



California Regulatory Notice Register

REGISTER 2022, NUMBER 27-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

JULY 8, 2022

PROPOSED ACTION ON REGULATIONS

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

Conflict-of-Interest Codes — Notice File Number Z2022-0628-03 769

AMENDMENT

Multi-County: Santa Clarita Valley Water Agency (fka Castaic Lake Water Agency)

TITLE 11. CALIFORNIA PRIVACY PROTECTION AGENCY

California Consumer Privacy Act Regulations — Notice File Number Z2022-0628-02 770

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

Consistency Determination No. 2080-2022-009-01, Eureka Hill Road Bridge Seismic Retrofit Project, Mendocino County 775

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

30-day Notice of Modified Text and Availability of Additional Documents and Information Concerning Safer Consumer Products Regulations, Listing Nail Products Containing Toluene as a Priority Product (Original 45-day Notice Published on October 1, 2021) 779

PETITION DECISION

STATE WATER RESOURCES CONTROL BOARD

Regarding Petition to Amend the Bay-Delta Plan and Initiate a Rulemaking to Regulate All Recognized Rights to Bay-Delta Water 783

SUMMARY OF REGULATORY ACTIONS

Regulations filed with *Secretary of State* 784

Time-Dated Material

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.

CALIFORNIA REGULATORY NOTICE REGISTER is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 328-4880. The Register can also be accessed at <https://oal.ca.gov>.

**PROPOSED ACTION ON
REGULATIONS**

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

**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Santa Clarita Valley Water Agency (fka Castaic Lake Water Agency)

A written comment period has been established commencing on July 8, 2022 and closing on August 22, 2022. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than August 22, 2022. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

**EFFECT ON HOUSING
COSTS AND BUSINESSES**

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

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

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

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

TITLE 11. CALIFORNIA PRIVACY PROTECTION AGENCY

**DIVISION 6. CALIFORNIA PRIVACY PROTECTION AGENCY
CHAPTER 1. CALIFORNIA CONSUMER PRIVACY ACT REGULATIONS**

The California Privacy Protection Agency (Agency) proposes to amend sections 7000, 7001, 7010, 7011, 7012, 7013, 7016, 7020, 7021, 7022, 7024, 7026, 7028, 7050, 7060, 7061, 7062, 7063, 7070, 7071, 7072, 7080, 7081, 7100, 7101, and 7102, adopt sections 7002, 7003, 7004, 7014, 7015, 7023, 7025, 7027, 7051, 7052, 7053, 7300, 7301, 7302, 7303, and 7304, and repeal section 7031 of title 11, division 6, chapter 1 of the California Code of Regulations concerning the California Consumer Privacy Act.

PUBLIC HEARING

The Agency will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed regulations, at the following dates and time at the physical location identified below and via Zoom video and telephone conference:

Dates: August 24 and 25, 2022
Time: 9:00 a.m. Pacific Time
Location: Elihu M. Harris State Building
1515 Clay Street
Oakland, CA 94612
Auditorium (1st floor)

To join this hearing by Zoom video conference:

<https://coppa-ca-gov.zoom.us/j/89421145939>

Or Telephone:

USA (216) 706-7005 US Toll
USA (866) 434-5269 US Toll-free
Conference code: 682962

Members of the public who wish to speak at the hearing are requested to RSVP in advance on the Agency's website at <https://coppa.ca.gov/regulations/>. Speakers will be called on in the order of the RSVP. The information provided will also help the Agency plan logistics and ensure that the hearing location can accommodate all participants who plan to attend in person.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on August 23, 2022, at 5:00 p.m. Only written comments received by that time will be considered.

You may submit comments by the following means:

Electronic:

Comments may be submitted electronically to regulations@coppa.ca.gov.

Please include "CPPA Public Comment" in the subject line.

Mail:

California Privacy Protection Agency
Attention: Brian Soublet
2101 Arena Boulevard, Sacramento, CA 95834
(279) 895-6083

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

AUTHORITY AND REFERENCE

Authority: Section 1798.185, Civil Code.

Reference: Sections 1798.100, 1798.105, 1798.106, 1798.106, 1798.110, 1798.115, 1798.120, 1798.121, 1798.125, 1798.130, 1798.135, 1798.140, 1798.145, 1798.150, 1798.155, 1798.175, 1798.185, 1798.199.35, 1798.199.40, 1798.199.45, 1798.199.50, 1798.55 and 1798.199.65, Civil Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

The Legislature enacted the California Consumer Privacy Act of 2018 (CCPA) in late 2018 and the statute became operative January 1, 2020. (Stats. 2018, chapter 55 (Assembly Bill Number 375), § 3, effective Jan. 1, 2019, operative Jan. 1, 2020.) The CCPA conferred new privacy rights for consumers and imposed corresponding obligations on businesses subject to it. The rights conferred to consumers include the right to know what personal information businesses are collecting about consumers and how that information is being used, sold, and shared, the right to delete personal information held by businesses, the right to stop the sale of personal information by businesses, and the right to non-discrimination in service and price when exercising privacy rights. (Civ. Code, §§ 1798.100-1798.199.)¹

¹ All references are to the Civil Code unless otherwise indicated.

Subsequently, in November 2020, voters approved the Consumer Privacy Rights Act of 2020 (CPRA), amending and building on the CCPA. The CPRA amendments to the CCPA endow California residents with new rights of control over the personal information that covered businesses hold about them.² California consumers now have:

- The right to delete the personal information that a business collects from them (with specified exceptions for operational and legal necessity). (§ 1798.105.)
- The right to correct inaccurate personal information the business maintains about them. (§ 1798.106.)
- The right to know what personal information a business has collected about them, and how the business uses, sells, and shares that information. (§§ 1798.110, 1798.115 and 1798.140, subdivisions (ad) and (ah).)
- The right to opt out of the sale or sharing of their personal information. (§ 1798.120.)
- The right to limit a business’s use and disclosure of sensitive personal information about them to certain business purposes. (§ 1798.121.)
- The right to non-discrimination, meaning that consumers who exercise their rights under the CCPA are entitled receive the same service and price as consumers who do not. (§ 1798.125.)

Businesses have corresponding duties. First, businesses are required to provide consumers with a number of disclosures about their business practices as they relate to their collection and use of consumers’ personal information. Businesses must provide timely notice, at or before the point of collection, about the categories of personal information it will collect about the consumer, including categories of sensitive personal information; the purposes for which that information will be used; whether that information is sold or shared; and the length of time the business intends to retain that information. (§ 1798.100, subdivision (a).) The business must not collect additional categories of personal information or use the personal information for purposes that are incompatible with the disclosed purpose for which the personal information was collected. (§ 1798.100, subdivision (a)(1).) The businesses collection, use, retention, and sharing of the personal information must also be reasonably necessary and proportionate to achieve the purposes for which the

personal information was collected or processes, or for another disclosed purpose that is compatible with the context in which the personal information was collected, and not further processed in a manner that is incompatible with those purposes. (§ 1798.100, subdivision (c).)

A business must also post a privacy policy that provides consumers with a comprehensive description of a business’s online and offline practices regarding the collection, use, sale, sharing, and retention of personal information, as well as a description of a consumer’s CCPA rights. (§ 1798.130, subdivision (a)(5); see also Cal. Code Regs., title 11, § 7011.) If a business sells or shares personal information or uses or discloses sensitive personal information for certain purposes, the business must provide a “Do Not Sell or Share My Personal Information” link and/or “Limit the Use of My Sensitive Personal Information” link on its internet homepage, or an alternative opt-out link that allows consumers to exercise both their right to opt-out of the sale/sharing of their personal information and their right to limit the use of their sensitive personal information. (§ 1798.130, subdivision (a).)

Businesses are required to make available to consumers two or more methods for submitting CCPA requests. (§ 1798.130, subdivision (a)(1).) In obtaining consent from consumers, businesses are prohibited from using dark patterns, which is defined to mean a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decisionmaking, or choice. (§ 1798.140, subdivisions (h) and (l).) Businesses must respond to verifiable consumer requests within 45 to 90 days. (§ 1798.130, subdivision (a)(2); see also Cal. Code Regs., title 11, §§ 7060–7062 (discussing verification of requests).) If a business is unable to comply completely with a request, it is still obliged to comply with the request as much as possible. For instance, if a business denies a consumer’s request to know “in whole or in part, because of a conflict with federal or state law, or an exception to the CCPA,” the business must explain the basis for its denial and disclose information that is not subject to the exception. (Cal. Code Regs., title 11, § 7024, subdivision (e).) Similarly, if a business denies a request to delete because of an exception to the CCPA, the business must still delete the consumer’s personal information that is not subject to the exception and must not use the information retained for any other purpose than provided for by the exception. (*Id.*, § 7022, subdivision (f).) Businesses must also ensure that individuals responsible for handling consumer requests about the businesses’ privacy practices or the businesses’ compliance with the CCPA are informed of all the requirements under the law and how to direct consumers to exercise their CCPA rights. (§ 1798.130, subdivision (a)(6).)

² As amended by the CPRA, the CCPA now applies to businesses that collect personal information about California residents and that either (1) have gross revenues exceeding \$25 million a year; (2) buy, sell, or share the information of 100,000 or more consumers or households; or (3) derive 50 percent or more of their annual revenue from selling or sharing consumers’ personal information. (§ 1798.140, subdivision (d)(1)(A)–(C).)

There are a number of significant exceptions to the CCPA. First, the CCPA does not apply to government entities or nonprofit organizations, and excludes information that is lawfully made available to the general public, such as government records, widely distributed media, and information made available by a consumer if the consumer has not restricted the information to a specific audience. (§ 1798.140, subdivision (d)(1) and (v)(2).) The CCPA also contains a set of nuanced exceptions for certain categories of information — such as medical records, credit reporting, banking, and vehicle safety records — that apply when the information is governed by another privacy-protecting statute. (§ 1798.145, subdivisions (c), (d), (e) and (g).)

The Attorney General submitted proposed regulations and supporting materials to the Office of Administrative Law for its consideration in June 2020, and the regulations became operative on August 14, 2020. (Cal. Code Regs., title 11, § 7000, et seq.) A set of amendments to the regulations went into effect March 15, 2021. (*Id.*, §§ 7013, 7026, 7063 and 7072.)

On October 21, 2021, the Agency provided notice to the Attorney General that it was prepared to assume rulemaking responsibilities. Rulemaking authority transferred from the Attorney General to the Agency six months after that notice. (§§ 1798.185, subdivision (d) and 1798.199.40, subdivision (b).) On May 5, 2022, the Office of Administrative Law (OAL), pursuant to Section 100 of OAL’s regulations, approved the transfer of the existing CCPA regulations to Title 11, Division 6, a new division of the California Code of Regulations that is under the jurisdiction of the Agency. (See OAL Matter Number 2022–0325–02, available at https://coppa.ca.gov/regulations/pdf/2022032_02nr_approval.pdf.)

Effect of the Proposed Rulemaking:

The CPRA established a new agency, the California Privacy Protection Agency, to implement and enforce the CCPA. (§ 1798.199.10.) The Agency is directed to adopt regulations to further the purposes of the Act, including promulgating regulations on 22 specific topics. (§ 1798.185.) The proposed regulations primarily do three things: (1) update existing CCPA regulations to harmonize them with CPRA amendments to the CCPA; (2) operationalize new rights and concepts introduced by the CPRA to provide clarity and specificity to implement the law; and (3) reorganize and consolidate requirements set forth in the law to make the regulations easier to follow and understand.

More specifically, the proposed regulations:

- Establish rules defining the notified purposes for which a business can collect, use, retain, and share consumer personal information consistent with consumers’ expectations. (§ 1798.185, subdivision (a)(10).)

- Establish rules, procedures, and any exceptions necessary to ensure that the notices and information that businesses are required to provide under the CCPA are provided in a manner that may be easily understood by the average consumer, are accessible to consumers with disabilities, and are available in the language primarily used to interact with the consumer. (§ 1798.185, subdivision (a)(6).)
- Establish rules and procedures to facilitate and govern the submission of a consumer’s request to opt-out of sale/sharing and request to limit and a business’s compliance with the request, to ensure that consumers have the ability to exercise their choices without undue burden and to prevent businesses from engaging in deceptive or harassing conduct, including in retaliation against consumers for exercising their rights, while allowing businesses to inform consumers of the consequences of their decision. (§ 1798.185, subdivision (a)(4).)
- Establish rules and procedures to facilitate a consumer’s right to delete, correct, or obtain personal information. (§ 1798.185, subdivision (a)(7).)
- Establish rules on how often and under what circumstances a consumer can request a correction; how a business responds to the request; how concerns regarding accuracy are resolved; the steps taken to prevent fraud; and the right to submit an addendum when a request to correct health information has been rejected. (§ 1798.185, subdivision (a)(8).)
- Establish procedures to extend the 12-month period of disclosure of information after a verifiable consumer request pursuant to section 1798.130, subdivision (a)(2)(B). (§ 1798.185, subdivision (a)(9).)
- Define the requirements and specifications for an opt-out preference signal. (§ 1798.185, subdivision (a)(19)(A) & (B).)
- Establish regulations governing how businesses respond to an opt-out preference signal where the business has elected to comply with section 1798.135, subdivision (b). (§ 1798.185, subdivision (a)(20).)
- Establish regulations governing the use or disclosure of a consumer’s sensitive personal information. (§ 1798.185, subdivision (a)(19)(C).)
- Further define and add to the business purposes for which businesses, service providers, and contractors may use personal information consistent with consumer expectations, and further define the business purposes for which service providers and contractors may combine personal information. (§ 1798.185, subdivision (a)(10).)

- Identify the business purposes for which service providers and contractors may use consumers' personal information pursuant to a written contract with a business, for the service provider or contractor's own business purpose. (§ 1798.185, subdivision (a)(11).
- Establish procedures for filing complaints with the Agency (§ 1798.199.45) and procedures necessary for the Agency's administrative enforcement of the CPRA. (§ 1798.199.50).
- Define the scope and process for the exercise of the Agency's audit authority as well as the criteria for selecting those that would be subject to an audit. (§ 1798.185, subdivision (a)(18).)
- Harmonize regulations governing opt-out mechanisms, notices, and other operational mechanisms to promote clarity and functionality. (§ 1798.185, subdivision (a)(22).)

The Agency will not be promulgating rules on cybersecurity audits (§ 1798.185, subdivision (a)(15)(A)), risk assessments (§ 1798.185, subdivision (a)(15)(B)), or automated decisionmaking technology (§ 1798.185, subdivision (a)(16)) at this time. These areas will be the subject of a future rulemaking and are not within the scope of this Notice of Proposed Rulemaking.

Anticipated Benefits of the Proposed Regulations:

The proposed regulations provide a number of significant benefits to Californians. Building off of the existing CCPA regulations, the proposed regulations provide comprehensive guidance to consumers, businesses, service providers, and third parties, on how to implement and operationalize new consumer privacy rights and other changes to the law introduced by the CPRA amendments to the CCPA. (Prop. 24, as approved by voters, Gen. Elec. (Nov. 3, 2020), § 3(C)(2).) They set forth clear requirements for how businesses are to craft their methods for submitting consumer requests and obtaining consumer consent so that the consumer's choice is freely made and not manipulated, subverted, or impaired through the use of dark patterns. (*Ibid.*) They also clearly explain that the CPRA amendments now restrict businesses from collecting, using, retaining, and sharing consumer personal information in a manner that is inconsistent with consumer expectations, unless they obtain the consumer's explicit consent. In doing so, the regulations place the consumer in a position where they can knowingly and freely negotiate with a business over the business's use of the consumer's personal information. (*Id.*, § 3(C)(3).)

In addition, the proposed regulations set forth the requirements for an opt-out preference signal that consumers may use to easily opt-out of the sale or sharing of their personal information with all businesses that they interact with online. With the goal of

strengthening consumer privacy, the regulations support innovation in pro-consumer and privacy-aware products and services and help businesses efficiently implement privacy-aware goods and services. (*Id.*, § 3(C)(1) & (5).) They take into consideration how privacy rights are being implemented in the marketplace presently and build upon the development of privacy-forward products and services.

Finally, the proposed regulations take into consideration privacy laws in other jurisdictions and implement compliance with the CCPA in such a way that it would not contravene a business's compliance with other privacy laws, such as the General Data Protection Regulation (GDPR) in Europe and consumer privacy laws recently passed in Colorado, Virginia, Connecticut, and Utah. In doing so, it simplifies compliance for businesses operating across jurisdictions and avoids unnecessary confusion for consumers who may not understand which laws apply to them.

Comparable Federal Regulations:

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

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Agency has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Agency has concluded that these are the only regulations that concern the California Consumer Privacy Act.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

Section 1798.185, subdivision (a), requires the Agency to solicit broad public participation and adopt regulations to further the purposes of the CCPA. During its pre-rulemaking process, the Agency published an invitation for written comments, held informational sessions, and held stakeholder sessions to solicit public participation in the rulemaking process.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Agency's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: No fiscal impact is anticipated on the Agency. The Agency's enforcement responsibilities are a result of the statute, and cannot commence prior to July 1, 2023. (§ 1798.185, subdivision (d).) The proposed regulations do not create additional workload for the Agency.

The proposed regulations may impact the Department of Justice's (DOJ) expenditures for

enforcement because DOJ is currently enforcing CCPA and maintains civil enforcement authority.

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

Other non-discretionary costs or savings imposed on local agencies: None.

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

Cost impacts on representative person or business:

The Agency estimates that the proposed regulations will have a cost impact of \$127.50 per business. This represents the labor cost of updating certain website information to comply with the proposed regulations.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Agency has made an initial determination that 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.

Results of the Economic Impact Assessment (EIA):

The Agency concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Agency also concludes that:

- (1) The proposed regulations would benefit the health and welfare of California residents by operationalizing the CPRA amendments to the CCPA, thus ensuring California residents are afforded greater privacy protections.
- (2) The proposal would not benefit worker safety because it does not regulate worker safety standards.
- (3) The proposal would not benefit the state’s environment because it does not change any applicable environmental standards.

Business report requirement: Section 7102 requires businesses collecting large amounts of personal information to annually compile and disclose certain metrics. The Agency proposes to amend section 7102 to require these businesses to additionally disclose information about requests to correct and requests to limit.

The Agency finds it is necessary for the health, safety or welfare of the people of this state that proposed section 7102, which requires a report, applies to businesses.

Small business determination: The Agency has determined that the proposed action affects small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Agency must determine that no reasonable alternative considered by the Agency or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose for which the action is proposed 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 Agency has determined that the proposed regulations are the most effective way to operationalize the CPRA amendments to the CCPA. The regulations balance the benefits to consumers, the burden to businesses, and the purposes of the CCPA. The Agency considered two alternative approaches to the regulations and determined that they would be less effective in carrying out the purposes for which the regulations are proposed. Specific alternatives to individual regulations are discussed in detail in the Initial Statement of Reasons.

More stringent regulatory requirement. A more stringent regulatory alternative considers mandating more prescriptive compliance requirements, such as prescriptive methods for submitting, tracking, and responding to CCPA requests, and detailed training programs and record-keeping practices for all businesses subject to the CCPA. This requirement would be an additional requirement (beyond the proposed regulations) for potentially hundreds of thousands of California businesses and would impose substantial costs. The Agency rejects this regulatory alternative to allow flexibility to businesses in crafting their own processes in handling CCPA requests in order to ease the compliance burden for smaller businesses subject to the CCPA. Smaller businesses may not have the resources to devote additional staff to handle CCPA-related tasks and may not receive a substantial amount of CCPA requests requiring an extensive compliance program.

Less stringent regulatory requirement. A less stringent regulatory alternative would, among other things, allow limited exemption for GDPR-compliant firms. Limitations would be specific to areas where GDPR and CCPA conform in both standards and enforcement, subject to auditing as needed. This approach could achieve significant economies of scale in both private compliance and public regulatory costs. The Agency rejects this regulatory alternative because of key differences between the GDPR and CCPA, especially in terms of how personal information is defined and the consumer’s right to opt-out of the sale or

sharing of personal information (which is not required in the GDPR).

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

California Privacy Protection Agency
 Attention: Brian Soublet
 2101 Arena Boulevard, Sacramento, CA 95834
 (279) 895-6083
regulations@coppa.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

California Privacy Protection Agency
 Attention: Von Chitambira
 2101 Arena Boulevard, Sacramento, CA 95834
 (279) 895-1412
regulations@coppa.ca.gov

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

The Agency will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency’s website at <https://coppa.ca.gov/regulations/>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Agency analyzes all timely and relevant comments received during the 45-day public comment period, the Agency will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Agency 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 Agency adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Agency 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, a copy of the Final Statement of Reasons will be available on the Agency’s website at <https://coppa.ca.gov/regulations/>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency’s website at <https://coppa.ca.gov/regulations/>.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

**CALIFORNIA ENDANGERED SPECIES ACT
 CONSISTENCY DETERMINATION
 NUMBER 2080-2022-009-01**

- Project:** Eureka Hill Road Bridge Seismic Retrofit Project
- Location:** Mendocino County
- Applicant:** County of Mendocino Department of Transportation
- Notifier:** James Linderman
- Background**

The County of Mendocino Department of Transportation (Applicant) proposes construction of the Eureka Hill Road Bridge (10C-0034) Seismic Retrofit Project (Project) along Eureka Hill Road in Mendocino County. The Project would retrofit the existing Eureka Hill Road Bridge over the Garcia River to strengthen the structural components against seismic and erosive processes. The Project requires

construction of a temporary clear water crossing (temporary work pad) beneath the bridge with temporary culverts to maintain streamflow and fish passage.

The Project activities described above are expected to incidentally take¹ coho salmon (*Oncorhynchus kisutch*) of the Central California Coast (CCC), where those activities take place within the bed, bank, and channel of the Garcia River². In particular, CCC coho salmon, could be incidentally taken as a result of the temporary stream diversion and dewatering process. CCC coho salmon are designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.) (See Cal. Code Regs., title 14, § 670.5, subdivision (a)(2)(N)).

CCC coho salmon individuals are documented as present at Garcia River. Because of the possible occurrences of all life stages of CCC coho salmon at the Project sites, the known dispersal patterns of CCC coho salmon and the presence of suitable CCC coho salmon, habitat within the Project site during the Project's work period, the National Marine Fisheries Service (Service) has determined that CCC coho salmon are reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of CCC coho salmon.

According to the Service, incidental take will be exceeded if more than 100 CCC coho salmon are captured for relocation, or if more than 4 juvenile CCC coho salmon are harmed or killed. The Project will not result in permanent habitat loss for the species.

Because the Project is expected to result in take of species designated as threatened under the federal ESA, the California Department of Transportation (Caltrans), as a Federal Highway Administration agent, consulted with the Service as required by the ESA. On June 25, 2014, the Service issued a Biological Opinion, entitled Eureka Hill Road Bridge Seismic Retrofit Project, Mendocino County, California, (Service file Number WCR-2014-834) (BO) to Caltrans for the Project. The BO describes the Project, requires the Applicant to comply with terms of the incidental take statement (ITS) and accompanying BO, and incorporates additional measures. The ITS also requires the

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

² The Project activities are also expected to take the federally threatened Northern California steelhead (*Oncorhynchus mykiss*) and federally threatened California Coastal Chinook salmon (*Oncorhynchus tshawytscha*). These species are not listed under CESA and are not addressed in this consistency determination.

Applicant to implement and adhere to measures contained within the Project Biological Assessment (BA) dated November 2020. On March 9, 2022, the Service issued two letters amending the ITS and associated BO.

On May 17, 2022, the Director of the Department of Fish and Wildlife (CDFW) received a notice from James Linderman, on behalf of the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS, and accompanying BO and BA are consistent with CESA for purposes of the Project and CCC coho salmon (Cal. Reg. Notice Register 2022, Number 22-Z, page 658.)

Determination

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

Avoidance, Minimization, and Mitigation Measures

- 1) Applicant shall ensure that work in the live channel of the Garcia River (consisting of construction of the temporary work pad, implementation of footing retrofits at pier 2, and installation of column casings to the pier columns and top mats to the pier foundations) will be limited to the period of June 15 through October 15. If any work within the live channel of the Garcia River is not completed by October 15, a written approval/extension must be obtained from the Service and CDFW to allow work past October 15. Revegetation activities are excluded from this requirement with the stipulation that no heavy equipment be used in the channel.
- 2) Caltrans or Applicant must retain a qualified biologist with expertise in the areas of anadromous salmonid biology, including handling, collecting, and relocating salmonids; salmonid/habitat relationships; and biological monitoring of salmonids. Caltrans must ensure that all biologists

working on this Project are qualified to conduct fish collections in a manner that minimizes potential risks to CCC coho salmon. Electrofishing, if used, must be performed by a qualified biologist and conducted according to the *Service Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act* (Available at: <https://media.fisheries.noaa.gov/dam-migration/electro2000.pdf>).

- 3) A qualified biologist must monitor the construction site during placement and removal of channel diversions and cofferdams to ensure that any harm or loss of salmonids is minimized and documented. The biologist must be on site during all dewatering events to ensure that all ESA-listed salmonids are captured, handled, and relocated safely. The biologist must notify the Service biologist one week prior to capture activities in order to provide an opportunity for Service staff to observe the activities.

Although not a requirement of the BO, CDFW requests to be notified as well.
- 4) Prior to project implementation, Applicant shall ensure that a Service/ and CDFW-approved biologist will instruct all construction personnel and monitoring biologists of the terms and conditions being implemented to protect anadromous fish during construction. The biological monitor will have the full authority to halt work as necessary for the purpose of minimizing adverse effects on anadromous fish. The biological monitor will also be on site to monitor all work to install and remove the diversion and temporary gravel pad and to minimize adverse effects to anadromous fish from these activities.
- 5) Applicant shall notify and coordinate with the Service and CDFW 10 days prior to any stream diversions and fish capture and relocation activities.
- 6) Prior to installation of the temporary work pad, the Applicant shall ensure that the work area shall be dewatered. Dewatering will be accomplished by funneling flows with clean plastic sheeting and gravel through temporary culverts; temporary culverts will remain in place during in-channel construction to maintain fish passage and bypass flows through the work area.
- 7) During implementation of the seismic improvements, Applicant shall ensure that the temporary work pad will prevent any debris from falling into the Garcia River.
- 8) Applicant shall ensure that Environmentally Sensitive Areas (ESAs) will be established at the edges of the temporary access routes within the riparian corridor and around a portion of the temporary work pad within the river to prevent

encroachment into adjacent natural areas. ESA limits will be marked using orange snow fencing or equivalent, and will remain in place and maintained in good condition until construction is complete.

- 9) Applicant shall ensure that the use of non-toxic vegetable based hydraulic fluid will be required for all equipment operated below the ordinary high water mark.
- 10) Applicant shall ensure that all fuel storage and refueling sites, concrete washouts, and any other hazardous materials are stored on the top of the bank at least 50 feet from surface water.
- 11) Applicant shall ensure that all construction equipment, pumps, hand tools, and personnel protective equipment that is to be used in the stream channel is subjected to inspection and appropriate treatments to prevent the spread of invasive plant and aquatic invertebrate species.
- 12) Applicant shall ensure that all upland areas temporarily impacted during project construction will be restored to preconstruction contours and revegetated with native species.
- 13) The Applicant shall ensure that measures consistent with the current Caltrans' Construction Site BMP Manual (including the Storm Water Pollution Prevention Plan [SWPPP] and Water Pollution Control Plan [WPCP] Manuals) shall be implemented to minimize effects to anadromous fish during construction.
- 14) Applicant shall ensure a SWPPP will be prepared by the contractor. The SWPPP will contain a Spill Response Plan with instructions and procedures for reporting spills, the use and location of spill containment equipment, and the use and location of spill collection materials. Implementation of the SWPPP will minimize effects to salmonids and their habitat from potential spills associated with construction activities.
- 15) Applicant shall ensure that gravel used for the temporary work pads shall consist of 1-inch to 4-inch diameter uncrushed, washed and rounded river rock (aka spawning gravel).
- 16) Captured fish must be handled with extreme care and kept in water to the maximum extent possible during relocation activities. All captured fish must be kept in cool, shaded, aerated water protected from excessive noise, jostling, or overcrowding any time they are not in the stream, and fish must not be removed from this water except when released. To avoid predation, the biologist must have at least two containers and segregate young-of-year fish from larger age-classes and other potential aquatic predators. Captured salmonids will be relocated as soon as possible to

a suitable instream location where habitat conditions are present to allow for survival of transported fish and fish already present.

- 17) If any salmonids are found dead or injured, the biologist must contact the Service biologist immediately. The purpose of the contact is to review the activities resulting in take and to determine if additional protective measures are required. All salmonid mortalities must be retained, placed in an appropriately-sized sealable plastic bag, labeled with the date, location of collection, and measured fork length, and be frozen as soon as possible. Frozen samples must be retained by the biologist until specific instructions are provided by the Service. The biologist may not transfer biological samples to anyone other than the Service North Central Coast Office without obtaining prior written approval from the North Central Coast Office supervisor. Any such transfer will be subject to such conditions as Service deems appropriate.

Although not a requirement of the BO, CDFW requests to be contacted in this situation as well.

- 18) All cofferdams, pumps, pipes and sheet plastic will be removed from the stream upon Project completion; any clean native gravel used for the cofferdams will be left in the channel to augment available spawning habitat.
- 19) All pumps used to divert live stream flow, outside the dewatered work area, will be screened and maintained throughout the construction period to comply with the Service's Fish Screening Criteria for Anadromous Salmonids. See: https://media.fisheries.noaa.gov/dam-migration/southwest_region_1997_fish_screen_design_criteria.pdf.

Applicant shall ensure that any emergent or submergent aquatic vegetation shall be retained. Other vegetation shall be retained as practical within the constraints of the proposed project. Where vegetation removal is necessary, rapidly sprouting plants, such as willows, shall be cut off at the ground line and the root systems left intact.

- 20) Applicant will remove or restore all temporary access area (temporary work pad) to pre-project conditions once the seismic improvements have been completed.
- 21) Prior to removal of the temporary work pad, the Applicant shall mitigate by ensuring that large wood debris (LWD) (12-inch diameter or greater and 25 feet in length) will be embedded and cable anchored downstream of the Project's bridge on the Garcia River to enhance existing salmonid habitat at the site. Woody debris used will come

from within the Garcia River watershed and will be cut for the express use of salmonid mitigation.

Monitoring and Reporting Measures

- 1) Caltrans or the Applicant must provide a written report to the Service by January 15, following completion of construction. The report must be submitted to the Service and must contain, at a minimum, the following information:
 - a. Fish Relocation — The report must include a description of the location from which fish were removed and the release site including photographs; the date and time of the relocation effort; a description of the equipment and methods used to collect, hold, and transport salmonids; if an electro shocker was used for fish collection, a copy of the logbook must be included; the number of fish relocated by species; the number of fish injured or killed by species; and a brief narrative of the circumstances surrounding ESA listed fish injuries or mortalities.
 - b. Turbidity Monitoring — The report must include turbidity measurements at 250 feet downstream of the bridge prior to, during, and following construction and removal of the construction pad; a description of the equipment (secchi disc, transparency tub, etc.) and methods to measure turbidity must be included; and, if any fish are present within 250 feet of the construction pad, a brief narrative of any behavioral changes observed during turbidity monitoring should also be provided. A discussion of any unanticipated effects or unanticipated levels of effects on salmonids, a description of any and all measures taken to minimize those unanticipated effects, and a statement as to whether or not any unanticipated effects had any effect on ESA-listed fish; the number of salmonids killed or injured during Project construction; and photographs taken before, during, and after the activity from photo reference points.
- 2) The Applicant shall ensure that monitoring and maintenance for LWD installation occurs, including examination after the first high-flow event and after one year to determine performance. Maintenance needs that should be anticipated include replacement, re-anchoring, and removal of failed material. Additional salmonid sheltering habitat created by this effort is expected to increase total salmonid juvenile counts by more than five individuals. The estimated cost is \$10,000 for this effort.

- 3) Caltrans or the Applicant must monitor turbidity 250 feet downstream of the bridge prior to, during, and following construction and removal of the construction pad. Behavioral changes of fish present during turbidity monitoring must also be recorded.

The ITS and accompanying BO and BA require the Applicant to submit monitoring reports to the Service by January 15 of the year following construction of the Project. Although not a condition of the ITS and accompanying BO and BA, CDFW requests a copy of the monitoring reports as well. The reports should include dates construction occurred and the success of revegetation and restoration.

Security

The Project and the required mitigation are being funded by the Caltrans Local Assistance Program. Caltrans shall provide security, in compliance with the Master Funding Agreement entered into by CDFW and Caltrans on September 3, 2021, to ensure that it has adequate funding to complete the mitigation measures described above.

Conclusion

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

CDFW’s determination that the ITS and accompanying BO and BA are consistent with CESA is limited to CCC coho salmon.

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

30-DAY NOTICE OF MODIFIED TEXT
AND AVAILABILITY OF ADDITIONAL
DOCUMENTS AND INFORMATION

SAFER CONSUMER PRODUCTS
REGULATIONS — LISTING NAIL PRODUCTS
CONTAINING TOLUENE AS A
PRIORITY PRODUCT

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL REFERENCE NUMBER: R-2019-04
OFFICE OF ADMINISTRATIVE LAW
REFERENCE NUMBER: 2021-0921-06

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) has made changes to the proposed regulatory text, amending title 22, California Code of Regulations, section 69511 and adopting title 22, California Code of Regulations, section 69511.6. The modification to the proposed regulation would set an Alternatives Analysis Threshold (AAT) for nail products containing toluene at 100 parts per million (ppm) and describe the requirements related to submission of an AAT Notification. DTSC considers these new changes to the rulemaking to be “sufficiently related changes,” as defined in title 1, California Code of Regulations, section 42.

DTSC mailed the initial notice of proposed action for this rulemaking and provided links to these documents for public review and comment on October 1, 2021. Written comments were accepted during the 45-day public comment period.

WRITTEN COMMENT PERIOD

A public comment period for the modified rulemaking has been established commencing on July 8, 2022 and closing on August 8, 2022. Statements, arguments, or contentions regarding the rulemaking and/or supporting documents must be submitted in writing for them to be considered by DTSC before it adopts this regulation. Only comments received in writing at the DTSC office on or before that date will be considered. Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard copy formats.

Written comments may be submitted electronically through the SCP Information Management System, CalSAFER at: <https://calsafes.dtsc.ca.gov/>. Please direct questions or concerns about CalSAFER to Christine Papagni at 818-717-6541 or Christine.Papagni@dtsc.ca.gov.

While DTSC prefers that comments be submitted through the CalSAFER system, interested persons may also submit their comments in an email to:

SaferConsumerProducts@dtsc.ca.gov or through the DTSC regulations email address at regs@dtsc.ca.gov. Written comments in hard-copy format can be directed to the Office of Legislation and Regulatory Review, as specified below:

Office of Legislation and Regulatory Review
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Fax Number: (916) 324-1808
Phone Number: (916) 322-4563

TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulation may be directed to Christine Papagni as specified above. However, such oral inquiries are not part of the rulemaking record.

AVAILABILITY OF MODIFIED TEXT AND ALL OTHER RULEMAKING DOCUMENTS

Copies of the Notice of Proposed Action, Initial Statement of Reasons, all the information upon which its proposal is based, and the express terms of the proposed regulation (also known as the proposed regulatory text), are posted to DTSC's Internet website at <https://dtsc.ca.gov/regs/> or may be obtained from the Office of Legislation and Regulatory Review, as specified above.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial changes are made, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation or provide written comments on this specific regulation will be sent a copy of the modified text if substantive changes are made.

DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <https://dtsc.ca.gov/regs/> along with the date the rulemaking is

filed with the Secretary of State and the effective date of the regulation.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to the office of Legislation and Regulatory Review, as specified above. To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable e-list or e-mail: regs@dtsc.ca.gov.

CHANGES TO PROPOSED REGULATIONS MADE AFTER THE 45-DAY COMMENT PERIOD

Modified Regulatory Text

The proposed regulatory text has been modified to add several new subsections to section 69511.6 to set an AAT for toluene in nail products at 100 ppm. A detailed statement of reasons for these changes is provided below. All other sections in the originally proposed regulatory text that are not listed below remain unchanged.

A copy of the revised text is posted to DTSC's Internet website at <https://dtsc.ca.gov/regs/>. Changes to the regulatory text after the start of the rulemaking process contain the following formatting features:

- New language in the original regulations text is indicated by single underlining the text.
- Deleted language in the original regulations text is indicated by ~~striking out the text~~.
- Language that has been added since publishing the original notice of this proposed action is indicated by double underlining text.
- Language that has been deleted since publishing the original notice of this proposed action is indicated by ~~double striking out the text~~.

General Overview and Background of the Modifications

Pursuant to section 69503.2(b) of the Safer Consumer Products regulations, DTSC may identify and list as a Priority Product one or more product-chemical combinations that it determines to be of high priority. DTSC's decision to identify and list a product-chemical combination is based on an evaluation of potential exposures and adverse impacts. DTSC proposes to identify nail products containing toluene — including nail coatings and nail polish thinners — as a Priority Product and set an AAT of 100 ppm for toluene in the Priority Product in accordance with section 69503.5(c).

Following the adoption of a Priority Product in regulation, manufacturers are required to submit a Priority Product Notification and determine whether they will conduct an Alternatives Analysis (AA). An AA is a

systematic process for evaluating the life cycle impacts of a Priority Product and any alternatives considered. In lieu of submitting an AA Report, a manufacturer may also remove the Chemical of Concern from the Priority Product, replace it with a safer alternative, or stop selling the product in California. Section 69505.1(a) and section 69505.4, subdivisions (b), (c), and (d) identify the options a manufacturer must comply with in lieu of conducting an AA. Alternatively, if the concentration of the Chemical of Concern in the Priority Product does not exceed a set AAT level, the manufacturer may submit an AAT Notification in lieu of an AA, in accordance with section 69505.3.

This proposal has been modified to allow the manufacturer to submit an AAT Notification in lieu of an AA if the concentration of toluene in the Priority Product does not exceed the AAT level of 100 ppm.

DTSC is proposing to set an AAT for toluene in nail products at 100 ppm based on the following:

- DTSC’s goal in listing this Priority Product is to reduce the potential for nail salon workers and nail product consumers to be exposed to, and harmed by, toluene that is intentionally added in nail products as an ingredient.
- Data received in 2020 from nail product manufacturers and other entities indicated that toluene was present in nail products as a contaminant, residual, or as an intentionally added ingredient.
- DTSC recently conducted analytical laboratory testing of 157 nail products and detected toluene in 27 nail products at concentrations ranging from 31.4 ppm to 187,000 ppm. These findings were consistent with the information from manufacturers reporting that toluene is in some products as an intentionally added ingredient where it was found at high concentrations, and present in other products as a contaminant where it was found at much lower concentrations.
- During the regulatory 45–day public comment period, industry stakeholders requested that DTSC set an AAT above contaminant levels. When toluene is present as a contaminant in nail products, the concentration is generally 100 ppm or lower, according to these commenters.
- Several other states have enacted laws requiring that manufacturers report products marketed to children that contain toluene and other specified chemicals above a contamination threshold of 100 ppm, including:
 - Oregon Toxic Free Kids Act;
 - Washington Children’s Safe Products Act; and
 - Vermont Chemicals of High Concern to Children Law.

DTSC is proposing to allow manufacturers of the Priority Product the option of demonstrating that their products qualify for the AAT Notification by providing testing data from ingredient suppliers. During adoption of the SCP framework regulations in 2012, DTSC stated, in responses to public comments related to the AAT, that it would not accept supplier declarations or certification of material content as a demonstration of a Priority Product meeting the AAT. However, DTSC has determined that it is appropriate to allow manufacturers, in this instance, to use information from suppliers if the manufacturer determines and certifies that the supplier meets specified reporting and analytical requirements to measure the concentration of toluene in the supplied ingredients. DTSC believes it is appropriate to allow manufacturers to use information from suppliers for toluene in nail products due to toluene’s likely presence in nail product supply chain ingredients at low concentration levels.

Section 69511.6(a).

This section has been modified to update the definition “nail products containing toluene” to mean nail products containing toluene, including nail coatings and nail polish thinners that contain toluene as an added ingredient, a residual, or a contaminant. This change is necessary because any responsible entity that manufacturers, sells, imports, or assembles a nail product containing toluene as an added ingredient or as a known or suspected contaminant or residual is required to submit a Priority Product Notification.

Section 69511.6(f).

This section has been modified to clarify that a manufacturer submitting an AAT Notification to request an exemption from the Alternatives Analysis requirements must do so no later than the due date for the Preliminary AA Report, as indicated in section 69505.3(a).

This change is necessary to provide responsible entities with a time frame for complying with the notification and reporting requirements included in the SCP regulations.

Section 69511.6(g).

This section is added to the proposed regulatory text. This section indicates that an AAT is being set at 100 ppm for toluene in nail products.

Toluene may be present in nail products as an intentionally added ingredient, residual, or contaminant. The default AAT for a contaminant is the Practical Quantitation Limit (PQL), which is defined in section 69501.1(a)(52) as “the lowest concentration of a chemical that can be reliably measured within specified limits of precision and accuracy using routine laboratory operating procedures.” DTSC may also set the AAT at a higher level, pursuant to section 69503.5(c). DTSC was informed that, when toluene is present as

a contaminant in nail products, the concentration is generally 100 ppm or lower. Further, as noted earlier, several other states with chemical ingredient disclosure laws for children’s products have established a reporting threshold for toluene of 100 ppm. Based on these factors, DTSC has chosen to set the AAT for nail products at 100 ppm.

If the concentration of toluene in a product does not exceed the AAT, the manufacturer of that product may submit an AAT Notification instead of an AA Report. The AAT Notification may be submitted concurrently with the Priority Product Notification or afterwards, but not later than the due date for the Preliminary AA Report. If the manufacturer submits an AAT Notification, the manufacturer must also certify that it meets and will continue to meet the criteria and conditions that are the basis for the AA exemption.

Add Section 69511.6(h).

This section is added to the proposed regulatory text. This section specifies the reporting requirements for a manufacturer submitting an AAT to demonstrate and certify that the concentration of toluene in a product does not exceed the AAT. This section also provides the sample preparation, analytical methods, instrumentation, calibration, and quality control criteria that a testing laboratory must follow if a manufacturer chooses to submit laboratory testing results of the formulated Priority Product.

This section is necessary to ensure that manufacturers who assert that they are exempt from AA requirements understand the reporting requirements. To this end, this section specifies that a manufacturer may submit certificates of analyses from ingredient suppliers along with calculations of the concentration of toluene in the formulated Priority Product or they may submit laboratory testing results that demonstrate the concentration of toluene in the Priority Product. This section also specifies the laboratory criteria that must be met for measuring toluene in each Priority Product as well as the data submittal requirements. This section provides the specific quality control requirements and documentation to be submitted with an AAT Notification.

Additional Documents

The following documents are added to the rulemaking file.

Revised Initial Statement of Reasons (ISOR)

This document has been revised to include rationale for setting an AAT, the potential economic impacts associated with the AAT, as well as some editorial changes to clarify some language and accurately reflect the Safer Consumer Products Program. Further, in response to a stakeholder comment provided during the 45-day comment period, some additional

language was added to describe the requirements of the California Professional Cosmetics Labeling Law.

Language that has been added to the ISOR since publishing the previously proposed regulatory text is indicated by double-underlining text. Language that has been deleted from the ISOR since publishing the previously proposed regulatory text is indicated by ~~double-striking-out-the-text~~.

Revised Economic and Fiscal Impact Statement (STD 399) and Revised Economic and Fiscal Impact Analysis (attachment to STD 399)

Note: Language that has been added to this document since publishing the previously proposed regulatory text is indicated by double-underlining text. Language that has been deleted from this document since publishing the previously proposed regulatory text is indicated by ~~double-striking-out-the-text~~.

These documents have been revised to include the potential economic impacts associated with the AAT. DTSC estimates that each manufacturer submitting an AAT Notification will invest a maximum of three hours at \$42/hour to complete the notification and respond to questions from DTSC. Each manufacturer may develop AAT Notifications for up to, at most, 20 percent of their products. Some of the larger manufacturers possess product ingredient laboratory results produced and gathered onsite, while most manufacturers will obtain and transmit ingredient certificates of analyses from their suppliers.

DTSC estimates the cumulative cost for all affected California manufacturers of nail products containing toluene to submit AAT Notifications and to respond to DTSC’s reviews of these submittals to be between \$13,486 to \$20,748.

DTSC estimates the maximum combined total costs to manufacturers for engaging in the development of Priority Product Notifications, AAs, and AAT Notifications will not exceed \$3,376,000.

Revised Product–Chemical Profile for Nail Products Containing Toluene.

The Product–Chemical Profiles for Nail Products Containing Toluene has been updated to include technical information about the presence of toluene as a contaminant in nail products. New language is indicated by red, single underlined text. Deleted language is indicated by ~~red, strikethrough text~~. The document is cited as follows: DTSC (2022) Revised Product–Chemical Profile for Nail Products Containing Toluene.

PETITION DECISION

STATE WATER RESOURCES CONTROL BOARD

DECISION ON PETITION TO AMEND THE BAY-DELTA PLAN AND INITIATE A RULEMAKING TO REGULATE ALL RECOGNIZED RIGHTS TO BAY-DELTA WATER

On May 24, 2022, the State Water Resources Control Board (State Water Board), received a Petition to adopt, amend, or repeal a regulation, pursuant to Government Code section 11340.6, from Mills Legal Clinic at Stanford Law School on behalf of the Winnemem Wintu Tribe, Shingle Springs Band of Miwok Indians, Save California Salmon, Little Manila Rising, and Restore the Delta (collectively “Petitioners”).

Petitioners request that the State Water Board (1) immediately undertake and timely complete review of water quality standards in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan); (2) engage in meaningful government-to-government consultation with affected tribes and center opportunities for meaningful public participation by other impacted Delta communities in the review and revision process; (3) revise beneficial uses in the Bay-Delta Plan to incorporate tribal beneficial uses and non-tribal subsistence fishing beneficial uses; (4) issue new and revised water quality standards adequate to protect the full range of beneficial uses and public trust interests; and (5) initiate a rulemaking to regulate all recognized rights to Bay-Delta water — including pre-1914 appropriative rights — and limit water diversions and exports to levels consistent with the revised water quality standards.

In accordance with Government Code Section 11340.7, subdivision (a), this document serves as the State Water Board’s response to the petition.

PROVISIONS OF CALIFORNIA CODE OF REGULATIONS REQUESTED TO BE AFFECTED

The Petition does do not identify specific provisions in the California Code of Regulations that Petitioners are requesting be adopted, amended, or repealed. Petitioners are requesting changes to the Bay-Delta Plan and that the State Water Board initiate a rulemaking to regulate all recognized rights to Bay-Delta water. The State Water Board notes that when amendments

to the Bay-Delta Plan were adopted in 2018 to update Lower San Joaquin River flows and southern Delta salinity requirements, those amendments were summarized in California Code of Regulations, title 23, section 3002.1 and conforming amendments were made to California Code of Regulations, title 23, section 3002, summarizing the previous amendments to the Bay-Delta Plan in 2006.

REFERENCE TO AUTHORITY TO TAKE THE REQUESTED ACTION

The federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.), the public trust doctrine (*Nat. Audubon Society v. Super. Ct.* (1983) 33 Cal.3d 419), and state prohibitions on the waste or unreasonable use of water or unreasonable method of diversion (Cal. Const., article X, § 2; Water Code §§ 100, 275, 1050, 1831 and 85023.)

AGENCY DETERMINATION

The petition is **denied**.

REASONS SUPPORTING THE AGENCY DETERMINATION

The State Water Board is committed to completing a review of water quality standards in the Bay-Delta. In 2018, the State Water Board updated the Bay-Delta Plan to (1) provide reasonable protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers; and (2) provide reasonable protection of agricultural beneficial uses in the southern Delta. Water quality control plans are not self-implementing. The State Water Board must assign responsibility for implementation to water right holders and claimants. This will require the State Water Board to undergo a water quality or water right proceeding including preparing the appropriate level of environmental review tiering from the State Water Board’s adopted substitute environmental document for the 2018 update. In addition, the State Water Board is preparing a Staff Report to support an update to the Bay-Delta Plan for the Sacramento River and its tributaries and the Interior Delta and its tributaries. The State Report will present options for updating the Bay-Delta Plan and include the environmental analysis to support those options, among other information.

The State Water Board acknowledges one or more Voluntary Agreements (VAs) could be elements of a Bay-Delta Plan update. Voluntary Agreements would be stakeholder proposed flows and complimentary actions, such as habitat restoration, to help reasonably

protect fish and wildlife beneficial uses. In the State Water Board Resolution adopting the 2018 Bay–Delta Plan update, the State Water Board recognized there were “ongoing negotiations between interested stakeholders and various other state agencies to achieve [VAs] to implement the Plan Amendments” and that “robust [VAs] can help inform and expedite implementation of the LSJR flow objectives and provide durable solutions in the Bay–Delta watershed while also providing reasonable protections for fish and wildlife.” (State Water Board Resolution Number 2018–0059 at page 5.) However, there is no final State Water Board decision on VAs and those efforts do not preclude further progress on amending the Bay–Delta Plan.

The State Water Board is denying your request to initiate a rulemaking to regulate all recognized rights to Bay–Delta Water. The State Water Board’s ongoing rulemaking efforts and subsequent development and implementation of water quality standards will allow the State Water Board to better limit water diversions and exports to levels in compliance with those standards. As state above, the State Water Board will impose enforceable obligations to implement the water quality objectives in future proceedings involving the specific exercise of the State Water Board’s water right or water quality authority. A rulemaking remains one option to implement the 2018 Bay–Delta Plan update, but no final decision has yet been made as to whether to proceed with a regulation, a different option such as a water right proceeding, or a combination of options.

The State Water Board is committed to meaningful engagement with representatives of affected tribes in the Bay–Delta watershed, including the Winnemem Wintu Tribe and Shingle Springs Band of Miwok Indians; however, a request for government–to–government consultation is outside of the scope of a rulemaking petition. In addition, the State Water Board is interested in continued dialogue with Tribes regarding the request to revise beneficial uses in the Bay–Delta Plan to incorporate tribal beneficial uses and non–tribal subsistence fishing beneficial uses but cannot commit to undergoing a rulemaking prior to understanding the full scope and application of such a request.

DEPARTMENT CONTACT PERSON

Please direct any inquiries regarding this action to:

Tina Cannon Leahy, Staff Counsel IV
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
Tina.Leahy@waterboards.ca.gov

NOTICE TO INTERESTED PERSONS

Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the State Water Board contact person listed in this notice.

DATE OF DECISION

June 24, 2022

**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.

Board of Vocational Nursing and Psychiatric
Technicians
File # 2022–0616–03
Program Approval Process

This action amends the regulations on the approval process for nursing programs and psychiatric technician programs (16 CCR §§ 2525, 2526, 2580 and 2581.) It also adopts new regulations regarding the fees associated with the approval process for these programs (16 CCR §§ 2537.2 and 2590.2.)

Title 16
Adopt: 2537.2, 2590.2
Amend: 2525, 2526, 2580, 2581
Filed 06/27/2022
Effective 06/27/2022
Agency Contact: Doris Pires (916) 263–7864

Dental Board of California
File # 2022–0613–01
Dentists Initiating and Administering Vaccines

Assembly Bill 526 (Stats. 2021, Chapter 653) authorized a dentist, if the dentist complies with specified requirements, to independently prescribe and administer influenza and COVID–19 vaccines approved or authorized by the United States Food and Drug Administration for persons three years of age or older, as specified. In this deemed emergency pursuant to Business and Professions Code section 1625.6, the Dental Board of California is adopting regulations to

implement these provisions, including requirements pertaining to training, recordkeeping, and reporting.

Title 16
 Adopt: 1066
 Filed 06/23/2022
 Effective 06/23/2022
 Agency Contact:
 Lawrence Bruggeman (916) 263-2027

Education Audit Appeals Panel
 File # 2022-0616-05
 Audits of K-12 LEAs — FY 2022-23

This emergency rulemaking action adopts the “Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting” for the 2022-2023 fiscal year.

Title 05
 Amend: 19810
 Filed 06/27/2022
 Effective 06/27/2022
 Agency Contact: Mary Kelly (916) 445-7745

Department of Public Health
 File # 2022-0620-01
 Industrial Hemp Fees

The Department of Public Health submitted this emergency file and print action to adopt industrial hemp regulations to implement registration and fees for hemp manufacturers including those producing hemp extract, inhalable hemp as well as those producing hemp human food, processed pet food, and cosmetics. This action is exempt from OAL review pursuant to Health and Safety Code section 110065(c).

Title 17
 Adopt: 23200, 23205, 23210, 23215, 23220, 23225, 23230, 23235
 Filed 06/28/2022
 Effective 07/05/2022
 Agency Contact: David Martin (916) 440-7673

Department of Social Services
 File # 2022-0620-04
 Annual Redeterminations Assembly Bill 79 2020

This action by the Department of Social Services readopts the changes previously filed in OAL File Number 2021-1223-01EFP, which amended the Manual of Policies and Procedures to update the annual CalWorks eligibility redetermination procedure. This action was submitted to OAL as a deemed emergency exempt from OAL review pursuant to section 96 of Assembly Bill 79 (Chapter 11, Stats. 2020).

Title MPP
 Amend: 40-103, 40-181, 44-113
 Filed 06/29/2022
 Effective 07/06/2022
 Agency Contact: Kenneth Jennings(916) 651-8862

Department of Corrections and Rehabilitation
 File # 2022-0608-01
 Release Allowances

This Emergency by Operational Necessity amends the method of issuance of release allowances for eligible individuals.

Title 15
 Amend: 3000, 3075.2
 Filed 06/28/2022
 Effective 06/28/2022
 Agency Contact: Renee Rodriguez (916) 445-2220

Board of Parole Hearings
 File # 2022-0617-02
 Proceedings Conducted In Person and By
 Videoconference

This emergency rulemaking action by the Board of Parole Hearings readopts regulations originally adopted in emergency action Number 2021-0917-01, and modified in action Number 2022-0317-01, that establish procedures for conducting parole hearings and other proceedings by videoconference pursuant to Penal Code section 3041.6.

Title 15
 Adopt: 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064
 Filed 06/27/2022
 Effective 06/27/2022
 Agency Contact: Mina Y. Choi (916) 322-6729

Fish and Game Commission
 File # 2022-0623-01
 Recreational Sub-bag Limits for Vermilion, Copper & Quillback Rockfish

This emergency action readopts without change emergency adjustments to the sub-bag limits for quillback, copper, and vermilion rockfish in the recreational groundfish fishery (zero to three miles offshore) for 2022 so as to be consistent with Pacific Fishery Management Council regulations published in the Federal Register on January 6, 2022, for these species in waters between three and 200 miles offshore.

Title 14
 Amend: 28.55
 Filed 06/29/2022
 Effective 07/06/2022
 Agency Contact:
 Sherrie Fonbuena (916) 902-9284

Department of Housing and Community
Development
File # 2022-0513-02
Income Limits

This action sets income limits for households of varying sizes used to determine eligibility for department programs. This filing is exempt from the Administrative Procedure Act pursuant to Health and Safety Code section 50093. These regulations are effective 5-13-2022 pursuant to Health and Safety Code section 50093.

Title 25
Adopt: 6932
Repeal: 6932
Filed 06/27/2022
Effective 05/13/2022
Agency Contact: Tom Brinkhuis (916) 776-7707

Department of Resources Recycling and Recovery
File # 2022-0526-03
Covered Electronic Waste Recovery and Recycling
Payment Rates

This action by the Department of Resources, Recycling and Recovery (CalRecycle) amends the payment rates for recovering and recycling covered electronic waste and is submitted to OAL for filing and printing only as exempt from the Administrative Procedure Act pursuant to the exemption for regulations that establish or fix rates (Government Code section 11340.9(g)).

Title 14
Amend: 18660.24, 18660.25, 18660.33, 18660.34
Filed 06/27/2022
Effective 07/01/2022
Agency Contact: Irina Kaminer (916) 341-6396

Commission on Peace Officer Standards and Training
File # 2022-0517-01
Update POST-Certified Requalification Course
Hour Requirement, Training and Testing Standards
Revision Date

This change without regulatory effect filing by the Commission on Peace Officer Standards and Training (POST) updates the required instructional hours for the requalification course to align with the required instructional hours specified in the Training and Testing Specifications for Peace Officer Basic Courses document incorporated by reference. This action also updates the incorporation by reference revision date for the Training and Testing Specifications for Peace Officer Basic Courses document.

Title 11
Amend: 1005, 1059
Filed 06/29/2022
Agency Contact: Jennifer Hardesty (916) 227-3917

California Gambling Control Commission
File # 2022-0512-01
180-Day Extension

In response to changes made by Senate Bill 819 (Stats. 2021, chapter 553), this action adds additional types of renewal applications for which the California Gambling Control Commission may provide extensions of up to 180 calendar days in the event that the Commission is unable to act on the application prior to the expiration date.

Title 04
Amend: 12054
Filed 06/23/2022
Effective 10/01/2022
Agency Contact: Josh Rosenstein (916) 274-5823

Commission on Peace Officer Standards and Training
File # 2022-0519-03
Commission Regulation 1081— Campus Law
Enforcement Course

This action amends the Campus Law Enforcement Course requirements to modernize terminology and curriculum.

Title 11
Amend: 1081
Filed 06/23/2022
Effective 10/01/2022
Agency Contact:
Stephen Crawford (916) 227-4957

Department of Fish and Wildlife
File # 2022-0516-02
Form DFW901 Declaration of Importation

The Department of Fish and Wildlife is creating a newly incorporated form to allow the public to declare legal fishing and hunting take from outside California as it is brought into the state.

Title 14
Adopt: 712.5
Filed 06/28/2022
Effective 07/01/2022
Agency Contact: Mike Randall (916) 902-9109

Department of Motor Vehicles
File # 2022-0413-01
Traffic Violator Schools

This action amends regulations to define “regular business hours” and create a standard for measuring

distances between traffic violator schools for purposes of Vehicle Code section 11202(a).

Title 13
Amend: 345.50
Filed 06/27/2022
Effective 07/01/2022
Agency Contact: Randi Calkins (916) 282-7294

Division of Labor Standards Enforcement
File # 2022-0121-04
Assessment of Civil Penalties for Retaliation

This action adopts standards for the reduction of \$10,000 civil penalties assessed against employers by the Division of Labor Standards Enforcement for violations of retaliation laws that are within the Division's jurisdiction. The action also defines a term, establishes the burden of proof, and specifies joint and several liability for penalties.

Title 08
Adopt: 13900, 13901, 13902, 13903
Filed 06/29/2022
Effective 10/01/2022
Agency Contact: Dorothy Chang (213) 576-7722

Board of Psychology
File # 2022-0127-01
Continuing Professional Development

In this regular rulemaking, the Board of Psychology is amending continuing education guidelines and requirements that must be completed by a licensee as a condition of renewal or reactivation of their license.

Title 16
Adopt: 1397.60.1, 1397.61.1, 1397.62.1, 1397.67.1
Amend: 1381.9, 1397.60, 1397.61, 1397.62, 1397.67
Filed 06/29/2022
Effective 10/01/2022
Agency Contact:
Jason Glasspiegel (916) 574-7137

Department of Alcoholic Beverage Control
File # 2022-0620-02
Drawing for Priority of Obtaining Limited General Licenses

This action by the Department of Alcoholic Beverage Control adopts regulations to establish procedures for drawings for priority of obtaining limited general alcoholic beverage licenses.

Title 04
Adopt: 69, 69.1, 69.2, 69.3, 69.4
Filed 06/29/2022
Effective 06/29/2022
Agency Contact: Robert de Ruyter (916) 419-8958

**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.