



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

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

**CONFLICT-OF-INTEREST CODES**

**AMENDMENT**

STATE AGENCY: Employment Training Panel  
Legislative Analyst's Office

**ADOPT**

STATE AGENCY: Department of Cannabis  
Control

A written comment period has been established commencing on June 17, 2022 and closing on August 1, 2022. Written comments should be directed to the Fair Political Practices Commission, Attention Amanda Apostol, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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

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

The Executive Director of the Commission, upon his or its own motion or at the request of any interested

person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than August 1, 2022. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

**COST TO LOCAL AGENCIES**

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

**EFFECT ON HOUSING  
COSTS AND BUSINESSES**

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

**AUTHORITY**

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

**REFERENCE**

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

**CONTACT**

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

## AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

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

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)<sup>1</sup> by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **July 21, 2022**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m. on July 19, 2022**.

### BACKGROUND/OVERVIEW

The Act prohibits persons from making, and committees from receiving, cash contributions of \$100 or more. Committees are also prohibited from making expenditures of \$100 or more in cash. Section 84300 provides:

“(a) No contribution of one hundred dollars (\$100) or more shall be made or received in cash. A cash contribution shall not be deemed received if it is not negotiated or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported. If a cash contribution, other than a late contribution, as defined in Section 82036, is negotiated or deposited, it shall not be deemed received if it is refunded within 72 hours of receipt. In the case of a late contribution, as defined in Section 82036, it shall not be deemed received if it is returned to the contributor within 48 hours of receipt.

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

“(b) No expenditure of one hundred dollars (\$100) or more shall be made in cash.

“(c) No contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or the intermediary, as defined in Section 84302.

“(d) The value of all in-kind contributions of one hundred dollars (\$100) or more shall be reported in writing to the recipient upon the request in writing of the recipient.”

Additionally, Section 85201 provides that all contributions or loans made to a candidate, or the candidate’s controlled committee, shall be deposited into a single campaign bank account. This is typically, referred to as the “one-bank account” rule.

The Commission voted to prohibit the making and receipt of cryptocurrency contributions with the adoption of Regulation 18215.4 in September 2018, which states “[n]o contribution may be made or received in cryptocurrency.”

### REGULATORY ACTION

The Commission may review and consider all aspects of the cryptocurrency contribution regulation, including, but not limited to, the repeal of the existing prohibition, and the adoption of regulatory language to allow a committee to solicit contributions in cryptocurrency as in-kind contributions. The Commission may also consider all aspects of the new regulation that would allow cryptocurrency contributions. While the Commission may review and consider any aspect of Regulation 18421.2, it is anticipated that the Commission will specifically consider each of the following proposals made by Commission staff:

*Repeal 2 Cal. Code Regs. Section 18215.4* which prohibits the making and receipt of contributions in cryptocurrency.

*Adopt 2 Cal. Code Regs. Section 18421.2*

It is anticipated the Commission will consider provisions:

- Allowing a person to make, and a committee to solicit, a contribution in cryptocurrency as an in-kind contribution. A committee must ensure that any cryptocurrency contribution be made and received through a U. S. based cryptocurrency payment processor or other service amenable to a subpoena for records, which utilizes and rigorously enforces know your customer (KYC) protocols to verify the identity of the contributor for all contributors at any amount. These procedures must enable the payment processor to form

a reasonable belief that it knows the true identity of each contributor.

- Requiring committees to use a payment processor that collects the name, address, occupation, and employer of each contributor at the time the contribution is made and transmit this to the committee within 24 hours of the time the contribution is made. A committee may not accept any contributions from a contributor where the payment processor has not verified the identity of the contributor and provided the required contributor information to the committee.
- Requiring that a committee utilize a payment processor which will immediately convert any cryptocurrency contribution to U.S. dollars at the prevailing rate of exchange at the time the contribution is made. The amount of the contribution is the fair market value of the cryptocurrency at the time the payment processor obtains possession of the contribution. The funds must be deposited into the committee's campaign bank account within two business days of receipt. Any charge incurred or discount received in the payment collection process must be reported in the same manner as credit card transactions.

## SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues.

## FISCAL IMPACT STATEMENT

*Fiscal Impact on Local Government.* This regulation will have no fiscal impact on any local entity or program.

*Fiscal Impact on State Government.* This regulation will have no fiscal impact on any state entity or program.

*Fiscal Impact on Federal Funding of State Programs.* This regulation will have no fiscal impact on the federal funding of any state program or entity.

## AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

## REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 84300 and 85201.

## CONTACT

Any inquiries should be made to Zachary Norton, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)<sup>1</sup> by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **July 21, 2022**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m. on July 19, 2022**.

## BACKGROUND/OVERVIEW

Commission staff has identified a need to clarify the duties of filing officers and requirements for referrals to the Enforcement Division, as well as to clarify and increase transparency around the Commission's practices when responding to public requests for information and records concerning a pending Enforcement Division matter.

The proposed regulatory changes would provide a comprehensive list of information filing officers must include when making referrals to the Commission's Enforcement Division, as well as steps filing officers should take to avoid submitting referrals missing critical information. Additional amendments would shorten the delay period between providing notice to the

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

subject of an Enforcement matter and making information and records available to the public; clarify when the Commission will comment on the specifics of a pending Enforcement matter; and make other clarifying changes to make clear to the public and regulated community how the Commission responds to public requests for information and records. The proposed changes include amendments to Regulations 18115 and 18360.

## REGULATORY ACTION

Amend 2. Cal. Code Regs. Section 18115 – Duties of Filing Officers and Filing Officials – Statements of Economic Interests.

The Commission may consider amendments to Regulation 18115, which defines the terms filing officer and filing official and sets forth the duties of both with respect to Statements of Economic Interests (“SEI”) submitted in paper or electronic format. Despite the duties laid out in Regulation 18115, referrals of statement of economic interests non-filers from filing officers often lack information to process a referral. Other issues with referrals include filing officers sending Leaving Office SEI notifications to non-filers’ agency email addresses after the non-filer has left the position and no longer has access to the email account. Proposed amendments would require:

- Filing officers to send at least one notice to the filer’s personal email or personal mailing address and to obtain updated contact information including the filer’s personal email address, mailing address, and telephone number.
- A filing official notify the filing officer when a filer’s lack of filing has been due a leave of absence and when the filer’s expected return date would be.

*Amend 2 Cal. Code Regs. Section 18360 – Complaints Filed with the Commission*

The Commission may consider amendments to all provisions of current Regulation 18360, which addresses how the Commission handles the complaints and referrals it receives, as well as the matters it pursues proactively. The regulation’s provisions include how to file a complaint or referral, the procedural rights of a sworn complainant, handling of Commission-initiated cases, and handling of complaints rejected without notice to the respondents.

Regulation 18360, subdivision (a) details the requirements for filing a complaint or referral with the Commission’s Enforcement Division. Nevertheless, campaign referrals often lack information to process a campaign referral. Proposed amendments would provide a comprehensive list of information filing officers must include in both campaign and statement of economic interests (SEI) non-filer referrals, as well as

steps filing officers should take to avoid submitting referrals missing critical information.

Regulation 18360, subdivision (d) details how the Commission responds to public requests for information and records regarding a pending Enforcement Division matter. Generally, subdivision (d) identifies the information and records the Commission can provide to the public and the circumstances in which it may be provided. In accordance with due process principles and the California Public Records Act, the Commission may consider amendments to increase transparency and specify the Commission’s practices when responding to public requests for information and records concerning a pending Enforcement Division matter.

At a minimum, Commission staff anticipates proposing the following:

- Requiring filing officers to include, as part of information regarding attempts to obtain compliance, the email address, mailing address, and phone number at which the referred person or entity was contacted;
- Specifying what a filing officer must include in a referral to the Enforcement Division for both campaign and SEI referrals;
- Requiring a filing officer who receives a filing from a referred candidate, committee, or statement of economic interests filer to notify the Enforcement Division within 7 days of receipt of the filing;
- Shortening the period between providing notice to a complainant or the subject of a complaint and making information and records available to the public when notice is provided via email;
- Expressly providing that, aside from certain records and general information or confirming the current step or result of a step in the administrative process, the Commission will not comment on the specifics of a pending Enforcement matter;
- Requiring Enforcement Division staff to include a request for a read receipt when sending notice via email.

## SCOPE

The Commission may adopt the language noticed herein or it may choose new language to implement its decisions concerning the issues identified above or related issues.

## FISCAL IMPACT STATEMENT

*Fiscal Impact on Local Government.* This regulation will have no fiscal impact on any local entity or program.

*Fiscal Impact on State Government.* This regulation will have no fiscal impact on any state entity or program.

*Fiscal Impact on Federal Funding of State Programs.* This regulation will have no fiscal impact on the federal funding of any state program or entity.

#### AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

#### REFERENCE

Section 83115.

#### CONTACT

Any inquiries should be made to Kevin Cornwall or Toren Lewis, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

## TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

### CONSIDERATION OF CRIMINAL HISTORY IN EMPLOYMENT DECISIONS REGULATIONS

The Fair Employment and Housing Council (Council) of the Department of Fair Employment and Housing (DFEH) proposes to amend section 11017.1 of Title 2 of the California Code of Regulations after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

The Council will hold a public hearing starting at **1:00 p.m. on August 10, 2022**, at the following location:

**1515 Clay Street, Second Floor, Room 11  
Oakland, CA 94612**

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

The meeting facilities are accessible to individuals with physical disabilities. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the meeting, should contact Brenda Valle-Balderrama, DFEH ADA Coordinator, at (844) 541-2877 (voice or via relay operator 711) or TTY (800) 700-2320 or via email: [Brenda.Valle-Balderrama@dfeh.ca.gov](mailto:Brenda.Valle-Balderrama@dfeh.ca.gov) or [accommodations@dfeh.ca.gov](mailto:accommodations@dfeh.ca.gov) as soon as possible or at least 72 hours before the meeting.

#### WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Council. The written comment period closes on **August 10, 2022 at 5:00 p.m.** The Council will consider only comments received by the end of that day. Written comments can be mailed to:

Fair Employment and Housing Council  
c/o Rachael Langston, Senior Fair Employment  
and Housing Counsel  
Department of Fair Employment and Housing  
2218 Kausen Dr. #100  
Elk Grove, CA 95758  
Telephone: (916) 478-7251

Comments may also be submitted by e-mail to [FEHCouncil@dfeh.ca.gov](mailto:FEHCouncil@dfeh.ca.gov).

#### AUTHORITY AND REFERENCE

Government Code section 12935(a) authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 12900 et seq. of the Government Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies, makes specific, and supplements existing state regulations interpreting the Fair Employment and Housing Act ("FEHA") set forth in Government Code section 12900 et seq. As it relates to employment, the FEHA prohibits harassment and discrimination because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military and/or veteran status of any person. The Fair Chance Act (Gov. Code § 12952), which is part of FEHA, specifies limitations on employers who seek to consider criminal history information.



In compliance with the Administrative Procedure Act, the Council proposes to adopt these rules as duly noticed, vetted, and authorized regulations. The overall objective of the proposed regulations is to provide clarity regarding compliance with the Fair Chance Act and other provisions of FEHA which may make it unlawful to consider criminal history in employment decisions where such consideration has an adverse impact on persons based on characteristics protected under FEHA. This action has the specific benefit of ensuring that employees, applicants, and employers better understand their respective rights and obligations with regard to the consideration of criminal history in the employment context, in turn reducing litigation costs and the burden on the courts. Ultimately, the proposed action furthers the mission of the DFEH by protecting Californians from employment discrimination.

The proposed amendments specifically do the following: (1) add an introduction providing an overview of the regulation and the intersecting laws discussed therein; (2) clarify that posting recruitment materials indicating that individuals with criminal histories will not be considered for hire is prohibited by the Fair Chance Act; (3) add references to DFEH forms that provide additional guidance for employers in the process of considering conviction history following a conditional offer of employment; (4) provide additional explanations and examples regarding evidence that an applicant or employee may provide an employer during the individualized assessment process to demonstrate rehabilitation and/or mitigation; (5) add further explanation regarding the meaning of “adverse impact”; (6) clarify that an employer applying for the Work Opportunity Tax Credit (“WOTC”) must nevertheless comply with this regulation and the FEHA, and provide guidance on how an employer can apply for WOTC while maintaining such compliance; (7) modify subheadings and reorganize subsections and paragraphs to ensure clarity and continuity throughout the regulation.

The Council has determined that the proposed amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Council has concluded that these are the only regulations that concern the Fair Employment and Housing Act.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Council has made the following initial determinations:*

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

**Cost or savings to any state agency:** No additional costs or savings beyond those imposed by existing law.

**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:** No additional costs or savings beyond those imposed by existing law.

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

**Cost impacts on a representative private person or businesses:** No additional costs or savings beyond those imposed by existing law. Therefore, the agency 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 assessment/analysis:** The Council anticipates that the adoption of the regulations will not impact the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business within the state. To the contrary, adoption of the proposed amendments is anticipated to benefit the health and welfare of California residents and businesses and improve worker safety by clarifying and streamlining the operation of the law, making it easier for employees and employers to understand their rights and obligations, and reducing litigation costs for businesses. These regulations would not affect the environment.

**Statewide adverse economic impact directly affecting businesses and individuals:** The Council has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Significant effect on housing costs:** None.

**Small Business Determination:** The Council anticipates that the regulations will not create additional costs or savings beyond those imposed by existing regulations. Similarly, the Council has determined that there is no impact on small businesses as a result of this proposed action because these regulations primarily serve to clarify existing law.

**Business Report:** The Council has determined that the proposed regulations do not require a report to be made.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Council must



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

The Council has thus far not become aware of a better alternative and invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Rachael Langston, Senior Fair Employment and Housing Counsel  
Department of Fair Employment and Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758  
Telephone: (916) 478-7251  
E-mail: [rachael.langston@dfeh.ca.gov](mailto:rachael.langston@dfeh.ca.gov)

The backup contact person for these inquiries is:

Mariel Block, Senior Fair Employment and Housing Counsel  
Department of Fair Employment and Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758  
Telephone: (916) 478-7251  
E-mail: [mariel.block@dfeh.ca.gov](mailto:mariel.block@dfeh.ca.gov)

Please direct requests for copies of the proposed text (express terms) of the regulations, the Initial Statement of Reasons, any modified text of the proposed regulations, or other information upon which the rulemaking is based, should other sources be used in the future, to Rachael Langston at the above address.

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

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above Elk Grove address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Rachael Langston at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed regulations substantially as described in this notice. If the Council makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Rachael Langston at the address indicated above. The Council 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, the Final Statement of Reasons will be available on the Council's webpage: <http://www.dfeh.ca.gov/fehccouncil/>.

Copies also may be obtained by contacting Rachael Langston at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations, any modified texts, and the Final Statement of Reasons can be accessed through the Council's webpage at <http://www.dfeh.ca.gov/fehccouncil/>.

### TITLE 2. CALIFORNIA 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 in the Informative Digest after considering public comments, objections, or recommendations regarding the proposed regulatory action.

#### I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes the adoption of section 574.1, "Definition of Limited Duration Employment," of Article 4 of Subchapter 1 of Chapter 2 of Division 1 of Title 2 of the California Code of Regulations (CCR). By proposing this regulation in this Article, CalPERS seeks to clarify what is considered "limited duration" employment as stated in

Government Code (GC) sections 7522.56, 21224, and 21229 for retired persons serving after retirement, and CCR section 571(a)(3) for employees required by their employer or governing board or body to work in an upgraded position or classification. The California Public Employees' Retirement Law (PERL) and the California Public Employees' Pension Reform Act of 2013 (PEPRA) do not explicitly define "limited duration" employment for either situation. By proposing this regulation, the Board seeks to explicitly define "limited duration" employment and provide clarity and uniformity for CalPERS, its members, CalPERS-covered employers, and other stakeholders by ensuring consistent use of the term "limited duration."

## II. WRITTEN COMMENT PERIOD

Any interested person, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period has been established as commencing on **June 17, 2022** and closing at 11:59 p.m. on **August 1, 2022**. The Regulation Coordinator must receive all written comments by the close of the comment period. Comments may be submitted by e-mail to [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, CA 94229-2720  
Telephone: (916) 795-3038

## III. PUBLIC HEARING

A public hearing will not be scheduled unless an interested person, or his or her duly authorized representative, submits a written request for a public hearing to CalPERS no later than 15 days before 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 the room can be made accessible to persons with hearing or visual impairments upon advance request to the CalPERS Regulation Coordinator.

## V. AUTHORITY AND REFERENCE

Under GC section 7522.02(j), the Board has the authority to adopt regulations or resolutions to comply with the requirements of PEPRA, and under GC

section 20121, the Board has authority to make rules as it deems proper.

GC sections 7522.56, 21202, 21220, 21224, and 21229 govern post-retirement employment, among other statutes. GC sections 20636 and 20636.1 require the Board to promulgate regulations explaining what constitutes "special compensation" as used in those sections. CCR section 571 defines special compensation, including temporary upgrade pay. The proposed regulation clarifies the meaning of "limited duration" employment for purposes of GC sections 7522.56, 21224, and 21229, and CCR section 571(a)(3).

## VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Working After Retirement

The PERL and PEPRA allow retired persons to work for CalPERS-covered employers after retirement without reinstatement or loss or interruption of benefits under certain conditions. GC sections 7522.56, 21224, and 21229 allow retired persons to work after retirement either during an emergency to prevent the stoppage of public business or because the retired person has specific skills needed to perform work of limited duration. All working-after-retirement appointments under these provisions are limited to 960 hours in a fiscal year, but the authorizing statutes do not specify how long appointments of a "limited duration" can be. GC section 21224 applies to appointments with the State of California and public agencies and GC section 21229 applies to appointments with school employers and the California State University. GC section 7522.56 applies to specified appointments with public employers in public retirement systems in California effective January 1, 2013.

By proposing this regulation, the Board seeks to explicitly define "limited duration" employment as stated in GC sections 7522.56, 21224, and 21229 for retired persons serving after retirement and set forth processes to extend an appointment of a retired person serving after retirement if the CalPERS-covered employer determines the appointment requires an extension beyond the period of time defined as a "limited duration" in the proposed regulation. This proposed regulation only defines "limited duration" employment as it pertains to working-after-retirement appointments with CalPERS-covered employers. This proposed regulation does not define "limited duration" employment for purposes of administering working-after-retirement statutes for any public retirement system in California other than CalPERS.

Currently there is variation in the duration of working-after-retirement appointments. This proposed regulation is intended to benefit CalPERS, its members, CalPERS-covered employers, and other

stakeholders by providing a clear definition of and ensure consistent use of the phrase “limited duration” for working–after–retirement appointments.

### Special Compensation

In 1994, CalPERS promulgated CCR section 571 to delineate an all–inclusive list of special compensation to be reported to CalPERS to comply with Senate Bill 53 (Stats. 1993, Ch. 1297, operative 7/1/1994). CCR section 571(a)(3) identifies temporary upgrade pay as reportable special compensation paid to employees “who are required by their employer or governing board or body to work in an upgraded position/classification of limited duration.” CCR section 571(a)(3) does not define “limited duration” employment. This proposed regulation is intended to benefit CalPERS, its members, CalPERS–covered employers, and other stakeholders by providing a clear definition of and ensure consistent use of the phrase “limited duration” for temporary upgrade pay reportable to CalPERS as special compensation.

### Consistency Evaluation

CalPERS conducted a review for any related state regulation and found that there are no other state regulations concerning the definition of “limited duration” employment for purposes of CalPERS’ administration of GC sections 7522.56, 21224, and 21229, and CCR section 571(a)(3). Therefore, CalPERS has determined that the proposed regulation is not inconsistent or incompatible with existing regulations.

## VII. PRENOTICE CONSULTATION WITH THE PUBLIC

No prenotice consultation with the public was done, as all public comments and hearing requests can be submitted during the written comment period.

## VIII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to CalPERS, CalPERS–covered employers, and CalPERS members.

## IX. 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 mandates on local agencies and school districts.
- B. **COSTS OR SAVINGS TO ANY STATE AGENCY:** Costs estimated to be incurred by CalPERS, a state agency, will be absorbed in its existing budget and resources.

- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will not result in any costs on any local agency or school district.
- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose any non-discretionary costs or savings on local agencies.
- E. **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 of California.
- F. **ADVERSE ECONOMIC IMPACT:** The proposed regulatory action will not have a significant statewide adverse economic impact affecting businesses including the ability of businesses in California to compete with businesses in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action because the proposed regulatory action only applies to CalPERS, CalPERS–covered employers, and CalPERS members and does not impose costs on CalPERS members who are in compliance with the proposed regulatory action.
- H. **RESULTS OF THE ECONOMIC IMPACT ANALYSIS:** The proposed regulatory action is not intended to create or eliminate jobs within California; and will not (1) create new businesses or eliminate existing businesses within California; (2) affect the expansion of businesses currently doing business within California; and (3) affect the health and welfare of California residents, worker safety or the State’s environment. The proposed regulatory action serves only to define certain terms used in the PERL and PEPR.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action will have no effect on housing costs.
- J. **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.

## X. CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5(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 regulation at a public hearing or during the written comment period.

#### XI. CONTACT PERSON

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  
[Regulation\\_Coordinator@calpers.ca.gov](mailto:Regulation_Coordinator@calpers.ca.gov)

The backup contact person for the proposed action is:

Andrea Peters, Regulation Coordinator  
California Public Employees' Retirement System  
P.O. Box 942720  
Sacramento, CA 94229-2720  
Telephone: (916) 795-3038  
[Regulation\\_Coordinator@calpers.ca.gov](mailto:Regulation_Coordinator@calpers.ca.gov)

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 the Regulation Coordinator at the contact information listed above.

#### XII. AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE

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 XI.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at <https://www.calpers.ca.gov/page/about/laws-regulations/regulatory-actions>.

#### XIII. 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 listed in Section XI. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

#### XIV. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

### TITLE 4. DEPARTMENT OF CANNABIS CONTROL

**Subject Matter of Proposed Regulations:** Standard cannabinoids test method and standardized operating procedures for all licensed commercial cannabis testing laboratories.

**Sections Affected:** Title 4, California Code of Regulations (CCR), sections 15712.1 and 15712.2.

**Notice is hereby given** that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and



will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

### PUBLIC HEARING

The Department will hold a virtual public hearing at the following date and time listed below:

**Tuesday, August 1, 2022  
9:00 a.m. to 12:00 p.m.**

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Charisse Diaz at [Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov) or (916) 465-9025 by 4:30 p.m. July 29, 2022 to request a link to the meeting. A link to the meeting will also be posted on the Department's website no later than 9:00 a.m. the day of the hearing.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID-19 safety protocols. Please contact Charisse Diaz at [Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov) or (916) 465-9025 by 4:30 p.m. on July 29, 2022, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearings will proceed on the dates noted above until all testimony is submitted or **12:00 p.m.**, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email.

### WRITTEN COMMENT PERIOD

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or e-mail, can be submitted to the addresses listed below. **Comments submitted must be received by the Department at its office by 5:00 p.m. on August 2, 2022.**

Submit comments to:

Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
E-mail: [publiccomment@cannabis.ca.gov](mailto:publiccomment@cannabis.ca.gov)

### AUTHORITY AND REFERENCE

Business and Professions Code section 26013 authorizes the Department to adopt these proposed regulations. Pursuant to Business and Professions Code section 26100, the Department shall establish a standard cannabinoids test method, including standard operating procedures, that shall be utilized by all testing laboratories, on or before January 1, 2023. The proposed regulations implement, interpret, and make specific the requirements for the standard cannabinoids test method to be used by all licensed laboratories pursuant to Business and Professions Code section 26100.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of these regulations is to implement, interpret, and make specific requirements for a standard cannabinoids test method, including standard operating procedures, that shall be utilized by all licensed testing laboratories.

#### *Existing Law*

Pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the Department regulates commercial cannabis license holders in California including testing laboratories. MAUCRSA prohibits cannabis and cannabis products from being sold unless a representative sample of specified batches has been tested by a licensed testing laboratory. MAUCRSA requires the testing laboratory to issue a certificate of analysis to report specified information, including the content of specified compounds and contaminants. Requirements for testing laboratories are contained in Chapter 6, Division 19, of Title 4 of the CCR. Business and Professions Code section 26100, subsection (f)(2) requires the Department to establish a standard cannabinoids test method, including standard operating procedures, on or before January 1, 2023. All licensed laboratories will be required to use the method established by the Department.

#### *Policy Statement*

The purpose of these regulations is to implement and make specific Business and Professions Code section 26100(f)(2) pertaining to the establishment of a standard cannabinoids test method, including standardized operating procedures, that shall be utilized by all testing laboratories.

The rulemaking action would specify the standardized cannabinoids test method to be used by all licensed laboratories. The proposed regulations would specify that testing laboratories must use the standard operating procedure for the determination of cannabinoids concentration by high performance liquid chromatography (HPLC). The proposed regulations would specify the equipment to be used and the procedures to follow for the determination of cannabinoid concentration. The proposed regulations would clarify the requirements for method validation and method verification by the licensed laboratories. The proposed regulations would specify the method verification procedures and documentation requirements and the submission of documentation to the department. The proposed regulations would also inform licensed laboratories of the timeline for laboratories to commence utilizing the cannabinoid test method.

#### *Regulation Objectives and Anticipated Benefit of the Proposed Regulations*

The objective of proposed regulations is to implement and make specific Business and Professions Code section 26100(f)(2) pertaining to the establishment of a standard cannabinoids test method on or before January 1, 2023. Through the proposed regulations, the Department aims to ensure all licensed laboratories are using the same standardized cannabinoid test method which will ensure consumers receive accurate and consistent information regarding the cannabinoid content of the cannabis and cannabis product they use or consume.

An inherent challenge in regulating an industry that has not been federally regulated is the lack of standardized, generally accepted and validated methods for the testing of cannabis and cannabis products. If a standard test method is not available for an analysis, new methods must be developed and validated. Accordingly, section 15712 of the Department's existing regulations require licensed laboratories to develop, validate and implement test methods for the required analyses and, to the extent practicable, requires the test methods developed to comport with established guidelines such as those from the U.S. Food and Drug Administration, the Association of Analytical Communities (AOAC) International, and United States Pharmacopeia. Due to the lack of generally accepted standardized methods, each licensed laboratory has developed and implemented its own test method for cannabinoid content analysis. The use of different methods by individual licensed laboratories can produce inconsistent analytical results between the laboratories, thus resulting in inconsistent reporting of cannabinoid content of cannabis and cannabis products among licensed laboratories.

The proposed regulations implement the requirement that the Department develop a standardized test

method for cannabinoids for use by all licensed laboratories. The proposed regulations establish and make specific the standardized cannabinoids test method that all licensed laboratories must use. The proposed regulations inform the licensed laboratories of the standard operating procedures that they must follow and the instructions for the determination of cannabinoid concentrations using high performance liquid chromatography systems (HPLC). The proposed regulations also inform licensed laboratories of the timeline to commence utilizing the cannabinoid test method.

The proposed regulations are expected to benefit the health and welfare of California residents. The specific benefits anticipated are increased protection of the public from the harms associated with inconsistent laboratory testing methods for cannabinoids that can result in inconsistent reporting of the cannabinoid content of cannabis and cannabis products by licensed laboratories. The proposed regulations aim to provide uniformity and transparency for cannabinoid testing by establishing standard operating procedures and instructions for licensed laboratories to determine cannabinoids concentration. More specifically, the standard operating procedures provide instruction on sample preparation, sample extraction, proper dilution, necessary apparatus and materials, reagents, calibration standards, instrumental parameters, instrument analysis, method limit of quantification and reporting limit, quality control, acceptance criteria, and method verification. These factors can affect testing results, thus standardization of all these factors within a standard operating procedure will result in more accurate and consistent reporting of cannabinoid content by licensed laboratories.

The proposed regulations will also increase the Department's ability to effectively regulate licensed laboratories. A well organized, clearly written set of procedures will allow the Department to better educate licensees regarding the testing method as well as provide consistency in enforcement. Effective education and enforcement regarding the requirements found in the regulations are essential to the Department's goal of ensuring that California's licensed laboratories operate in a manner that benefits the state of California while reducing or eliminating the risks of harm to the people of the state. The increased clarity and efficiency obtained by the proposed regulation will further increase the Department's ability to carry out this mission.

#### *Section 15712.1. Test Method for Cannabinoids.*

This proposed section would specify the cannabinoids test method that must be used by licensed laboratories. The section would specify that testing laboratories must use the standard operating procedure developed by the Department and incorporated by

reference for the determination of cannabinoids concentration by HPLC. The section would specify the equipment to be used and the procedures to follow for the determination of cannabinoid concentration. The proposed section would clarify that a licensed laboratory does not need to perform method validation but must perform method verification. The proposed section would clarify the requirement for submission of the standard operating procedures to the Department. The proposed section would also inform testing laboratories that they must commence using the specified test method no later than July 1, 2023.

*Section 15712.2. Verification of Test Methods for Cannabinoids.*

This proposed section would specify the procedures and documentation requirements for method verification by the licensed laboratories. The proposed section would require the licensed laboratories to perform method verification prior to use of the method for regulatory compliance testing and submit the verification documentation to the department.

***Incorporated by Reference***

Determination of Cannabinoids Concentration by HPLC, Standard Operating Procedures (New 05/15/2022)

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

As required by Gov. Code section 11346.5(a)(3) (D), the Department has conducted an evaluation of these proposed regulations and has determined that they are not inconsistent or incompatible with existing regulations.

***Evaluation of Inconsistency with Federal Regulation Statute***

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis and cannabis products for persons aged 21 or older and for medicinal patients.

***Plain English Requirement***

Department staff prepared these proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subsection (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500, et seq: None.

Any other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: None.

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

Effect upon housing: There is no effect on housing.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The proposed regulations would affect approximately 48 licensed laboratories. The businesses impacted by the regulation all meet the criteria for being classified as small businesses. The cost associated with the proposed regulations for a small business is anticipated to be minimal for most licensed laboratories as most laboratories currently use similar testing methods and are in possession of all relevant apparatus and materials necessary to comply with the proposed regulations. However, if a licensed laboratory needed to purchase the required equipment and supplies the upper range of initial costs would be \$108,300. The annual ongoing costs would amount to approximately \$11,300.

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.

ECONOMIC IMPACT AND  
FISCAL IMPACTS

***Business Impact***

The Department of Cannabis Control has 48 licensed laboratories as of May 13, 2022.

The businesses impacted by the regulation are all licensed testing laboratories.

***Estimated Costs to Businesses***

The proposed regulations require licensees to commence utilizing the Department established cannabinoid test method no later than six months following the Department's adoption of the test method through these proposed regulations. Many of the licensed laboratories currently use an HPLC system consisting of a column module, solvent delivery



module, photodiode–array detection module and sampling module that is capable of separating the cannabinoids of interest to achieve a minimum resolution of 1.3 because the system is a basic instrument that is used to separate cannabinoids effectively and efficiently. The cost of an HPLC system that meets the proposed regulatory requirements is approximately \$60,000. Additionally, the grinding and homogenization procedures in the proposed regulations would require licensed laboratories to have a grinder capable of grinding samples to less than 1 mm. If the licensees do not have an existing grinder that is sufficient, the cost of a grinder would range from approximately \$20,000 to \$35,000. Further, the proposed regulations would also require the licensed testing laboratories to freeze grind edible samples and the associated cost for the liquid cryogenics is approximately \$10,000 per year. Licensed laboratories also purchase solvents and standards in the ordinary course of business, but in varying quantities depending on the volume of samples being processed. On average, a licensed laboratory may spend \$800 for standards and \$500 for solvents in a year and \$2,000 for a column. However, the costs of standards, solvents, and columns would be incurred even if the proposed regulations were not in effect as they are necessary supplies to operate a licensed laboratory.

It is anticipated that the cost for most licensed laboratories to comply with the proposed regulations are minimal as most laboratories currently use similar testing methods and are in possession of all relevant apparatus and materials necessary to comply with the proposed regulations. The lowest range of initial costs for a licensed testing laboratory to comply with the proposed regulations would be approximately \$1,300.00 reflective of purchasing \$800 for standards and \$500 for solvents, assuming the licensed laboratory already possessed a LC column, adequate grinder, and HPLC system.

However, if a licensed laboratory needed to purchase the required equipment and supplies the approximate costs are as follows: a new HPLC system for \$60,000, a grinder for \$35,000, liquid cryogenics for \$10,000, standards at \$800, solvents for \$500, and a LC column for \$2,000.00, the upper range of initial costs would be \$108,300. The annual ongoing costs would amount to approximately \$11,300 including \$800 for standards, \$500 for solvents, and \$10,000 for liquid cryogenics though costs may vary depending on the volume of samples a particular licensed laboratory processes each year.

To calculate the approximate total statewide costs a business may incur to comply with this regulation over its lifetime, the upper range of costs is approximately \$108,300 added to the annual ongoing costs of \$11,300

yields a sum of \$119,600.00. \$119,600 multiplied by ten years results in a grand total of \$1,196,000.00.

The proposed regulations will not have a significant adverse economic impact on businesses because the cost of compliance described above is anticipated to be absorbable by existing licensees.

#### ***Results of the Economic Impact Assessment***

Based on the analysis below, the Department concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

The proposed regulations will not have a significant adverse economic impact on businesses.

The Department does not anticipate the creation or elimination of jobs as a result of the proposed regulations. The proposed regulations are standardizing an HPLC cannabinoid test method which is already used by a majority of licensed laboratories, thus it is anticipated that existing laboratory personnel can perform the procedure proposed by the regulation and there will be no creation or elimination of jobs. The proposed regulations would not affect worker safety.

The proposed regulations would affect approximately 48 licensed laboratories. The businesses impacted by the regulation all meet the criteria for being classified as small businesses. The cost associated with the proposed regulations for a small business is anticipated to be minimal for most licensed laboratories as most laboratories currently use similar testing methods and are in possession of all relevant apparatus and materials necessary to comply with the proposed regulations. However, if a licensed laboratory needed to purchase the required equipment and supplies the upper range of initial costs would be \$108,300. The annual ongoing costs would amount to approximately \$11,300.

The Department does not anticipate the creation or the elimination or expansion of existing businesses, as a result of the proposed regulations. The proposed regulations would not affect the ability of businesses in the State to compete.

The proposal does not benefit or negatively impact the State's environment because the proposed regulatory action does not involve any topic that induces harm or benefit to the environment in the State.

#### ***Benefits of the Proposed Regulation***

The total statewide economic benefit of this regulation is difficult to quantify in dollars because many of the benefits are fiscally intangible. The primary benefit of the proposed regulations is to protect the health and welfare of California residents by ensuring that

licensed laboratories are properly testing cannabis and cannabis products and reporting accurate results. This will allow consumers to receive accurate information regarding the level of cannabinoids in cannabis and cannabis products, while ensuring that the labeling of cannabis and cannabis products is accurate. Additionally, the proposed regulations reduce the ability to select licensed laboratories to achieve more favorable testing results.

The proposal does not benefit or negatively impact worker safety or the State's environment because the proposed regulatory action does not involve any topic that induces harm or benefit to worker safety or the environment in the State.

### ***Fiscal Effect on State Government***

The proposed regulations govern licensed laboratories while implementing the statutory requirement for the Department, on or before January 1, 2023, to establish a standard cannabinoids test method, including standardized operating procedures that shall be utilized by all testing laboratories. There is no impact on the Department's workload created by the proposed regulations. Thus, there is no fiscal impact on state government resulting from the proposed regulations.

## CONSIDERATION OF ALTERNATIVES

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

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

The first alternative considered by the department was to not adopt the proposed regulations. This alternative was rejected because SB 544, as codified in Business and Professions Code section 26100(f)(2), requires the Department to establish a standard cannabinoids test method, including standardized operating procedures, that shall be utilized by all testing laboratories. If the Department does not adopt the proposed regulations, there will be no standardized test method for licensees to follow to test cannabinoids and the Department will not have complied with its statutory mandate.

The second alternative considered was developing a method that uses liquid chromatography/mass

spectrometry (LCMS or LCMSMS). These methods use the separating power of liquid chromatography but use a different detector called mass spectrometry that is highly sensitive. The LC method specified in the reference method can be used with the LCMS or LCMSMS method. The advantage to this method is that it can uniquely identify compounds by mass or a mass fragment spectrum. The disadvantage is the cost as these instruments are approximately \$200,000 to \$800,000. The Department did not adopt this method because only a small number of licensed laboratories currently utilize this method and it would be very costly for licensees.

The third alternative considered was developing a method that uses gas chromatography/mass spectrometry (GCMS). This method is rarely used for cannabinoids as the heating routine used by GCMS causes chemical changes of the cannabinoids. These chemical changes will give inaccurate results for cannabinoid analysis. There are variations to this method that allow derivatization of the sample to protect it from degradation in analysis. However, licensed laboratories that have undergone method validations do not use this method, and the additional cost of a GCMS instrument, slower analysis time, and added steps of derivatization make it unfeasible for routine testing. Additionally, the Gas Chromatography Mass Spectrometry instruments cost approximately \$170,000. The Department did not adopt this method as it is rarely used for cannabinoids testing and costly.

## CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Charisse Diaz  
Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-465-9025  
[Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov)

The backup contact person for these inquiries is:

Kaila Fayne  
Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-251-4544  
[Kaila.Fayne@cannabis.ca.gov](mailto:Kaila.Fayne@cannabis.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 the contact persons listed above.

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

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting the contact person at the address, email or phone number listed above.

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 the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 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 contact person at the above address, email, or phone number indicated above.

AVAILABILITY OF DOCUMENTS  
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Department's website at <https://cannabis.ca.gov/cannabis-laws/rulemaking/>.

**TITLE 4. DEPARTMENT OF  
CANNABIS CONTROL**

**California Code of Regulations Title 4,  
Division 19**

**Subject Matter of Proposed Regulations:** Conversion to Large and Medium Cultivation Licenses; Type 5, 5A and 5B Large Cultivation License Fees and Requirements.

**Section Affected:** California Code of Regulations (CCR), title 4, sections 15014.2, 15027.1, 16201.1, and 16300.1.

**Notice is hereby given** that the Department of Cannabis Control (Department) proposes to adopt the proposed regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

**PUBLIC HEARING**

The Department will hold a virtual public hearing at the following date and time listed below:

**Tuesday, August 1, 2022  
1:00 p.m. to 4:00 p.m.**

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Charisse Diaz at [Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov) or (916) 465-9025 by 4:30 p.m. on **July 29, 2022**, to request a link to the meeting. Links to the meetings will also be posted on the Department's website no later than 9:00 a.m. the day of the hearings.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID-19 safety protocols. Please contact Charisse Diaz at [Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov) or

(916) 465–9025 by 4:30 p.m. on **July 29, 2022**, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 4:00 PM, whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that a person who makes oral comments at the hearing also submits a written copy of their testimony via email.

#### ***Written Comment Period***

Any interested person, or the interested person’s authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments may be submitted by mail or e-mail to the addresses listed below. **Comments submitted must be received by the Department at its office by 5:00 p.m. on August 2, 2022.**

Submit comments to:

Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
E-mail: [publiccomment@cannabis.ca.gov](mailto:publiccomment@cannabis.ca.gov)

#### **AUTHORITY AND REFERENCE**

Business and Professions Code section 26013 authorizes the Department to adopt these proposed regulations. Pursuant to Business and Professions Code section 26061, subsection (c), the Department may begin issuing Type 5, 5A and 5B Large Cultivation Licenses (collectively referred to herein as Large Cultivation License) on January 1, 2023. The proposed regulations implement, interpret, and make specific the requirements for obtaining a Large Cultivation License under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, section 26000 et. seq.)

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

The purpose of these regulations is to implement, interpret, and make specific requirements for obtaining a Large Cultivation License under MAUCRSA. These regulations also provide a pathway for existing licensees to convert to a Large Cultivation License once the license type becomes available on January 1, 2023. Additionally, the regulations provide a pathway for existing licensees to convert to Medium Cultivation

Licenses once the limitation on the number of such licenses that may be held by the same owner expires.

#### ***Existing Law***

Pursuant to MAUCRSA, the Department regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events. Application requirements, fees, and other general requirements for all license types are contained in Chapter 1, Division 19, of Title 4 of the CCR. Requirements for the cultivators are contained in Chapter 7, Division 19 of Title 4 of the CCR. Business and Professions Code section 26061, subsection (c) allows the Department to begin issuing Large Cultivation Licenses on January 1, 2023. Additionally, CCR, title 4, section 16209 prohibits a person or owner from holding more than one Medium Cultivation License until January 1, 2023.

#### ***Policy Statement***

This rulemaking action would specify the rules governing Large Cultivation Licenses which the Department may begin issuing on January 1, 2023. The proposed regulations would provide applicants and licensees with the requirements for applying for a Large Cultivation License or converting smaller sized cultivation licenses into a Large Cultivation License. Similarly, the proposed regulations would provide applicants and licensees with the requirements for converting smaller sized cultivation licenses into the Medium Cultivation Licenses. The prohibition of holding more than one Medium Cultivation License is set to expire on January 1, 2023. The proposed regulations would provide applicants and licensees with the application fees and annual licensing fees that must be paid in order to obtain and operate under a Large Cultivation License. The same proposed regulations would allow the Department to collect application and annual licensing fees that are required in order to effectively issue and regulate Large Cultivation Licenses. Additionally, the proposed regulations would provide licensees with the requirements that must be followed when engaging in cultivation under a Large Cultivation License.

#### ***Regulation Objectives and Anticipated Benefits of the Proposed Regulations***

The broad objective of the proposed regulations is to integrate the newly available Large Cultivation license into the Department’s existing commercial cannabis licensing system. The proposed regulations will allow the Department to issue Large Cultivation Licenses in accordance with Business and Professions Code section 26061, subsection (c). The proposed regulations provide specific guidance to applicants and licensees who are seeking to obtain a Large Cultivation License. The proposed regulations provide the specific

requirements for submitting an application for a Large Cultivation License, the requirements for converting smaller cultivation licenses into a Large Cultivation License or a Medium Cultivation License, the fees applicable to a Large Cultivation License, and the regulatory requirements that apply to any cultivation activity occurring under a Large Cultivation License.

Adoption of the proposed regulations will provide clear guidance to applicants and licensees seeking a Large Cultivation license. The proposed regulations will provide applicants and licensees with specific guidance regarding applying for Large Cultivation Licenses, payment of application and annual license fees for Large Cultivation Licenses, and the cultivation requirements for operating under a Large Cultivation License. Additionally, the proposed regulations will allow the Department to issue Large Cultivation Licenses, collect fees relating to Large Cultivation Licenses, and regulate Large Cultivation Licenses in a manner that is consistent with all other commercial cannabis license types regulated by the Department. The regulations will also allow cultivators to convert smaller cultivation licenses into a Large or Medium Cultivation License with a cultivation area that is the equivalent of the combined smaller licenses, which will result in efficiencies and added flexibility for cultivation licensees, as well as increased efficiencies for the Department.

The proposed regulations will allow the Department to issue Large Cultivation Licenses beginning January 1, 2023, as allowed under Business and Professions Code section 26061, subsection (c). The proposed regulations will clarify the requirements and the process for obtaining a new Large Cultivation License. Under the proposed regulations, licensees and applicants may obtain a new Large Cultivation either through application for a new license or through conversion of existing cultivation licenses. The proposed regulations clarify the requirements and the process for obtaining a Large Cultivation License using either method. This will reduce the risk of confusion for licensees and applicants who are seeking a Large Cultivation License beginning the January 1, 2023, date when Large Cultivation Licenses become available.

Under the proposed regulations, the Department would allow cultivators with multiple contiguous cultivation licenses to request to convert the existing licenses to a Large Cultivation License, provided the licenses have the same ownership. Cultivators may only convert existing licenses into an annual Large Cultivation License. Cultivators may also obtain a new Large Cultivation License by preparing and submitting an application and one-time application fee. Large Cultivation Licenses would be subject to all existing Department cultivation regulations, as well as those applicable to all licensees. The proposed

regulations additionally allow cultivators to convert multiple stacked licenses to a Medium Cultivation License. In contrast to Large Cultivation Licenses, the proposed regulations would allow conversion of provisional stacked licenses to a provisional or annual Medium Cultivation License.

The proposed regulations provide clear guidance regarding the requirements that a cultivator must comply with to engage in the commercial cultivation of cannabis under a Large Cultivation License. This will reduce the risk of confusion regarding what requirements are applicable to the newly available license.

The introduction of the Large Cultivation license is likely to result in increased efficiency as well as providing licensed cultivators additional flexibility in operating their businesses. Prior to the introduction of the Large Cultivation Licenses, licensed cultivators who were engaging in cultivation activities on land that exceeded the maximum size of a small or medium license were required to obtain multiple cultivation licenses. With the Large Cultivation License becoming available, cultivation licensees who in the past had to apply for and maintain multiple cultivation licenses may now conduct their cultivation activities under one license. This will result in an overall net direct cost savings to cultivation businesses that is estimated to be \$8.041 million per year. The addition of the Large Cultivation License is expected to result in an increase of jobs within the state. Additionally, consolidating multiple smaller cultivation licenses into one Large or Medium Cultivation License is likely to result in increased efficiency for the Department as the administrative and regulatory costs of issuing and maintaining one license for a single cultivation site on a single parcel of land is likely to be substantially less than the costs for issuing and maintaining multiple cultivation licenses on that same parcel of land.

After an initial increase in Department staff time needed in the first year to accommodate the initial shift to Large Cultivation Licenses, the annual staff time required to manage cultivation licenses will decrease in subsequent years as there will be fewer cultivation licenses overall.

The proposed regulations would also provide benefits to the State's environment that are not monetized. This may include encouraging more cannabis businesses to remain in the licensed market. To the extent that unlicensed cannabis operations can cause negative environmental impacts, the proposed regulations would provide indirect benefits to the State's environment. In addition, consumers could benefit to the extent that some of the producers' cost savings are passed on to them.

#### *Section 15014.2. Fees—Large Cultivation License.*

This section would specify the fees for the Large Cultivation License. The section would provide fees,



set in accordance with existing fees, for applications and would establish a base license fee with incremental increases based on additional square footage of canopy.

*Section 15027.1. Conversion to Large and Medium Cultivation Licenses.*

In recognition of existing license holders and current restrictions on Large and Medium Cultivation Licenses, this section would provide a pathway for conversion. The section would specify the requirements for conversion, information to be submitted for a conversion, when a converted license becomes active, when the associated fee must be paid, and resolve issues with multiple expiration dates by prorating previously paid license fees.

*Section 16201.1. Large Cultivation Licenses.*

This section would provide the general rules and requirements governing Large Cultivation Licenses.

*Section 16300.1. Cultivation Requirements for Large Licenses.*

This section would specify that the requirements for cultivating cannabis under a Large License are the same as those for other cultivation license types. This section would also restate statutory prohibitions on specific license types that may not be held by Large Cultivators.

***Incorporated by Reference***

There are no documents incorporated by reference.

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

As required by Gov. Code section 11346.5(a)(3) (D), the Department has conducted an evaluation of these proposed regulations and has determined that they are not inconsistent or incompatible with existing regulations.

***Evaluation of Inconsistency with Federal Regulation Statute***

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

***Plain English Requirement***

Department staff prepared these proposed regulations pursuant to the standard of clarity provided in Gov. Code section 11349 and the plain English requirements of Gov. Code sections 11342.580 and 11346.2, subsection (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500, et seq: None.

Any other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: Reduction of \$4.5 million in license fees.

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

Effect on Housing Costs: The proposed regulations will have no fiscal or other effect upon housing in the state.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The proposed regulations would affect approximately 319 businesses. Of these businesses 300 are estimated to meet the criteria for being classified as a small business. The annual cost savings associated with the proposed regulations for a small business equal \$2,600.

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.

ECONOMIC IMPACT AND  
FISCAL IMPACTS

***Business Impact***

Licensed cultivators will now have the ability to choose to obtain a single large license instead of multiple smaller licenses to engage in cultivation on a larger parcel of land. This will result in the need for fewer individual cultivation licenses overall. Additionally, licensees will have the opportunity to convert existing licenses into a large or medium cultivation license. This provides licensed cultivators with added flexibility in operating their cultivation operations.

***Estimated Costs to Businesses***

Costs to licensed cultivators include one-time conversion costs such as reviewing the new regulations and preparing a request for conversion which is estimated to be \$7,585 per Large Cultivation License. The estimated one-time cost for converting a Medium Cultivation License is approximately \$1,385. The estimated annual costs to licensed cultivators to maintain

a Large Cultivation License is approximately \$3,000 for internal staff and legal/consulting resources used to maintain the license. The estimated annual cost of maintaining a Medium Cultivation License is roughly \$1,500. The total annual gross direct costs to licensed cultivators is estimated to be \$1.295 million annually.

### ***Estimated Benefits of Regulation***

The reduction in the overall number of licenses due to the availability of Large Cultivation Licenses leads to a reduction in the amount of licensing fees paid by licensed cultivators and a reduction in the regulatory costs for the Department. It is estimated that under the proposed regulations 4,239 existing cultivation licenses will be consolidated into 319 Type 5 Large Cultivation License. Additionally, it is estimated that 103 existing medium cultivation licenses would be consolidated into 29 Medium Cultivation Licenses.

It is estimated that the reduction in total annual license fees paid by cultivators will equal a total of \$4.549 million a year. The estimated annual operating cost savings per stacked license due to reduced owner time and reduced hours for consulting and/or legal services is roughly \$1,102 per license. Multiplied over the total reduction in licenses, the estimated total gross cost savings for operational costs of cultivation businesses is approximately \$4.787 million per year. Therefore, the total cost benefit to cultivation businesses is estimated at \$9.336 million annually.

When compared to the estimated cost to businesses, the direct net benefit to cultivation businesses from the proposed regulations is estimated to be \$8.041 million a year.

### ***Economic Impact Assessment***

The proposed regulations will not have a significant adverse economic impact on businesses.

In relation to jobs, the Department anticipates a total net increase of 18.3 Full-Time Equivalent (FTE) jobs. The proposed regulations are expected to eliminate 21.9 FTE jobs and create 40.3 FTE jobs. All jobs are expected to be in cannabis cultivation or related industries.

The proposed regulations would affect approximately 319 businesses. Of these businesses 300 are estimated to meet the criteria for being classified as a small business. The representative costs for a typical business to convert all licenses to a Large Cultivation License would be \$7,625 in one-time costs, followed by \$3,000 annually. The annual benefits would be \$5,900 in reduced business expenses, as well as between \$0 and \$6,480 in annual license fee savings, depending on the cultivation method. The annual cost savings associated with the proposed regulations for a small business equal \$2,600.

The proposed regulations would neither create nor eliminate businesses. The proposed regulations are likely to encourage expansion of businesses in the

State as there is an opportunity and incentive for cultivators to expand to realize economies of scale. The proposed regulations would not affect the ability of businesses in the State to compete.

The proposed regulations are estimated to result in a total net increase of 18.3 FTE jobs, \$9.014 million in labor income, \$2.339 million in value added, and \$4.424 million in total output.

### ***Benefits of the Proposed Regulation***

The proposed regulations would not affect the health and welfare of California.

The proposed regulations would not affect worker safety.

The proposed regulations would also provide benefits to the State's environment that are not monetized. This may include encouraging more cannabis businesses to remain in the licensed market. To the extent that unlicensed cannabis operations can cause negative environmental impacts, the proposed regulations would provide indirect benefits to the State's environment.

### ***Fiscal Effect on State Government***

There is likely going to be an increase in the Department staff time needed in the first year to accommodate the shift to Large Cultivation Licenses. However, the annual staff time required to manage licenses will decrease in subsequent years as there will be fewer individual cultivation licenses. There is also expected to be an increase in cultivation license fee collected in the first year, followed by a decrease in cultivation license fees collected in subsequent years as there will be fewer licenses overall. It is estimated that Department license fee revenue will decrease by \$4.5 million annually.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to 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 provision of law.

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

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The first alternatives considered for the proposed regulations concerns the method for determining the



annual license fee for the Large Cultivation Licenses being introduced through the proposed regulations. The proposed regulations include a method for determining the appropriate annual license fee for a large cultivation license based on the total canopy size of the cultivation. This method is consistent with the methods currently used for determining the licensing fees for all other existing cultivation license types. The Department considered an alternative method of determining the licensing fees based on a measure of output rather than canopy size. The annual license fees for a number of commercial cannabis license types regulated by the Department are determined by the licensed business' annual gross revenue. Another potential measure of output could be a measure of the physical amount of cannabis harvested as the basis for determining the annual license fee. The Department considered applying a similar method using a measure of output such as gross revenue or total pounds of cannabis harvested to determine the license fees for Large Cultivation Licenses. Currently, all cultivation license types regulated by the Department have annual license fees that are determined based on the canopy size. At this time, it is not clear which of the methods would be less expensive to implement or more effective. The Department has determined that either method may be reasonably used to determine an effective annual license fee for Large Cultivation Licenses. To keep the annual license fee calculation or Large Licenses consistent with the calculation for annual license fees for all other types of cultivation licenses, the Department has decided to determine the annual license fee for Large Cultivation Licenses based on canopy size as proposed in the regulations, rather than determining the annual license fee based on a measure of output. By keeping the method for determining license fees consistent among all cultivation license types, the Department hopes to reduce any confusion that may occur among licensees and applicants who are seeking a cultivation license.

The second alternative considered by the Department was to not develop new regulations. The Department would not create new regulations to provide guidance for applicants and licensees who seek to obtain a Large Cultivation License. The Department would rely only on existing regulations. The current regulations were not developed with the Large Cultivation Licenses in mind and do not currently contain any provisions that are specific to Large Cultivation Licenses. This alternative would be less costly than the method proposed within the regulations as it would not require to Department to take any action. However, this alternative is much less effective than the proposed regulations. Failing to provide licensees and applicants with clear information regarding Large Cultivation Licenses prior to the January 1, 2023, date when the

licenses become available will likely cause confusion for licensees and applicants. Additionally, failing to provide applicants and licensees with a clear process for obtaining Large Cultivation Licenses will likely result in none of these licenses being issued. Failure to provide Large Cultivation Licenses will deny both the commercial cannabis industry and the Department the benefits intended by the statutory language by eliminating the net direct economic benefits of the proposed regulations. Any cost savings to both businesses and the Department due to the availability of the Large Cultivation License type will not be realized. For the stated reasons, the Department has decided not to implement this alternative to the proposed regulations.

### CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Charisse Diaz  
Department of Cannabis Control  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-465-9025  
[Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov)

The backup contact person for these inquiries is:

Kaila Fayne  
Department of Cannabis Control  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-251-4544  
[Kaila.Fayne@cannabis.ca.gov](mailto:Kaila.Fayne@cannabis.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 the contact persons listed above.

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

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting the contact person at the address, email or phone number listed above.

## 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 the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 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 contact person at the above address, email, or phone number indicated above.

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Department's website at [www.cannabis.ca.gov/resources/rulemaking/](http://www.cannabis.ca.gov/resources/rulemaking/).

## TITLE 4. DEPARTMENT OF CANNABIS CONTROL

### California Code of Regulations Title 4, Division 19

**Subject Matter of Proposed Regulations:** Equity fee waivers and deferrals for commercial cannabis licensing fees.

**Sections Affected:** California Code of Regulations, title 4, section 15014.1.

**Notice is hereby given** that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulation, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of

technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

## PUBLIC HEARING

The Department will hold a virtual public hearing at the following date and time listed below:

**Tuesday, August 2, 2022**  
**10:00 a.m. to 1:00 p.m.**

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Charisse Diaz at [Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov) or (916) 465-9025 by 4:30 p.m. on July 29, to request a link to the meeting. The link to the meeting will also be posted on the Department's website no later than 9:00 a.m. the day of the hearing.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID-19 safety protocols. Please contact Charisse Diaz at [Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov) or (916) 465-9025 by 4:30 p.m. on July 29, 2022, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 1:00 p.m., whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that person who make oral comments at the hearing also submit a written copy of their testimony via email.

## WRITTEN COMMENT PERIOD

Any interested person, or the interested person's authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or e-mail, can be sent to the Department at the addresses listed below. **Comments submitted must be received by the Department at its office by 5:00 p.m. on August 2, 2022.**

Submit comments to:

Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
E-mail: [publiccomment@cannabis.ca.gov](mailto:publiccomment@cannabis.ca.gov)

## AUTHORITY AND REFERENCE

Business & Professions Code (BPC) section 26249 authorizes the Department to develop and implement a program to provide equity fee relief in the form of waivers and deferrals of required licensing fees. These regulations will implement, make specific, or reference BPC section 26249.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of these regulations is to implement the Department's program for providing equity fee relief in the form of waivers and deferrals of licensing fees. These regulations are necessary to implement the equity fee relief program and clarify and make specific sections of the Medicinal and Adult-Use Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, section 26000 et seq.) pertaining to equity fee relief in the form of waivers and deferrals of licensing fees. Additionally, the regulations are necessary to provide assistance to the Department's applicants and licensees that were harmed by the War on Drugs.

### *Existing Law*

Pursuant to MAUCRSA, the Department regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events. Application requirements, fees, and other general requirements for all license types are contained in Chapter 1, Division 19, of Title 4 of the CCR. BPC section 26012 authorizes the Department to collect fees in connection with its regulation of such commercial cannabis activities and BPC section 26180 further establishes a scale of application, licensing, and renewal fees intended to cover the costs of administering MAUCRSA. Additionally, and notwithstanding BPC sections 26012 and 26180, BPC section 26249 requires the Department to implement a fee waiver program by January 1, 2022, and a fee deferral program by January 1, 2023.

The present emergency regulations established the framework for the Department's issuance of fee waivers and were filed with the Office of Administrative Law (OAL) on December 10, 2021. The emergency regulations were approved on December 20, 2021 and filed the same day with the Secretary of State, making them effective immediately. Following the fee waiver program's initiation in January 2022, the Department

filed an action with OAL to readopt the emergency regulations. The readoption action was approved by OAL on June 6, 2022, and filed with the Secretary State the same day, keeping them effective immediately.

### *Policy Statement*

This rulemaking action would make permanent fee waiver provisions and implement fee deferrals under the Department's equity fee relief program. The rulemaking would provide an overview of the definitions that are applicable to the equity fee relief regulations. The proposed regulations would also provide an overview of what types of Department applicants and licensees may qualify for equity fee relief and the form of equity fee relief qualified equity applicants and licensees may obtain. Further, the proposed regulation would provide an overview of what constitutes a complete request for equity fee relief. Consistent with BPC section 26249, the proposed regulation would clarify the qualifying criteria that equity applicants and licensees must satisfy to obtain equity fee relief. The proposed regulation would provide clarification regarding the consequences of submitting an incomplete request for equity fee relief. The proposed regulation would clarify that the Department will process requests for equity fee relief in the order in which the application or renewal has been approved by the Department. Moreover, the proposed regulation would clarify the Department's process for considering multiple requests for equity fee relief submitted by a commercial cannabis business. The proposed regulation would clarify that the issuance of fee waivers is subject to available funding and indicate that where funding is unavailable, qualified equity applicants may obtain a fee deferral. Finally, the proposed regulations would provide clarity on the terms and conditions of fee deferrals issued by the Department.

### *Regulation Objectives and Anticipated Benefits of the Proposed Regulations*

The broad objectives of these regulations are to provide fee relief to eligible applicants and licensees that were harmed by the War on Drugs. Cannabis prohibition and criminalization had a devastating impact to certain populations and communities in California. Individuals convicted of a cannabis offense and their families suffer the long-term consequences of prohibition and criminalization. Such individuals have a more difficult time entering the regulated commercial cannabis industry due, in part, to a lack of access to capital. Accordingly, the overall objective of the proposed regulations is to provide the process for a commercial cannabis business applicant or licensee to request equity fee relief in the form of waivers and deferrals of licensing fees in accordance with BPC section 26249. Designed to assist people and communities that have been harmed by the War on Drugs, BPC section 26249 facilitates the first statewide cannabis

equity fee relief program of its kind in an effort to help disadvantaged cannabis entrepreneurs. Both cannabis businesses in local jurisdictions with local equity programs and those that operate in jurisdictions that do not have local equity programs are eligible for waivers or deferrals of licensing fees from the Department. To be eligible for a fee waiver or deferral from the Department, BPC section 26249 requires applicants and licensees to meet one of the following criteria:

1. The applicant or licensee has previously been convicted for a cannabis related violation;
2. The applicant or licensee has been arrested for a previous cannabis related violation;
3. The applicant or licensee resides in a household whose income is less than or equal to 60 percent of the area median income for the local jurisdiction; or
4. The applicant or licensee resides in an area with a population disproportionately impacted by past criminal system policy.

The proposed regulation would provide specific guidance to potential equity applicants and licensees who wish to obtain equity fee relief by defining “qualified equity applicant or licensee” and “locally verified equity applicant or licensee”. The proposed regulation would specify that commercial cannabis businesses with at least one qualified equity applicant or licensee would be eligible for equity fee relief in the form of one fee waiver during each calendar year and unlimited fee deferrals if they satisfy certain criteria. The proposed regulation would also specify the information that must be included in a request for equity fee relief. The proposed regulation would also specify how an applicant or licensee can demonstrate eligibility. Lastly, the proposed regulation would provide specific outcomes for deficient requests, how the Department will process requests and issue fee waivers and deferrals.

Under the proposed regulation, the Department would be able to grant fee waivers or fee deferrals to certain qualified equity applicants and licensees. The proposed regulation is necessary to provide clear guidance to qualified equity applicants and licensees seeking equity fee relief which will reduce the risk of confusion regarding whom may request equity fee relief from the Department.

Additionally, the proposed regulation would provide specific guidance regarding the submittal of requests for equity fee relief, as well as the types of evidence that will be accepted by the Department in support of requests for equity fee relief. Including this information in the regulations will ensure that prospective equity fee relief requestors are aware of submittal requirements and that the Department obtains enough information to make an equity fee relief

determination. Moreover, it reduces the risk of confusion for qualified equity applicants and licensees who seek equity fee relief.

The proposed regulation would provide clarity regarding the Department’s process for evaluating requests for equity fee relief and the order in which equity fee relief will be considered. The Department anticipates a large number of requests from qualified equity applicants and licensees. Providing clarity regarding how the Department will process equity fee relief requests reduces the risk of confusion for equity fee relief requestors regarding the timing of review and availability of funding.

Offering equity fee relief in the form of waivers and deferrals of licensing fees will further the stated intent of MAUCRSA by reducing barriers to licensure in the regulated commercial cannabis industry by allowing prospective applicants to be able to seek licensure without the need for obtaining large amounts of start-up capital required to pay for licensing fees. This, in turn, will aid the state in its goal of eliminating or reducing the illicit cannabis market by bringing more people into the regulated marketplace. Notably, through the budget process, the Department has already received the budget allocations for the costs associated with the administration of the program.

#### *Section 15014.1 Equity Fee Relief*

The proposed section would define the terms “qualified equity applicant or licensee” and “locally verified equity applicant or licensee.” The proposed section would specify that commercial cannabis businesses with at least one qualified equity applicant or licensee would be eligible for equity relief in the form of one fee waiver during each calendar year and an unlimited number of deferrals if certain criteria are met, such as having a gross revenue less than or equal to \$5,000,000. The proposed section would specify the contents of a request for equity fee relief and the criteria that must be satisfied to receive a waiver or deferral. The proposed section would specify that deficient requests will be denied, but that applicants or licensees may resubmit subsequent requests and that the Department will process requests in the order in which the application or renewal for commercial cannabis licensure is approved by the Department. Lastly, the section would specify that issuance of fee waivers by the Department is subject to available funding. The proposed regulation would also provide the conditions that fee deferrals granted by the Department would be subject to, including repayment within six months of issuance or renewal of the license.

#### *Incorporated by Reference*

There are no documents incorporated by reference.

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

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

***Evaluation of Inconsistency with Federal Regulation Statute***

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 regulations.

***Plain English Requirement***

Department staff prepared the proposed regulation pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subsection (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500, et seq.: None.

Any other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: The Department's staff workload associated with the additional operational activities created by these regulations can be absorbed by existing staff.

Any costs or savings in federal funding to the state: None.

Effect upon housing: There is no effect on housing.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses: The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Small Business Determination: The proposed regulations would affect approximately 8,325 businesses. Of these businesses 4,579 are estimated to meet the criteria for being classified as a small business. The ability to receive fee waivers and deferrals of license fees will likely increase access to licensure.

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.

**ECONOMIC IMPACT AND FISCAL IMPACTS**

***Business Impact***

The proposed regulation does not impose any new licensure eligibility or operational requirements. Rather, it provides an opportunity for equity applicants and licensees to obtain financial assistance with payment of fees, either through waiver of fees or a longer time to pay through a deferral. Participating in the equity fee relief program is voluntary and only requires submission of information to establish eligibility to be considered for a fee waiver or deferral.

The Department implemented its fee waiver program on January 1, 2022. Based on the information gathered through implementation of the fee waiver program, the Department believes that there are approximately 8,235 applicants and licensees who could be eligible under the Department's proposed equity fee relief program. The businesses impacted by the regulation are qualified equity applicants and licensees who wish to engage in commercial cannabis businesses including cultivators, manufacturers, distributors, retailers, testing laboratories, event organizers, and microbusinesses. As the proposed regulation will increase access to licensure by providing an opportunity for financial assistance to equity licensee and applicants. The Department has determined that it will not have a significant adverse economic impact on businesses.

***Estimated Costs to Businesses***

The proposed regulation requires applicants and licensees to complete and submit certain information prescribed by the Department to request equity fee relief in the form of a waiver or deferral of licensing fees required by MAUCRSA and its implementing regulations. If the information is submitted electronically, the Department has determined that applicants and licensees will be able to complete and submit the form electronically in a few minutes. As a result, no additional costs to these businesses are anticipated. If the required information is submitted by mail, applicants and licensees will still be able to complete such information in a few minutes, which is not anticipated to increase costs to the business. However, applicants and licensees will incur mail postage costs ranging from \$0.58 (first class) to \$3.75 (certified) per applicant or licensee if submitting by mail. To the extent that the approximately 8,235 applicants and licensees opt to submit their request by mail, the total economic



impact would range from \$4,776.30 (first class) to \$30,881.25 (certified). However, based on current submission methods utilized by equity applicants and licensees, it is anticipated that most submissions will be made electronically.

### ***Estimated Benefits of Regulation***

The proposed regulation would result in benefits to the regulated commercial cannabis industry that are not easily monetized. Under the proposed regulation, qualified equity applicants and licensees will have the opportunity to obtain equity fee relief in the form of a waiver or deferral of licensing fees required by MAUCRSA and its implementing regulations. This will promote increased accessibility to the regulated commercial cannabis market for qualified equity applicants and licensees who have historically been impacted by the long-term consequences of cannabis prohibition and criminalization by reducing barriers to licensure in the regulated commercial cannabis industry.

### ***Results of Economic Impact Assessment***

Based on the analysis below, the Department concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

The proposed regulations will not have a significant adverse economic impact on businesses. In relation to jobs, the Department does not anticipate any changes in the number of Full-Time Equivalent (FTE) jobs in the commercial cannabis industry, as the proposed regulation relates to assistance with the payment of fees. The proposed regulations would affect approximately 8,235 businesses that are applicants or licensees with the Department. Approximately 55% of these businesses (4,579) are estimated to meet the criteria for being classified as a small business. As described above, the proposed regulation requires licensees to complete and submit certain information prescribed by the Department to request equity fee relief. However, based on current submission methods utilized by equity applicants and licensees, it is anticipated that most submissions will be made electronically. Thus, such applicants or licensees will not incur any costs for the submittal of their requests for equity fee relief.

The proposed regulations are not expected to create or eliminate businesses. Rather, the proposed regulations may encourage expansion of existing licensees or encourage existing businesses to enter the legal commercial cannabis market. The proposed regulations would not affect the ability of businesses in the State to compete.

### ***Benefits of the Proposed Regulations***

The proposed regulations would benefit the health and welfare of California residents by providing benefits to the environment and by increasing availability of tested and regulated commercial cannabis that is safe for consumption and use. The proposed regulations would provide benefits to the State's environment that are not monetized. This may include encouraging more cannabis businesses to enter or remain in the licensed market. To the extent that unlicensed cannabis operations can cause negative environmental impacts, the proposed regulations would provide indirect benefits to the State's environment. In addition, California residents could benefit from the increased availability of tested and regulated commercial cannabis that is introduced to the supply chain. The proposed regulations would not affect worker safety.

### ***Fiscal Effect on State Government***

The proposed regulations govern equity applicants and licensees who wish to obtain a fee waiver or fee deferral from the Department, while implementing the statutory requirement for the Department to process requests submitted by such equity applicants and licensees. Processing a request for equity fee relief includes reviewing and analyzing information provided in support of the request, as well as application and licensure materials from the Department's cannabis licensing system to determine whether an equity applicant or licensee is eligible for a fee waiver or fee deferral under the Department's fee waiver program. Through the budget process, the Department has already received budget allocations for the costs associated with the administration of the program.

The proposed regulation requires certain information to be submitted by the equity applicant or licensee requesting a fee waiver or deferral from the Department; this will assist the Department in processing requests as required by the statute but does not alter the Department's workload created by statute. Moreover, the proposed regulation provides clarification regarding the payment terms of fee deferrals granted by the Department; this will ensure that qualified equity applicants may spread their license fee payments over a specified period of time, while ensuring all required fees are still remitted to the Department as required by MAUCRSA. However, simply allowing for fees to be paid at a later date does not alter the Department's workload. Thus, there is no fiscal effect on state government as a result of the proposed regulation.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or

that has otherwise been identified and brought to 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 provision of law.

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

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Option 1: Not adopt the regulation. This alternative was rejected because BPC section 26249 requires the Department to develop and implement a program to provide waivers and deferrals for required licensing fees. If the Department does not adopt the regulation, there will be no specific process for applicants and licensees to follow to qualify for waivers or deferrals of required fees and the Department will not fulfill its statutory mandate.
2. Option 2: Do not require a written equity fee relief request from an applicant or a licensee. This alternative was rejected because BPC section 26249 requires that applicants and licensees satisfy certain criteria to be eligible for a fee waiver or deferral. To ensure that fee waiver and deferral requestors satisfy the parameters enumerated in statute, it is necessary to adopt these regulations prescribing a process for determining eligibility. The regulation is also necessary to ensure accurate recordkeeping of each fee waiver and deferral request received by the Department.
3. Option 3: Having cannabis businesses initially apply for a deferral, which may turn into a waiver if certain conditions are met, such as hiring equity employees, supporting community organizations, or supporting equity businesses. This alternative was rejected due to the administrative burden of implementing this option. Moreover, BPC section 26249 requires that applicants and licensees satisfy certain parameters to be eligible for equity fee relief. The Department rejected this option to ensure that equity fee relief requestors satisfy the parameters enumerated in statute.

#### CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Charisse Diaz  
Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-465-9025  
[Charisse.Diaz@cannabis.ca.gov](mailto:Charisse.Diaz@cannabis.ca.gov)

The backup contact person for these inquiries is:

Kaila Fayne  
Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-251-4544  
[Kaila.Fayne@cannabis.ca.gov](mailto:Kaila.Fayne@cannabis.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 the contact persons listed above.

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

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting Charisse Diaz at the address, email or phone number listed above.

#### 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 the Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of Kaila Fayne at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 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 Charisse Diaz at the above address, email, or phone number indicated above.

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the proposed regulations can be accessed through the Department's website at: [www.cannabis.ca.gov/resources/rulemaking/](http://www.cannabis.ca.gov/resources/rulemaking/).

**TITLE 5. STATE BOARD OF  
EDUCATION**

**AMENDMENTS TO CALIFORNIA CODE  
OF REGULATIONS, TITLE 5, REGARDING  
PHYSICAL FITNESS TEST**

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

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

**PUBLIC HEARING**

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 9:00 a.m. on August 2, 2022, at 1430 N Street, Room 1101, Sacramento, California. The room is wheelchair accessible.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

**REASONABLE ACCOMMODATION FOR  
ANY INDIVIDUAL WITH A DISABILITY**

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the

*Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Stephanie Ireland, Assessment Development and Administration Division, 1430 N Street, Room 4409, Sacramento, CA, 95814; telephone, 916-445-2766 is recommended that assistance be requested at least two weeks prior to the hearing.

Pursuant to Government Code section 11346.6(a)(3) and (b), because some of these regulations pertain to special education, the following provisions also apply:

Upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the CDE shall provide that person a narrative description of the additions to, and deletions from, the regulations. The description shall identify each addition to or deletion from the regulations by reference to the subdivision, paragraph, subparagraph, clause, or subclause within the proposed regulation containing the addition or deletion. The description shall provide the express language proposed to be added to or deleted from the regulations and any portion of the surrounding language necessary to understand the change in a manner that allows for accurate translation by reading software used by the visually impaired.

The CDE shall provide the information described above within 10 business days, unless the CDE determines that compliance with this requirement would be impractical and notifies the requester of the date on which the information will be provided.

Notwithstanding any other law, if information is provided to a requester as described above, the CDE shall provide that requester at least 45 days from the date upon which the information was provided to the requester to submit a public comment regarding the proposed regulation. The CDE shall not take final action to adopt the regulation until the requester has submitted a public comment or the extended 45-day comment period expires, whichever occurs first.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Lorie Adame, Regulations Coordinator  
Administrative Support and Regulations  
Adoption Unit  
California Department of Education  
1430 N Street, Room 5319  
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-322-2549 or by email to [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov).

Comments must be received by the Regulations Coordinator prior to or on August 2, 2022. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

## AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

References: Sections 60603, 60608 and 60800, Education Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Education Code (EC) section 60800 requires that local educational agencies (LEAs) administer the Physical Fitness Test (PFT), designated by the California State Board of Education (SBE), during the month of February, March, April, or May to each student in grades five, seven, and nine. The law also requires that LEAs provide individual results to students for completed testing and report aggregate results in their annual School Accountability Report Card (SARC) and to the California Department of Education (CDE) at least every two years.

The FITNESSGRAM® was designated by the SBE in February 1996 as the PFT for California schools. The FITNESSGRAM® is a physical fitness assessment developed by the Cooper Institute and published by Human Kinetics and includes six fitness areas: Aerobic Compacity, Body Composition, Abdominal Strength and Endurance, Trunk Extensor and Strength and Flexibility, Upper Body Strength and Endurance, and Flexibility. The desired performance standard (developed by the Cooper Institute) for each fitness-area test is the Healthy Fitness Zone (HFZ).

Section 1040 of 5 CCR provides the definitions for the physical performance test required by EC section 60800. These proposed regulations address a concern related to body image. Specifically, the Body Composition subtest of FITNESSGRAM® commonly involves calculating Body Mass Index (BMI), which may negatively impact a student's personal body perception. (A study published in 2021 in the *Journal of the American Medical Association Pediatrics* entitled "Effect of School-Based Body Mass Index Reporting in California Public Schools: A Randomized Clinical Trial" found that reporting BMI alone may decrease weight satisfaction.)

In the interests of students' mental and physical health, it is necessary to eliminate the Body Composition subtest and the related Body Composition

HFZ now, even pending the results of the ongoing study pursuant to SB 820.

A second concern relates to nonbinary students. Based on Senate Bill No. 179, chapter 852 (Stats. 2017), relating to a nonbinary option for identification of persons, the CDE's California Longitudinal Pupil Achievement Data System (CALPADS) addressed and then began to accommodate the option of a nonbinary gender student code for the 2019-20 academic year. On April 22, 2020, in response to the COVID-19 pandemic, Executive Order N-56-20, Section 13, waived the administration of the Physical Fitness Test (PFT) for the 2019-20 school year. Later that year, Senate Bill No. 820 (Stats. 2020) not only provided for the study and report about the PFT to be submitted to the Legislature in November 2022, it also suspended the PFT for the 2020-21 school year because of the ongoing COVID-19 pandemic (Sen. Bill No. 820, Stats. 2020, ch. 110, § 68(a)). On June 30, 2021, Senate Bill No. 98 (Stats. 2020) expired of its own terms, ending the authorization for distance learning and returning students to in-person instruction (EC, section 43511(b)). Thereafter, while continuing to participate in the ongoing Senate Bill No. 820 study about the PFT and to monitor the ongoing pandemic, the CDE pursued a legislative extension of the PFT suspension for the 2021-22 school year, pending submission of the Senate Bill No. 820 report on the PFT in November 2022. However, the CDE was ultimately unsuccessful in this request. Once it was clear that administration of the PFT for spring 2022 was expected to go forward (with a testing window beginning in February 2022), the CDE began developing a regulatory solution including both emergency regulations for the spring 2022 administration of the PFT and permanent regulations for the spring 2023 administration.

Currently, LEAs report students' HFZ scores on each FITNESSGRAM® subtest to the student upon completion, and report aggregate results on the LEA's School Accountability Report Card and to the CDE. However, the HFZs for the FITNESSGRAM® subtests correspond to a student's sex at birth. There are no HFZs for a nonbinary student. While a nonbinary student may receive raw scores, the nonbinary student will not receive HFZ scores, and therefore will not be included in the LEA's aggregate scores, and will not have the opportunity to satisfy the criteria for exemption from physical education in EC section 51241(b) (1), i.e., receiving a passing HFZ score on at least five of the six subtests. To ensure equity, it is necessary to add a regulatory definition of "Results" to indicate that for all students, LEAs will report **raw scores** only to the student upon completion of the test, and LEAs will report **participation scores** only on their SARC and to the CDE.

A third concern relates to students with physical disabilities. While EC section 60800 states that students with physical disabilities shall participate in the PFT to the extent they are able, and the regulations confirm in 5 CCR sections 1041(e) and 1047(a) that a student's Individualized Education Program or Section 504 plan may exempt the student from a subtest or subtests, the PFT does not offer a student with a physical disability an alternative way of satisfying the HFZ for any subtest in which the student cannot participate. Thus, a student with a physical disability will not receive a HFZ score for any subtest from which the student is exempted, and therefore will not be included in the LEA's aggregate scores for that subtest, and will not have an alternative way of satisfying the criteria for exemption from physical education in EC section 51241(b)(1).

Lastly, while "the lack of HFZ [Healthy Fitness Zone] performance standards will eliminate all students' ability to satisfy the criteria for the exemption from physical education in EC section 51241(b)(1)," it must be clarified that there remains the possibility that a LEA with the consent of a pupil could grant an exemption from physical education under that permissive section in a specific set of circumstances. That is, a student could volunteer (or a LEA could collect from a willing student) the student's height and weight and, together with the raw scores from the aerobic capacity subtest, do the necessary computation to determine whether the student met the HFZ standard for that subtest. Then, if the student passed that subtest, and it was determined that the student's raw scores also met the HFZ standard for the remaining four subtests, a student could apply for and be granted the exemption in EC section 51241(b) if the LEA chose to exercise that option. Although this regulatory action thus does not completely eliminate the potential equity issues that have been identified, it is not expected that many LEAs will offer or many students will seek exemptions under EC section 51241(b)(1) following the spring 2022 administration of the PFT. Therefore, this regulatory action takes a substantial step towards reducing inequities and maintaining students' mental and physical health.

#### **Policy Statement Overview**

The proposed regulations are necessary for the state implementation of Education Code section 60800, while the required PFT study is in process and ensuring equitable results for all students.

#### **Anticipated Benefits of the Proposed Regulation**

The proposed regulations will provide LEAs flexibility in the administration of the PFT while the required PFT study is underway. The proposed regulations will allow for an equitable administration, while collecting and reporting only participation results.

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

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D). After conducting a review of any regulations that would relate to or affect this area of law, the SBE has concluded that these are the only regulations that concern the Physical Fitness Test regulations.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT**

The SBE has made the following initial determinations:

*Other statutory requirements:* There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

*Mandate on local agencies and school districts:* No.

*Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code:* No.

*Cost or savings to any state agency:* No.

*Other non-discretionary costs or savings imposed on local agencies, including local educational agencies:* No.

*Costs or savings in federal funding to the state:* No.

*Effect on housing costs:* No.

*Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:* No.

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

*Report required:* The proposed regulations do not require a report to be made.

*Effect on small businesses:* The proposed regulations would not have an effect on any small business because they are designed to address students' body image perception and will not expand or eliminate small businesses currently doing business within the state of California.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

### ***Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment—Gov. Code Section 11346.5(a) (10):***

The SBE concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulations will benefit the health of California's students and will not adversely affect the welfare of California residents, worker safety and the State's environment.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, 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 SBE 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 content of these proposed regulations should be directed to:

Stephanie Ireland  
Assessment Development and Administration  
Division  
California Department of Education  
1430 N Street, Room 4409  
Sacramento, CA 95814  
Telephone: 916-445-2766  
Email: [pft@cde.ca.gov](mailto:pft@cde.ca.gov)

Inquiries concerning the regulatory process may be directed to the Lorie Adame, Regulations Coordinator, or the backup contact person, Hillary Wirick, Regulations Analyst. The Regulations Coordinator and the Regulations Analyst may be reached by email at [regulations@cde.ca.gov](mailto:regulations@cde.ca.gov) or by telephone at 916-319-0860.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INFORMATION

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons (ISOR), the agenda and a recording of the SBE meeting where the SBE approved commencement of this rulemaking activity, and Fiscal and Economic Impact Statement (STD. 399). These documents upon which the proposed action is based may be obtained upon request from the Regulations Coordinator. In addition, this Notice, the text of the proposed regulations and the ISOR may also be viewed on the CDE's website at <http://www.cde.ca.gov/re/lr/rr/>.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available to the public for at least 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations. The SBE will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

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

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified



text, if any, can be accessed via CDE's website at <http://www.cde.ca.gov/re/lr/rr/>.

## TITLE 15. BOARD OF PAROLE HEARINGS

### BPH RN 22-01: NOTICE OF PROPOSED RULEMAKING ACTION

#### BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS CHAPTER 1. GENERAL

#### Addition of ARTICLE 6. PROCEEDINGS CONDUCTED IN PERSON AND BY VIDEOCONFERENCE Sections 2050-2064

**NOTICE IS HEREBY GIVEN** that the Executive Officer of the Board of Parole Hearings (board), under the authority granted by Government Code section 12838.4 and Penal Code sections 3052 and 5076.2, authorizes the board to adopt the proposed addition of article 6, sections 2050 through 2064, to division 2 of title 15 of the California Code of Regulations, concerning proceedings conducted in person and by videoconference.

#### WRITTEN PUBLIC COMMENT PERIOD

Interested persons, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

Board of Parole Hearings  
Attn: Mina Y. Choi  
P.O. Box 4036  
Sacramento, CA 95812-4036

Comments may also be submitted by e-mail to [BPH.Regulations@cdcr.ca.gov](mailto:BPH.Regulations@cdcr.ca.gov).

**THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON FRIDAY, JUNE 17, 2022, AND WILL CLOSE ON MONDAY, AUGUST 1, 2022.** For comments to be considered by the board, they must be submitted in writing to the above mailing address or e-mail address no later than the close of the comment period.

#### PUBLIC HEARING

The board has not scheduled a public hearing on this proposed regulatory action. The board, however, will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing.

If scheduled, the purpose of a public hearing would be to receive oral comments about the proposed regulations. It would not be a forum to debate the proposed regulations, and no decision regarding the permanent adoption of the proposed regulations would be rendered at a public hearing. The members of the board would not be present at a public hearing.

#### AUTHORITY

Government Code section 12838.4 and Penal Code sections 3052 and 5076.2.

#### REFERENCE

California Constitution, article I, section 28, subdivision (e); Penal Code sections 2964, 2966, 3000, 3000.1, 3041, 3041.1, 3041.5, 3041.6, 3041.7, 3043, 3043.2, 3043.25, 3550, and 5076.1; *Armstrong v. Wilson* (9th Cir. 1997) 124 F.3d 1019; *Clark v. California* (N.D. Cal. 2010) 739 F.Supp.2d 1168; *Coleman v. Newsom* (E.D. Cal. Feb. 10, 2014, No. 2:90-cv-00520-LKK DAD (PC), 2014 WL 2889598, 2014 U.S. Dist. Lexis 17913); and *Plata v. Newsom* (N.D. Cal., No. 3:01-cv-01351-TEH); *Coleman v. Schwarzenegger* (E.D. Cal. 2009) 922 F.Supp.2d 882; and *In re J.G.* (2008) 159 Cal.App.4th 1056.

#### SPECIFIC AGENCY STATUTORY REQUIREMENTS

There are no other statutory requirements specific to the board or to any specific regulation or class of regulations promulgated by the board.

#### INFORMATIVE DIGEST

##### *Summary of Existing Laws and Effect of the Proposed Action*

Under Penal Code section 3041.5, inmates have a right to be present at their parole consideration hearings. Additionally, victims, victims' next of kin, members of a victim's family, victim representatives, victim support persons, and representatives of the prosecuting agency also have a right to attend the hearing. Except under certain circumstances, the board has

historically conducted its hearings and other proceedings at the institution in which the inmate is housed, with other participants appearing physically at that same location.

On July 16, 2021, Assembly Bill 145 was enacted, which added section 3041.6 to the Penal Code, authorizing the board to conduct parole proceedings by videoconference, and specified that a participant's statutory right to be present is satisfied by their appearance by videoconference. Thus, the board is no longer required to conduct hearings in person and may choose to conduct some or all hearings by videoconference. This hybrid approach is a new process and the statute provides no clear guidelines on the matter. Accordingly, this rulemaking is necessary to provide clarity to inmates, victims, and other stakeholders regarding the board's procedures in implementing this new process.

This proposed regulatory action identifies which board proceedings will be conducted in person and which will be conducted by videoconference. It also provides who may participate at these proceedings and in what manner they may participate. Lastly, the regulatory action establishes guidelines regarding participant availability, restrictions, and videoconference equipment and connectivity issues. The proposed changes would allow the board to implement Penal Code section 3041.6 while preserving participants' rights to be present at board proceedings.

#### *Anticipated Benefits of the Proposed Regulations*

The proposed regulations will implement and clarify the application of section 3041.6 of the Penal Code, which authorizes the board to conduct parole proceedings by videoconference. Specifically, these regulations will identify which board proceedings will be conducted in person and by videoconference. This allows participants to know how a hearing will be conducted, minimizing the potential for confusion, misinterpretation, or misapplication of the statute. These regulations also provide advance notice to all interested parties attending a hearing, allowing them to prepare in advance by making travel preparations or ensuring that they have the necessary equipment and connectivity to fully participate in the hearing.

Whether a hearing is conducted in person or by videoconference, victims, victims' next of kin, victims' family members, and designated representatives and support persons will have the option to participate by videoconference. The board has already seen a benefit from allowing videoconference attendance, as more victims and their families are choosing to attend parole hearings. As an example, in February 2020, prior to hearings being conducted by videoconference, 127 victims and victim family members attended parole hearings. In February 2021, when hearings were conducted by videoconference, the number of victims

and victim family members attending parole hearings more than doubled to 343. The board anticipates more victims to be involved in future hearings as OVSRS continues to conduct outreach to victims and familiarize them with the board's new processes.

These regulations also benefit the board by conserving the board's resources and allowing in-person hearings only when necessary. This reduces the amount of time that hearing panels are traveling, which allows them to spend more time preparing for hearings. The reduction in travel also benefits other participants, such as prosecutors and inmate's attorneys, who can save the time and costs associated with travel without sacrificing vigorous advocacy.

#### *Evaluation of Inconsistency/Incompatibility with Existing State Regulations, State Statutes, or Federal Statutes*

Any existing regulations regarding the method of conducting a board proceeding and the method of stakeholder participation can be found in division 2 of title 15 of the California Code of Regulations. Upon review, the board has determined that the proposed changes are not inconsistent or incompatible with existing state regulations, state statutes, or federal statutes.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The board has made the following initial determinations:

*Mandate on local agencies or school districts:* None.

*Cost or savings to any state agency:* None. The board has already absorbed the costs and savings during the implementation of emergency regulations BPH RN 21-05E, which became effective on September 27, 2021. Therefore, the implementation of this regulatory action will not create any additional costs or savings to the board. This regulatory action is not expected to create or eliminate jobs in California.

*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.

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



*Results of the Economic Impact Analysis/Assessment*

The board has determined that the proposed regulations do not have a significant impact on the following: (1) elimination of any jobs, (2) creation of any jobs, (3) creation of any new businesses, (4) elimination of any existing businesses, or (5) expansion of businesses currently doing business within California.

The board anticipates that this regulatory action will benefit the health and welfare of California residents by continuing to promote public safety through vigorous participation by all interested parties. Additionally, this regulatory action promotes the health of California residents by allowing parole hearings to move forward in a safe manner during times of healthcare crises, such as the ongoing COVID-19 pandemic. Further, this regulatory rulemaking will result in a reduction of travel in cars and planes by participants, which will benefit the environment. Lastly, participants attending by videoconference no longer need to print out documents to bring into the institution; they can instead access those documents on an electronic device. This will greatly reduce the amount of paper being used, which benefits the environment.

*Small Business Determination*

The board has determined that the proposed regulations do not have a significant adverse economic impact on small business because small businesses are not affected by the internal processes governing the board's requirements in conducting board proceedings.

**CONSIDERATION OF ALTERNATIVES**

Government Code section 11346.5, subdivision (a) (13) requires the board to determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory 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 board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written public comment period.

**CONTACT PERSONS**

Inquiries concerning the proposed rulemaking action may be directed to:

**Mina Y. Choi, Staff Attorney**

Board of Parole Hearings  
P.O. Box 4036  
Sacramento, CA 95812-4036  
Phone: (916) 322-3475  
E-mail: [BPH.Regulations@cdcr.ca.gov](mailto:BPH.Regulations@cdcr.ca.gov)

The backup contact person for these inquiries is:

**Heather L. McCray Pool, Assistant Chief Counsel**

Board of Parole Hearings  
P.O. Box 4036  
Sacramento, CA 95812-4036  
Phone: (916) 322-3475  
E-mail: [Heather.McCray@cdcr.ca.gov](mailto:Heather.McCray@cdcr.ca.gov)

In any such inquiries, please identify the action by using the board's regulation control number **BPH RN 22-01**.

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

The board will make the entire rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 K Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice of Proposed Action, the text of the proposed regulations, the Initial Statement of Reasons, the STD Form 399 (Fiscal and Economic Impact Statement), and the STD Form 400 (Notice of Submission of Regulation).

Copies of any of these documents may be obtained by contacting the board's Contact Person identified in this Notice at the mailing address or email address listed above or by visiting the board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After considering all timely and relevant comments received, the board may adopt the proposed regulations 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 regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>. If the

board makes modifications, the board 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 board's Contact Person identified in this notice at the mailing address, phone number, fax number, or email address listed above or by visiting the board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>.

## TITLE 16. BOARD OF PSYCHOLOGY

### Notice Concerning Psychological Associate Registration

NOTICE IS HEREBY GIVEN that the Board of Psychology (hereinafter "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments, in writing, relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under *Contact Person*, in this Notice, must be received by the Board at its office no later than **5:00 p.m. on Tuesday, August 2, 2022**.

### PUBLIC HEARING

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

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

*Authority and Reference:* Pursuant to the authority vested by Sections 2930 and 2940 of the Business and Professions Code (BPC), and to implement, interpret

or make specific Sections 27, 30, 114.5, 115.4, 135.4, 144, 651, 2913, 2948, 2987, and 17500 of said Code, the Board is considering changing sections 1391.1, 1391.2, 1391.5, 1391.6, 1391.8, 1391.11, 1391.12, 1392.1 of, and repealing section 1391.10 of, Division 13.1, Title 16, of the California Code of Regulations (CCR), as follows:

## INFORMATIVE DIGEST

### A. *Informative Digest*

The Board seeks to change the current regulatory language regarding registration as, and supervision of, a registered psychological associate, as current regulatory language conflicts with amended statutory language of BPC sections 2913 and 2987, pursuant to Senate Bill 1193 (SB 1193) (Hill, Chapter 484, Statutes of 2016), Senate Bill 547 (SB 547) (Hill, Chapter 429, Statutes of 2017), and Senate Bill 801 (SB 801) (Archuleta, Chapter 647, Statutes of 2021). While the law now specifies that a person desiring to be a registered psychological associate is responsible to apply for and renew the registration, and pay the applicable fees, current regulations still place that responsibility on the supervisor and employer. This is confusing to applicants for a psychological associate registration, registered psychological associates, supervisors, and employers, as to who is responsible for applying for registration, renewing a registration, paying the applicable fees, and reporting changes to the status of a registration.

The statutory changes also deleted the requirement that the registered psychological associate be employed by specified individuals or organizations. Current regulations still reference employer and employment settings. References to employer and employment organizations are confusing to applicants, registrants, supervisors and employers, as the application and registration processes are no longer employer-initiated.

### B. *Policy Statement Overview/Anticipated Benefits of Proposal*

These proposed regulations will implement, interpret, and make specific the provisions of BPC sections 2913 and 2987. The Board proposes amendments to its current regulations to clarify the responsibilities of the supervisor and the registered psychological associate relating to an application for registration, renewal, and reporting changes to the status of a registration. These amendments will also clarify the requirements of delegated supervisors and make clarifying changes relating to the registration and renewal processes. Additionally, the proposed amendments will provide a clear, streamlined, administrative process for applicants, registrants, and supervisors, that will be consistent with the current statutes.

*C. Consistency and Compatibility with Existing State Regulations*

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

INCORPORATION BY REFERENCE

- Application for Registration as a Psychological Associate (PSB 100 (New 2021))
- Notification to Add or Change a Supervisor or Service Location for a Psychological Associate (PSB 101 (New 2021))

FISCAL IMPACT ESTIMATES

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

These regulations do not result in a fiscal impact to the State because these regulations are intended to conform the Board's regulations with current law and existing practice. There are no anticipated costs or savings to any other state agency or in federal funding.  
*Nondiscretionary Costs/Savings to Local Agencies:*

None.

*Local Mandate:*

None.

*Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500–17630:*

None.

*Business Impact:*

The Board has made an initial determination that the proposed regulatory action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the fact that these regulations are being updated to meet the statutory changes of 2017. No further impacts are expected.

*Cost Impact on Representative Private Person or Business:*

The Board estimates a reduction in costs to a representative private person or business in reasonable compliance with the proposed action. This determination is based upon the registered psychological associate being issued only one registration number, rather than a separate registration number for each service location, which requires a separate application and renewal fee for each registration number.

*Effect on Housing Costs:*

None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may positively affect small businesses. This initial determination is based upon the fact that changes to these regulatory sections will impact businesses, positively, because it shifts the responsibility for annual reporting requirements to the registered psychological associate and away from the business employing them.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

*Impact on Jobs/Businesses:*

The Board has initially determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because registered psychological associates will remain at the same level of demand due to these regulations.

*Benefits of Regulation:*

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents, worker safety, and state's environment, because it will not remove the supervision requirements for registered psychological associates but allows enhanced portability of the psychological associate registration to multiple supervisors and/or employers.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative that it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Any interested person may present statements or arguments, orally or in writing, relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at any requested hearing or, upon request, from the person designated in the Notice under Contact Person, or by accessing the Board's website at: [https://www.psychology.ca.gov/laws\\_regs/regulations.shtml](https://www.psychology.ca.gov/laws_regs/regulations.shtml).

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

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named or by accessing the website listed below.

## CONTACT PERSON

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

Name: Suzy Costa  
Address: 1625 North Market Blvd., Suite N215  
Sacramento, CA 95834  
Telephone No.: (916) 574-8112  
Fax No.: (916) 574-8672  
E-Mail Address: [Suzy.Costa@dca.ca.gov](mailto:Suzy.Costa@dca.ca.gov)

The backup contact person is:

Name: Jason Glasspiegel  
Address: 1625 North Market Blvd., Suite N215  
Sacramento, CA 95834  
Telephone No.: (916) 574-7137  
Fax No.: (916) 574-8672  
E-Mail Address: [Jason.Glasspiegel@dca.ca.gov](mailto:Jason.Glasspiegel@dca.ca.gov)

*Website Access:* Materials regarding this proposal can be found at: [http://www.psychology.ca.gov/laws\\_regs/regulations.shtml](http://www.psychology.ca.gov/laws_regs/regulations.shtml)

## TITLE 16. PHYSICAL THERAPY BOARD OF CALIFORNIA

Retired License §1399.18  
Physical Therapist Fees §1399.50  
Physical Therapist Assistant Fees §1399.52  
Of the California Code of Regulations

**NOTICE IS HEREBY GIVEN** that the Physical Therapy Board of California (Board) is proposing

to adopt a new Article 1.5, a new Section 1399.18 of Article 1.5 and amend Sections 1399.50 and 1399.52 of Article 10 of Division 13.2 of Title 16 of the California Code of Regulations (CCR), as described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

## PUBLIC HEARING

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

## WRITTEN COMMENT PERIOD

Any interested person, or a person's authorized representative, may submit written comments relevant to the proposed regulatory action to the address listed under *Contact Person* in this Notice. Comments may also be submitted by facsimile (FAX) at 916 263-2560 or by e-mail to [ptbc.rulemaking@dca.ca.gov](mailto:ptbc.rulemaking@dca.ca.gov). The written comment period closes at **5:00 p.m. on Tuesday, August 2, 2022**. The Board will consider only comments received at the Board's office by **5:00 p.m. on Tuesday, August 2, 2022**, or at the public hearing, if one is requested. Submit comments to the Contact Persons listed in this Notice.

## AUTHORITY AND REFERENCE

Business and Professions Code (BPC) sections 464 and 2615 authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific sections 118, 144, 163.5, 464, 2644, 2647, 2649, 2660 and 2688 of the BPC.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Physical therapists (PT) are licensed health care practitioners that perform physical therapy and physical therapist assistants (PTA) are licensed health care practitioners that provide physical therapy services under the supervision of a licensed physical therapist (BPC section 2630.3). Both are regulated pursuant to the Physical Therapy Practice Act (BPC 2600 and following). BPC section 464 provides that boards within the Department of Consumer Affairs may provide for a retired license category.

While BPC section 464 gave the Board statutory authority to issue retired licenses, it did not specify the provisions and procedures for obtaining such licenses. Therefore, without regulations in place, there is no formal process for a licensee who is retired and no longer practicing placing their license on a retired status and alleviate the expense of license renewal fees for a license they are no longer using.

Currently, licensed PTs and PTAs who no longer wish to practice must either utilize the inactive status pursuant to CCR 1399.98 and pay the biennial renewal fee of \$300 or choose not to renew in inactive status, let their license expire into delinquent status, and cancel after five years. By providing a means to obtain a retired status, licensees who are no longer practicing avoid the possible stigma in their professional community from having a licensed placed in a “delinquent” or “cancelled” status and can be relieved from the expense of renewal fees.

The Board’s proposal would address the foregoing issues by:

- (1) adopting CCR section 1399.18 to specify who is eligible for a retired license, how to apply for and obtain a retired license, and how a holder of a retired license may return to active status; and,
- (2) amending CCR sections 1399.50 and 1399.52 to assign a fee of \$100 for a retired license application fee for PTs and PTAs.

These proposed regulations will also incorporate by reference the following applications: (1) Application for Retired License (RS1–New 09/2021) and (2) Application to Restore Retired License to Active Status (RS2–New 09/2021).

*Anticipated Benefits of the Proposed Regulation:*

This proposal would establish a consistent and simple process for obtaining retired license status and would eliminate barriers for those who wish to retire and have the option of placing their license in a retired status. It would also save costs for those licensees who select this status by not being required to pay renewal or other fees associated with continuing competency. This proposal further alleviates confusion to the public regarding the true status of an individual who does not wish to abandon their license by entering into delinquent status but would rather simply retire from practice.

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

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

INCORPORATION BY REFERENCE

- Application for Retired License (RS1–New 09/2021)
- Application to Restore Retired License to Active Status (RS2–New 09/2021)

DISCLOSURES REGARDING THE PROPOSED ACTION

*Fiscal Impact Estimates*

*Fiscal impact on public agencies including costs or savings to state agencies or costs/savings in federal funding to the state:*

The Board anticipates demand for the new retired status license type to be greatest in the first two years of implementation as inactive and active licensees opt to retire and apply for the new status with lower demand annually thereafter. The Board anticipates approximately 1,064 licensees apply for the retired license status in the first two years of implementation and 689 licensees per year thereafter.

The Board indicates an Office Technician will take approximately 95 minutes to process each application with workload costs of \$101 per application, which results in costs ranging from \$69,589 to \$107,464 per year and up to \$771,640 over a ten-year period. The Board estimates retired license type fee revenues of approximately \$106,400 per year in the first two years of implementation, \$68,900 per year thereafter, and up to \$764,000 over a ten-year period. Please see the Initial Statement of Reasons for further information.

This regulatory proposal does not impact any costs or savings in federal funding to the state.

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

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

*Nondiscretionary costs or savings imposed on local agencies:* None.

*Cost impacts on a representative private person or business:* Licensees will have the option to apply for a retired license for a one-time fee of \$100. The Board anticipates demand for the new retired status license type to be greatest in the first two years of implementation as inactive and active licensees opt to retire and apply for the new status with lower demand annually thereafter.

The Board anticipates approximately 1,064 licensees will apply for the retired license in the first two years of implementation and 689 licensees per year thereafter, which results in an economic impact of \$106,400 per year in the first two years of implementation,



\$68,900 per year thereafter, and up to \$764,000 over a ten-year period.

*Effect on housing costs:* None.

*Business Impact:*

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses and other states. This initial determination is based on the following facts: this proposed regulation establishes placement of a license in a retired status for a licensee who is not actively engaged in the practice of physical therapy or any activity that requires them to be licensed by the Board. Since licensees can currently choose to go inactive, or allow their licenses to lapse or cancel when they retire, there would be no effect on businesses when an individual opts to change their license title to “retired.”

Licensees will have the option to apply for a retired license for a one-time fee of \$100. The Board anticipates demand for the new retired status license type to be greatest in the first two years of implementation as inactive and active licensees opt to retire and apply for the new status with lower demand annually thereafter.

The Board anticipates approximately 1,064 licensees apply for the retire license status in the first two years of implementation and 689 licensees per year thereafter, which results in an economic impact of \$106,400 per year in the first two years of implementation, \$68,900 per year thereafter, and up to \$764,000 over a ten-year period. Please see Initial Statement of Reasons for further information.

*Effect on Small Business:*

As explained above, the Board has determined that the proposed regulation will not affect small businesses because the proposal would only affect those licensees who move into retired status unless the small business is owned by the retiring licensee, but since licensees can currently choose to go inactive, or allow their licenses to lapse or cancel when they retire, there would be no effect on businesses when an individual opts to change their license title to “retired.”

*Business Reporting Requirements:*

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

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has determined that this regulatory proposal will not create or eliminate jobs, will not create new business or eliminate existing businesses, and will not affect the expansion of businesses currently doing business within the State of California or eliminate jobs because the proposal is not of sufficient

magnitude to create or eliminate jobs or businesses or affect the expansion of businesses. The Board has made this initial determination because this proposed regulation simply affords licensees already retired from working as a physical therapist or a physical therapist assistant, the opportunity to place a license in a retired status. Since licensees currently choose to go inactive, or allow their licenses to lapse or cancel when they retire, there would be no effect on the workforce related to a change in license status nor an effect on new business or existing businesses or the expansion of businesses.

This regulatory proposal will benefit the health and welfare of California residents because consumers searching for a physical therapist or physical therapist assistant will find the license status to accurately reflect “retired.” This would indicate the licensee is no longer authorized to practice and would alleviate confusion regarding the true status of a licensee who does not choose to abandon their license but rather simply retire from practice. It would also benefit a physical therapist or physical therapist assistant who has retired for less than five years and wishes to return to practice by giving them a process to do so. Currently, licensees who no longer wish to practice must either utilize the inactive status pursuant to CCR 1399.98 and pay the biennial renewal fee of \$300 or choose not to renew in inactive status, let their license expire into delinquent status, and cancel after five years. This process relieves the financial burden of having to remain in active status and provides easy access to return to active status if desired.

This regulatory proposal will not affect worker safety or the State’s environment because the proposal does not involve worker safety or environmental issues. The proposed regulation establishes the placement of a license into a retired license when the licensee is no longer actively engaged in the practice of physical therapy as well as a return to practice, if desired.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to its attention, will be more effective in carrying out the purpose for which the regulation is proposed, will be as effective and less burdensome to affected private persons than the adopted regulation, or will be 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 regulation during the written comment



period and submit them to the address listed under *Contact Persons* in this Notice.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

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

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the Initial Statement of Reasons (ISOR), and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 2600, Sacramento, California 95815.

**AVAILABILITY OF STATEMENT OF  
REASONS AND RULEMAKING FILE**

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, documents incorporated by reference, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the Contact Persons named in this Notice.

**AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the Contact Persons named in this Notice.

**CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Sarah Conley  
2005 Evergreen Street, Suite 1350  
Sacramento, California 95815  
Telephone: (916) 561-8200  
Fax: (916) 263-2560  
Email Address: [ptbc.rulemaking@dca.ca.gov](mailto:ptbc.rulemaking@dca.ca.gov)

The backup contact person is:

Brooke Arneson  
2005 Evergreen Street, Suite 2600  
Sacramento, California 95815  
Telephone: (916) 561-8200  
Fax: (916) 263-2560  
Email Address: [ptbc.rulemaking@dca.ca.gov](mailto:ptbc.rulemaking@dca.ca.gov)

*Website Access:* Materials regarding this proposal can be found at [https://www.ptbc.ca.gov/laws/prop\\_regs/index.shtml](https://www.ptbc.ca.gov/laws/prop_regs/index.shtml).

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at: [https://www.ptbc.ca.gov/laws/prop\\_regs/index.shtml](https://www.ptbc.ca.gov/laws/prop_regs/index.shtml).

**TITLE 23. STATE WATER RESOURCES  
CONTROL BOARD**

**STATE WATER RESOURCES CONTROL  
BOARD AND REGIONAL WATER QUALITY  
CONTROL BOARDS  
CHAPTER 24. GRANT AND  
LOAN PROGRAMS**

**Replacing, Removing, or Upgrading Petroleum  
Underground Storage Tanks Grant and Loan  
Program Regulations**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Water Board) proposes to amend, adopt, or repeal the Replacing, Removing, or Upgrading Petroleum Underground Storage Tanks (RUST) Grant and Loan Program Regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 24 (commencing with section 3420) (RUST Regulations) to update the RUST Regulations to implement

amendments to the Health and Safety Code and to make them more specific and consistent with current operational practices.

### PUBLIC HEARING

A public hearing has not been scheduled for this proposed action. However, as provided in Government Code section 11346.8, any interested person, or his or her duly authorized representative, may request a public hearing if the request is submitted in writing in the manner described below to the State Water Board no later than 15 days prior to the close of the written comment period. If a request for a public hearing is made, the State Water Board shall, to the extent practicable, provide notice of the time, date, and place of the hearing in accordance with Government Code section 11346.4 by mailing the notice to every person who has filed a request for notice with the State Water Board. In addition, as prescribed by Government Code section 11340.85, notice may be provided by means of electronic communication to those persons who have expressly indicated a willingness to receive notice by this means.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes on August 2<sup>nd</sup>, 2022 at 12:00 p.m. The State Water Board only will consider comments received by that time.

Please send comment letters to Jeanine Townsend, Clerk to the Board, by email at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov), by fax at (916) 341-5620, or by mail or hand delivery addressed to:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000  
(by mail)  
1001 I Street, 24<sup>th</sup> Floor, Sacramento, CA 95814  
(by hand delivery)

Please also indicate in the subject line, **“Comment Letter – Proposed RUST Regulations.”** Hand and special deliveries should also be addressed to Ms. Townsend at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Townsend at (916) 341-5600. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. Therefore, the State Water Board requests that comments larger than 15 megabytes be submitted under separate emails.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserve for **“Underground Storage Tank Cleanup Fund”** by going to: [http://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml). You also may call Mr. Robert Smith at (916) 323-2095 or email her at [Robert.Smith@waterboards.ca.gov](mailto:Robert.Smith@waterboards.ca.gov). **Persons who receive this notice by mail or electronic mail are already on the mailing list.**

### AUTHORITY AND REFERENCE

Health and Safety Code section 25299.108 authorizes the State Water Board to adopt regulations to implement chapter 6.76 of division 20 of the Health and Safety Code. References to specific code sections are identified in the proposed amendments to the proposed regulations.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Water State Water Board proposes to amend the RUST Regulations to update the RUST Regulations and make them more specific and consistent with current operational practices. The State Water Board further proposes to amend the RUST Regulations to implement amendments to the Health and Safety Code enacted by Chapter 296, Statutes of 2020 and those changes to the Health and Safety Code enacted by Chapter 69, Statutes of 2009, Chapter 649, Statutes of 2009, Chapter 640, Statutes of 2013, and Chapter 547, Statutes of 2014 that still are in effect.

Where appropriate the State Water Board proposes to amend the RUST grant and RUST loan requirements to make the requirements for grants and loans similar, which makes it easier for those applicants who are applying for both a RUST grant and a RUST loan for their project. Consistency between the requirements for RUST grants and RUST loans also serves to streamline the State Water Board’s eligibility review.

The State Water Board also proposes certain amendments to the RUST Regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (e.g., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, cross-references, grammar, punctuation, or renumbering or relocating regulatory provisions. For consistency purposes, the citation format for statutory and regulatory references is made consistent throughout the RUST Regulations. To the extent that many of these amendments without regulatory effect are non-substantive and their

purpose is self-evident or merely editorial, they are not discussed herein.

The State Water Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing these amendments to the RUST Regulations. The State Water Board relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11346.3, subdivision (b) in proposing these amendments to the RUST Regulations. The specific purpose and the basis for the State Water Board's determination of the necessity of each amendment are explained in the Initial Statement of Reasons.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations*

The State Water Board has determined that these proposed RUST Regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that concern RUST grant and loans.

#### LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with section 17500) of the Government Code, division 4.

#### COST OR SAVINGS TO STATE AGENCIES

The State Water Board has determined that there are no fiscal impacts on any State agency or program because the regulations because the proposed regulatory amendments are to implement amendments to the Health and Safety Code impacting the existing program to provide RUST grants and loans to small businesses program and to make them more specific and consistent with current operational practices.

#### COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The State Water Board has determined that there is no cost or savings imposed on local agencies or school districts as a result of the proposed regulations, or other nondiscretionary costs or savings imposed on local agencies or school districts.

#### COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE OF CALIFORNIA

The State Water Board has determined that there is no cost or savings in Federal funding to California as a result of the proposed regulatory action.

#### EFFECT ON HOUSING COSTS

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

#### BUSINESS IMPACT/SMALL BUSINESS

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. The proposed regulatory action will have a slight beneficial effect on small businesses in California because it will improve the RUST program allowing for small businesses to obtain both grants and loans. These grants and loans will help small business UST owners and operators to stay in or get back into compliance with regulatory requirements."

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

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

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The State Water Board has determined that the cost for a typical RUST grant or loan applicant in California to comply with the proposed amendments is zero.

*Assessment Regarding Effect on Jobs and Businesses*

The State Water Board has determined that the proposed regulatory action will not have an effect on the creation or elimination of jobs within California as a result of the proposed amendments because the amendments to the RUST Regulations do not create or eliminate a significant enough workload to support the creation or elimination of jobs within California. 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. Nor will the proposed regulatory action adversely affect small businesses in California.

The proposed regulatory action will not have an effect on the creation or elimination of businesses within California as a result of the proposed amendments because the amendments to the RUST Regulations do not create or eliminate a significant enough workload to support the creation or elimination of businesses within California. Nor will the proposed regulatory action have an effect on the expansion of businesses within California as a result of the proposed amendments because the amendments to the RUST Regulations do not create or enough workload to support the expansion of businesses currently doing business within California.

*Benefit of the Regulation for Public Health, Safety, and Welfare*

The proposed regulatory action will implement statutory changes and update the RUST Regulations to make them more specific and consistent with existing practice, which will assist the State Water Board in decreasing the processing time for RUST applications, execution of grant and loan agreements, and processing of invoicing. As a result, RUST projects may be completed, decreasing the risk of soil and groundwater contamination resulting from UST releases, improving the health and welfare of California residents, worker safety, and the State's environment.

## CONSIDERATION OF ALTERNATIVES

The State Water Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention: 1) would be more effective in carrying out the purpose for which the proposed regulations are proposed; 2) would be as effective and less burdensome to affected private persons, industry, local governments, and state agencies; or 3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND THE RULEMAKING FILE

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific purpose for the regulation proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. All the information upon which the proposed regulation is based is contained in the rulemaking file. The Initial Statement of Reasons, the express terms of the proposed regulations, and the

rulemaking file are available from the contact person listed below or at the website listed below.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding any hearing that is requested and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulation substantially as described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) days before the State Water Board adopts the regulation as modified. A copy of any modified regulation may be obtained by contacting Mr. Robert Smith, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the persons listed below. A copy also may be accessed on the State Water Board website previously identified.

## CONTACT PERSONS

Requests of copies of the text of the proposed regulation, the Statement of Reasons, or other information upon which the rulemaking is based, or other inquiries should be addressed to the following:

Name: Robert Smith, Staff Services  
Manager I  
Address: State Water Resources Control Board  
Division of Financial Assistance  
1001 "I" Street  
Sacramento, CA 95814  
Telephone No.: (916) 323-2095  
E-mail address: [Robert.Smith@waterboards.ca.gov](mailto:Robert.Smith@waterboards.ca.gov)

The backup contact person is:

Name: McLean Reich, Staff Services  
Manager II  
Address: State Water Resources Control Board  
Division of Financial Assistance  
1001 "I" Street  
Sacramento, CA 95814  
Telephone  
No.: (916) 341-5765  
E-mail  
address: [McLean.Reich@waterboards.ca.gov](mailto:McLean.Reich@waterboards.ca.gov)

The documents relating to this proposed action may also be found on the State Water Board's website at the following address:

[https://www.waterboards.ca.gov/water\\_issues/programs/ustcf/rust/regulations/](https://www.waterboards.ca.gov/water_issues/programs/ustcf/rust/regulations/)

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FISH & WILDLIFE

#### HABITAT RESTORATION AND ENHANCEMENT ACT

#### CONSISTENCY DETERMINATION NO. 1653-2022-094-001-R3

**Project:** Mindego Creek Fish Passage Project  
**Location:** San Mateo County  
**Applicant:** San Mateo Resource Conservation District

#### Background

##### *Project Location:*

The Mindego Creek Fish Passage Project (Project) is located on Alpine Road, approximately one mile south of the Town of La Honda, in San Mateo County, at a property owned by the City and County of San Francisco, Assessor Parcel Number (APN) 083-300-010, Latitude 37.30416, Longitude -122.25116, and affects Mindego Creek, a tributary to San Gregorio Creek. Mindego Creek supports populations of federally threatened and state endangered marbled murrelet (*Brachyramphus marmoratus*), federally threatened steelhead trout – Central California Coast distinct population segment (*Oncorhynchus mykiss irideus* pop. 8), provides habitat for federally endangered and state endangered Coho salmon, Central California Coast evolutionarily significant unit (*Oncorhynchus kisutch* pop. 4), federally threatened and state species of special concern California red-legged frog (*Rana draytonii*), state species of special concern California giant salamander (*Dicamptodon ensatus*).

##### *Project Description:*

San Mateo Resource Conservation District (Applicant) proposes to enhance and restore habitat within Mindego Creek to provide a net conservation benefit for steelhead trout and Coho salmon. The Project includes the removal of an existing barrier which will restore fish passage to five miles of habitat in the San Gregorio Creek watershed. The existing barrier consists of a six-foot-high concrete dam, a Denil-style fish ladder which is prone to clogging, and water diversion infrastructure. The Project will also restore the channel in accordance with fish passage guidelines, incorporate features such as large woody debris to enhance creek complexity and create fish refugia, and reconstruct the water diversion infrastructure.

The channel-spanning dam, ladder, and submersible pump will be removed in their entirety. Approximately 310 linear feet of the channel will be reconstructed based on the stream simulation method outlined in the "Guidelines for Salmonid Passage at Stream Crossings" (NMFS, 2001) and the "Stream Simulation" design approach outlined in the "California Salmonid Stream Habitat Restoration Manual, Part XII, Fish Passage and Design Implementation" (CDFW, 2009). The stream simulation method has been designed to match existing bed material found downstream of the dam and will provide an appearance of channel roughness similar to adjacent undisturbed reaches. The stream simulation material will be comprised of 70 percent of salvaged onsite materials and 30 percent imported materials. The material will be water-jetted to lock in the finer particles, improve channel stability, and reduce the risk of water going subsurface during low flow conditions.

The Applicant will install two boulder weirs and rock slope protection (RSP) in the reconstructed channel segment. The boulder weirs will be installed at the upstream and downstream extent of the reconstructed channel. Pools, 2.5 feet deep with 0.5-foot hydraulic drop, will be situated at each rock weir to enhance habitat complexity and provide resting areas for fish and allow fish passage. RSP will be installed at the upstream end of the reconstructed channel along the left bank to buttress an area of unstable bank and constrain the channel upstream of the pool that will contain the water diversion intake replacement. RSP will also be installed along the lower bank near an existing concrete building, which houses a pump and generator.

Large woody debris structures will be installed from three logs and fallen trees salvaged within the limits of disturbance along the channel. Two large woody debris structures will be installed along the left bank of the channel. The first, most upstream structure, will be incorporated into RSP and extend into the channel. The second structure will be installed in



the downstream pool. The third installation, from a large fallen redwood located upstream of the concrete pump and generator building, will be cut into smaller segments for use in proposed log structures. Each structure will be anchored to boulders. The structures will provide habitat complexity and areas of cover for salmonids.

The Project will replace the existing submersible diversion intake pump with a passive fish screening system and precast concrete gravity flow diversion, installed within the pool constructed near the upstream end of the Project. The new gravity-fed diversion will have a regulated weir plate and fish screen designed to meet the California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS) screening criteria to protect against fish entrapment. The Project does not include operation of the diversion.

Project designs were developed with input from and reviewed by the Integrated Watershed Restoration Program Technical Advisory Committee which is composed of staff from federal, state, and local resources agencies including CDFW Engineering and Fisheries staff.

*Project Size:*

The total area of ground disturbance associated with the Project is approximately 0.24 acres and 310 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15333).

*Project Associated Discharge:*

Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) Approximately 520 cubic yards of stream simulation. (2) Approximately 145 cubic yards of RSP installed as part of creek enhancement work. (3) Approximately 80 cubic yards of weir boulders three feet or greater in diameter to construct rock weir pools. (4) Approximately three logs and fallen trees located within the limits of disturbance, salvaged with their root wads intact. (5) Diversion box and screened intake.

*Project Timeframes:*

Start date: July 2022

Completion date: October 2022

Work window: July 15 – October 31

*Water Quality Certification Background:*

Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish passage to five miles of spawning and rearing habitat, the San Francisco Bay Regional Water Quality Control Board (Regional

Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) No. 2CW446962, for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to marbled murrelet, steelhead trout, Coho salmon, California red-legged frog, and California giant salamander.

*Receiving Water:* Mindego Creek, tributary to San Gregorio Creek

*Filled or Excavated Area:*

Permanent area impacted: 0.24 acres

Temporary area impacted: None.

Length temporarily impacted: 0 linear feet

Length permanently impacted: 310 linear feet

*Dredge Volume:* None.

*Discharge Volume:* 145 cubic yards (cy) of RSP, three pieces of large wood, two with root wad attached, 520 cy of stream simulation material, five approximate 25-foot-long fiber rolls, 80 cy of weir boulders approximately 3 feet in diameter, one diversion box, and one screened intake.

*Project Location:* Latitude 37.30416 N. and Longitude -122.25116 W., (NAD 83); APN: 083300010.

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

On May 3, 2022, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on May 4, 2022, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number [Z-2022-0504-02]) on May 20, 2022. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

**Determination**

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



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

#### **Avoidance and Minimization Measures**

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Riparian and Aquatic Habitat Protective Measures; (2) Marbled Murrelet Protective Measures; (3) Steelhead Protective Measures; (4) California red-legged frog Protective Measures; (5) Migratory Bird Protective Measures; (6) Tree Protective Measures; and (7) Best Management Practices for Project Activities. The specific avoidance and minimization requirements are found in an attachment to the NOI, Exhibit B, Biological Resources Evaluation for the Mindego Creek Fish Passage Project.

#### **Monitoring and Reporting**

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

#### **Notice of Completion**

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

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

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant's NOI. Applicant shall include the project name and WDID number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit

the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: [Will.Kanz@wildlife.ca.gov](mailto:Will.Kanz@wildlife.ca.gov).

#### **Project Authorization**

Pursuant to Fish and Game Code section 1654, CDFW's approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI. Activities outside of those described in this Consistency Determination, such as operation of a water diversion, are subject to notification requirements pursuant to Fish and Game Code section 1602.

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

By: /s/ Date: 6/2/2022

Erin Chappell, Regional Manager  
California Department of Fish and Wildlife  
Bay Delta Region

### **SUMMARY OF REGULATORY ACTIONS**

#### **REGULATIONS FILED WITH THE SECRETARY OF STATE**

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

Department of Food and Agriculture  
File # 2022-0421-02  
Emerald Ash Borer Exterior Quarantine

This certificate of compliance makes permanent an emergency exterior quarantine against the emerald ash borer, including adoption of relevant terms, regulated areas, articles covered, and restrictions.

Title 03  
 Adopt: 3288  
 Filed 06/03/2022  
 Effective 06/03/2022  
 Agency Contact: Rachel Avila (916) 403-6813

Department of Social Services  
 File # 2022-0422-05  
 Child Support in Lieu of CalWORKs Grant

This certificate of compliance makes permanent emergency amendments to the Manual of Policies and Procedures (MPP) to implement Senate Bill 380 (Bradford, Chapter 729, Statutes 2017) with respect to changes to the California Work Opportunity and Responsibility to Kids (CalWORKS) program, (1) allowing applicants and recipients to elect to receive full child support payments for a stepsibling or half-sibling of an eligible child in the Assistance Unit in lieu of cash aid; and (2) exempting these child support payments from consideration in determining CalWORKS eligibility or grant amounts.

Title MPP  
 Amend: 44-102, 44-111, 44-315, 80-310, 82-504, 82-506, 82-507, 82-820, 82-832  
 Repeal: 44-309, 44-310  
 Filed 06/06/2022  
 Effective 06/06/2022  
 Agency Contact: Everardo Vaca (916) 657-2363

Department of Social Services  
 File # 2022-0422-07  
 Repeal of the Consecutive Day Rule in Homeless Assistance

This certificate of compliance action makes permanent the emergency regulations that removed, from section 44-211 of the Manual of Policies and Procedures, provisions which required that temporary shelter payments be used on consecutive days. Senate Bill 80 (Chapter 27 of 2019) repealed that requirement.

Title MPP  
 Amend: 44-211  
 Filed 06/06/2022  
 Effective 06/06/2022  
 Agency Contact: Everardo Vaca (916) 657-2363

Board of Forestry and Fire Protection  
 File # 2022-0527-02  
 Santa Cruz and San Mateo Weekend Emergency (2nd Readoption)

This emergency rulemaking action readopts, for a second time, regulations which extend the allowed days of operation of chainsaws and other power-driven equipment within, and the hauling of forest products from, Timberland affected by the CZU

Lightning Complex Fire of 2020 in Santa Cruz and San Mateo Counties to include Saturdays and Sundays.

Title 14  
 Amend: 926.9, 926.10, 928.5, 928.6  
 Filed 06/06/2022  
 Effective 06/22/2022  
 Agency Contact: Eric Hedge (916) 917-3170

Department of Cannabis Control  
 File # 2022-0525-03  
 Waivers for Commercial Cannabis Licensing Fees

In this emergency action, the Department re-adopts a regulation to establish a fee waiver for equity applicants or licensees, pursuant to Business and Professions Code section 26249. The emergency re-adopt increases the commercial cannabis business applicant's gross revenue threshold for eligibility from \$1,500,000 to \$5,000,000. It also adds that a qualified equity applicant or licensee must have an immediate family member who was convicted or arrested of an offense relate to the sale, possession, use, manufacture, or cultivation of cannabis, prior to November 8, 2016.

Title 04  
 Adopt: 15014.1  
 Filed 06/06/2022  
 Effective 06/06/2022  
 Agency Contact: Charisse Diaz (916) 465-9025

Department of Toxic Substances Control  
 File # 2022-0527-04  
 Chemically Treated Metal Shredder Residue

This emergency readoption allows for the continued transportation and disposal of chemically treated metal shredder residue (CTMSR) as a nonhazardous waste under a conditional exclusion.

Title 22  
 Amend: 66260.10, 66261.4  
 Filed 06/06/2022  
 Effective 06/06/2022  
 Agency Contact: Rick Brausch (916) 251-6398

Office of Energy Infrastructure and Safety  
 File # 2022-0526-01  
 Process & Procedure, Document Management, Enforcement

This is the second readoption of emergency action no. 2021-0903-01E (first readopted in action no. 2022-0228-02EE), which established processes and procedures enabling the Office of Energy Infrastructure Safety to ensure that electrical utilities take effective actions to reduce utility-related wildfire risks.

Title 14  
Adopt: 29100, 29101, 29102, 29200, 29300, 29301,  
29302  
Filed 06/06/2022  
Effective 06/14/2022  
Agency Contact: Jeff Brooks (916) 926-1672

Office of Environmental Health Hazard Assessment  
File # 2022-0427-01  
Chemicals Required by State or Federal Law to  
Have Been Tested for Potential to Cause Cancer  
or Reproductive Toxicity, But Which Have Not  
Been Adequately Tested as Required

This file and print request by the Office of  
Environmental Health Hazard Assessment amends  
subdivisions (b) to remove Triethylene Glycol from the  
list of chemicals required to be tested by the California  
Department of Pesticide Regulation. This amendment  
is exempt from the rulemaking procedures of the APA  
and OAL review pursuant to Health and Safety Code  
section 25249.8.

Title 27  
Amend: 27000  
Filed 06/02/2022  
Effective 04/26/2022  
Agency Contact: Tyler Saechao (916) 327-3015

California Department of Tax and Fee  
Administration  
File # 2022-0426-03  
Application of the Fee Collection Procedures Law

This action makes non-substantive changes to  
the Department of Tax and Fee Administration's  
fee collection regulations by removing regulations  
based on repealed statutes, adjusting the reference  
citations accordingly, and by adding authority ci-  
tations which explain the legislative history of the  
Board of Equalization's transition of authority to the  
Department of Tax and Fee Administration.

Title 18  
Amend: 3500  
Filed 06/08/2022  
Agency Contact: Kim DeArte (916) 309-5227

California Prison Industry Authority  
File # 2022-0420-01  
California Prison Industry Authority

This action amends 15 C.C.R. Sections 8001(a), (b),  
and (e) for grammar, syntax, and brevity.

Title 15  
Amend: 8001  
Filed 06/02/2022  
Agency Contact: Moira Doherty (916) 413-1140

California Prison Industry Authority  
File # 2022-0425-01  
Severability

This action amends 15 C.C.R. Section 8003 for word  
choice and brevity.

Title 15  
Amend: 8003  
Filed 06/07/2022  
Agency Contact: Moira Doherty (916) 413-1140

California Prison Industry Authority  
File # 2022-0426-02  
Participation

This action by the California Prison Authority  
makes changes without regulatory effect to regula-  
tions relating to participation in work and training  
programs.

Title 15  
Amend: 8004  
Filed 06/07/2022  
Agency Contact: Moira Doherty (916) 413-1140

Contractors State License Board  
File # 2022-0421-01  
Definitions: Bona Fide Employee; Direct Supervision  
and Control

In this action without regulatory effect the  
Contractors State License Board is repealing one regu-  
lation in title 16 of the California Code of Regulations.

Title 16  
Repeal: 823  
Filed 06/02/2022  
Agency Contact: Mike Jamnetski (916) 255-2798

Dental Hygiene Board of California  
File # 2022-0428-02  
Process for Approval of a New RDH Educational  
Program

This change without regulatory effect amends  
section 1104.1 of title 16 of the California Code of  
Regulations and its incorporated document to correct  
the Board name and term for different types of reg-  
istered dental hygienists to reflect statutory changes,  
change the Board address, and correct grammar.

Title 16  
Amend: 1104.1  
Filed 06/06/2022  
Agency Contact:  
Adina Pineschi-Petty (916) 516-5537

Department of Corrections and Rehabilitation  
File # 2022-0429-01  
Offender with a Mental Health Disorder

This non-substantive action by the Department of Corrections and Rehabilitation amends two sections to replace the term “Mentally Disordered Offender” with “Offender with a Mental Health Disorder” consistent with changes to the penal code pursuant to Assembly Bill 46 (Stats. 2021, Ch. 626).

Title 15  
Amend: 3000, 3079.1  
Filed 06/07/2022  
Agency Contact: Sarah Pollock (916) 445-2308

Board of Forestry and Fire Protection  
File # 2022-0422-08  
Substantially Damaged Consistency Amendments

This action clarifies the applicability of the Substantially Damaged Timberlands regulations in CCR, title 14, division 1.5, chapter 4, subchapter 7, article 6 to the Southern Subdistrict of the Coast Forest District.

Title 14  
Amend: 913.8  
Filed 06/06/2022  
Effective 01/01/2023  
Agency Contact: Eric Hedge (916) 917-3170

California Health Facilities Financing Authority  
File # 2022-0426-01  
Community Services Infrastructure Grant Program

In this rulemaking action, the Authority amends its regulations to require applications to be submitted online, removing the procedures related to the submission of applications by mail. It further revises its Community Services Infrastructure Grant Program Application form to reflect this change.

Title 04  
Amend: 7413, 7416  
Filed 06/08/2022  
Effective 06/08/2022  
Agency Contact: Bianca Smith (916) 653-2408

San Francisco Bay Conservation and Development Commission  
File # 2022-0421-04  
Implementation of California Environmental Quality Act

This action by the San Francisco Bay Conservation and Development Commission (Commission) adopts and amends regulations dealing with the California Environmental Quality Act. In this action the Commission establishes a consultation requirement

with other public agencies for environmental assessments. This action addresses how an environmental assessment will be made available for public review and requires a written response to comments to be available prior to Commission consideration of a proposed activity. Additionally, this action establishes the process for Commission consideration and approval an environmental assessment. The rulemaking identifies the documents that comprise the final environmental assessment, addresses the findings to be made by the Commission if an environmental assessment identifies one or more significant environmental effects of a proposed activity and provides for the adoption of a program for monitoring or reporting on revisions to mitigate or avoid significant environmental effects. Also clarified is the procedure for retaining a consultant when necessary, including fees paid to the consultant and requiring independent review and analysis of an environmental assessment produced by a consultant. Fees required to be paid to the Commission to produce an environmental assessment are also adopted in this action. Pursuant to this rulemaking the Executive Director must consider the environmental effects of the proposed activity as described in any environmental document prepared by the lead agency and summarize the environmental information for the Commission’s consideration. Other minor changes are also being made in this action.

Title 14  
Adopt: 11522, 11523, 11524, 11525  
Amend: 11501, 11510, 11511, 11520, 11521, 11531, 11532, 11533, 11540, 11560  
Repeal: 11541, 11542, 11543, 11544  
Filed 06/02/2022  
Effective 10/01/2022  
Agency Contact: Marc Zeppetello (415) 352-3655

Alcoholic Beverage Control Appeals Board  
File # 2022-0422-04  
Alcoholic Beverage Control Administrative Appeals Process

This resubmittal action reforms the appeals process for administrative decisions issued by the Department of Alcoholic Beverage Control, including definitions and provisions for service of documents, notices, appellate records, briefing, motions, and hearings.

Title 04  
Adopt: 176, 177, 181, 181.1, 181.2, 183, 194, 196, 197.1  
Amend: 178, 184, 187, 188, 193, 195, 197, 198, 199  
Repeal: 189, 190  
Filed 06/06/2022  
Effective 06/06/2022  
Agency Contact: Taryn Kinney (916) 445-4005

California Architects Board  
File # 2022-0428-01  
Education and Training/Practice Credits

This resubmittal action amends the education and training credit standards for a candidate to qualify as a landscape architect.

Title 16  
Amend: 2615, 2520  
Filed 06/08/2022  
Effective 06/08/2022  
Agency Contact: Kourtney Nation (916) 575-7237

Department of Corrections and Rehabilitation  
File # 2022-0425-05  
Off-Duty Firearms

This is a resubmittal of OAL action no. 2021-0920-04S, which proposed to establish conditions and restrictions regarding the concealed carrying of firearms by off-duty peace officers employed by the Department of Corrections and Rehabilitation.

Title 15  
Adopt: 3412  
Filed 06/07/2022  
Effective 06/07/2022  
Agency Contact: Rosie Ruiz (916) 445-2244

San Francisco Bay Conservation and Development  
Commission  
File # 2022-0427-03  
Enforcement Procedures Regulations

In this action, the San Francisco Bay Conservation and Development Commission (Commission) adopts and amends regulations governing enforcement procedures used to take action against any person or entity in violation of the McAteer-Petris Act, the Suisun

Marsh Preservation Act, or any permit or cease and desist order issued by the Commission.

Title 14  
Adopt: 11387, 11388, 11389, 11390, 11391, and Appendix J  
Amend: 11301, 11302, 11303, 11310, 11320, 11321, 11322, 11323, 11324, 11326, 11327, 11328, 11329, 11330, 11331, 11332, 11333, 11334, 11340, 11341, 11342, 11343, 11350, 11351, 11352, 11360, 11361, 11362, 11370, 11380, 11381, 11382, 11383, 11384, 11385, 11386, Renumbering of 11386(b) as new 11387, Renumbering of 11386(c) as new 11388, Renumbering of 11386(d) as new 11389, Renumbering of 11386(e)(f)(g)(h) as new 11390, Renumbering of 11386(i)(j)(k) as new 11391, and Appendices H and I  
Filed 06/07/2022  
Effective 10/01/2022  
Agency Contact: Marc Zeppetello (415) 352-3655

**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).