



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

**I. PROPOSED REGULATORY ACTION**

In this filing, the Board proposes to amend section 599.500, subdivision (o), in Article 1, Subchapter 3 of Chapter 2 of Division 1 of Title 2, of the California Code of Regulations (CCR), titled "Definitions." (Hereafter "regulation 599.500".) The proposed regulatory action seeks to clarify Parent-Child Relationship (PCR) dependent eligibility by implementing clear enrollment eligibility criteria and required supporting documentation for CalPERS health plan subscribers.

**II. WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the proposed regulatory action. The written comment period has been established commencing on June 3, 2022 and closing on July 18, 2022. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via e-mail at [Regulation\\_Coordinator@calpers.ca.gov](mailto:Regulation_Coordinator@calpers.ca.gov) or mailed to the following address:

Andrew White, Regulation Coordinator  
 California Public Employees' Retirement System  
 P.O. Box 942720  
 Sacramento, California 94229-2720  
 Phone: (916) 795-3038

**III. PUBLIC HEARING**

A public hearing will not be scheduled unless an interested person or their duly authorized representative submits a written request to CalPERS for a public hearing no later than 15 days prior to the close of the

written comment period. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

**IV. ACCESS TO HEARING ROOM**

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulation Coordinator.

**V. AUTHORITY AND REFERENCE**

The Board has general authority to take regulatory action under Government Code (GC) sections 22750, 22775, 22794, 22796, and 22830. The Board has specific authority to amend regulation 599.500, subdivision (o) pursuant to GC section 22775.

Reference citation: GC sections 22775.

**VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

CalPERS provides health care benefits to State and contracting agency employees, annuitants, and eligible family members under the Public Employees' Medical and Hospital Care Act (PEMHCA). Pursuant to GC section 22775, a family member includes a natural, step and adopted child. Under GC section 22775, the definition of "family member" specifically allows the Board to "prescribe age limits and other conditions and limitations pertaining to children."

PEMHCA regulations allow the definition of a family member to also include a child for whom the subscriber has assumed a parental role, labeled as a PCR dependent.

A PCR is defined in PEMHCA regulation 599.500, subdivision (o) as "intentional assumption of parental status, or assumption of parental duties by the employee or annuitant, as certified by the employee or annuitant at the time of the enrollment of the child, and annually thereafter up to the age of 26, unless the child is disabled as described in section 599.500, subdivision (p)." PCR's do not include foster children.

Employees and annuitants or "subscribers" are required to submit a signed Affidavit of Parent-Child Relationship form (HBD-40) at the time of enrollment and annually thereafter (up to the child reaching age 26). By signing this form, the subscriber agrees to provide the required supporting documentation. However, existing regulations do not clearly define the types of supporting documentation required to certify that a PCR dependent is financially dependent upon the employee or annuitant for more than fifty percent (50%) of their support. For PCR dependents 18 and under, a copy of the first page of a subscriber's tax return

from the previous tax year listing the child as a dependent is required. In lieu of a tax return for a time not to exceed one tax filing year, the subscriber can submit other documents that substantiate the child's financial dependence. However, the regulation does not currently specify what criteria to use for those employees or annuitants who are not required to file taxes and are unable to provide a copy of the first page of their tax return.

This lack of clarity leads to confusion amongst impacted subscribers and the inability for CalPERS and/or the employer to properly assess an individual's financial dependency upon the subscriber and ultimately determine PCR eligibility.

The proposed regulatory amendments specify the required primary and secondary supporting documentation required to certify a child is financially dependent upon the subscriber and clarifies the supporting documentation must contain the PCR dependent's name and may not be older than sixty (60) calendar days from the date of signature of the Affidavit of Parent-Child Relationship. They will also provide guidance for individuals who are not required to file an income tax return. Lastly, the Affidavit of Parent-Child Relationship (HBD-40) form, which is currently incorporated by reference in regulation 599.500, subdivision (o), is removed and various provisions currently set forth within the form be included in the body of the regulation. This will provide CalPERS the ability to make nonsubstantive formatting changes to the form as needed, without having to go through the formal rule making process.

#### ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The proposed regulatory action will remove the ambiguity from determining PCR dependent eligibility by implementing clear enrollment eligibility criteria for CalPERS health plan subscribers and increase productivity and efficiency in the workplace by streamlining the enrollment processes among all State and contracting agency employers.

#### EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

CalPERS has evaluated and determined that the proposed regulations are not inconsistent, nor incompatible with existing State regulations. There are no other State regulations comparable to regulation 599.500 or as required to be identified pursuant to GC section 11346.5, subdivision (a), paragraphs (3)(D).

#### VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small private businesses because it applies only to the State of California in its role as an employer and local contracting agencies and school districts that have contracted with CalPERS to provide health benefits coverage to their employees and annuitants, and State of California, local contracting agency and school district employees and annuitants.

#### VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** The proposed regulatory action does not impose requirements on local agencies and school districts that contract with CalPERS above and beyond the normal scope of determining health benefit eligibility.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will not reflect any cost or savings to any State agency.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will not impose costs to any local agency or school district.
- D. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC SECTION 17500 THROUGH SECTION 17630:** There are no costs to any local agency or school district which must be reimbursed in accordance with GC section 17500 through section 17630.
- E. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action will not impose nondiscretionary costs or savings on local agencies.
- F. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action will not result in costs or savings in federal funding to the state.
- G. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- H. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a private person or business would necessarily incur in reasonable compliance with the proposed action because the regulatory action only applies

to the State of California in its role as an employer, local contracting agencies and school districts that contract with CalPERS to provide health benefits coverage to their employees and annuitants, and State of California and local contracting agencies and school districts that have contracted with CalPERS to provide health benefits coverage to their employees and annuitants, and State of California, local contracting agency and school district employees and annuitants.

- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect on housing costs.
- J. RESULTS OF THE ECONOMIC IMPACT ANALYSIS OR THE STANDARDIZED REGULATORY IMPACT ANALYSIS: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) affect worker safety or the State’s environment.

The proposed regulatory action benefits the health and welfare of California residents since it will provide clarity regarding PCR dependent eligibility criteria. This clarification will help sustain CalPERS Health Benefits Program’s integrity, which currently provides health benefits coverage to more than one and one-half million active and retired State, local government, and school employees, and their family members.

**IX. CONSIDERATION OF ALTERNATIVES**

In accordance with GC Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board, would be:

- more effective in carrying out the purpose of the proposed action,
- as effective as, and less burdensome to affected private persons than the proposed action, or
- more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

**X. CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Andrew White, Regulation Coordinator  
 California Public Employees’ Retirement System  
 P.O. Box 942720  
 Sacramento, CA 94229–2720  
 Telephone: (916) 795–3038  
 E-Mail:  
[Regulation\\_Coordinator@CalPERS.CA.GOV](mailto:Regulation_Coordinator@CalPERS.CA.GOV)

Andrea Peters, Backup Regulation Coordinator  
 California Public Employees’ Retirement System  
 P.O. Box 942720  
 Sacramento, CA 94229–2720  
 Telephone: (916) 795–1471  
 E-Mail:  
[Regulation\\_Coordinator@CalPERS.CA.GOV](mailto:Regulation_Coordinator@CalPERS.CA.GOV)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Andrew White, Regulation Coordinator at the contact information listed above.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 Q Street, Sacramento, CA 95811. As of the date this notice is published in the Notice Register. The rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting the CalPERS Regulation Coordinator at the contact information listed in Section X.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS’ website at [www.calpers.ca.gov/regulations/regulatoryactions](http://www.calpers.ca.gov/regulations/regulatoryactions).

**XII. AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After receiving comments from the public and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of the CalPERS Regulation Coordinator at the mailing address shown in Section X. The Board will accept written comments

on the modified regulation for 15 days after the date on which it is made available.

**XIII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting the CalPERS Regulation Coordinator at the contact information listed in Section X.

**TITLE 3. DEPARTMENT OF PESTICIDE REGULATION**

**Certification and Training  
DPR Regulation Number 22-003**

The Department of Pesticide Regulation (DPR) proposes to adopt Title 3, California Code of Regulations (3 CCR) sections 6509, 6512.1, 6512.2, 6512.3, 6512.4, 6580.1, 6580.2, 6624.5, and 6731; amend sections 6000, 6302, 6404, 6406, 6414, 6428, 6430, 6500, 6502, 6504, 6508, 6510, 6511, 6512, 6513, 6522, 6530, 6531, 6540, 6562, 6564, 6568, 6580, 6582, 6584, 6612, 6622, 6624, 6724, and 6742; and repeal sections 6445.5, 6534, 6536, and 6560. The pesticide regulatory program activities affected by the proposal are those pertaining to the certification of commercial and private pesticide applicators (“certified applicators”), development and submittal of continuing education (CE) courses required for pesticide applicator license or certificate renewal, and supervision of non-certified applicators. In summary, the proposed regulations will align California’s regulations with the revised federal regulations in Title 40, Code of Federal Regulations Part 171 “Certification of Pesticide Applicators” (40 CFR Part 171) that were noticed in the Federal Register Vol. 82, Number 2 on January 4, 2017. The proposed action will improve the competency standards for certified applicators using California restricted materials, which includes federally restricted use pesticides (RUPs), improve certification standards for certified applicators, create additional certification categories for certified applicators, increase protection for noncertified applicators using restricted materials under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, establish a minimum age requirement for certified and noncertified applicators using restricted materials under the direct supervision of a certified applicator, and improve standards for CE courses. In addition, new forms will be incorporated by reference and some forms currently incorporated by reference will be amended to align with the proposed action.

**SUBMITTAL OF COMMENTS**

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on July 19, 2022. Comments regarding this proposed action may also be transmitted via e-mail to <[dpr22003@cdpr.ca.gov](mailto:dpr22003@cdpr.ca.gov)> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

**EFFECT ON SMALL BUSINESS**

DPR has determined that the proposed regulatory action does affect small businesses.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

DPR’s mission is to protect public health and the environment, in part by regulating and mitigating the adverse effects of pesticide use, including use of restricted materials, which includes federally restricted use pesticides. DPR regulates statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; conducts environmental monitoring; pesticide product evaluation and registration; and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7. Additionally, per FAC section 11501.5, the County Agricultural Commissioner (CAC) of each county, under the direction and supervision of the Director, shall assist in enforcing these FAC divisions and the regulations which are issued pursuant to them.

The FAC also specifically requires that DPR adopt regulations to ensure pesticide applicators, pest control businesses, dealers, advisers, and those working under direct supervision of a certified applicator have sufficient knowledge to safely and effectively perform pest control and related activities. DPR’s licensing and certification regulatory requirements for these individuals/entities, are designed to reduce the risk of pesticide exposure and injuries to pesticide applicators, the public, and the environment. This is accomplished through ensuring these individuals/entities meet minimum competency standards, obtain continuing education, and receive the most comprehensive and up to date pesticide and pest management information.

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<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) establishes the United States Environmental Protection Agency's (U.S. EPA) authority to approve a state's pesticide applicator certification program pertaining to pesticide regulatory activities and establish a State Lead Agency (SLA) responsible for such a program. On December 23, 1974, DPR (formerly part of California Department of Food and Agriculture) was designated as the SLA responsible for establishing and administering California's pesticide applicator certification program, including the provisions contained within 40 CFR Part 171. DPR is responsible for, at minimum, meeting the requirements of 40 CFR Part 171; however, DPR may choose to establish regulatory requirements that are stricter than those established in 40 CFR Part 171.

In 1974, U.S. EPA adopted 40 CFR Part 171 "Certification of Pesticide Applicators" to ensure pesticide applicator certification program standards adequately protected applicators, the public, and the environment from risks associated with the use of RUPs. Since then, U.S. EPA has updated 40 CFR Part 171 to enhance and improve programs that certify applicators of RUPs.

On March 6, 2017, U.S. EPA's revisions to 40 CFR Part 171 to enhance protections to individuals using or supervising the use of RUPs became effective. These revisions were noticed in the Federal Register, Vol. 82, Number 2. The revisions are intended to further reduce the harmful effects caused to pesticide applicators, the public, and the environment from the use of RUPs by increasing the standards commercial and private applicators must initially and continually meet to be certified to handle or apply RUPs.

RUPs are pesticidal products that U.S. EPA has determined have the potential to cause adverse effects to the environment and have the potential to cause injury to applicators or bystanders if not used properly and according to label instructions. For these reasons, U.S. EPA requires RUPs to only be used by a certified applicator or someone under the direct supervision of a certified applicator (40 CFR 152.170).

FAC sections 14004.5 and 14005 authorize the Director to adopt a list of restricted materials based upon criteria including danger of impairment of public health; hazards to applicators, farmworkers, domestic animals, and crops from direct application or drift; hazards related to persistent residues in the soil resulting in the contamination of air, waterways, estuaries, or lakes; or hazards to subsequent crops. Because U.S. EPA and DPR designate pesticides as "restricted" for similar reasons, 3 CCR section 6400(a) designates that any pesticide labeled as an RUP as a California restricted material. Therefore, when restricted materials are referenced in this document, the reference includes RUPs.

A California restricted material can only be sold in stores that have a DPR-issued dealer license authorizing the sale of restricted materials, and can only be purchased by certified applicators and, if purchasers are not structural pest control applicators, those with a restricted materials permit issued by the CAC. FAC section 14001 authorizes DPR to regulate the use of restricted materials and FAC section 14015 authorizes DPR to ensure that restricted materials are only possessed or used by, or under the direct supervision of, a certified applicator. This statutory scheme allows DPR to ensure individuals using or supervising the use of restricted materials have demonstrated a level of competency to do so safely and in a manner that will not result in harm to human health or the environment.

As the SLA for programs that certify pesticide applicators using RUPs within California, under Section 11 of FIFRA, DPR must ensure that all California state programs and associated regulations concerning the certification of pesticide applicators meet or exceed the federal regulations established by U.S. EPA in 40 CFR Part 171. As the SLA, DPR coordinates with other agencies who maintain pesticide applicator certification and training programs, including the Department of Consumer Affairs' Structural Pest Control Board (SPCB) and the California Department of Public Health (CDPH), to ensure pesticide laws and regulations are being implemented consistent with the federal requirements. These agencies have their own set of regulations that are currently undergoing revisions for consistency with 40 CFR Part 171 and DPR works closely with these agencies to ensure all requirements are met.

To achieve this, DPR proposes to adopt, amend, and repeal regulatory requirements pertaining to the certification and training of pesticide applicators in order to maintain at least the same level of protection as the revised federal regulations in 40 CFR Part 171. The proposed regulations will improve competency standards for certified applicators using restricted materials, improve competency standards for private applicators using restricted materials, improve certification standards for certified applicators, improve standards for CE courses, create additional certification categories for certified applicators, create additional certification requirements for private applicators that use fumigants, increase protection for noncertified applicators using restricted materials (under direct supervision of a certified applicator), and establish a minimum age requirement for certified and noncertified applicators using restricted materials (under direct supervision of a certified applicator). DPR proposes to have these regulations in effect on January 1, 2024.

Adoption of these regulations will provide a benefit to certified applicators, pest control businesses, dealers, advisers, and noncertified applicators handling

restricted materials as well as the public and environment. For example, noncertified applicators will receive improved training on how to handle restricted materials and on the safe use of any equipment used for handling or applying pesticides, and all certified applicators will meet revised minimum competency standards, where applicable. These changes will reduce improper applications and accidental exposure or poisonings. Better trained applicators (certified or noncertified) will be better able to understand and follow pesticide use requirements, ensuring that applications are made properly and follow requirements of pesticide product labeling, California laws and regulations, and any restricted material permit conditions.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used. In addition, DPR, the Structural Pest Control Board (SPCB), and the California Department of Public Health (CDPH) have overlapping mandates pertaining to pest control and related activities. In some instances, due to this overlap, DPR's regulations supersede those of SPCB and CDPH. For these reasons, DPR, as the SLA, coordinates with SPCB and CDPH to ensure pesticide laws and regulations are being implemented consistent with, or more stringent than, federal requirements and to also ensure proposed amendments are not inconsistent nor incompatible with these cooperating agencies established programs.

*Incorporated by Reference Forms:*

1. Qualified Applicator License Application, LIC-001 (Rev. 07/23)
2. Qualified Applicator Certificate Application, LIC-001A (Rev. 07/23)
3. Pest Control Business License Application, LIC-042 (Rev. 07/23)
4. Agricultural Pest Control Adviser Application, LIC-084 (Rev. 07/23)
5. Pest Control Aircraft Pilot Certificate Application, LIC-005 (Rev. 07/23)
6. Pest Control Dealer Designated Agent License Application, LIC-043 (Rev. 07/23)
7. Pest Control Business Renewal Application, LIC-192 (Rev. 07/23)
8. Individual License/Certificate Renewal Application, LIC-141 (Rev. 07/23)

9. In-Person Continuing Education Approval Request Application, LIC-131A (Rev. 07/23)
10. Interactive Online and Webinar Continuing Education Approval Request Application, LIC-131B (Rev. 07/23)
11. Continuing Education Additional Course Date Request, LIC-132 (Rev. 07/23)
12. Private Applicator Certificate Application, LIC-045 (Rev. 07/23)

**IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. CAC offices will be the local agencies responsible for enforcing the proposed regulations. As stated, DPR anticipates that there will be no fiscal impact to these agencies. DPR establishes an annual work plan with the CACs, which already requires the CACs to conduct pesticide use inspections and investigations and to enforce compliance with California certification and training laws and regulations.

CAC offices use a mix of State and local funding to fund their local pesticide use enforcement programs. The amount of funding the State gives to the CAC's is fixed by FAC section 12841(g)(1)(C), which says DPR must reimburse counties 7.6 mills of mill assessment for costs incurred by the counties for pesticide use enforcement. Pursuant to 3 CCR section 6391, reimbursement shall be made by April 1 of each year. DPR is not authorized to reimburse the counties more than the amount generated from 7.6 mills. Because the funding level from DPR does not change, the counties' workload from this regulation is redirected at the expense of other lower priority workload.

**COSTS OR SAVINGS TO STATE AGENCIES**

DPR expects to see an increase in the number of individuals applying for and taking examinations to obtain a Qualified Applicator License (QAL) and/or Qualified Applicator Certificate (QAC) in the new Non-Soil Fumigation category, the revised Soil Fumigation category, and/or existing categories that include activities previously conducted under the subcategories being removed. In addition, this increase in individuals applying and taking examinations also includes current private applicator certificate holders who must obtain a QAC and/or QAL to conduct certain fumigation or "householder" activities. Lastly, DPR expects to receive new continuing education course applications from course sponsors who will be

required to align their courses with improved continuing education course requirements. The expected increase in revenue for individuals applying and taking examinations and new continuing education courses is estimated at \$468,645 for fiscal year (FY) 2023/24, \$82,715 for FY 2024/25, and \$0 for FY 2025/26.

Costs to DPR would involve the processing of new licenses and certificates, examination administration, continuing education accreditation, study guide development, examination development, knowledge expectation development, database management, maintenance, and development, additional administrative costs associated with issuing and renewing additional licenses and certificates over the initial implementation and lifetime of the regulation, administrative costs associated with retesting individuals on revised competency standards, and staffing costs to accommodate the increase in workload. The expected cost to DPR is estimated at \$517,302 for FY 2023/24, \$517,302 for FY 2024/25, and \$517,302 for FY 2025/26.

The net impact of the regulation will be an increase to DPR's costs. Net cost increases are estimated at \$48,657 for FY 2023/24, \$434,587 for FY 2024/25, and \$517,302 for FY 2025/26.

OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES

There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the adoption of this regulation 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. The proposed regulations will bring California certification and training regulations into alignment with the recently revised regulations in 40 CFR Part 171.

The estimated lifetime cost of the proposed regulation is \$12.6 million (lifetime cost is over a 10-year period). DPR made this determination based on the economic impact report titled, "Economic Impact Analysis for California Rulemaking Pertaining to the Certification and Training of Pesticide Applicators," listed in the "Documents Relied Upon" section of the Initial Statement of Reasons for this proposed regulatory action which is available from DPR.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed regulations will bring California certification and training regulations into alignment with the revised federal regulations in 40 CFR Part 171. However, in some areas, DPR's proposed regulations are more restrictive than 40 CFR Part 171, or will require a higher standard to be met. As a result, individuals and businesses who currently use fumigants (soil and non-soil), hold commercial applicator subcategories, hold a private applicator certificate and perform 'householder' activities, or sponsor CE courses may be impacted by the proposed regulations. Under the proposed regulations, these individuals or businesses may need to apply for and take examinations to obtain the new QAL and/or QAC Non-Soil Fumigation category, the revised Soil Fumigation category, or additional categories needed to continue conducting activities currently conducted under subcategories (which will no longer be available); apply for and take examinations to continue 'householder' activities currently under a private applicator certificate; or meet improved CE course standards. In the short-term, the estimated initial cost to individuals (1,100) is \$594 and the estimated initial cost to businesses (2,858) ranges from \$45 to \$1,800. Furthermore, the estimated annual cost to individuals ranges from \$438 to \$594 and the estimated annual cost to businesses ranges from \$33 to \$1,534. In the long-term, according to the *Economic Impact Analysis for California Rulemaking Pertaining to the Certification and Training of Pesticide Applicators* prepared by Dr. Serhat Ascii and Dr. Srimi Konduru and dated October 1, 2021, individuals (548,154) are anticipated to incur initial and annual costs of \$3.85 and businesses (123,783) are anticipated to incur initial and annual costs of \$3.00 to comply with the proposed regulations. These long-term estimates were calculated using Impact Analysis for Planning (IMPLAN) software and data, and estimates the long-term impact faced by California at large.

**RESULTS OF THE ECONOMIC  
IMPACT ANALYSIS**

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR has determined that the proposed regulatory action will not create any jobs and eliminate 15 jobs in California; is unlikely to result in the creation of new businesses or the elimination of existing businesses; and is unlikely to result in the expansion of businesses currently doing business with the State of California. The proposed regulations are designed to bring California certification and training regulations into alignment with the revised federal regulations in 40 CFR Part 171.

The proposed regulations will provide a benefit to certified applicators, pest control businesses, dealers, advisers, and noncertified applicators handling restricted materials as well as the public and environment. For example, noncertified applicators will receive improved training on how to handle restricted materials and on the safe use of any equipment used for handling or applying pesticides, and all certified applicators will meet revised minimum competency standards, where applicable. These changes will reduce improper applications and accidental exposure or poisonings. Better trained applicators (certified or noncertified) will be better able to understand and follow pesticide use requirements, ensuring that applications are made properly and follow requirements of pesticide product labeling, California laws and regulations, and any restricted material permit conditions.

**CONSIDERATION OF ALTERNATIVES**

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

**AUTHORITY**

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, 11502.5, 11702, 12005, 12024, 12111, 12203.1, 12781, 12976, 12981, 13145, 14001, 14005, 14102, 14151 and 14153.1.

**REFERENCE**

This regulatory action is to implement, interpret, or make specific FAC sections 11401.2, 11407, 11408, 11456, 11501, 11502.5, 11701, 11702, 11703, 11704,

11705, 11707, 11708, 11733, 11791, 11901, 11902, 11903, 11904, 11905, 11908, 11909, 12021, 12024, 12103, 12104, 12105, 12106, 12110, 12116, 12201, 12202, 12203, 12252, 12400, 12401, 12404, 12971, 12972, 12973, 12980, 12980.1(c), 12981, 12991, 13145, 13186, 14001, 14006, 14006.6, 14010, 14011, 14011.5, 14015, 14035, 14091, 14092, 14093, 14095, 14096, 14102, and 14153.

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

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

**AGENCY CONTACT**

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist  
(Specialist)  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Laurie Brajkovich, Environmental Program  
 Manager I  
 Enforcement Headquarters Branch  
 916-603-7796

Dean Kelch  
 Department of Food and Agriculture  
 Plant Health and Pest Prevention Services  
 1220 N Street  
 Sacramento, CA 95814  
[dean.kelch@cdfa.ca.gov](mailto:dean.kelch@cdfa.ca.gov)  
 Tel. (916) 261-9252

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

Questions regarding the substance of the proposed regulation should be directed to Dean Kelch. In his absence, you may contact Erin Lovig at (916) 654-1017 or [erin.lovig@cdfa.ca.gov](mailto:erin.lovig@cdfa.ca.gov), FAX number (916) 651-2900.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

Unless there are substantial changes to the proposed regulation prior to adoption, the Department may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

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

AUTHORITY

The Department proposes to adopt Section 3591.29 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code (FAC) of California.

TITLE 3 OF THE CALIFORNIA CODE OF REGULATIONS SECTION 3591.29

The Department of Food and Agriculture (Department) proposes to adopt Section 3591.29 of title 3 of the California Code of Regulations (CCR) pertaining to the Black Fig Fly Eradication Area.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5761, 5762, 5763, and 5764 of the FAC.

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) is proposing to adopt the Section 3591.29 Black Fig Fly Eradication Area to provide authority for the Department, by the established means and methods, to eradicate infestations of black fig fly (*Silba adipata* McAlpine) from within the declared eradication areas. This regulation was originally adopted as an emergency regulation that became effective on September 20, 2021 and expired on March 22, 2022.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on July 18, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than July 18, 2022. Submit comments to:

EXISTING LAWS & REGULATIONS

Existing law, FAC section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.

Existing law, FAC Section 5761, provides that the regulations which are adopted pursuant to Article 2 (commencing with Section 5321) of Chapter 5, Part 1 of the FAC may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

Existing law, FAC Section 5762, provides that any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC Section 5763, provides that the director, or the commissioner acting under the supervision and direction of the director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

Existing law, FAC Section 5764, provides that if an eradication area has been proclaimed with respect to a species of fruit flies and the removal of host plants of such species is involved, the director may enter into an agreement with the owner of such host plants to remove and replace them with suitable nursery stock in lieu of treatment. Any expenditures for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance.

#### ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS

The adoption of this regulation provides the necessary regulatory authority to eradicate a serious insect pest which is a mandated statutory goal. This regulation is necessary to prevent the spread of BFF to uninfested areas of the State. The regulation benefits industries (nursery, fruit for domestic use and exports, packing facilities), the environment (urban

landscapes), and the overall California economy by preventing the spread of BFF.

#### EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Prior to conducting any action authorized by this regulation, the Department shall conduct environmental analysis pursuant to the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 et. seq. as amended) and the State CEQA Guidelines (Title 14 California Code of Regulations Section 15000 et seq.).

#### DISCLOSURES REGARDING THE PROPOSED ACTION

Mandates on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

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

The Department has been conducting eradication actions throughout the State for over 30 years without causing significant impact on businesses. Therefore, the Department does not anticipate that these amendments will affect small businesses.

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS/ASSESSMENT

The Department has concluded that this Section 3280 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, and (3) will have no impact on the expansion of businesses within the State of California.

Small business determination: There are no known private sector cost impacts.

There are no known specific benefits to worker safety or the health of California residents.

CONSIDERATION OF ALTERNATIVES

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

The Department invites interested persons to present statements or alternatives during the written comment period.

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

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdffa.ca.gov/plant/Regulations.html](http://www.cdffa.ca.gov/plant/Regulations.html)). Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed at this website or available upon request.

AVAILABILITY OF CHANGED OR  
MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at

least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer (contact) named herein.

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

TITLE 3 OF THE CALIFORNIA CODE OF  
REGULATIONS SECTION 3280

The Department of Food and Agriculture (Department) proposes to revise title 3 of the California Code of Regulations (CCR) Section 3280, subsection (f) pertaining to Japanese Beetle Exterior Quarantine.

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulation to the Department. Comments may be submitted by USPS, FAX or email. The written comment period closes on July 18, 2022. The Department will consider only comments received at the Department offices by that date or postmarked no later than July 18, 2022. Submit comments to:

Dean Kelch  
Department of Food and Agriculture  
Plant Health and Pest Prevention Services  
1220 N Street  
Sacramento, CA 95814  
[dean.kelch@cdffa.ca.gov](mailto:dean.kelch@cdffa.ca.gov)  
916.403.6650  
916.651.2900 (FAX)

Questions regarding the substance of the proposed regulation should be directed to Dean Kelch. In his absence, you may contact Erin Lovig at (916) 654-1017 or [erin.lovig@cdfa.ca.gov](mailto:erin.lovig@cdfa.ca.gov), FAX number (916) 651-2900.

Unless there are substantial changes to the proposed regulation prior to adoption, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

#### AUTHORITY

The Department proposes to amend Section 3280 pursuant to the authority vested by Sections 407 and 5301 and 5302 of the Food and Agricultural Code (FAC) of California.

#### REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5021, 5311, 5701, and 6441 of the FAC and Section 1094.5 of the Code of Civil Procedure (CCP).

#### INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture (Department) adopted the Section 3280 exterior quarantine to provide authority for the State to protect the agricultural industry and the environment by preventing the movement and spread of an injurious plant pest, Japanese beetle within California. These revisions clarify the regulation with regard to abatement procedures and fines for conveyances containing a Japanese beetle infestation.

#### EXISTING LAWS & REGULATIONS

Existing law, FAC section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which the Secretary is directed or authorized to administer or enforce.

Existing law, FAC section 5301, provides that the Secretary may establish, maintain, and enforce such quarantine regulations as he or she deems necessary to protect the agricultural industry of this State from pests. The regulations may establish a quarantine at the boundaries of this State or elsewhere within the State.

Existing law, FAC section 5302, provides that the Secretary may make and enforce such regulations as he or she deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division.

Existing law, FAC section 5021, provides that, unless otherwise specified, any treatment which may be required pursuant to this division is at the risk and at the expense of the owner or person in charge or in possession of the property which is treated at the time of treatment.

Existing law, FAC section 5311, provides the secretary may levy a civil penalty against a person violating this regulation in an amount not to exceed two thousand five hundred dollars (\$2,500) for each violation. The remainder of the section outlines the procedures for implementing this fine and the appeals process.

Existing law, FAC section 5701, provides that if any pest exists on any premises, the Secretary may hold any plant or other host or possible carrier which is, or may be, capable of disseminating or carrying the pest. The Secretary shall notify the owner of the plant or other host or possible carrier, or his or her agent, of this action, and the issuance of any shipping permit or nursery stock certificate with respect to the plant or other host or possible carrier shall be refused and any such permit or certificate which has been previously issued shall be revoked.

Existing law, FAC section 6441, provides that if, after inspection, any plant or thing is found to be infested or infected, the owner or bailee shall, at his expense, disinfect the conveyance or place where the plant or thing may have been located, in such manner as to destroy all infection or infestation present, or that is liable to be present.

Existing law, Code of Civil Procedure (CCP) section 1094.5, provides that a review of the decision of the Secretary to impose a penalty may be sought by the person against whom the penalty was levied.

#### ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENTS

The implementation of this regulation will clarify the abatement responsibilities of the affected parties and the appeals process outlined in this regulation.

#### EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it

is not inconsistent or incompatible with existing state regulations.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A review pursuant to title 14 CCR section 15060(c) indicates that adoption of this regulation will not cause either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

### DISCLOSURES REGARDING THE PROPOSED ACTION

Mandates on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

Cost or savings in federal funding to the state: None

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

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

The proposed amendments do not require any additional treatment or costs above that of the existing regulation. Therefore, the Department does not anticipate that these amendments will affect small businesses.

Significant effect on housing costs: None.

### RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department has concluded that this Section 3280 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, and (3) will have no impact on the expansion of businesses within the State of California.

Small business determination: There are no known private sector cost impacts.

There are no known specific benefits to worker safety or the health of California residents.

### CONSIDERATION OF ALTERNATIVES

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

The Department invites interested persons to present statements or alternatives during the written comment period.

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

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)). Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed at this website or available upon request.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer (contact) named herein.

**TITLE 5. STATE TEACHERS’  
RETIREMENT SYSTEM**

**NOTICE OF INTENTION TO AMEND  
THE CONFLICT-OF-INTEREST CODE  
OF CALIFORNIA STATE TEACHERS’  
RETIREMENT SYSTEM**

NOTICE IS HEREBY GIVEN that the California State Teachers’ Retirement System (CalSTRS), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on June 3, 2022, and closing on July 18, 2022. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include: changes to position titles, addition and deletion of designated positions, revisions to disclosure categories and other technical changes.

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

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than July 18, 2022, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than July 3, 2022.

CalSTRS has determined that the proposed amendments:

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

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

Brian Sytsma  
Special Counsel  
California State Teachers’ Retirement System  
(916) 414-1703  
[bsytsma@calstrs.com](mailto:bsytsma@calstrs.com)

**TITLE 10. HEALTH BENEFIT  
EXCHANGE**

**CHAPTER 12, ARTICLE 4  
ADOPT SECTION 6466**

Notice is hereby given that the Board of the California Health Benefit Exchange (the Exchange) proposes to make final the emergency regulations under Title 10, California Code of Regulations (CCR), sections 6466. These regulations were adopted as emergency regulations, became effective on April 8, 2021, and remain in effect until April 7, 2023.

Before undertaking this action, the Board of the Exchange will conduct written public proceedings, during which time any interested person, or such person’s duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes on July 18, 2022. The Exchange will consider only comments received at the Exchange’s office by that time. Submit written comments to:

Mariah Gonzales  
California Health Benefit Exchange (Covered  
California)  
1601 Exposition Blvd.  
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-403-4468 or by e-mail to [regulations@covered.ca.gov](mailto:regulations@covered.ca.gov).

AUTHORITY AND REFERENCE

Government Code section 100504, subdivision (a) (6) authorizes the Board of Directors for the Exchange to adopt rules and regulations, as necessary. The proposed regulation implements, interprets, and makes specific Business and Professions Code, section 7454.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

**Summary of Existing Laws**

In March 2010, President Obama signed federal health reform legislation called the Patient Protection and Affordable Care Act (ACA). It created the opportunity for each state to establish a state-based health insurance exchange to implement the ACA. California chose to operate an exchange that is commonly known as “Covered California.” For purposes of this Notice, Covered California will be referred to as the “Exchange.” The Exchange’s mission is to increase the number of insured Californians, improve health care quality, lower costs, and reduce health disparities through an innovative, competitive marketplace that empowers consumers to choose their health plan.

State law specifies the powers and duties of the executive board of the Exchange. Government Code section 100504, subdivision (a)(6) authorizes the Exchange’s Board of Directors to adopt rules and regulations, as necessary. The Exchange proposes this permanent rulemaking in furtherance of its rulemaking authority to implement, interpret, and make specific state law.

Business and Professions Code section 7454, added by ballot initiative Proposition 22, requires network companies to provide quarterly healthcare subsidies for qualifying app-based drivers working on their platforms. Drivers that earn the healthcare subsidies can use them to purchase or offset the cost of healthcare coverage, including individual coverage available through Covered California.

Pursuant to Business and Professions Code section 7454, subdivision (a), the amount of the available subsidy is a percentage based on driving hours of the “average statewide monthly premium” for an individual for a Covered California bronze health insurance plan. Business and Professions Code section 7454, subdivision (g), requires the Exchange to annually publish the “average statewide monthly premium for an individual for the following calendar year for a Covered California bronze health insurance plan” to enable

network companies to calculate the required subsidy amount.

**Summary of the Effect of the Proposed Regulation**

This proposed regulation implements, interprets, and makes more specific the statutory requirement that the Exchange annually publish the statewide monthly bronze premium, to allow network companies to issue healthcare subsidies to app-based drivers.

Proposed Title 10 of the California Code of Regulations, section 6466, subdivision (a) states that the Exchange will annually publish the average statewide monthly premium and identifies the Exchange’s public website as the location of the annual publication. Proposed section 6466, subdivision (b) adopts the methodology the Exchange will use to calculate the “average statewide monthly premium” annually. Proposed section 6466, subdivision (c) provides a definition relevant to the adopted methodology in subdivision (b).

The proposed regulation will benefit the public by providing consistency and transparency to the annual calculation of the average statewide monthly premium for the purposes of the healthcare subsidy added by Proposition 22. The proposed regulation will also inform the public, including network companies required to issue the healthcare subsidy to drivers, as to where to access the published information annually.

**Anticipated Benefits of the Proposed Regulation**

The anticipated benefits of this proposed regulation include:

- Ensuring that impacted parties, including network companies and consumers, know where to access the average statewide monthly premium calculation annually;
- Providing consistency in the methodology for calculating the average statewide monthly premium for an individual; and
- Enabling network companies subject to Business and Professions Code section 7454 to issue healthcare subsidies to qualifying app-based drivers.

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

After an evaluation of current regulations, the Exchange determined that this proposed regulation is not inconsistent or incompatible with any existing regulations.

**Substantial Difference from Existing, Comparable Federal Regulation/Statute**

None.

JUSTIFICATION FOR DUPLICATION

Pursuant to Title 1 of the California Code of Regulations, subdivision 12(b)(1), the proposed regulation duplicates Business and Professions Code

section 7454, subdivision (g) to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3). The duplicated language in proposed section 6466, subdivision (a) clarifies the methodology detailed in subdivision (b) by indicating what the methodology pertains to and when the posting will occur annually.

**DOCUMENTS TO BE INCORPORATED  
BY REFERENCE**

None.

**DISCLOSURES REGARDING THE  
PROPOSED ACTION**

The Exchange has made the following initial determinations:

**Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations**

None.

**Mandate on Local Agencies and School Districts**

None. The Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

**Cost to Any Local Agency or School District Which Must Be Reimbursed in Accordance with Government Code Sections 17500 Through 17630**

None. This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

**Costs or Savings to State Agencies**

The proposal does not result in costs or savings to state agencies or the State General Fund. The Exchange is currently completely funded by assessments on premiums charged by Qualified Health Plans.

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

The proposal will not result in costs or savings in federal funding to the state.

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

None. This proposal does not impose other nondiscretionary costs or savings on local agencies.

**Significant Effect on Housing Costs**

None.

**Effect on Small Business**

This proposed regulation is not expected to affect small business within the State of California. The proposed regulation does not create or expand the operations of any small businesses.

**Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States**

The Exchange has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business.

**Cost Impacts on a Representative Private Person or Business**

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

**Business Reporting Requirement**

None.

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

The Exchange concludes regarding the proposed regulation that it is:

- (1) **unlikely to** create or eliminate any jobs in the State;
- (2) **unlikely to** create or eliminate businesses within the State;
- (3) **unlikely to** impact the expansion of businesses currently doing business in California; and
- (4) **likely to** provide benefits to the health and welfare of California residents,
- (5) **unlikely to** provide benefits to worker safety and the state’s environment.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Exchange has determined that no reasonable alternative considered or otherwise been identified and brought to the attention of the Exchange would be more effective in carrying out the purpose for which this 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 effectuating the purpose of the statute. This proposed action is the most effective in effectuating the purpose of the statute.

The Exchange invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Mariah Gonzales  
California Health Benefit Exchange (Covered California)  
1601 Exposition Blvd.  
Sacramento, CA 95815  
Telephone: (916) 281-2562

The backup contact person for inquiries concerning the proposed administrative action may be directed to:

Anna Pifer-Foote  
Attorney  
California Health Benefit Exchange (Covered California)  
1601 Exposition Blvd.  
Sacramento, CA 95815  
Telephone: (916) 281-2563

Please direct requests for copies of the proposed text of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Anna Pifer-Foote at the above contact information.

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

The Exchange will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date of this notice published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies may be obtained by contacting Anna Pifer-Foote at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if requested, and considering all timely and relevant comments received, the Exchange may adopt the proposed regulation substantially as described in this notice. If the Exchange makes modifications which are sufficiently related to the originally proposed text, it will make the modified text available to the public for at least 15 days before the Exchange adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Anna Pifer-Foote at the address indicated above. The Exchange will accept written

comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Anna Pifer-Foote at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulation in underline can be accessed through our website at <http://hbex.coveredca.com/regulations/>.

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

The Department of Motor Vehicles (department) proposes to adopt Section 360.00 in Article 5.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to Administrative Law Judges participation in the confidential address program.

PUBLIC HEARING

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

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than **July 18, 2022**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code section 1651, in order to implement, interpret, or make specific Vehicle Code section 1808.4.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

Current law authorizes home address confidentiality for qualifying persons in the department's vehicle registration, driver license, and identification card records reflecting the qualified person's name. Vehicle Code section 1808.4 identifies the occupations that allow for a home address to be held as confidential, including law enforcement personnel, court employees, the Attorney General, a Member of the Legislature, and other high profile government officials, as well as many rank and file government employees for whom the release of their home address may pose a security risk. The purpose of the confidential address program is to protect individuals from physical harm, harassment, or stalking, should their address become available to members of the public who may be dissatisfied with the official action the person undertook as part of their employment with the identified government agencies and bodies.

Vehicle Code section 1808.4(a)(4) allows an address of an active or retired judge or court commissioner to be held as confidential. The department occasionally receives requests that the addresses of Administrative Law Judges also be held confidential.

The department proposes to adopt Section 360.00 to make clear that a person employed by an agency of the State of California in the civil service classification of Administrative Law Judge qualifies for participation in the confidential records program.

CONSISTENCY AND COMPATIBILITY WITH  
STATE REGULATIONS

The department has conducted a review of other state regulations and has concluded that these are the only regulations related to the confidential address program as it relates to Administrative Law Judges. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES OR  
STATE REGULATIONS

There are no existing federal statutes or regulations that govern the administration of confidential record programs.

DOCUMENTS INCORPORATED  
BY REFERENCE

There are no documents incorporated by reference.

ECONOMIC AND FISCAL  
IMPACT DETERMINATIONS

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

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Effects on Housing Costs:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Cost Impact on Representative Private Persons or Businesses:* None. 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:* This proposed action will not impact small businesses. The confidential address program is accessible to qualifying individuals. The program has no impact on businesses and the adoption of Section 360.00 will also have no impact on small businesses.
- *Local Agency/School District Mandate:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:* The department has made the initial determination that this action will not have a significant statewide adverse economic impact directly affecting business nor will it impact the ability of California businesses to compete with businesses in other states. This proposed rule impacts specified individuals, not businesses.

RESULTS OF THE ECONOMIC  
IMPACT STATEMENT

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

This proposed action is unlikely to 1) create or eliminate jobs within the State of California; 2) create or eliminate businesses within the State of California; or

3) expand businesses currently doing business in the State of California.

This action will benefit worker safety and the health and welfare of California residents by making confidential the address of Administrative Law Judges working for the State of California. Holding their address as confidential will protect Administrative Law Judges from potential harassment or harm from a member of the public who may be dissatisfied with an action taken by the Administrative Law Judge as part of their employment. This proposed action is unlikely to benefit the state's environment.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

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

#### ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be 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.

#### CONTACT PERSON

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

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

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

Telephone: (916) 282-7294  
Facsimile: (916) 657-6243  
E-Mail: [LADRegulations@dmv.ca.gov](mailto:LADRegulations@dmv.ca.gov)

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

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

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

The department has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strike-out to indicate deletions from the California Code of Regulations.

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

#### AVAILABILITY OF MODIFIED TEXT

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

**TITLE 13. HIGHWAY PATROL**

AMEND ARTICLE 10, SECTIONS 1041  
AND 1046

VEHICLE SOUND MEASUREMENT  
(CHP-R-2019-06211)

The California Highway Patrol (CHP) proposes to amend regulations in Title 13, of the California Code of Regulations (CCR), Division 2, Chapter 4, Article 10, Section 1041, Definitions, which defines and establishes consistency throughout regulations and Section 1046, Measurement Procedures for New Motor Vehicles, which adopts the most currently recognized Society of Automotive Engineers SAE International standards.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Pursuant to Division 12, Equipment of Vehicles, commencing with Section 27200 of the California Vehicle Code (CVC), the CHP shall establish test procedures for new motor vehicle noise emissions, taking into consideration the procedures published by SAE International. The currently referenced SAE standards in the CCR have become obsolete and are no longer recognized by SAE International. This amendment makes substantive changes to ensure California sound-level measurement procedures for new motor vehicles align with current SAE standards. This amendment will repeal obsolete SAE testing procedures, presently adopted in Title 13, CCR, Section 1046, and adopt the most currently recognized SAE standards. This amendment removes repealed authority-cited sections and includes a definition for the terms “sound” and “noise” in Title 13, CCR, Section 1041.

*Anticipated Benefits of Proposed Regulations:*

This proposed regulatory action will continue to provide a nonmonetary benefit by protecting the health, safety, and welfare of California’s residents, workers, and environment through establishing procedural standards for sound-level measurements to be used by manufacturers of new motor vehicles. The changes bring regulations into conformance with current SAE standards and clarify terms used within the regulation.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations:*

The CHP has determined the proposed regulations are neither inconsistent, nor incompatible, with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the

CHP has concluded these are the only regulations that concern vehicle sound measurement for new motor vehicles.

**PUBLIC COMMENT**

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

California Highway Patrol  
Commercial Vehicle Section  
Attention: Officer Kasonja Pochop  
P.O. Box 942898  
Sacramento, CA 94298-0001

Written comments must be received by July 18, 2022.

**PUBLIC HEARINGS**

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

**AVAILABILITY OF INFORMATION**

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

The rulemaking file is available for inspection. Interested parties are advised to call CHP, CVS, for an appointment. Additionally, documents regarding the proposed action are available through the CHP’s website at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>. Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above-noted address. Copies will also be posted on the CHP website.

**NOTE:** The SAE standards to be incorporated by reference may only be viewed by appointment, due to copyright restrictions, at CHP Headquarters from Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for state holidays.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or the substance of the proposed regulations should be directed to Sergeant David Kelly or Officer Kasonja Pochop, at (916) 843-3400.

ADOPTION OF PROPOSED REGULATIONS

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

FISCAL DISCLOSURES AND RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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

Benefits of the Proposed Action: The proposed regulations update sound-level measurement testing procedures for new motor vehicles, and will continue to provide benefits, including the nonmonetary benefit of protecting public health and safety for residents, workers, and the environment, by providing a regulatory basis for new motor vehicle registration requirements. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

The CHP has determined the proposed regulatory action will not have an effect on small businesses. The action is intended to clarify and update the testing procedures for sound-level measurements of new motor vehicles which are to be registered in California.

CONSIDERATION OF ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine no reasonable alternative considered by the CHP, or otherwise identified and brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 27200 and 38370, CVC.

REFERENCE

This action implements, interprets, or makes specific interpretations of Sections 27200 and 38370, CVC as mandated by the statute.

**TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES**

**PROPOSED AMENDMENTS TO THE CHILDREN'S COMMUNITY CRISIS HOMES AND ENHANCED BEHAVIOR SUPPORTS HOMES**

The Department of Developmental Services (Department or DDS) proposes to amend the Children's Community Crisis Homes (CCH) and Enhanced Behavior Supports Homes (EBSH) regulations as described below after considering all comments, objections, and recommendations regarding the proposed action.

**WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

The public comment period for this regulatory action will begin on **June 3, 2022**, and closes on **July**

**18, 2022.** To ensure the Department will consider your comment it must be received by the Department **no later than July 18, 2022.** When commenting, please indicate the proposed rulemaking action to which your comment refers.

Any interested person or his or her representative may submit comments relevant to the proposed regulatory action to the Department by personal delivery, postal mail service, or electronic submittal as described in detail below. Comments sent to persons and/or addresses other than that specified, or received after the date and time specified above, may be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.

For consideration, written comments shall be submitted as follows:

Postal Mail or Hand Delivery:

Department of Developmental Services  
Legislation, Regulations & Public Affairs  
**RE: CCH and EBSH**  
1215 O Street MS 9-10  
Sacramento, CA 95814; or

*Electronic Submittal:*

<https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>

**“Please note: Public comments should not include any personal or medical information, as your written and oral comments, and attachments become part of the public record and can be released to the public upon request under the California Public Records Act (Gov. Code, § 6250 et seq.)”**

#### PUBLIC HEARING

A public hearing is not currently scheduled; however, any interested person may request the Department to conduct a public hearing. A public hearing will be held if any interested person, or their duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice fifteen (15) days prior to the close of the 45-day comment period. If a request for public hearing is received, the time, date, and location of the public hearing will be provided by separate notice. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing

#### AUTHORITY AND REFERENCE

Welfare and Institutions Code (WIC), Sections 4698, 4698.1, 4684.81, and 4684.86 and Health and Safety Code (HSC), Section 1180.2 authorize the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 4648, 4695.2, 4698, 4698.1, 4684.81, and 4684.86 of the WIC, and Sections 1180.1, 1180.4, and 1567.81 of the HSC.

#### INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed amendments to Sections 59000, 59001, 59002, 59006, 59007, 59008, 59009, 59010, 59011, 59012, 59022, 59050, 59051, 59052, 59054, 59055, 59056, 59057, 59058, 59059, 59060, 59061, 59062, 59063, 59064, 59065, 59066, 59067, 59068, 59069, 59070, 59071 and 59072. Title 17, California Code of Regulations (CCR).

Proposed adoption of new Articles 5.5 and 6.5 and new Sections 59009.5, 59010.1, 59010.2, 59010.3, 59010.4, and 59010.5, Subchapter 23, Title 17, CCR, for CCH.

Proposed adoption of new Articles 5.5 and 6.5 and new Sections 59060.1, 59060.2, 59060.3, 59060.4, and 59060.5, Subchapter 24, Title 17, CCR, for EBSH.

The Department has reorganized the EBSH regulations to mirror the arrangement of the CCH regulations. The Department proposes to renumber Sections 59054 to 59060, 59055 to 59063, 59056 to 59059, 59057 to 59064, 59058 to 59065, 59059 to 59066, 59060 to 59054, 59061 to 59055, 59062 to 59056, 59063 to 59057, 59064 to 59058, 59065 to 59067, 59066 to 59068, 59067 to 59069, 59068 to 59070, 59069 to 59071, 59070 to 59061, 59071 to 59062. Furthermore, the Department proposes to renumber Articles 4 to 6, 5 to 8, 6 to 5, 7 to 9, 8 to 4, 9 to 10, and 10 to 7. The Initial Statement of Reasons includes a crosswalk on page 4, which identifies the proposed rearrangement and allows for a side-by-side comparison of the regulations.

#### **Documents Incorporated by Reference**

- Department Form DS 6024 (Revised 9/2021) entitled “Rate Development — Individual Costs Associated with Residency”
- Department Form DS 6023 (Revised 9/2021) entitled Rate Development — Facility Costs
- Repealed Department Form DS 6024 (Revised 10/2016) entitled “Rate Development — Individual Costs Associated with Residency”
- Repealed Department Form DS 6023 (Revised 10/2016) entitled Rate Development — Facility Costs

**Summary of Existing Laws and Effect of the Proposed Regulatory Action:**

The Department is responsible for administering the Lanterman Act. The Lanterman Act, WIC, Section 4500 et seq., was enacted to reduce institutionalization of people with developmental disabilities and prevent their dislocation from their home communities. Under the Lanterman Act, people with developmental disabilities have a right to services and supports in the least restrictive environment. With the reduced reliance on restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult-to-serve consumers. Furthermore, pursuant to the Lanterman Act, WIC, Section 4500 et seq., people with developmental disabilities, as defined in WIC, Section 4512(a), receive, as an entitlement, services and supports based on their individual needs and choices.

2012 Budget Trailer Bill language Assembly Bill (AB) 1472 imposed a moratorium on admissions into state developmental centers and closure plans for the remaining state developmental centers arose from 2015 Budget Trailer Bill language Senate Bill (SB) 82. With the reduced reliance on costly and restrictive institutional and out-of-state placements, there is a need to increase community capacity and develop new alternatives, particularly for the most difficult-to-serve consumers, including those with challenging behaviors.

To continue the development of alternative living arrangements, SB 856 (Committee on Budget and Fiscal Review, Chapter 30, Statutes of 2014) required the Department to develop the residential option of Community Crisis Homes, as well as Enhanced Behavioral Supports Homes.

As part of the 2019–20 State Budget package, SB 81 amended and added numerous sections of law pertaining to Human Services, including amendments which require the Department to develop guidelines around the use of restraint or containment in community crisis homes. The Department is now undertaking the regular rulemaking process to make the Children’s Community Crisis Homes emergency regulations permanent and to align the Enhanced Behavioral Supports Homes with the same regulations.

The proposed adoption of these regulations on a permanent basis is necessary to permit the continued availability of the residential options and to establish program standards, consumers’ rights protections, and other requirements for these homes, including the guidelines around the use of restraint or containment in Community Crisis Homes and Enhanced Behavioral Supports Homes.

The proposed regulations clarify and interpret WIC Section 4684.86. The authorizing statutes permit but

do not require the establishment of Community Crisis Homes and Enhanced Behavioral Supports Homes, as well as the program standards for their development. The amendments proposed in this rulemaking action would add specificity and greater detail regarding the program standards which include program plan requirements, staffing structure, staff qualifications and training, requirements and timelines for the completion and updating of consumers’ individual behavior supports plans, admission and continued stay requirements, requirements for ensuring appropriate services and supports are provided at the time of admission, the rate methodology, and assurances of consumer rights and protections.

**Comparable Federal Regulations:**

None.

**Anticipated Objectives and Benefits of the Proposed Regulations:**

The broad objective of the proposed regulatory action is to ensure that the guidelines around the use of restraint or containment in EBSH and CCH are clear and precise. The benefit of these regulations is in furthering the intent of SB 856 and the Lanterman Act: to minimize institutionalization by establishing community living options to meet the needs of individuals with challenging behaviors and who would otherwise be at risk of admission to or continued placement in more restrictive, locked institutional settings, or placement out of state. Further benefits anticipated from the proposed regulations are to protect the rights of consumers admitted to EBSH and CCH, including periodic reassessments of the continued appropriateness of the placement for each consumer by providing clear standards and requirements for EBSH and CCH program plans and staff. The proposed adoption of these regulations on a permanent basis is necessary to permit the continued availability of the residential options authorized by SB 856 and to establish program standards, consumers’ rights protections, and other requirements for these homes.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations (Gov. Code, § 11346.5(a)(3)(D)):*

During the process of developing the proposed regulatory action, the Department conducted a search of any similar regulations on this topic and determined that these proposed regulations are not inconsistent or incompatible with existing regulations.

MANDATED BY FEDERAL  
LAW OR REGULATIONS  
(Gov. Code §§11346.2(c) and 11346.9)

The proposed regulatory action is not mandated by federal law or regulations.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

The Department has made the following initial determinations:

*Mandate on Local Agencies or School Districts:*

None.

*Cost or Savings to any State Agency:*

The Department anticipates no additional costs, apart from the costs associated with the implementation and operation of the CCH and EBSH programs, which are included in the annual Budget. The Department estimates a savings to state government in the current State Fiscal Year of \$395,000 to \$900,000.

*Cost or Savings to Any Local Agency or School District which must be Reimbursed in Accordance with Government Code, Sections 17500 through 17630:*

None.

*Other Non-Discretionary Costs or Savings Imposed on Local Agencies:*

None.

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

The Department has determined that the proposed regulations would not create costs in federal funding to the State. The Department estimates a savings on federal funding of state programs in the current State Fiscal Year of approximately \$197,500 to \$450,000.

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

None.

*Significant Effect on Housing Costs:*

None.

*Cost Impacts on Representative Private Persons or Businesses:*

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

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

In accordance with Government Code, Section 11346.3(b), the Department has made the following assessments regarding the proposed regulations:

***The Creation or Elimination of Jobs within the State of California***

Developing regulations for Community Crisis Homes and Enhanced Behavioral Supports Homes will not significantly affect the creation or elimination of jobs within the state of California.

***The Creation of New or Elimination of Businesses within the State of California***

The proposed regulations establish procedures, consumer safeguards, and program standards related to development of Community Crisis Homes and Enhanced Behavioral Supports Homes. No new businesses in California will be created or existing businesses eliminated.

***The Expansion of Businesses currently doing Business within the State of California.***

The proposed regulations establish procedures, consumer safeguards, and program standards related to development of Community Crisis Homes and Enhanced Behavioral Supports Homes. There will be no expansion of businesses currently doing business within the state as a result of the proposed regulations.

***Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment***

The proposed regulations are expected to improve the health and welfare of California residents with developmental disabilities by filling an unmet need and enabling the development of previously unavailable community living alternatives for individuals who require intensive services and supports due to challenging behaviors. The proposed regulations benefit the general welfare of people with developmental disabilities by furthering the intent of the Lanterman Act, as well as the federal Americans with Disabilities Act, to support their integration into the community. The proposed regulations will not affect the health and welfare of California residents in general and will not affect worker safety or impact the state's environment.

***Small Business Determination (Cal. Code Regs., Title 1, §4(A) and (B))***

DDS has determined under California Code of Regulations, Title 1, Section 4, that the proposed regulatory action would not affect small businesses as a result of these regulations because the proposed regulations only affect certain individual consumers who reside in an EBSH or CCH.

***Business Report (Gov. Code, §§11346.5(a)(11) and 11346.3(d))***

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the department finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

CONSIDERATION OF ALTERNATIVES

(Gov. Code, § 11346.5(a)(13))

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must

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

CONTACT PERSONS  
(Gov. Code, § 11346.5(a)(14))

Inquiries concerning the substance of the proposed regulatory action may be directed to the Department's representative, Catherine Knight, Assistant Deputy Director, at (916) 952-5475 or her backup, Tiffani Andrade, Assistant Deputy Director, at (916) 654-3016.

AVAILABILITY OF STATEMENT  
OF REASONS, TEXT OF PROPOSED  
REGULATIONS AND RULEMAKING FILE  
(Gov. Code, § 11346.5(a)(16))

The Department has compiled a record for this rulemaking action which includes all the information upon which the proposal is based, including an Initial Statement of Reasons (ISOR) for the proposed regulatory action, the proposed text (the "express terms") of the regulation and the Economic and Fiscal Impact Statement (STD. 399). Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with existing regulations, may be accessed on the Department's website listed below. Please direct requests for physical hard copies of the documents to Sunday Balalis, Legislative and Regulations Analyst at (916) 653-0732 or [Sunday.Balalis@dds.ca.gov](mailto:Sunday.Balalis@dds.ca.gov). Due to COVID-19 restrictions please contact Sunday Balalis to make an appointment to review the rulemaking file in person.

AVAILABILITY OF CHANGED OR  
MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications 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 adopting the regulations as revised. Please send requests for copies of any modified regulations to the contact person(s) listed above. If substantive modifications are made, the Department will accept written

comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS

Upon its completion, Final Statement of Reasons (FSOR) will be available on the Department's Internet website for this rulemaking listed below. Copies may also be requested from the Department contact persons listed above.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

This notice, the Initial Statement of Reasons, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, will be made available on the *Department's Internet website* for this rulemaking at <https://www.dds.ca.gov/transparency/laws-regulations/emergency-and-proposed-regulations/>.

**TITLE 18. STATE BOARD OF  
EQUALIZATION**

PROPOSED AMENDMENTS TO  
CONFLICT-OF-INTEREST CODE

**NOTICE IS HEREBY GIVEN** that the State Board of Equalization (Board), pursuant to Government Code (Gov. Code) section 87306 of the Political Reform Act (Gov. Code, § 81000 et seq.), proposes to amend California Code of Regulations, title 18, section (Regulation) 6001, General Provisions, Appendices A and B, which contain the Board's Conflict of Interest Code (Code). The purpose of the amendments is to implement Government Code sections 87300 through 87302, and section 87306.

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

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

These amendments implement classification and organizational changes that have taken place at the Board since the Code was last amended on April 3, 2015. The proposed amendments update Appendix A to the Code to list only those positions at the Board that make or participate in the making of decisions which may foreseeably have a material financial effect on any financial interest as required by Government Code section 87302, subdivision (a). Therefore, the Board proposes to delete positions that are no longer used at the Board from Appendix A, and add new positions that make or participate in the making of decisions which may foreseeably have a material financial effect on any financial interest to Appendix A. The proposed amendments update the disclosure categories listed in Appendix B for the purpose of narrowly tailoring the disclosure requirements assigned to each position listed in Appendix A to the position's job duties, and to differentiate between similar positions listed in Appendix A with different levels of responsibility. Copies of the proposed amendments to the Code are available to interested persons, are available on the Board's website (<https://www.boe.ca.gov/regs/regscont.htm>) and may be requested from the Contact Person set forth below.

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

Any interested person may submit written statements, arguments, or comments related to the proposed amendments by submitting them in writing no later than **July 18, 2022** or at the conclusion of the public hearing, if one is requested, whichever comes later, to the agency contact set forth below. The Board has not scheduled a public hearing on the proposed amendments. However, it will hold a hearing if it receives a written request for a hearing from any interested person, or their representative, 15 days before the close of the written comment period on **July 3, 2022**.

The State Board of Equalization (Board) has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private person, businesses or small businesses.

**Contact Persons**

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to Henry Nanjo, Chief Counsel, 916–274–3520, [henry.nanjo@boe.ca.gov](mailto:henry.nanjo@boe.ca.gov) or to Honey Her, Associate Governmental Program Analyst, 916–274–3523, [honey.her@boe.ca.gov](mailto:honey.her@boe.ca.gov).

**GENERAL PUBLIC INTEREST**

**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 **July 21, 2022**, at 10:00 a.m.  
in Room 310 of the County Administration Center  
1600 Pacific Highway, San Diego, California

as well as via the following:

- 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 **July 21, 2022**, at 10:00 a.m.  
in Room 310 of the County Administration Center  
1600 Pacific Highway, San Diego, California

as well as via the following:

- 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.

## FISH AND GAME COMMISSION

### NOTICE OF CHANGE OF DATE OF FINAL CONSIDERATION OF PETITIONS HEARING

On May 10, 2022, the California Fish and Game Commission (Commission) provided notice of its scheduled final consideration of petitions to list western Joshua tree (*Yucca brevifolia*) as a threatened species and Milo Baker's lupine (*Lupinus milo-bakeri*) as an endangered species for its June 15-16, 2022 meeting. Consideration of the petitions, previously scheduled on Thursday, June 16, is now scheduled to take place Wednesday, June 15.

Consideration of the petitions will be heard at the California Department of Transportation Building, Conference Room 1.040A,B,C, 100 South Main Street, Los Angeles, California, and the Trinidad Rancheria

Administrative Office Conference Room, 1 Cher-Ae Lane, Trinidad, California. Members of the public may participate in person or via webinar/teleconference. Instructions for participation in the by teleconference 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.

Please see the agenda meeting agenda for additional details. The agenda of the June 15-16, 2022 meeting, and the agendas and video archive of previous meetings where actions were taken on western Joshua tree and Milo Baker's lupine 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 western Joshua tree as threatened and Milo Baker's lupine as an 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>.

## DEPARTMENT OF FISH AND WILDLIFE

### CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080-2022-008-03

**Project:** Stony Point Flats Apartments  
**Location:** Sonoma County  
**Applicant:** Stony Point Flats, LP  
**Background**

Stony Point Flats, LP (Applicant) proposes to build a 50-unit affordable apartment community on 2.03 acres of the 2.93-acre site. The Stony Point Flats Apartments Project (Project) includes demolishing all existing buildings onsite and constructing four buildings, a parking lot, and a 30-foot-wide, two-lane road with a 120-foot hammerhead turnaround. The Project site will be accessed from Stony Point Road along the western Project site boundary. Equipment and materials storage and staging will occur within

the boundaries of the Project site. The Project is located at 2268 Stony Point Road in the City of Santa Rosa, Sonoma County. It is on Assessor's Parcel Number 125-521-008 at Latitude 38.415422, Longitude -122.73899.

The Project activities described above are expected to incidentally take<sup>1</sup> California tiger salamander (CTS; *Ambystoma californiense*), Sebastopol meadowfoam (*Limnanthes vinculans*), and Sonoma sunshine (*Blennosperma bakeri*) where those activities take place within the Project site. In particular, CTS could be incidentally taken as a result of crushing or entombing of individuals during construction; grubbing; cut and fill grading; trench digging; vehicular access; collapsing of burrows; and entrapment in excavated pits, trenches, or within construction materials. Incidental take may also occur in the form of pursue, catch, capture, or attempt to do so from CTS surveying and relocating operations. Sebastopol meadowfoam and Sonoma sunshine could be incidentally taken as a result of grubbing, cut and fill grading, filling of wetlands, trench digging, and other construction activities. CTS, Sebastopol meadowfoam, and Sonoma sunshine are designated as endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). CTS is designated as a threatened species and Sebastopol meadowfoam and Sonoma sunshine are designated as endangered 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); Cal. Code Regs., title 14, § 670.2, subdivisions (a)(2)(B) & (a)(18)(D).)

CTS individuals are documented as present approximately 700 feet to the south of the Project site and there is suitable CTS habitat within and adjacent to the Project site. Because of the proximity of the nearest documented CTS, dispersal patterns of CTS, and the presence of suitable CTS habitat within the Project site, the United States Fish & Wildlife Service (Service) determined that CTS is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of CTS. Sebastopol meadowfoam and Sonoma sunshine individuals are documented as present approximately 0.4 miles and 1.4 miles southwest of the Project site, respectively, and there is suitable Sebastopol meadowfoam and Sonoma sunshine habitat within the Project site. Because of the proximity of the nearest

<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 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").

documented Sebastopol meadowfoam and Sonoma sunshine and the presence of suitable Sebastopol meadowfoam and Sonoma sunshine habitat within the Project site that may contain a seed bank of these species, the United States Fish & Wildlife Service (Service) determined that Sebastopol meadowfoam and Sonoma sunshine are reasonably certain to occur within the Project site and that Project activities are expected to result in impacts to Sebastopol meadowfoam and Sonoma sunshine.

According to the Service, the Project will result in the permanent loss of 1.87 acres of CTS upland habitat and 0.06 acres of Sebastopol meadowfoam and Sonoma sunshine habitat.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the U.S. Army Corps of Engineers (Corps) consulted with the Service as required by the ESA. On April 20, 2022, the Service issued a biological opinion, entitled Formal Consultation on the Stony Point Flats Apartments, Sonoma County (Service file Number 2022-0021147) (BO) to the Corps. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The ITS also requires the Applicant to implement and adhere to measures contained within the Project Biological Assessment (BA).

The BO also appends the Project to the Programmatic Biological Opinion on Issuance of Clean Water Act, Section 404 Permits by the U.S. Army Corps of Engineers on the Santa Rosa Plain, Sonoma County California (Service file Number 81420-2008-F-0261-R002) (PBO). The ITS and accompanying BO require the Applicant to implement the Minimization Measures and Best Management Practices contained in pages 8-14 of the PBO (minus a restoration plan) and compensate for the loss of habitat by following the conservation framework on pages 14-16 of the PBO. All references to measures in the ITS and accompanying BO in this consistency determination include these PBO measures that are specifically incorporated by reference as requirements. These measures are further highlighted below.

On April 21, 2022, the Director of the Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and accompanying BO are consistent with CESA for purposes of the Project and CTS, Sebastopol meadowfoam, and Sonoma sunshine. (Cal. Reg. Notice Register 2022, Number 18-Z, page 528.)

#### Determination

CDFW has determined that the ITS, along with the accompanying BO, is consistent with CESA as to the Project and CTS, Sebastopol meadowfoam, and

Sonoma sunshine because the mitigation measures contained in BO and ITS, as well as the conditions in the BA, 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, Sebastopol meadowfoam, and Sonoma sunshine will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS, BO, and BA, will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization, and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of CTS, Sebastopol meadowfoam, and Sonoma sunshine. The avoidance, minimization and mitigation measures in the ITS, BO, and BA include, but are not limited to, the following:

*Avoidance, Minimization, and Mitigation Measures*

- 1) Prior to any earthmoving activities, the Applicant has proposed to purchase CTS credits at a 2:1 ratio associated with the proposed Project. Therefore, the applicant has proposed to offset the loss of 1.87 acres of CTS upland habitat by purchasing 3.74 acres of CTS credits. Applicant will purchase the mitigation from a mitigation bank that is within designated critical habitat.
- 2) Prior to any earthmoving activities, the Applicant has proposed to purchase credit for listed plants at a 1.5:1 ratio within the same core areas associated with the proposed Project. Sonoma sunshine and Sebastopol meadowfoam have the closest occurrences to the Project site so compensation will be for these two species. The compensation will be split between the two species. To offset the loss of 0.06 acre of suitable habitat, the Applicant proposes to purchase 0.045 acre of Sebastopol meadowfoam and 0.045 acre of Sonoma sunshine credits.
- 3) A qualified biological monitor will conduct a training session for all construction workers before work is started on the project. The training program is for all construction personnel including contractors and subcontractors. The training will include, at a minimum, a description of CTS, and the applicable listed plant(s) and their habitat within the Project area; an explanation of the species' status and protection under state and federal laws; the avoidance and minimization measures to be implemented to reduce loss of these species; and communication and work stoppage procedures in case a listed species is observed within the Project area. The Applicant will ensure a fact sheet conveying this information is prepared

and distributed to all construction personnel. The Applicant shall provide interpretation for non-English speaking workers.

- 4) The Applicant will limit access routes, number and size of staging areas, and work areas, to the minimum necessary to achieve the project goals. The Applicant will clearly mark routes and boundaries of the roadwork prior to initiating construction/grading. The Applicant will clearly delineate Environmentally Sensitive Areas (ESAs) containing sensitive habitats adjacent to or within construction work areas for which physical disturbance is not allowed using high visibility orange fencing. The Applicant will ensure the final Project plans depict all locations where ESA fencing will be installed and provide installation specifications. The Applicant will ensure the bid solicitation package includes special provisions and clearly describes acceptable fencing material and prohibited construction-related activities including vehicle operation, material and equipment storage, access roads and other surface-disturbing activities within ESAs. The Applicant will ensure the ESA fencing remains in place throughout the duration of the proposed action, while construction activities are ongoing, and is regularly inspected and fully maintained at all times. The Applicant will ensure the orange fencing is removed promptly after Project completion.
- 5) Prior to the start of construction, the Applicant will install wildlife exclusion fencing (WEF) at the edge of the project footprint in all areas where CTS could enter the construction area. WEF with exit ramps, funnels, and cover boards may be required for one full rainy season to allow any CTS onsite to move into an adjacent habitat offsite and will be determined on a case-by-case basis.

The location of the fencing shall be determined by the onsite project manager and the Service-approved biologist in cooperation with the Service prior to the start of staging or surface disturbing activities. The Applicant shall submit a conceptual fencing plan to the Service for review and approval prior to WEF installation. The location, fencing materials, installation specifications, and monitoring and repair criteria shall be approved by the Service prior to start of construction. The Applicant shall include the WEF specifications on the final project plans. The Applicant shall include the WEF specifications including installation and maintenance criteria in the bid solicitation package special provisions. The WEF shall remain in place throughout the duration of the project and shall be inspected weekly and fully maintained. The Applicant shall make repairs

to the WEF within 24 hours of discovery. Upon project completion, the Applicant shall completely remove the WEF, clean the area of debris and trash, and return the area to natural conditions.

If installation will result in more ground disturbance than project activities, and the duration of work activities is very short (e.g., three days or less) and during the dry season, then the boundaries and access areas and sensitive habitats may be staked and flagged by the biological monitor prior to disturbance and species monitoring would occur during all Project activities at that site.

- 6) The Corps through its Applicant shall prepare and submit a relocation plan for the Service's written approval. The relocation plan shall be consistent with the Guidelines for the relocation of California tiger salamanders (*Ambystoma californiense*) (Shaffer et al. 2008). The relocation plan shall contain the name(s) of the Service-approved biologist(s) to relocate CTS, method of relocation, a map, and description of the proposed release site(s) and burrow(s), and written permission from the landowner to use their land as a relocation site. At various times, a conservation bank may be a desired location to relocate CTS from a salvage site; however, no conservation bank may receive relocated CTS until all the bank's credits have been sold to prevent interfering with their performance criteria and credit release schedule.
- 7) The Applicant will conduct ground disturbance between April 15 and October 15, of any given year, depending on the level of rainfall and/or site conditions. However, if unavoidable, The Applicant shall only conduct grading and other disturbance in pools and ponds when dry, typically between July 15 and October 15. Work within a pool or wetland may begin prior to July 15 if the pool or wetland has been dry for a minimum of 30 days prior to initiating work. Any work in pools and wetlands that are holding water shall be subject to approval of the Service. If work must continue when rain is forecast (greater than 40 percent chance of rain), a Service-approved biologist(s) shall survey the Project site before construction begins each day rain is forecast. If rain exceeds 0.5 inches during a 24-hour period, the Applicant shall cease work until National Weather Service forecasts no further rain. This restriction is not applicable for areas within 1.3 miles of potential or known CTS breeding sites once the Applicant encircles the site with WEF.

#### Monitoring and Reporting Measures

- 1) Qualified biological monitor(s) will be on site each day during all earth moving activities. The

biological monitor(s) shall conduct clearance surveys at the beginning of each day and regularly throughout the workday when construction activities are occurring that may displace, injure, or kill CTS through contact with workers, vehicles, and equipment. The biological monitor(s) shall duly inspect all aquatic and upland habitat including refugia habitat such as small woody debris, refuse, burrow entries, etc.

Where feasible and only on a case-by-case basis, a biological monitor may carefully excavate with hand tools rodent burrows and other ground openings suspected to contain CTS that would be destroyed from Project activities. Pre-soaking the area prior to ground disturbance may also increase emergence of the species for translocation. The Service will consider the implementation of specific project activities without the oversight of an on-site biological monitor on a case-by-case basis.

Before the start of work each day, the biological monitor will check for animals under all equipment such as vehicles and stored pipes. The biological monitor will check all excavated steep-walled holes or trenches greater than one foot deep for any CTS. CTS will be removed by the biological monitor and relocated according to the Relocation Plan. To prevent inadvertent entrapment of animals during construction, the Applicant will ensure all excavated, steep-walled holes or trenches more than six inches deep will be covered with plywood (or similar materials) that leave no entry gaps at the close of each working day or provided with one or more escape ramps constructed of earth fill or wooden planks. The Service-approved biologist shall inspect all holes and trenches at the beginning of each workday and before such holes or trenches are filled. All replacement pipes, culverts, or similar structures stored in the project footprint overnight will be inspected before they are subsequently moved, capped, and/or buried.

- 2) A Service-approved biologist will be present during all vegetation clearing and grubbing activities. The Applicant will ensure grasses and weedy vegetation are mowed to a height no greater than six inches prior to ground-disturbing activities. The Applicant will remove all cleared vegetation from the project footprint to prevent attracting animals to the project site. Prior to vegetation removal, the Service-approved biologist shall thoroughly survey the area for CTS. Once the qualified biologist has thoroughly surveyed the area, clearing and grubbing may continue without further restrictions on equipment;

however, the qualified biologist shall remain on-site to monitor for CTS until all clearing and grubbing activities are complete.

- 3) The biological monitor(s) shall maintain monitoring records that include: (1) the beginning and ending time of each day's monitoring effort; (2) a statement identifying the listed species encountered, including the time and location of the observation; (3) the time the specimen was identified and by whom and its condition; (4) the capture and release locations of each individual; (5) photographs and measurements (snout to vent and total length) of each individual; and (6) a description of any actions taken. The biological monitor(s) shall maintain complete records in their possession while conducting monitoring activities and shall immediately provide records to the Service upon request. All monitoring records shall be provided to the Service within 30 days of the completion of monitoring work.

*Although not a condition of the BO, CDFW requests a copy of the monitoring reports as well. The reports should include dates construction occurred.*

- 4) Qualified biological monitor(s) will possess a working wireless/mobile phone whose number will be provided to the Service prior to the start of construction and ground disturbance. The biological monitor(s) shall keep a copy of the PBO and appendage in his/her possession when on-site. Through the Onsite Project Manager or his/her designee, the biological monitor(s) shall be given the authority to communicate verbally, by telephone, email, or hardcopy with the Applicant, Project personnel, and any other person(s) at the Project site or otherwise associated with the Project to ensure that the terms and conditions of the PBO and appendage are met. The biological monitor(s) shall have oversight over implementation of the terms and conditions in the PBO and appendage and shall have the authority to stop project activities if they determine any of the associated requirements are not being fulfilled. If the biological monitor exercises this authority, the Service shall be notified by telephone and email within 24 hours. The Service contact is the Coast Bay Division Chief of the Endangered Species Program, Sacramento Fish and Wildlife Office at telephone number (916) 414-6623.
- 5) If verbally requested before, during, or upon completion of ground disturbance and construction activities, the Applicant will ensure the Service

can immediately and without delay, access and inspect the project site for compliance with the project description, Conservation Measures, and reasonable and prudent measures of the PBO and appendage, and to evaluate project effects to the CTS and its habitat.

#### *Security*

- 1) The Applicant proposes to purchase mitigation credits in the amounts described in Avoidance, Minimization, and Mitigation Measures 1 and 2 above. Credits shall be from one or more conservation banks approved by Service and CDFW. The applicant will obtain written confirmation from the Service and CDFW that the conservation bank(s) is in good standing prior to purchasing the credits.

In the event that credits are not available for purchase, partly or entirely, prior to the start of ground disturbing activities, the Applicant will purchase credits that are available prior to the start of ground disturbing activities and the Applicant will establish a performance security equivalent to the amount needed to purchase the remaining credits. The security will be held in the form of an irrevocable letter of credit issued to CDFW to execute the purchase of the remaining needed credits based on the estimated cost of **\$230,000** per acre plus administrative fees, estimated to be **\$40,000**. The applicant will purchase all needed credits within 18 months of the commencement of ground disturbing activities.

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

CDFW's determination that the Service ITS and its accompanying BO are consistent with CESA is limited to CTS, Sebastopol meadowfoam, and Sonoma sunshine.

DEPARTMENT OF FISH AND  
WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT  
CONSISTENCY DETERMINATION  
NUMBER 2080R-2022-007-01

**Project:** Redwood National and State Park  
Visitor Center and Restoration  
Project

**Location:** Humboldt County

**Applicant:** Save the Redwoods League

**Background**

Save the Redwoods League (Applicant) proposes to restore 0.75 miles of the stream and floodplain in lower Prairie Creek. Additionally, the Applicant proposes to construct a new park visitor center for Redwood National and State Parks. The Redwood National and State Park Visitor Center and Restoration Project (Restoration Project) includes restoring geomorphic function and habitat forming processes in lower Prairie Creek. Specific restoration actions include reconfiguring the channel to increase connectivity to the floodplain, installing large wood structures, constructing backwater channels and ponds, removing invasive vegetation, and planting native species.

The Restoration Project activities described above are expected to take<sup>1</sup> coho salmon (*Oncorhynchus kisutch*) of the Southern Oregon–Northern California Coast evolutionarily significant unit (Covered Species) where those activities take place within lower Prairie Creek. In particular, the Covered Species could be taken as a result of channel reconfiguration and fish relocation activities. Channel reconfiguration could increase suspended sediment concentrations, which can have negative effects on fish health and behavior. Capturing and handling of fish during relocation activities can result in stress, physical injury, and mortality of individuals. Additionally, relocation into receiving waters can have density-dependent effects such as increased competition. The Covered Species is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title

14, § 670.5, subdivision (b)(2)(D).<sup>2</sup>) Activities associated with the visitor center portion of the project will not result in take of the Covered Species.

Covered Species individuals are present in Prairie Creek. Because of known occurrences of all life stages of the Covered Species, the known dispersal patterns of Covered Species, and the presence of suitable Covered Species habitat within the Restoration Project site, the National Marine Fisheries Service (Service or NMFS) determined that the Covered Species is reasonably certain to occur within the Restoration Project site and that Restoration Project activities are expected to result in take of the Covered Species. The Service anticipates that within a ten-year timespan, 46,820 juvenile Covered Species will be captured, of which 1,008 may be killed, as a result of implementing the proposed Restoration Project. The Service estimates that 6,705 juvenile Covered Species are expected to be captured and relocated each year for four years, with up to 202 mortalities annually. Additionally, the Service estimates that up to 2,000 juvenile Covered Species will be captured and tagged each year for 10 years for effectiveness monitoring, with up to 16 mortalities annually. The Service expects the Restoration Project to improve the status of physical and biological features of critical habitat in the Restoration Project area after implementation, which will positively affect population abundance and productivity for the Redwood Creek populations of the Covered Species. These long-term improvements will outweigh short term reductions in habitat availability during Restoration Project construction.

The intent of the Restoration Project is to increase juvenile rearing habitat for the Covered Species with the creation of backwater features and addition of large wood structures. Additionally, restoration of geomorphic function and habitat forming processes will benefit Covered Species as a result of removing invasive plant species, planting native vegetation, and reconfiguring the channel to improve connectivity with the floodplain, wetlands and backwater features. The Service has determined that the long-term effects of Restoration Project actions will be beneficial to the Covered Species and are expected to result in increased usage of the area by Covered Species. According to the Service, construction of the Restoration Project will result in restoration of 89 acres of the lower Prairie Creek watershed and enhance 0.75 miles of aquatic habitat.

Because the Restoration Project is expected to result in take of a species designated as threatened under the federal ESA, the United States Army Corps

<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 Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of permitting under Fish and Game Code section 2081, “‘take’...means to catch, capture or kill”).

<sup>2</sup> Coho salmon from Punta Gorda (Humboldt County), California to the northern border of California is listed as threatened under CESA. SONCC coho salmon is included within this group.

of Engineers (USACE) consulted with the Service, as required by the ESA. On August 5, 2021, the Service issued a biological opinion, entitled the Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response on the Redwood National and State Parks’ Visitor Center and Restoration Project, near Orick, California, (Service file Number WCRO–2021–01006) (BO) to the USACE for the Restoration Project. The BO describes the Restoration Project, requires all project applicants operating under the BO to comply with the terms of the BO and its Incidental Take Statement (ITS), and incorporates additional measures.

On April 15, 2022, the Director of the Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and the accompanying BO are consistent with CESA for purposes of the Restoration Project and the Covered Species. (Cal. Reg. Notice Register 2022, Number 18–Z, page 529.)

**Determination**

CDFW has determined that the ITS, along with its accompanying BO, is consistent with CESA as to the Restoration Project and the Covered Species because the measures contained in the BO and ITS, as well as the conditions in the biological assessment for the Restoration Project (Biological Assessment, Redwood National and State Park Visitor Center and Restoration Project, NMFS–regulated Species) (BA), meet the conditions set forth in Fish and Game Code section 2081, subdivision (a), for authorizing take of CESA–listed species. Specifically, CDFW finds that: (1) take of the Covered Species will be for management purposes; (2) the measures required are roughly proportional in extent to any impact on the Covered Species that is caused by the Restoration Project; (3) the measures required maintain the Permittee’s project purpose to the greatest extent possible; and (4) the Restoration Project will not jeopardize the continued existence of the Covered Species.

*BO Avoidance, Minimization, and Mitigation Measures. The avoidance, minimization, and mitigation measures in the ITS, BO, and BA include, but are not limited to, the following:*

- 1) To protect the most vulnerable life stages of Covered Species that occur within the Restoration Project area, Applicant shall restrict all ground disturbance work with the potential to drain to the stream network to the period between June 15 and October 15 unless dry weather permits an extension of the work. The work period may be extended in coordination with the Service until the

Redwood Creek estuary breaches and adult salmonids could potentially enter the watershed.

- 2) Applicant shall implement the following measures during Covered Species relocation, which occurs in tandem with dewatering:
  - a. Perform initial fish relocation efforts three to five days prior to the start of dewatering.
  - b. The individuals shall be relocated to an appropriate channel segment with suitable habitat in the upper watershed, which is anticipated to be within Lost Man or Little Lost Man Creeks. The ultimate relocation site will be approved by the Service prior to relocation.
  - c. Earthen sediment plugs or similar barriers such as coffer dams shall be constructed to separate the work area from the stream channel, and water shall be pumped gradually out of the construction area to a manageable level.
  - d. Exclude fish from re–entering work area by blocking the stream channel above and below the work area with fine–meshed net or screens.
  - e. A qualified fisheries biologist shall perform seining, dip netting, trapping, and/or electrofishing to a point at which the biologist is assured that all aquatic species within the construction area have been caught.
- 3) Applicant shall implement the following measures during all dewatering events:
  - a. All work related to the dewatering of Prairie Creek shall be conducted during the normal operating season (June 15 to October 15, unless extended by the Service), which coincides with low–flow summer conditions and the dry season.
  - b. With cofferdams or similar barriers in place, a “clear water diversion” shall be set up, consisting of the conveyance of upstream water diverted downstream via piping or other similar means around the dewatered area to be discharged below the downstream cofferdam, or similar barrier.
  - c. Block nets will be placed at least ten feet upstream of the hose ends to prevent entrainment or impingement of Covered Species against intake hosing.
- 4) Applicant shall implement the following measures after construction work within a dewatered area is completed and the area is ready to be rewatered:
  - a. Block nets, pumps, and other Restoration Project related products and materials shall

- be removed from the construction area (unless biotechnical control materials are to remain in place).
- b. Construction areas shall not be connected to receiving waters until stream banks have been stabilized with biotechnical control fabric, or similar material as called for in the construction plans and specifications.
  - c. Imported or clear diversion water shall be washed over the construction area to wash fine sediment into the interstitial spaces further sealing the lower bed layers. Water will pass through the work area until it appears clear at the downstream extent (“running clear”).
  - d. Water that appears dirty and that is not “running clear” shall be pumped from the downstream extent of the work area to the designated construction water infiltration area.
  - e. The dewatered channel will not be connected to receiving waters until stream banks have stabilized, streambed material has been flushed and pumped to the designated infiltration area, and water is “running clear”.
- 5) Applicant shall ensure sufficient erosion control supplies, including but not limited to: straw wattles, silt fences, jute mesh, and burlap are available and maintained on site until disturbed areas are stabilized.
  - 6) Applicant shall ensure all equipment and vehicle maintenance and staging, and dispensing of fuel, oil, and coolant, occurs within the staging areas at the previous mill site, and/or over liners, at least 300 feet from any water bodies. Applicant shall check equipment for leaks daily prior to leaving the staging area and repair leaks as necessary.

*Monitoring and Reporting Measures. The monitoring and reporting measures in the ITS, BO, and BA include, but are not limited to, the following:*

- 1) Wetland vegetation success monitoring, including measurements of native plant species total cover in the wetland monitoring area with success criteria spread out over five years.
- 2) Reporting mortality during fish relocation during construction.
- 3) Riparian revegetation success rates.
- 4) Fish habitat typing of instream features and assessment of large woody debris additions for habitat value.
- 5) Fish monitoring within the newly-constructed main channel and off channel habitat features in Prairie Creek to assess the effectiveness of the restoration actions on fish.

The BO requires the Applicant to submit monitoring reports to the Service every year. Although not a condition of the BO, CDFW requests a copy of the monitoring reports as well. The reports should include dates construction occurred, fish relocation activities, and success of revegetation and restoration efforts.

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

CDFW’s determination that the Service ITS and accompanying BO are consistent with CESA is limited to the Covered Species.

## DEPARTMENT OF FISH AND WILDLIFE

### CESA CONSISTENCY DETERMINATION REQUEST FOR EUREKA HILL ROAD BRIDGE SEISMIC RETROFIT PROJECT 2080-2022-009-01 MENDOCINO COUNTY

The California Department of Fish and Wildlife (CDFW) received a notice on May 17, 2022 that the California Department of Transportation (Caltrans) 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 retrofitting of a seismically deficient Eureka Hill Road Bridge. Proposed activities will include, but are not limited to (1) construction of a temporary work pad in the channel with temporary culverts to maintain flow and fish passage through the site, (2) addition of steel columns casings to piers 2, 3, and 4, (3) installation of cast in drill piles (CIDH) at abutments 1 and 5 and piers 2, 3, and 4 and (4) construction below grade “concrete top mats” at piers 2, 3, and 4 to tie piles to existing pier footings. The proposed project will occur at Eureka Hill Road Bridge, located where the Eureka Hill Road crosses the Garcia River.

The National Marine Fisheries Service (Service) issued a federal biological opinion (BO) (Service Ref. Number WCR–2014–834) in a memorandum to Caltrans on June 25, 2014 which considered the effects of the proposed project on federally threatened Northern California (NC) steelhead (*Oncorhynchus mykiss*), state and federally endangered Central California Coast (CCC) coho salmon (*O. kisutch*), and federally threatened California Coastal (CC) Chinook salmon (*O. tshawytscha*).

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

**SUMMARY OF  
REGULATORY ACTIONS**

**REGULATIONS FILED WITH THE  
SECRETARY OF STATE**

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

California Debt Limit Allocation Committee  
File # 2022–0411–01  
Qualified Residential Rental Project (QRRP)  
Program

This certificate of compliance amends definitions and requirements pertaining to the Qualified Residential Rental Project Program by making permanent the changes in emergency actions 2020–0211–01E, 2020–0603–01E, 2020–1204–01EE, 2021–0120–01E, 2021–0216–03EE, 2021–0326–01EE, 2021–0430–01E, 2021–0625–03EE, 2021–0913–02EE, 2021–0929–04EE, and 2021–1123–03EE.

Title 04  
Adopt: 5022  
Amend: 5000, 5010, 5020, 5033, 5035, 5036, 5037, 5050, 5052, 5053, 5060, 5062, 5100, 5101, 5103, 5133, 5141, 5144, 5153, 5170, 5180, 5190, 5191, 5192, 5194, 5205, 5210, 5211, 5212, 5220, 5230, 5231, 5232, 5233, 5240, 5241, 5250, 5251, 5422, 5432  
Repeal: 5102, 5480, 5490, 5491, 5492, 5493, 5494, 5500, 5510, 5520, 5530, 5531, 5532, 5533, 5534, 5540, 5550, 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731  
Filed 05/23/2022  
Effective 05/23/2022  
Agency Contact: Emily Burgos (916) 952–7161

Department of Corrections and Rehabilitation  
File # 2022–0511–01  
Youth Parole Eligible Date

This action is an Emergency by Operational Necessity re–adopt, pursuant to Penal Code section 5058.3. The Department adopts regulations to define youth offenders and establish criteria for calculating their Youth Parole Eligible Date (YPED). It further amends regulations to allow the YPED of a youth offender inmate to be advanced based on Educational Merit Credit.

Title 15  
Adopt: 3498.1, 3498.2  
Amend: 3043, 3043.5  
Filed 05/24/2022  
Effective 06/11/2022  
Agency Contact: Sarah Pollock (916) 445–2308

Occupational Safety and Health (Cal–OSHA)  
Division  
File # 2022–0509–01  
Definition of Normal Consumption

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

Title 08  
 Adopt: 340.70  
 Filed 05/19/2022  
 Effective 05/25/2022  
 Agency Contact: Lisa Brokaw (510) 286-6958

Department of Conservation  
 File # 2022-0509-02  
 Conflict-of-Interest

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing. OAL filed this regulation with the Secretary of State and will publish the regulation in the California Code of Regulations.

Title 14  
 Amend: 1670  
 Filed 05/25/2022  
 Effective 06/24/2022  
 Agency Contact:  
 Graham St. Michel (916) 445-0591

Fair Political Practices Commission  
 File # 2022-0426-04  
 Eligibility Requirements and Considerations

This action without regulatory effect corrects the subsection hierarchy by amending a skipped letter.

Title 02  
 Amend: 18360.1  
 Filed 05/18/2022  
 Effective 05/18/2022  
 Agency Contact: Amanda Apostol (916) 324-3854

California Prison Industry Authority  
 File # 2022-0419-02  
 Definitions

This action without regulatory effect amends section 8000 of title 15 of the California Code of Regulations to correct grammar, remove excess verbiage, replace obsolete terms, remove inoperative definitions, and make other nonsubstantive revisions in the California Prison Industry Authority's definitions of terms.

Title 15  
 Amend: 8000  
 Filed 05/23/2022  
 Agency Contact: Moira Doherty (916) 413-1140

Physical Therapy Board of California  
 File # 2022-0422-03  
 Guidelines for Issuing Citations and Imposing Discipline (Amend)

As a change without regulatory effect, the Physical Therapy Board of California amends section 1399.15 of Title 16 of the California Code of Regulations to

require that it consider the April 2022, 7th Edition of the "Guidelines for Issuing Citations and Imposing Discipline" instead of the September 2020, 6th Edition in reaching decisions on disciplinary actions against licensees.

Title 16  
 Amend: 1399.15  
 Filed 05/23/2022  
 Agency Contact: Elsa Ybarra (916) 561-8262

Commission on Peace Officer Standards and Training  
 File # 2022-0413-02  
 Peace Officer and Dispatcher Selection Standards

This action by the Commission on Peace Officer Standards and Training (POST) adopts a requirement for background investigators that perform required background investigations of peace officers and public safety dispatchers to complete a POST-certified background investigation training program.

Title 11  
 Amend: 1953, 1959  
 Filed 05/24/2022  
 Effective 07/01/2022  
 Agency Contact: Melani Singley (916) 227-4258

Dental Board of California  
 File # 2021-1207-04  
 California Dentistry Law and Ethics Examination

The Dental Board of California is deleting the requirement that a candidate pass the supplemental exam in law and ethics with a score of at least 75%. Instead they are requiring an applicant to achieve a criterion-referenced passing score on the exam.

Title 16  
 Amend: 1031  
 Filed 05/20/2022  
 Effective 07/01/2022  
 Agency Contact:  
 Wilbert Rumbaoa (916) 263-2215

Department of Managed Health Care  
 File # 2022-0406-02  
 Annual, Quarterly, and Monthly Financial Reporting

In this action the Department of Managed Health Care (DMHC) is incorporating by reference four documents, consisting of three financial reporting forms and an instruction manual, as follows: the "Annual DMHC Financial Reporting Form" (Annual Report), the "Quarterly DMHC Financial Reporting Form" (Quarterly Report), the "Monthly DMHC Financial Reporting Form" (Monthly Report), and the "Annual, Quarterly, and Monthly Reporting Forms Instruction Manual" (Instruction Manual). This rulemaking action also identifies the frequency with which financial

reports must be filed as well as the requirements a plan must meet to discontinue filing monthly reports. The instruction manual advises health plans how to complete the reports and address miscellaneous matters, such as which reports must be audited.

Title 28

Adopt: 1300.84.03, 1384.1

Amend: 1300.84.06, 1300.84.2, 1300.84.3

Filed 05/18/2022

Effective 07/01/2022

Agency Contact: Fabiola Murillo (916) 324-8176

Department of Justice

File # 2022-0405-02

Revised California Tobacco Directory Forms

In this resubmitted rulemaking action, the Department of Justice amends its regulations to make changes to various requirements for both Master Settlement Agreement (MSA) Participating Tobacco Product Manufacturers (PM) and Non-Participating Tobacco Product Manufacturers (NPM). The regulations also add definitions, modify forms JUS-TOB1, JUS-TOB3, JUS-TOB4, JUS-TOB5, and JUS-TOB8, add JUS-TOB7, and delete JUS-TOB15.

Title 11

Amend: 999.10, 999.14, 999.15, 999.16, 999.17, 999.18, 999.19, 999.22, 999.23, 999.24, 999.25, 999.26, 999.29

Repeal: 999.11, 999.20

Filed 05/19/2022

Effective 07/01/2022

Agency Contact: Kevin Sabo (916) 210-7639

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

