesses or the state economy. If anything, this proposed action may beneficially affect some businesses, as the provision for the expanded homeless assistance program may increase the amount of money clients spend on shelter.

**STATEMENT OF POTENTIAL COST IMPACT ON 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.

**SMALL BUSINESS IMPACT STATEMENT**

The Department has determined that there is no impact on small businesses because of filing these regulations because these regulations are only applicable to state and county agencies.

**STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT**

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state’s environment are as follows: These regulations will likely improve the health and welfare of fleeing victims of domestic abuse by granting

them up to 32 days of shelter payments and thereby giving them a safe alternative to returning to their abuser. These regulations will also improve access to homeless assistance for both CalWORKs reunification families and families that have become homeless due to a state or federally declared natural disaster. These regulations will have no effect on worker safety or the state's environment.

STATEMENT OF EFFECT ON  
HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF  
ALTERNATIVES CONSIDERED

In developing the regulatory action, the Department was not presented with any alternatives for consideration. The statute mandates that the Department adopt these regulations to implement the statutory provisions of law in AB 236, AB 557 and AB 607.

The Department must determine that no reasonable alternative considered 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 regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

The Department adopts these regulations under the authority granted in Sections 10553 and 10554 of the Welfare and Institutions Code. Subject regulations implement and make specific Sections 11100, 11105, 11253.5, 11265.8, 11271-11274, and 11450, Welfare and Institutions Code.

CDSS REPRESENTATIVE  
REGARDING THE RULEMAKING PROCESS  
OF THE PROPOSED REGULATION

Contact Person: Everardo Vaca (916) 657-2586  
Backup: Oliver Chu (916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments

concerning these regulations, they will be considered at public hearing in accordance with Government Code section 11346.4.

NOTE: This is the second 45-day public comment period. The one-year date from the first 45-day comment period has expired, hence the need for the new 45-day comment period. These emergency regulations are currently in effect and will be finalized shortly after the new 45-day public comment period is over.

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FISH AND  
WILDLIFE**

FISH AND GAME CODE SECTION 1653  
CONSISTENCY DETERMINATION  
REQUEST FOR  
Elk Creek Fish Passage and  
Sediment Reduction Project  
(Tracking Number: 1653-2021-087-001-R1)  
Del Norte County

California Department of Fish and Wildlife (CDFW) received a Request to Approve on 12/15/2021, that Smith River Alliance proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves replacing three culverts that are partial or complete fish passage barriers. The proposed project will be carried out on two main branches of Nunes Creek, tributary to Elk Creek, located 2.7 miles northeast of Crescent City, Del Norte, California.

On 9/24/2021, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Elk Creek Fish Passage and Sediment Reduction Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (Waste Discharge Identification (WDID) Number 1A21211WNDN; ECM PIN Number CW-876528) for coverage under the General 401 Order on 10/20/2021.

Smith River Alliance is requesting a determination that the project and associated documents are



complete pursuant to Fish and Game Code section 1653 subdivision (d). If CDFW determines the project is complete, the Smith River Alliance will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) or a Lake or Streambed Alteration Agreement under Fish and Game Code section 1605 for the proposed project.

In accordance with Fish and Game Code section 1653 subdivision (e), if CDFW determines during the review, based on substantial evidence, that the request is not complete, the Smith River Alliance will have the opportunity to submit under Fish and Game Code section 1652.

**DEPARTMENT OF FISH AND WILDLIFE**

**HABITAT RESTORATION AND ENHANCEMENT ACT  
CONSISTENCY DETERMINATION  
NO. 1653–2021–084–001–R1**

**Project:** Lower Flynn Creek Infiltration Pilot Project

**Location:** Mendocino

**Applicant:** Anna Halligan/Trout Unlimited

**Background**

*Project Location:* The Lower Flynn Creek Infiltration Pilot Project (Project) is located in the creek drainage near the junction of Highway 128 and Flynn Creek Road (39.16513, -123.58589), at a property owned by Mendocino Redwood Company (MRC), Assessor Parcel Number (APN) 129–290–07, and affects an unnamed tributary to Flynn Creek. The unnamed tributary to Flynn Creek supports populations of aquatic wildlife species, and its summer streamflows into the Navarro River support Central California Coast environmentally significant unit (ESU) Coho Salmon (*Oncorhynchus kitsutch*) and North Central Coastal distinct population segment (DPS) Steelhead (*O. mykiss*) populations.

*Project Description:* Anna Halligan (Applicant), representing Trout Unlimited (TU), proposes to enhance summer baseflows, repair upland hydrology processes and develop a replicable treatment model within the unnamed tributary to Flynn Creek to provide a net conservation benefit for Central California Coast ESU Coho Salmon, North Central Coastal DPS Steelhead and other aquatic wildlife species. The Project includes upgrading a road culvert to slow and dissipate the outflow of the culvert to reduce incision and to increase hydrological infiltration in the drainage. In addition, the project will implement rock check dams, native vegetation packing, and placement

of large woody debris throughout the drainage with the goal of increasing storage of suspended channel sediments, reducing incision, and increasing short-term soil saturation.

*Project Size:* The total area of ground disturbance associated with the Project is approximately 2.23 acres and 500 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. 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:* Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) Soil, (2) Rock Rip–Rap, (3) Native Vegetation, (4) Large Woody material, (5) Erosion Control Materials, (6) Culverts, (7) One–foot rock grade control structures

*Project Timeframes:*

Start date: August 2022

Completion date: August 2026

Work window: August–October 31, Annually

*Water Quality Certification Background:* Because the Project’s primary purpose is habitat restoration intended to improve the quality of waters in California and improve hydrological processes which support salmonid spawning and rearing habitat throughout the watershed, the North Coast 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) Number 1B21051WNME, Electronic Content Management Identification (ECM PIN) Number CW–872982 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 Northern red–legged frog (*Rana aurora*), California red–legged frog (*R. draytonii*), Foothill yellow–legged frog (*R. boylei*), Coastal tailed frog (*Ascaphus truei*), Southern torrent salamander (*Rhyacotriton variegatus*), California Giant Salamander (*Dicamptodon ensatus*), Red–bellied newt (*Taricha rivularis*), and Western Pond turtles (*Actinemys marmorata*).

*Receiving Water:* Unnamed tributary to the Flynn Creek, tributary to the North Fork Navarro River, Mendocino Coast Hydrologic Unit 113.50

*Filled or Excavated Area:* Temporary impact: 500 linear feet (1.6 acres)

*Dredge Volume:* None.

*Discharge Volume:* 164 cubic yards (cy) of native vegetation (for channel packing activities), 90 cy of ¼ to 1 ton of rock, 14 cy China Rock, 14 cy Gravel/soil filler, 860 linear feet Erosion Control Materials (coir wattles), 75 linear feet Culvert (36" ABS Culvert), 430 wood stakes.

*Project Location:* Latitude 39.162716 North and Longitude -123.583322 West, (NAD 83); APN: 129-290-07.

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 (Public Resources Code, § 21000 et seq.).

On November 17, 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 November 17, 2021, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2021-1117-02) on December 3, 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 meet the conditions set forth in Fish and Game Code section 1653 for authorizing the Project.

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

### **Avoidance and Minimization Measures**

The avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Proposed erosion control measures; (2) Post-construction erosion control measures; (3) Measures

to minimize disturbance from instream construction; (4) Measures to minimize degradation of water quality; (5) Measures to minimize loss or disturbance or riparian vegetation; and (6) General measures for environmental and cultural resources. The specific avoidance and minimization requirements are found in an attachment to the NOI, *Attachment A: Additional Pages — Lower Flynn Creek Infiltration Project*.

### **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, *Monitoring and Reporting Plan Trout Unlimited — Lower Flynn Creek Infiltration Pilot Project*.

### **Notice of Completion**

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

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

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

**DEPARTMENT OF FISH AND WILDLIFE**

**HABITAT RESTORATION AND ENHANCEMENT ACT  
CONSISTENCY DETERMINATION  
NO. 1653-2021-085-001-R1**

**Project:** Strawberry Creek at Clam Beach Fish Passage Improvement Project

**Location:** Strawberry Creek at the intersection of Highway 101 and Central Avenue, McKinleyville, Humboldt County, CA

**Applicant:** Elise Ferrarese, Trout Unlimited, Inc.

**Background**

*Project Location:* The Strawberry Creek at Clam Beach Fish Passage Improvement Project (Project) is located at the intersection of Highway 101 and Central Avenue at mile post 95.6, approximately nine miles north of Arcata, CA. Coordinates for the Project are 40.9937° North, 124.1128° West at a property owned by the California Department of Transportation District 1, Assessor Parcel Number (APN) 511-301-019-000. Strawberry Creek currently supports populations of coastal cutthroat trout, three spine stickleback and other native fishes, amphibians, and aquatic insects.

*Project Description:* Elise Ferrarese (Applicant) proposes to improve fish passage through an existing 185-foot-long trapezoidal concrete channel within Strawberry Creek by retrofitting the concrete channel with corner baffles to increase roughness and decrease water velocities. The design includes a series of 13 angled baffles installed along the length of the concrete channel. The baffles are spaced 12 feet apart measured along the channel centerline, resulting in a drop of 0.23 feet between baffle crests. The baffle crest has a compound shape with a horizontal crest along approximately 10.6 feet of the length. A 0.6-foot deep notch along the baffle crest will concentrate low flows. The design is intended to allow passage of juvenile and adult life stages of Coho Salmon, steelhead/resident rainbow trout, and coastal cutthroat trout. Adult Pacific Lamprey were also considered during design.

*Project Size:* The total area of ground disturbance associated with the Project is approximately 0.33 acres and 200 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:* 1.3 cubic feet of rebar, 5.7 cubic yards concrete, and 70 Cubic feet of dimensional lumber.

*Project Timeframes:*

Start date: August 1, 2022

Completion date: October 31, 2022

Work window: July 1–October 31, 2022

*Water Quality Certification Background:* Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in 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) Number 1B21192WNHU; CW-876231 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:* Strawberry Creek

*Filled or Excavated Area:*

Permanent area impacted: 0.004 acres

Temporary area impacted: 0.13 acres

Length temporarily impacted: 200 linear feet

Length permanently impacted: 156 linear feet

*Dredge Volume:* None

*Discharge Volume:* 7 Cubic yards

*Project Location:* Latitude 40.993375 North and Longitude -124.1130389 West (NAD 83); APN: 511-301-019-000

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 (Public Resources Code, § 21000 et seq.).

On November 17, 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 November 17, 2021, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg.

Notice File Number Z2021-1117-03). Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

**Determination**

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

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

**Avoidance and Minimization Measures**

The avoidance and minimization measures for 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, 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).)

**FISH AND GAME COMMISSION**

**NOTICE OF FINAL CONSIDERATION  
OF PETITION**

NOTICE IS HEREBY GIVEN pursuant to the provisions of Fish and Game Code Section 2078, that the California Fish and Game Commission (Commission), has scheduled final consideration of the petitions to list Shasta snow wreath (*Neviusia cliftonii*) and San Bernardino kangaroo rat (*Dipodomys merriami parvus*) as endangered species for its February 16-17, 2022 meeting in Sacramento. The public may also participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899.

The agenda of the February 16-17, 2022 meeting, and the agendas and video archive of previous meetings where actions were taken on Shasta snow wreath and San Bernardino kangaroo rat are available online at <http://www.fgc.ca.gov/meetings/>.

Pursuant to the provisions of Fish and Game Code, sections 2075 and 2075.5, the Commission will consider the petitions and all other information in the

records before the Commission to determine whether listing Shasta snow wren and San Bernardino kangaroo rat as endangered species is warranted.

The petitions, the California Department of Fish and Wildlife's evaluation reports, and other information in the records before the Commission, are posted on the Commission website at <https://fgc.ca.gov/CESA>.

## **FISH AND GAME COMMISSION**

### **NOTICE OF FINDINGS Upper Klamath–Trinity River Spring Chinook Salmon (*Oncorhynchus tshawytscha*)**

**NOTICE IS HEREBY GIVEN** that the California Fish and Game Commission (Commission), at a meeting on June 16, 2021, found pursuant to California Fish and Game Code Section 2075.5, that the information contained in the petition to list upper Klamath–Trinity River spring Chinook salmon (*Oncorhynchus tshawytscha*) (hereinafter “UKTSCS”) and other information in the record before the Commission, warrants adding UKTSCS to the list of endangered species under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See also Cal. Code Regs., title 14, § 670.1, subdivision (i).)

**NOTICE IS ALSO GIVEN** that, at its December 15–16, 2021 meeting, the Commission adopted the following findings outlining the reasons for its determination.

#### **I. Background and Procedural History**

##### ***Petition History***

On July 23, 2018, the Karuk Tribe and Salmon River Restoration Council submitted a petition to the Commission to list UKTSCS as an endangered species under CESA. The Commission reviewed the petition for completeness, and pursuant to Section 2073 of the California Fish and Game Code, referred the petition to the California Department of Fish and Wildlife (Department or CDFW) on August 2, 2018 for evaluation. The Commission gave public notice of receipt of the petition on August 17, 2018 (Cal. Reg. Notice Register 2018, Number 33–Z, page 1313). The Department requested a 30–day extension of the 90–day review period on October 5, 2018 which was granted by the Commission at its October 17, 2018 meeting. The Department transmitted to the Commission the Department's petition evaluation on November 27, 2018, and on December 13, 2018, the Commission formally received the Department's petition evaluation.

At its February 2019 meeting, FGC determined that listing may be warranted, and subsequently provided notice regarding UKTSCS's protected, candidate

species status (Cal. Reg. Notice Register 2019, Number 8–Z, page 284).

##### ***Status Review Overview***

The Commission's action designating UKTSCS as a candidate species triggered the Department's process for conducting a status review to inform the Commission's decision on whether to list the species. At a public meeting in June 2019, the Commission approved a request for a 6–month extension to complete the status review.

On March 12, 2021, the Department transmitted to the Commission the Department's report to the Commission titled *California Endangered Species Act Status Review for Upper Klamath and Trinity Rivers Spring Chinook Salmon (Oncorhynchus tshawytscha)* (status review) dated March 11, 2021. On April 14, 2021, the Commission formally received the Department's status review during a public meeting. On June 16, 2021, the Commission found that the information contained in the petition to list UKTSCS and other information in the record before the Commission warranted listing UKTSCS as a threatened species under CESA.

##### ***Species Description***

###### ***Chinook Salmon***

Chinook salmon are semelparous (i.e., reproducing or breeding only once in a lifetime), anadromous (i.e., ascending rivers from the sea for breeding), salmonid fishes native to fresh and ocean waters of the North Pacific Rim (CDFW 2021). The life cycle, physiology, diet, and habitat needs are detailed in the petition and status review.

Although among the least abundant of all the Pacific salmonids, Chinook salmon show the greatest life–history diversity and geographic range (Riddell et al. 2018). They are the largest of the Pacific salmon genus *Oncorhynchus*, with adults in northern waters growing as large as 45 kg (99 lbs). The name Chinook refers to the collective Chinookan Native American Tribes of the Pacific Northwest. The species is also known by the common names king salmon, tyee, and quinnat salmon. Additional information on species characteristics can be found in Moyle (1976), Scott and Crossman (1973), Wydoski and Whitney (1979), Morrow (1980), Eschmeyer et al. (1983), and Page and Burr (1991).

Broadly speaking, there are two recognized groups of Chinook salmon whose adult migration occurs in the spring in California: Central Valley spring–run Chinook salmon and UKTSCS (CDFW 2021). These two groups are widely separated spatially — one in the Central Valley and the other on the north coast (CDFW 2021). Those two groups of Chinook salmon are also genetically distant from one another (CDFW 2021).

*Upper Klamath and Trinity River Chinook Salmon*

In the upper Klamath and Trinity rivers, two Chinook salmon ecotypes are present: spring and fall. While fish that return in the fall currently comprise the majority of the Chinook salmon in these rivers, the opposite was likely historically the case (Karuk Tribe and Salmon River Restoration Council 2018).

UKTSCS was likely more common and more widely distributed within the basin historically due to conditions that favored expression of the early returning phenotype. Current distribution of the spring ecotype is fragmented and abundance is low compared to these historical populations. UKTSCS is currently found in relatively small to moderately large numbers in the basin, with notable spawning aggregations in three disjunct locations:

- Salmon River on the Klamath,
- Upper Trinity River, and
- South Fork Trinity River.

UKTSCS in the Salmon River and the South Fork Trinity River are less abundant than in the Upper Trinity River. In contrast, Upper Klamath Trinity River (UKTR) fall Chinook salmon (and therefore the federally-designated UKTR Chinook salmon evolutionarily significant unit as a whole) are relatively widely distributed in the basin and can occur in relatively large numbers.

**II. Statutory and Legal Framework**

The Commission, as established by the California State Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subdivision (b); Fish & Game Code, § 2070.) The CESA listing process for UKTSCS began in the present case with the petitioners’ submittal of the petition to the Commission on July 23, 2018. The regulatory and legal process that ensued is described in some detail in the preceding section, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600;
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111–1116;

- *Central Coast Forest Association v. California Fish and Game Commission* (2017), 2 Cal. 5th 594, 597–598; and
- *Central Coast Forest Association v. California Fish and Game Commission* (2018) 18 Cal.App.5th 1191, 1196–1197.

The “is warranted” determination at issue here stems from Commission obligations established by Fish and Game Code Section 2075.5. Under the provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether listing a species is warranted or is not warranted. Here, with respect to UKTSCS, the Commission made the finding under Section 2075.5(e)(2) that listing UKTSCS as threatened is warranted.

The Commission was guided in making its determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease.” (Fish & Game Code, § 2062.) Similarly, the Fish and Game Code defines a threatened species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter.” (*Id.*, § 2067.)

The Commission also considered Title 14, Section 670.1, subdivision (i)(1)(A), of the California Code of Regulations in making its determination regarding UKTSCS. This provision provides, in pertinent part, that UKTSCS shall be listed as endangered or threatened under CESA if the Commission determines that its continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance, providing that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt

of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & Game Code, §2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA are of great remedial and public importance and thus should be construed liberally.” (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal. App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & Game Code, §§ 2051, 2052.)

Finally, in considering the six identified factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., Id., §§ 2071, 2074.4, 2078; Cal. Code Regs., title 14, § 670.1, subdivision (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & Game Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., title 14, § 670.1, subdivisions (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) The referenced obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition, a related recommendation regarding candidacy, and a review of the candidate species’ status, culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & Game Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., title 14, § 670.1, subdivisions (d), (f), (h).)

**III. Factual and Scientific Bases for the Commission’s Final Determination**

The factual and scientific bases for the Commission’s determination that designating UKTSCS as a threatened species under CESA is warranted are set forth in detail in the Commission’s record of proceedings, including the petition (Karuk Tribe and Salmon River Restoration Council 2018); the Department’s petition evaluation report; the Department’s status review (CDFW 2021); written and oral comments received from members of the public, the regulated community, tribal entities, and the scientific community; and other evidence included in the Commission’s record of proceedings.

The Commission determines that the continued existence of UKTSCS in the State of California is in serious danger or threatened by one or a combination

of the following factors as required by the California Code of Regulations, Title 14, Section 670.1, subdivision (i)(1)(A):

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human–related activities.

The Commission also determines that the information in the Commission’s record constitutes the best scientific information available and establishes that designating UKTSCS as a threatened species under CESA is warranted. Similarly, the Commission determines that UKTSCS is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by CESA due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

The items highlighted here and detailed in the following section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for UKTSCS. Similarly, the issues addressed in these findings represent some, but not all, of the evidence, issues, and considerations affecting the Commission’s final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission, which record is incorporated herein by reference.

**Background**

The Commission has previously listed units at a lower level than a taxonomic subspecies. In 2004, the Commission listed two evolutionarily significant units (ESUs) of coho salmon, a decision that was upheld in *Ca. Forestry Assn. v. Ca. Fish Game*. In 2016, the Commission also listed an ESU of fisher. In 2020, the Commission listed five clades of the foothill yellow–legged frog; a clade, also referred to as a monophyletic group, is a branch on a phylogenetic tree that contains a group of lineages comprised of an ancestor and all its descendants.

The Commission bases its “is warranted” finding for UKTSCS most fundamentally on its determination that UKTSCS qualifies as a “subspecies” as specified in CESA sections 2062 and 2067. The qualification is based on the discreteness (when compared to other ecotypes) and significance of UKTSCS within the state of California (Fraser 2001; Waples 1991, 1995; Moran et al. 1994; de Guia and Saitoh 2007), coupled with the threats faced due to relatively small abundances, habitat alteration, disease, and climate change (Karuk Tribe

and Salmon River Restoration Council 2018; CDFW 2021; Moyle et al. 2008). Construing “subspecies” under this framework supports the preservation of important elements of genetic diversity, which has been shown to support long-term species conservation (Frankham 2005; Frankham 1996; Waples and Lindley 2018) and is important to fulfill the purpose of CESA of biodiversity preservation.

### ***Qualification for Listing***

The petition specifically refers to UKTSCS as an ESU and argues as to why UKTSCS should be considered as such. In making a recommendation to the Commission, the Department deemed that UKTSCS was best understood as an ecotype of a larger combined UKTR Chinook salmon ESU composed of late-returning (fall) and early-returning (spring) spawners, and from that the Department concluded that UKTSCS does not itself constitute an independent ESU. Following from this conclusion, the Department recommended against listing UKTSCS (CDFW 2021). However, whether UKTSCS qualifies as an ESU under federal policy does not preclude listing by the Commission under CESA. The Commission is not bound by federal ESU policy and must make its own factually-specific determination, supported by CESA and relevant case law.

The genetics of UKTSCS distinguishes it from individuals in the fall ecotype, and that distinction is meaningful given that it expresses as the seasonal run in a very precise (albeit not perfectly exact) relationship (Prince et al. 2017; Ford et al. 2020; Thompson et al. 2020). While spring-returning, intermediate-returning, and fall-returning fish do interbreed and can form heterozygous offspring (Anderson et al. 2019), homozygous spring fish most clearly exhibit the early (spring) run-timing; heterozygous fish are likely to arrive during the intermediate time between the spring and fall (CDFW June 16 presentation; Karuk June 16 presentation; Ford et al. 2020).

While capable of breeding, heterozygous fish survivorship may be expected to be extremely low given the river conditions in the summer and early fall (Karuk June 16 presentation), including low instream flows and higher temperatures (CDFW 2021). If heterozygotes do experience reduced survival, homozygotes could be predominantly selected for, serving as a maintenance function for homozygotes (Ford et al. 2020). This environmentally-enforced bias towards differentiation would further serve to underscore the distinctiveness between ecotypes. However, heterozygotes may play an important role in the maintenance of early-migrating alleles if conditions favor late run timing (Ford et al. 2020).

The best available genetic and evolutionary information points most likely to a monophyletic run-timing group (i.e., a single clade), that manifested from

a single evolutionary event (Prince et al. 2017; Ford et al. 2020). Given its evolutionary history, run-timing in the spring is unlikely to evolve again in Chinook salmon over ecological time scales should it disappear (Karuk Tribe and Salmon River Restoration Council 2018; Karuk June 16 presentation; Thompson et al. 2019, 2020; Ford et al. 2020; Prince et al. 2017).

The spring run-time of UKTSCS provides a unique, adaptive contribution to the ecosystem. The run-time differentiation allows access to disparate habitat conditions during the return migration (Allen 2000; CDFW 2021, appendix E), conferring a significant adaptive consequence. The variation brings important diversity to the species that increases its chances of surviving when faced with natural and human-caused environmental change and environmental stochasticity. Finally, UKTSCS is historically and culturally significant for the Yurok and Karuk people and the local communities (Campbell and Butler 2010; Hamilton et al. 2016; public comment June 16; Karuk Tribe and Salmon River Restoration Council 2018). This is reflected in traditional knowledge about the ecological and morphological distinctiveness of UKTSCS and the linguistic discreteness of the fall and spring ecotypes (Karuk June 16 presentation, public comment June 16).

Although the relationship between the genetic makeup of a particular fish is very closely related to its run timing, some variation is recognized in when it may choose to return from the ocean, even among homozygous individuals (Ford et al. 2020). That is, an individual with homozygous spring alleles may return late into the fall, and vice versa. Ultimately however, it is UKTSCS’s genetic composition which fundamentally drives its strong inclination to migrate at a particular time of year (Ford et al. 2020; Narum et al. 2018; Anderson et al. 2019; Anderson and Garza 2019). Therefore, the fundamental determinant of whether a fish is a UKTSCS is its genetic makeup; only UKTR Chinook salmon that possess homozygous alleles associated with the spring return are classified as UKTSCS, for the purposes of this CESA listing.

Based on the foregoing factors, the Commission finds UKTSCS qualifies as a subspecies under CESA.

### ***Threats***

UKTSCS is threatened due to:

- present or threatened modification of its habitat;
- disease; and
- other natural events or human-related activities

### ***Present or Threatened Modification or Destruction of Habitat***

Dam construction and other habitat modifications (e.g., historical mining, land and water use) in the Klamath basin have resulted in truncated and



fragmented distribution of UKTSCS in comparison to historical times.

Historically, UKTSCS over-summered and spawned in the Williamson, Sprague, and Wood River systems of southern Oregon (Hamilton et al. 2005). The construction of a complex of hydropower dams between 1917 and 1962 created a barrier to fish passage near the California/Oregon border, effectively denying salmonids access to approximately half the Klamath Basin (*Klamath Facilities Removal Final Environmental Impact Statement/Environmental Impact Report* 2012). Young's dam on the Scott River and Dwinnell Dam on the Shasta River also serve to deny access to historic UKTSCS habitat (Moyle et al., 2017).

Spring-returning Chinook salmon were historically more significant in northern California waters. At least some of the intermingling of UKTSCS and fall Chinook salmon is likely due to the anthropogenic habitat alteration within the watershed (Ford et al. 2020; Kinziger et al. 2008; Karuk June 16 presentation; Matt Sloat verbal comment June 16; CDFW 2021, appendix E), as UKTSCS are not able to reach historical spawning areas due to artificial barriers (whether specifically constructed or not) and altered water regimes (Hamilton et al. 2016; Strange 2012). This external condition has likely increased reproductive interplay between upper Klamath Chinook salmon ecotypes (Ford et al. 2020; CDFW 2021, appendix E). The interbreeding increases the likelihood of heterozygotes and opposes an otherwise natural tendency for genetic separation between fall and spring representatives, potentially threatening the persistence of the spring ecotype (Prince et al. 2017; Ford et al. 2020; Anderson and Garza 2019; CDFW 2021, appendix E).

Between 1870 and the 1950's large scale placer mining, including hydraulic and dredge mining, severely altered critical spawning and rearing habitat for UKTSCS in the middle Klamath and its tributaries. One of the most important factors leading to the decline and continued low abundance of UKTSCS (as well as other salmonids) is the legacy effect of historical placer mining on channel and floodplain habitat conditions throughout the mainstem and larger tributaries of the Klamath River (Karuk Tribe and Salmon River Restoration Council 2018; Kondolf 1997). Placer mining denuded floodplains and adjacent river terraces and hillslopes, reduced riparian shade cover, exposed the stream channel and surrounding areas to increased solar radiation, eroded streamside areas, and increased sedimentation (Stillwater Sciences 2018; Moyle et al. 2008). Other effects from mining (whether historical or contemporary) can include channel aggradation, widening and shallowing alluvial reaches, coarsening streambeds, reducing habitat complexity, filling of

pools, decreasing connection with groundwater, and reducing floodplain connectivity (Stillwater Sciences 2018; NMFS 2014; CDFW 2021). Reclamation efforts of the impacts from mining emplacements have a mixed record at best, and restoration of hydrology following mining impacts can often be infeasible (Kondolf 1993).

In addition, numerous irrigation projects throughout the Klamath Basin impact fish passage, impair water quality, and impair river and stream flows, all of which contribute to the decline of UKTSCS (Karuk Tribe and Salmon River Restoration Council 2018).

Four Klamath River dams are planned for removal starting in 2022 if permits are received on schedule. Removal of these dams will allow anadromous fish access to previously blocked spawning and rearing areas upstream into Oregon (CDFW 2021). However, UKTSCS, whose only consistent current representation in the Klamath River is in the Salmon River, will not likely rapidly repopulate the Upper Klamath naturally due to low numbers and how far down in the drainage UKTSCS occurs (CDFW 2021). UKTSCS are unlikely to derive short-term benefits from dam removal (Karuk Tribe and Salmon River Restoration Council 2018; CDFW 2021). However, recovery potential for UKTSCS and other anadromous fish is much more likely without the dams.

The Commission finds habitat modification and destruction to be a significant threat to the continued existence of UKTSCS.

#### *Disease*

Multiple diseases affect UKTSCS (Karuk Tribe and Salmon River Restoration Council 2018; CDFW 2021). Salmon are exposed to a variety of bacterial, viral, and parasitic organisms throughout their life cycle, contracting diseases through both waterborne pathogens and through mingling with infected hatchery-raised fish (Karuk Tribe and Salmon River Restoration Council 2018; CDFW 2021). It is possible for a fish to be infected with one or more pathogens but not show outward signs of disease. Hatchery-raised Chinook salmon appear to be more susceptible to disease than naturally spawning Chinook (Karuk Tribe and Salmon River Restoration Council 2018; CDFW 2021). Chinook salmon in the Klamath River Basin emigrate as juveniles, and the stress associated with their return when water temperatures and flows approach their limits of tolerance makes them particularly susceptible to disease (Moyle et al. 2008, NMFS 2009).

Principal diseases include ceratomyxosis, columnaris disease, and *Ichthyophthirius multifiliis* ("ich") (CDFW 2021). Juvenile and adult fish kills associated with disease are common in the Klamath River (CDFW 2021). Environmental factors that may exacerbate disease include elevated water temperature,

low dissolved oxygen, low water flow, elevated pH, and elevated nutrient levels. Toxic cyanobacteria blooms have also been detected in the Klamath River watershed (Fetcho 2006).

The Commission finds disease to be a significant threat to the continued existence of UKTSCS.

#### *Other Natural Events or Human-Related Activities*

##### *Small Populations*

Small, isolated populations are inherently vulnerable. There are only two occurrences of Chinook returning in the spring within the state of California, and the other spring returning Chinook salmon population (Central Valley) is in decline; it is listed as threatened under the federal Endangered Species Act (50 Code of Fed. Regs. 17.11). Small population size in the Salmon and South Fork Trinity groups, and overall fragmentation of spawning aggregations of UKTSCS, is of concern from the standpoint of diversity loss (CDFW 2021). The more robust wild population today is in the Salmon River (Karuk Tribe and Salmon River Restoration Council 2018; CDFW 2021). Other populations are either small and intermittent or heavily influenced by hatchery-raised fish, so may not be self-sustaining and are likely to be extirpated in the near future (Moyle et al. 2008). Therefore, small population size is a threat to the persistence of UKTSCS.

##### *Climate Change*

The Earth's climate is warming, and the primary causes are greenhouse gas emissions and deforestation (IPCC 2007; USGCRP 2009; USGCRP 2017). Since 1900, global average temperature has increased 0.7° C (NRC 2006) due to carbon dioxide emissions. Ice core data indicates that atmospheric carbon dioxide is currently 30% greater than its peak in the last 800,000 years. Over the last 150 years, carbon dioxide levels have increased 37.5% (CDFW 2021).

Greenhouse gas increases have resulted in changes in seasonal precipitation, decreased snowpack, earlier snowmelt, and increased storm severity (USGCRP 2009; USGCRP 2017), 0.1° C increase in sea surface temperature since 1961 and increased ocean acidification (USGCRP 2009), 203 mm increase in sea level after approximately 2000 years of stability (USGCRP 2009), and approximately a 20% decrease in the amount of arctic sea ice since the 1950s (Curran et al. 2003).

If current conditions remain unchanged, studies project that global climate will change drastically. Projections include an increase of 1.1–6.4° C in average global surface temperature (USGCRP 2009), sea level rise of 1–3 meters (IPCC 2007; USGCRP 2009; USGCRP 2017), and greater extremes in storm events and wildfire (Krawchuck et al. 2009). In particular, conditions in the Klamath basin are likely to change

drastically in the foreseeable future (Barr et al. 2010; Thorsteinson et al. 2011; CDFW 2021).

A warming climate is likely to result in poorer future environmental conditions for California's salmonids in general (Isaak et al. 2018; Katz et al. 2012; Crozier et al. 2019), and for UKTSCS specifically (CDFW 2021). Based on long- and short-term evaluations, and climate warming predictions, it seems likely that UKTSCS in the Salmon and South Fork Trinity rivers could be extirpated as an ecotype in those places, and that extirpation could progress rapidly (CDFW 2021; NMFS 2019). Additionally, changing climate could adversely affect marine habitats during the life stages in which UKTSCS inhabits the ocean (CDFW 2021; NMFS 2019). Therefore, climate change is a threat to the persistence of UKTSCS.

The Commission finds the natural or human-related activities discussed above to be a significant threat to the continued existence of UKTSCS.

#### **Conclusion**

Therefore, the continued existence of UKTSCS is in serious danger or threatened by significant threats, including present or threatened modification or destruction of habitat, disease, and other natural events or human-related activities.

#### **IV. Final Determination by the Commission**

The Commission has weighed and evaluated the information for and against designating UKTSCS as a threatened species under CESA; this information includes scientific and other general evidence in the petition; the Department's petition evaluation report; the Department's status review; the Department's related recommendations; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission's record of proceedings.

Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of UKTSCS is in serious danger or threatened by present or threatened modifications or destruction of the species' habitat, disease, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., title 14, § 670.1, subdivision (i)(1)(A); Fish & Game Code, §§ 2062, 2067.) The Commission determines that there is sufficient scientific information to indicate that designating UKTSCS as a threatened species under CESA is warranted at this time, and that with adoption and publication of these findings UKTSCS, for purposes of its legal status under CESA, shall be listed as threatened.

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## **OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

### **NOTICE OF PUBLIC MEETING AND BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting and Business Meeting:

#### **PUBLIC MEETING**

On **February 17, 2022**, at 10:00 a.m. via the following:

- In person at the Auditorium of the Harris State Building 1515 Clay Street, Oakland, California
- Video-conference at [www.webex.com](http://www.webex.com) (meeting ID 268 984 996)
- Teleconference at (844) 992–4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

BUSINESS MEETING

On **February 17, 2022**, at 10:00 a.m. via the following:

- In person at the Auditorium of the Harris State Building 1515 Clay Street, Oakland, California  
Video-conference at [www.webex.com](http://www.webex.com) (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Business Meeting, the Board will conduct its monthly business.

**DISABILITY ACCOMMODATION NOTICE:**

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**DEPARTMENT OF FISH AND WILDLIFE**

CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
Cultivation Project at 9500 Batchelder Road  
2080-2021-014-05  
Santa Barbara County

The California Department of Fish and Wildlife (CDFW) received a notice on December 14, 2021, that Farming First, LLC proposes to rely on a consultation with a federal agency to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves the development of an approximately 93-acre cultivation project within the 746.88-acre parcel. The proposed project will occur at 9500 Batchelder Road in the Los Alamos area in Santa Barbara County, California.

The U.S. Fish and Wildlife Service (Service) issued a federal incidental take permit (Permit Number: ESPER0026639) (ITP) under the General Conservation Plan (GCP) for Cultivation Activities in Santa Barbara County to Farming First, LLC on November 23, 2021, which considered the effects of the proposed project on state threatened and federally endangered Santa Barbara County distinct population segment of California tiger salamander (*Ambystoma californiense*).

Pursuant to California Fish and Game Code section 2080.1, Farming First, LLC is requesting a determination that the ITP under the associated GCP is consistent with CESA for purposes of the proposed project. If CDFW determines the ITP under the associated GCP is consistent with CESA for the proposed project, Farming First, LLC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

DEPARTMENT OF FISH AND  
WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT  
CONSISTENCY DETERMINATION  
NO. 2080–2021–013–05

**Project:** 7369 State Highway 246,  
Lompoc, CA, 93436  
(Assessor's Parcel Number (APN)  
099–220–017)

**Location:** Santa Barbara County

**Applicant:** Sun Valley Ranch, LLC

**Background**

Sun Valley Ranch, LLC (Applicant) proposes to develop a cannabis cultivation project (Project) on 65 acres of a 348.52-acre parcel (APN 099–220–017) located at 7369 State Highway 246, Lompoc, County of Santa Barbara, State of California, 93436 (Property). The Project includes the conversion and use of an active, historically cultivated farm and related support facilities including access roads, ancillary structures, and existing utilities present on site.

*Cultivation Areas*

The proposed cannabis cultivation will occupy approximately 65 acres that is currently and historically farmed. The cultivation site will be disked and tilled annually in accordance with organic agriculture practices. Most of the cultivation will be conducted via traditional organic methods with plants in the ground. In some cases, crop cultivation may be conducted in grow pots or bags with soil. Irrigation will be delivered via an auto drip irrigation system with an agronomic rate programmed to apply water to the extent that it is needed by the plants daily. Water will be supplied by the on-site well located in the southern portion of the cultivation site.

*Streams and Stream Setbacks*

The Project site consists of an unnamed stream that runs along the western Property boundary and a small drainage tributary to the unnamed stream. The unnamed stream that runs along the western Property boundary is located approximately 100 feet west of the cultivation area and is tributary to Santa Rosa Creek and the Santa Ynez River. All cultivation activities, including storage, will maintain a minimum 100-foot setback from the unnamed stream and its tributary.

*Agricultural Support Facilities/Structures*

Operation and maintenance activities will occur on 0.05 acre for emergency vehicle access, parking, and storage. In addition, a staging area dedicated to post harvest process/staging will occur on 0.70 acre on the southwestern portion of the Project site.

*Fencing and Lighting*

The western Property boundary will be fenced with security wood fencing that is six feet tall to replace the existing fabric fence. The northern and eastern Property boundaries will be fenced with wire mesh security fencing that is six feet tall to replace the cattle fence. Landscape screening is proposed on the southern portion of the western boundary of the Project site along Crawford Canyon Road, and the existing landscaping along the southern boundary of the site will remain.

*Access and Roadways*

The access road for the Project will occur from the southwestern end of the Project site through Crawford Canyon Road. Existing dirt access roads are present within the project site and are designed, constructed, and maintained consistent with the Handbook for Forest, Ranch, and Rural Roads (Pacific Watershed Associates 2015) and Title 14, Chapter 4 of the California Code of Regulations. No new access roads will be created for the project.

*Federal Permit History*

In September 2019, the United States Fish and Wildlife Service (USFWS) approved a General Conservation Plan for Cultivation Activities in Santa Barbara County, California (GCP). The GCP is a conservation plan as required in Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.) section 10(a)(2)(A) for issuance of an incidental take permit (ITP) pursuant to ESA section 10(a)(1)(B) for take of California tiger salamander (*Ambystoma californiense*; CTS). These ESA provisions allow USFWS to develop a 10(a)(1)(B) conservation plan suitable for the needs of a local area, and then to issue individual permits to landowners who apply for an ITP and demonstrate compliance with the terms and conditions of the plan. The GCP therefore provides a federal ESA permitting mechanism for incidental take of CTS by private landowners engaged in horticulture activities. The project is located in the Santa Rita CTS metapopulation identified in the GCP.

*Anticipated Take of California Tiger Salamander*

The Project activities described above are expected to incidentally take<sup>1</sup> CTS where those activities take place within the 65-acre Project site. In particular, CTS could be incidentally taken as a result of the development-related and long-term activities that include equipment access, staging, material storage, earth moving activities, active agricultural

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

activities, operation and maintenance of structures, agricultural fields, infrastructure, irrigation and water management, vehicular traffic, security fencing and lighting, and increased human activities. CTS is designated as an endangered species pursuant to the federal ESA and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

Two known, and seven potential CTS breeding-ponds designated by the USFWS<sup>2</sup> are located within 1.24 miles of the Project site. Based on analysis and consultation with USFWS, the addition of impermeable areas on site including the proposed hoop structures in the northern portion of the site, the guard house, and fenced staging area would remove suitable dispersal habitat for CTS. USFWS determined that the species could occur within the Project site and that Project activities could result in the incidental take of CTS due to the proximity of the nearest known and potential CTS breeding ponds, CTS dispersal patterns, and the presence of suitable CTS dispersal habitat within the Project site. The Applicant applied for an ITP under the GCP for federal authorization to take CTS on the Project site.

On October 28, 2021, USFWS issued an ITP (Permit Number ES78131D) to the Applicant pursuant to the GCP. The ITP describes the Project, requires the Applicant to comply with terms of the ITP and GCP, and incorporates additional measures.

The federal ITP authorizes the take of CTS in the form of capture for up to ten individuals and injury or mortality for up to 2 individuals during Project implementation.

USFWS calculated the value of the impacted habitat using the methodology outlined in Searcy and Shaffer (2008)<sup>3</sup> that included incorporating the amount of CTS aquatic breeding habitat and upland habitat on the Project site that will be impacted. The method described in Searcy and Shaffer (2008) attaches a value to habitat that scales with the reproductive value of the individuals estimated to be occupying an area. According to Searcy and Shaffer (2008), the reproductive value of a site is a function of: (1) distance from each known or potential breeding pond within dispersal distance of the site; and (2) land-use in the surrounding areas.

USFWS determined that the Project would consequently result in the loss of a reproductive value of up to 512 units as calculated in accordance with

Searcy and Shaffer (2008). Compensatory mitigation is based on the loss of this reproductive value for CTS.

On November 19, 2021, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from Karen Streeter of Streeter Group, Inc on behalf of the Applicant, requesting a determination pursuant to Fish and Game Code section 2080.1 that the federal ITP and associated GCP are consistent with CESA for purposes of the Project and CTS. (Cal. Reg. Notice Register 2021, Number 49–Z, page 1682).

### Determination

CDFW has determined that the ITP and associated GCP are consistent with CESA as to the Project and CTS because the mitigation measures contained in the ITP, and the GCP insofar as the ITP references and requires compliance with mitigation measures in the GCP, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITP, and the GCP insofar as the ITP references and requires compliance with mitigation measures in the GCP, will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is assured to implement the required avoidance, minimization and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of CTS. The mitigation measures in the ITP, and the GCP insofar as the ITP references and requires compliance with the GCP, include, but are not limited to, the following:

#### *Avoidance, Minimization, and Mitigation Measures*

1. Prior to the commencement of any activity that could result in take of CTS, the applicant will demonstrate that 0.6 mitigation credits have been purchased from the La Purisima Conservation Bank. Proposed project impacts result in a loss of reproductive value of 512 using methodology described in Searcy and Shaffer (2008). Using the same calculations, one credit at the La Purisima Conservation Bank has a reproductive value of approximately 850. Therefore, the purchase of 0.6 credits will offset the impacts resulting from the project.

*1.1 Although not a condition of the ITP, CDFW requests a copy of the documentation of the credit purchase at La Purisima Conservation Bank.*

2. During the project planning phase, the applicants will site all impacts as far away from known and potential CTS breeding habitats and to avoid high quality upland and dispersal habitat as possible.

<sup>2</sup>United States Fish and Wildlife Service. 2010. California Tiger Salamander Habitat Map.

<sup>3</sup>Searcy, C. A. and H. B. Shaffer. 2008 Calculating biologically accurate mitigation credits: insights from the California tiger salamander. *Conservation Biology* 22: 997–1005.



3. At least 15 days prior to ground–disturbing activities, the applicant will submit the names and credentials of biologists and monitors to the USFWS for approval to conduct the minimization measures outlined below. Excluding an emergency activity, no project activities will begin until the applicant has received notice from the USFWS that the biologists and monitors are approved to do the work. The USFWS–approved biologist(s) will notify the Ventura Fish and Wildlife Office of their intent to conduct any monitoring events within 48 hours of commencing the activity.
  - 3.1 *Although not a condition of the ITP, CDFW requests that Applicant submits the names and credentials of proposed biologists and monitors to CDFW at least 15 days prior to ground–disturbing activities.*
4. A USFWS–approved biologist will conduct a biological resources training program for all construction workers and their contractors to minimize potential impacts to the CTS and sensitive habitats. Training will occur prior to initial ground–disturbing activities and be repeated, annually and as needed for new workers for the duration of each project covered by the permit. The training program will be reviewed and approved by the USFWS and will include a description of: (1) important biological resources within their project site, specifically CTS that have potential to occur within or adjacent to work areas; (2) the applicable avoidance and minimization measures; (3) the roles and responsibilities of personnel; and (4) communication protocols if CTS are detected.
5. A USFWS–approved biologist will periodically review and monitor ground–disturbing activities and restoration efforts and will be responsible for ensuring that conditions of approval are being enforced and that success criteria are being met. Except for emergency situations, a USFWS–approved biologist will have the authority to temporarily halt activities if permit requirements and conditions are not being met.
6. Prior to ground–disturbing activities, all grading limits and construction boundaries, including staging areas, parking, and stockpile areas, will be delineated, and clearly marked in the field. All suitable CTS habitat located within 10 feet of ground–disturbing activities will be delineated with specific sensitive species labeling (e.g., permanent signage stating, “No Entry — Sensitive Habitat.”). A USFWS–approved biologist(s) will work with the USFWS to identify these areas.
7. All proposed linear routes (i.e., roads and pipelines) will be reviewed and modified, if necessary, in the field to minimize impacts to the CTS with assistance by the on–site biologist or environmental monitor.
8. Personnel will limit their vehicle use to existing routes of travel. Travelling off designated roads will be prohibited unless access is determined critical for a particular activity and the route has been flagged to avoid or minimize adverse effects. To minimize the potential for road mortality of CTS and their habitat, nighttime traffic will be minimized during the ground–disturbing phase to the extent feasible; all hauling activities within habitat for covered wildlife will be restricted to daylight hours, defined as the hours after sunrise and before sunset.
9. Except in areas with posted speed limits greater than 10 miles–per–hour, project–related vehicle speeds will not exceed 10 miles–per–hour when driving within CTS habitat.
10. Prior to moving vehicles or equipment, personnel will look under the vehicles or equipment for the presence of CTS. If a CTS or any other wildlife species is observed, the vehicle will not be moved until the animal has vacated the area on its own accord or has been relocated out of harm’s way in accordance with Measures 12–14
11. A USFWS–approved biologist will conduct pre–activity surveys of CTS habitat within project disturbance boundaries immediately prior to the onset of any ground disturbance associated with the project to determine if any CTS individuals are present, and to refine the final habitat mitigation acreages. The USFWS–approved biologist will monitor ground–disturbing activities in the vicinity of habitats to be avoided. Upon completion of initial ground disturbance, the biologist or monitor will periodically (minimum twice per week) visit the project site throughout the ground–disturbing period to ensure that impacts to the project site are in compliance with the permit. After periods of rain, a USFWS–approved biologist will conduct daily pre–activity surveys to ensure no CTS have migrated into the work area prior to ground–disturbing activities resuming. No construction work will be initiated until a USFWS–approved biologist determines that the work area is clear of CTS. Should any CTS be observed within harm’s way, the animal will be allowed to vacate the area on its own accord or be relocated in accordance with Measures 12–14.
12. Any CTS or individuals of other wildlife species will be allowed to vacate the project areas on its own accord under the observation of a USFWS–approved biologist. If any California

- tiger salamanders or individuals or other wildlife species does not relocate on their own, or if they are in harm's way, they will be relocated out of harm's way to nearby suitable habitat, similar to that in which it was found, and outside the project area. Only a USFWS-approved biologist will relocate CTS. The biologists conducting relocation activities will follow the Declining Amphibian Task Force Fieldwork Code of Practice: [https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining\\_Amphibian\\_Task\\_ForceFieldwork\\_Code\\_of\\_Practice.pdf](https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_ForceFieldwork_Code_of_Practice.pdf).
13. A USFWS-approved biologist will relocate any CTS found within the project footprint to an active rodent burrow system located no more than 300 feet outside of the project area unless otherwise approved by the USFWS. The individuals will be handled with clean and wet hands. During relocation they will be placed in a clean, covered plastic container with a wet non-cellulose sponge. Captured individuals will be relocated immediately; individuals will not be stored for lengthy periods or in heated areas. The relocation container will be kept out of direct sunlight.
  14. A USFWS-approved biologist will monitor relocated CTS until they enter a burrow and are concealed underground or otherwise deemed safe in the relocation area by the biologist. Relocation areas will be identified by the USFWS-approved biologist based on the best suitable habitat available. The USFWS-approved biologist will document both the capture site and the relocation site by photographs and GPS positions. The CTS will be photographed and measured (Snout-Vent) for identification purposes prior to relocation. All documentation will be provided to the USFWS within 24 hours of relocation.
 

*14.1 Although not a condition of the ITP, CDFW requests that the Applicant provides copies of the translocation and monitoring reports to CDFW.*
  15. Rodent burrows within the project areas that overlap CTS habitat will be excavated by a USFWS-approved biologist using hand tools until it is certain that the burrows are unoccupied. In lieu of burrow excavation, steel plates or plywood may also be utilized to protect small mammal burrows from ground disturbance. Plates and plywood will be removed nightly and will be removed if work is scheduled to cease for consecutive days. Any individual CTS that are encountered will be allowed to vacate the area on their own accord or be relocated out of harm's way in accordance with Measures 12–14.
  16. Exclusionary silt fencing (or other suitable fencing material) will be installed at the discretion of a USFWS-approved biologist to minimize the potential for CTS to enter the worksite. Exclusionary fencing will be maintained for the duration of the project. If a CTS or other wildlife species is observed within an enclosed worksite, a portion of the fencing will be removed to allow the individual to vacate the area on its own. Alternatively, the animal may be relocated out of harm's way in accordance with Measures 12–14.
  17. All construction and sediment control fencing will be inspected each workday during construction activities to ensure they are functioning properly.
  18. Open pipe segments will be capped or sealed with tape (or equivalent material) nightly, or otherwise stored at least three feet above ground. Should a pipe segment become occupied by a CTS or any other wildlife species, the animal will be allowed to vacate the pipe on its own or will be removed and relocated in accordance with Measures 12–14.
  19. If covered activities must occur during the rainy season, permittees will not work during rain events, 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, to the extent practicable. If work must occur 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, a USFWS-approved biologist will conduct a pre-activity survey to ensure that the work area is clear (refer to Measure 10 above).
  20. The applicant will ensure that all staging areas, equipment storage areas, stockpile sites, and refueling areas are located at least 100 feet from surface water bodies and wetland habitats to minimize the potential for releases into surface water or wetland habitat. In lieu of the 100-foot buffer, secondary containment measures may be employed to prevent contamination of soil and water.
  21. Upon locating CTS individuals that may be dead or injured as a result of project related activities, notification will be made within 72 hours to the USFWS's Ventura Field Office at (805) 644-1766
- Monitoring and Reporting Measures*
- Annual Reports: By March 31 following each year of ITP issuance and Project implementation, Applicant will submit a report to the Ventura Fish and Wildlife Office to document the status of the Project. The reports will be sent to the Ventura Fish and Wildlife Office by email at [sbc-cultivationgcp@fws.gov](mailto:sbc-cultivationgcp@fws.gov). Section 5 of the GCP details the information that is required in the annual reports.

Project Completion Report: Once an Applicant completes activities covered by the ITP, the Applicant will notify the Ventura Fish and Wildlife Office that they have completed all covered activities and mitigation measures and provide a final report to the Ventura Fish and Wildlife Office; subsequent annual compliance reports will not be necessary thereafter unless take of a listed species occurs or a changed or unforeseen circumstance occurs.

*Although not a condition of the ITP, CDFW requests copies of the annual reports and Project completion report.*

**Security**

As set forth in Avoidance, Minimization and Monitoring Measure Number 1 above, prior to the commencement of any activity that could result in take of CTS, the Applicant will demonstrate that 0.6 mitigation credits have been purchased from the La Purisima Conservation Bank. Because mitigation credits will be purchased before activities that could take CTS commence, a security is not required.

*Although not a condition of the ITP, CDFW requests a copy of the documentation of the credit purchase at La Purisima Conservation Bank.*

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

CDFW's determination that the USFWS ITP is consistent with CESA is limited to CTS.

**DEPARTMENT OF FISH AND WILDLIFE**

CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
Colgan Village Residential Housing Project  
2080-2021-015-03  
Sonoma County

The California Department of Fish and Wildlife (CDFW) received a notice on December 21, 2021,

that Colgan Village, LLC proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves the construction of a 65-lot residential subdivision. Proposed activities will include, but are not limited to, the use of heavy equipment to grade and prepare the project site for building pads, access roads, utilities, sidewalks and landscaped areas. The proposed project will occur at 3011 Dutton Meadow Drive in the southeastern portion of the City of Santa Rosa, Sonoma County.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (BO) (Service Ref. Number 08ESMF00-2018-F-3339-1) in a memorandum to the U.S. Army Corps of Engineers on December 17, 2021, which considered the effects of the proposed project on state threatened and federally endangered Sonoma County distinct population segment of California tiger salamander (*Ambystoma californiense*).

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

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

CHEMICALS LISTED EFFECTIVE  
DECEMBER 31, 2021

AS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE REPRODUCTIVE TOXICITY: PERFLUORONONANOIC ACID (PFNA) AND ITS SALTS

Effective December 31, 2021, the Office of Environmental Health Hazard Assessment (OEHHA) is adding *Perfluorononanoic acid (PFNA) and its salts* to the list of chemicals known to the state to cause reproductive toxicity for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986

(Proposition 65<sup>1</sup>). At a public meeting on December 14, 2021, the Developmental and Reproductive Toxicant Identification Committee (DARTIC) in its official capacity as the “state’s qualified experts” determined that PFNA and its salts were clearly shown through scientifically valid testing according to generally accepted principles to cause reproductive toxicity, based on the male reproductive endpoint. Regulations for the listing of chemicals by the DARTIC are set out in Title 27, California Code of Regulations, section 25305(b)(1).

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

**NOTICE OF DECISION NOT TO PROCEED**

Pursuant to Government Code section 11347

**GOVERNOR’S OFFICE OF EMERGENCY SERVICES**

RE: NOTICE OF PROPOSED RULEMAKING CONCERNING AMENDMENTS TO THE CALIFORNIA ACCIDENTAL RELEASE PREVENTION (CALARP) REGULATIONS (CHAPTER 4.5)

Pursuant to Government Code Section 11347, the California Governor’s Office of Emergency Services (Cal OES) hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register on February 5, 2021 Register 2021, Number 6–Z. The proposed rulemaking concerned the California Accidental Release Prevention (CalARP) Regulations (Chapter 4.5). (OAL Notice Z2021–0126–05.)

Any interested person with questions concerning this rulemaking should contact Meg Wilson at either (916) 621–8176 or by e–mail at [meg.wilson@caloes.ca.gov](mailto:meg.wilson@caloes.ca.gov).

Cal OES will also post this Notice of Decision Not to Proceed on its website.

<sup>1</sup>The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq.

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH THE SECRETARY OF STATE**

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

Department of Corrections and Rehabilitation  
File # 2021–1129–01  
Inmate Authorized Personal Property

In this Certificate of Compliance, the Department of Corrections and Rehabilitation (the “Department”) is making permanent the emergency changes made in OAL Matter Number 2021–0408–03EON, wherein the Department amended the list of facility exemptions for allowable personal property.

Title 15  
Amend: 3000, 3006, 3044, 3133, 3190, 3314, 3315, 3323  
Filed 12/20/2021  
Effective 12/20/2021  
Agency Contact: Rosie Ruiz (916) 445–2244

Department of Cannabis Control  
File # 2021–1210–01  
Waivers for Commercial Cannabis Licensing Fees

In this emergency action, the Department adopts a regulation to establish a fee waiver for equity applicants or licensees, pursuant to Business and Professions Code section 26249.

Title 04  
Adopt: 15014.1  
Filed 12/20/2021  
Effective 12/20/2021  
Agency Contact: Kaila Fayne (916) 465–9025

Department of Resources Recycling and Recovery  
File # 2021–1207–07  
Processing Payments

In this emergency rulemaking action, the Department of Resources Recycling and Recovery is amending the reasonable financial return for recycling centers to 10 percent of the statewide average allowable costs calculated in Title 14, section 2960.

Title 14  
Amend: 2975  
Filed 12/17/2021  
Effective 12/17/2021  
Agency Contact: Kris Chisholm (916) 322-2404

Department of Toxic Substances Control  
File # 2021-1209-03  
Addition to the List of Covered Electronic Devices

This emergency action adds the following to the list of Covered Electronic Devices (CED), bringing them within the scope of the Covered Electronic Waste Recycling Program pursuant to Health and Safety Code, Division 20, Chapter 6.5, Article 10.3: (1) Organic light-emitting diode (OLED)-containing laptop computers; (2) OLED-containing tablets; (3) OLED-containing desktop monitors; (4) OLED-containing televisions; (5) Liquid crystal display (LCD)-containing tablets; and (6) LCD-containing smart displays. The action also defines the term "smart displays" for these purposes.

Title 22  
Amend: 66260.10, 66260.201  
Filed 12/20/2021  
Effective 12/20/2021  
Agency Contact: Rick Brausch (916) 251-6398

Department of Insurance  
File # 2021-1210-02  
Dental Benefits & Coverage Disclosure Matrix

This is the second readoption of emergency action no. 2021-0119-01EFP (first readopted in action no. 2021-0915-04EFP), which established form, content, and delivery requirements for the uniform benefits and coverage disclosure matrix that must be used by insurers that issue, sell, renew, or offer a policy of insurance that covers dental services. This is a deemed emergency pursuant to Insurance Code section 10603.04(f)(1) and this action is exempt from OAL review pursuant to Insurance Code section 10603.04(f)(2).

Title 10  
Adopt: 2239.10  
Filed 12/20/2021  
Effective 12/28/2021  
Agency Contact: Ethan Lavelle (916) 492-3648

Fish and Game Commission  
File # 2021-1207-08  
Recreational Clam, Sand Crab, and Shrimp Gear  
Emergency

This action by the Fish and Game Commission readopts emergency regulations that prohibit the use of hydraulic pumps for the recreational harvest

of clams, sand crabs, and shrimp. (See OAL file no. 2021-0226-02E.)

Title 14  
Amend: 29.20, 29.80  
Filed 12/16/2021  
Effective 01/08/2022  
Agency Contact: David Haug (916) 902-9286

Department of Health Care Access and Information  
File # 2021-1208-03  
Health Care Payments Data Program ("HPD")

This emergency action initiates the first stage of the Health Care Payments Data Program, which includes collecting core health care data by identifying submitters, specifying data to be collected, creating a process for data submission, and establishing a timeline for data collection.

Title 22  
Adopt: 97300, 97305, 97310, 97314, 97318, 97330, 97332, 97334, 97340, 97342, 97344, 97346, 97348, 97350, 97351, 97352, 97360, 97362, 97370  
Filed 12/20/2021  
Effective 12/20/2021  
Agency Contact:  
Dionne Evans-Dean (916) 326-3937

Department of Industrial Relations  
File # 2021-1207-03  
Civil Penalties for Cal/OSHA Citations

This file and print action by the Department of Industrial Relations amends maximum and minimum civil penalties in accordance with statutory adjustments based upon the annual percentage increase in the applicable Consumer Price Index for All Urban Consumers. The adjustments increase (1) the maximum civil penalties for regulatory, general, and repeat violations; and (2) the minimum and maximum civil penalties for willful violations. These regulations are exempt from the Administrative Procedure Act pursuant to Labor Code sections 6427(b), 6429(a)(2), and 6431(b).

Title 08  
Amend: 336  
Filed 12/15/2021  
Effective 01/01/2022  
Agency Contact: Carl Paganelli (510) 910-9439

Workers Compensation Appeals Board  
File # 2021-1109-01  
WCAB Rules of Practice and Procedure

In this request for filing and printing pursuant to Government Code section 11343.8, the Workers' Compensation Appeals Board (the "Board" or WCAB)

is adopting and amending regulations pertaining to the Board's rules of practice and procedure.

Title 08  
 Adopt: 10815, 10816, 10817  
 Amend: 10305, 10400, 10401, 10404, 10462, 10550, 10610, 10615, 10625, 10628, 10635, 10670, 10745, 10750, 10752, 10755, 10756, 10759, 10818, 10832, 10862  
 Filed 12/15/2021  
 Effective 01/01/2022  
 Agency Contact: Anne Schmitz (510) 919-1779

Department of Public Health  
 File # 2021-1129-04  
 Lead-Related Construction Certification

The California Department of Health in this action without regulatory effect is taking language already in a form, Renewal of Lead Certification, that is incorporated by reference and placing it in an additional location on the form to ensure the regulated public is aware of a continuing education requirement for renewal of lead certification.

Title 17  
 Amend: 35095  
 Filed 12/22/2021  
 Agency Contact:  
 Hannah Strom-Martin (916) 440-7371

Air Resources Board  
 File # 2021-1015-03  
 Heavy-Duty Omnibus Low NOx Regulation

This action by the Air Resources Board adopts and amends regulations regarding heavy-duty omnibus emissions standards.

Title 13, 17  
 Adopt: title 13: 2139.5, 2166, 2166.1, 2167, 2168, 2169, 2169.1, 2169.2, 2169.3, 2169.4, 2169.5, 2169.6, 21697.7, 2169.8, 2170  
 Amend: title 13: 1900, 1956.8, 1961.2, 1965, 1968.2, 1971.1, 1971.5, 2035, 2036, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2121, 2123, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2133, 2137, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2423, 2485; title 17: 95662, 95663  
 Filed 12/22/2021  
 Effective 12/22/2021  
 Agency Contact: Chris Hopkins (916) 445-9564

Department of Financial Protection and Innovation  
 File # 2021-0902-02  
 Debt Collection Licensing Regulations

This action by the Department of Financial Protection and Innovation establishes license and

application procedures for debt collectors seeking licensure.

Title 10  
 Adopt: 1850, 1850.6, 1850.6.1, 1850.7, 1850.8, 1850.9, 1850.10, 1850.11, 1850.12, 1850.13, 1850.14, 1850.15, 1850.16, 1850.30, 1850.31, 1850.32, 1850.50, 1850.60, 1850.61  
 Filed 12/22/2021  
 Effective 12/22/2021  
 Agency Contact: Sandra Sandoval (213) 897-3432

Department of Social Services  
 File # 2021-0708-02  
 Address Requirement and Arrest investigation

The regulations require those subject to criminal record review in connection with the Community Care facilities, including Social Rehabilitation Facilities, Adult Day Programs, Crisis Nurseries, Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill, Child Care Centers, and Family Child Care Homes, to maintain a valid mailing address with the department. The regulations also specify requirements for a notice that shall be provided when conducting arrest investigations authorized pursuant to Assembly Bill (AB) 2632, Statutes of 2014.

Title MPP, 22  
 Amend: 80019, 81019, 82019, 86519, 87355, 87819, 101170, 102370  
 Filed 12/15/2021  
 Effective 04/01/2022  
 Agency Contact:  
 Trevor Morris-Seekins (916) 657-1808

Veterinary Medical Board  
 File # 2021-1112-02  
 Disciplinary Guidelines

The Veterinary Medical Board in this action is amending an incorporated by reference document, "Veterinary Medical Board Disciplinary Guidelines." These changes update terms and conditions for probation. Changes are in response to statutory changes as well as case law.

Title 16  
 Amend: 2006  
 Filed 12/22/2021  
 Effective 04/01/2022  
 Agency Contact: Justin Sotelo (916) 515-5238

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

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