



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

MULTI-COUNTY: Kings River Conservation District

STATE AGENCY: California Conservation Corps State Compensation Insurance Fund

A written comment period has been established commencing on September 30, 2022 and closing on November 14, 2022. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest codes 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 codes will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest codes, 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 codes 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 codes. Any written comments must be received no later than November 14, 2022. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest codes 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 8. DIVISION OF WORKERS’
COMPENSATION**

REVISED NOTICE OF RULEMAKING
AFTER EMERGENCY ADOPTION

WORKERS’ COMPENSATION —
QUALIFIED MEDICAL EVALUATOR
REGULATIONS

(TITLE 8, CALIFORNIA CODE OF
REGULATIONS SECTIONS 31.3, 31.5, 34, 46.3
AND FORMS 31.5 & 108)

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers’ Compensation (hereafter “Administrative Director”), proposes to adopt and amend regulations to implement the provisions of Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, and 4600 regarding the examination, and the procedures regarding Qualified Medical Evaluator (QME) medical-legal evaluations, that are used to resolve disputes in the workers’ compensation system. This action is taken pursuant to the authority vested in the Administrative Director by Labor Code sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

When adopted, the proposed regulations will constitute title 8, California Code of Regulations, Division 1, Chapter 1, Article 3 sections 31.3, 31.5, 34; Article 4 section 46.3 and Forms 31.5 and 108. The regulations implement, interpret and make specific the manner in which the Administrative Director will exercise the authority under Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, and 4660 regarding procedures concerning medical-legal evaluations. The adopted regulation implements a process by which medical-legal evaluations may be conducted.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers’ Compensation, proposes to amend and adopt the following regulations in Division 1, Chapter 1, Articles 3, 4, & 10 of Title 8, California Code of Regulations, commencing with sections 31.3, 31.5, 34, 46.3 and Forms 31.5 and 108. The proposed changes involve both changes without regulatory effect (“non-substantive” changes) within the meaning of section 100 of Title 1 of the California Code of Regulations (e.g. grammatical, capitalization, punctuation, syntax, numbering and lettering sequencing and corrections of cross references), as well as substantive changes; although in the case of section 46.3 it is making permanent what was originally adopted as an emergency regulation. A comprehensive summary of the proposed change to each affected section and form is set out in the Initial Statement of Reasons, which is not printed here but will be available at no charge upon written request made to Regulations Coordinator below or via the web at: <http://www.dir.ca.gov/dwc/DWCrulemaking.html>.

TIME AND PLACE OF PUBLIC HEARING

An in-person public hearing has been scheduled to permit all interested persons the opportunity to present oral statements or arguments with respect to the proposed amendments and adoption of title 8 CCR Section 31.3, 31.5, 34, 46.3 and Forms 31.5 & 108 on the following date:

Date: November 15, 2022
**Time: 12:00 p.m. to 5:00 p.m., or until
conclusion of business**
Place: Elihu Harris State Office
Building — Auditorium
1515 Clay Street
Oakland, CA 94612

Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Maureen Gray, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 12:00 p.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier.

The Administrative Director requests, but does not require, that any persons who make oral comments

also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed amendment to modify existing regulations, related to the Qualified Medical Evaluator process to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes on Tuesday, November 15, 2022. The Division of Workers' Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers' Compensation by that date. Again, equal weight will be accorded to oral comments presented at the public hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to the DWC contact person:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Ms. Gray must receive all written comments no later than 11:59 p.m. on November 15, 2022.

CONTACT PERSON

Inquiries concerning this proposed action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed amendments to the regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

BACKUP CONTACT PERSON

In the event the contact person is unavailable, inquiries should be directed to the following backup contact person:

Nicole L. Richardson, Attorney
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: (nrichardsont@dir.ca.gov)

The telephone number of the backup contact person is (510) 286-7100.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code (Lab. Code) sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

Reference is made to Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067 and 4600.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. The adjudication of workers' compensation claims requires the use of written reports of Qualified Medical Evaluators (QMEs).

Objective and Anticipated Benefits of the Proposed Amendments to the Regulations:

The Administrative Director of the Division of Workers' Compensation proposes to amend and add to various regulations that govern the evaluation process, appointment setting, and time frames for requesting replacements of physicians who are certified as Qualified Medical Evaluators ('QMEs') as provided in sections 31.3, 31.5, 34 and 46.3 of Title 8 of the California Code of Regulations. In addition, changes are made to forms 31.5 and 108 to accommodate changes to the regulations. These changes are needed to update and improve the functionality of the affected regulations based upon the current practical operation of the Qualified Medical Evaluator program. The recent adoption of emergency regulations indicated that certain changes in the function of regulations governing the operation of the Qualified Medical Evaluator program would lead to improved efficiency in the delivery of services. These regulations incorporate the changes that led to the increased efficiency. In addition, the Administrative Director of the Division of Workers' Compensation proposes to adopt section 46.3 of Title 8 of the California Code of Regulations. The proposed change adds functionality to the regulatory scheme by instituting a system for the performance of QME

evaluations remotely. A complete summary of the proposed changes is provided in the Initial Statement of Reasons.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Administrative Director has determined that these proposed amendments to the regulations are not inconsistent or incompatible with existing regulations.

The Administrative Director now proposes to amend and adopt regulations and forms related to the administration of the Qualified Medical Evaluator program. The proposed regulations and forms implement, interpret, and make specific Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067 and 5307.3 as follows:

Article 3. Assignment of Qualified Medical Evaluators, Evaluation Procedure (§31.3–34 & Form 31.5)

Section 31.3 is amended to provide additional time to schedule an appointment with a QME from 60 days to 90 days and if agreed from 90 day to 120 days. In addition, language is added to make the provisions of the regulation applicable to all face to face evaluations.

Section 31.5 is amended to comply with the new timeframes set forth in regulation 31.3.

Section 34 is amended to allow electronic service of form 110 consistent with regulation 36.7. The amendment also deletes the term “Agreed Panel QME” and deletes and re–numbers sections of the regulation to provide consistency.

Form 31.5 is amended to comply with the new time frames in regulation section 31.5.

Article 4. Evaluation Procedures (§46.3)

Section 46.3 adopted to provide for remote Medical–Legal Evaluations in the appropriate circumstances. The regulation allows evaluations to be performed by the use of electronic media when the physician and injured worker are in separate physical locations. This regulation provides flexibility for injured workers, physicians and insurance carriers/employers to agree to remote evaluations if certain criteria are met. The regulation substantially adopts the provisions of and makes permanent former emergency regulation section 46.2.

Article 10. QME application forms (Form 108)

Form 108 amended to make the form compliant with ADA standards. Updates to the website links for information. Updates to text to comply with changes to regulation sections 46.3 and 31.3.

DISCLOSURES REGARDING THIS PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- **Determination regarding whether this rulemaking imposes a Local Mandate:**

None is imposed by these proposed regulations because no new program or higher level of service to the public is required. The regulations provide technical detail on procedures used to regulate Qualified Medical Evaluators (‘QMEs’) and the procedures for obtaining appointments and evaluations from QMEs, and impose the same requirements on all employers in California. Local government and districts as employers, like all other employers in California, are already required by law to have workers’ compensation coverage, or otherwise to self administer or contract for another entity to administer the workers’ compensation claims of their employees and to conform to the Labor Code in using the medical dispute resolution procedures involving QMEs and AMEs.

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

- **Effect on Housing Costs:** None.

- **Cost Impacts Incurred By Private Persons or Businesses:** 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 (EIA):** The Administrative Director has determined that the changes proposed in this rulemaking will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses in the State of California because the regulations are updating and providing flexibility to the current system. The Administrative Director has determined that the regulations will promote the health and welfare of California residents, worker safety and that state’s environment by decreasing transportation through use of remote health and providing flexibility with regards to scheduling evaluations at various locations instead of a specific in person location.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that this rulemaking will not have any significant impact on small business.

Physicians appointed as Qualified Medical Evaluators fall within the definition of small business, and already required by existing law to comply with the statutes and regulations governing Qualified Medical

Evaluators (QMEs). Physicians are required to meet certain criteria in order to certify as QMEs. Once appointed, Physicians serve a two-year term, and must reappoint at the end of that term. The Administrative Director is required to issue panels listing three Qualified Medical Evaluators when requested by a party to resolve a disputed issue (Lab. Code §§ 139.2(h), 4062.1, 4062.2, and 139.2(h)(3).) In randomly compiling the panel of three QMEs, from which the injured worker and employer select a QME to evaluate the workers' disability, the Administrative Director must include only evaluators who do not have a conflict-of-interest as defined by the Administrative Director in regulations adopted pursuant to Labor Code section 139.2(o) and are in the specialty designated by the party holding the legal right to select the specialty. (Lab. Code § 139.2(h)(3)(A).) Once selected from the panel of three, the physician examines the injured worker and issues a medical-legal evaluation. Physicians can also issue follow-up medical legal evaluations and supplemental medical legal reports.

The proposed regulations relate to the processes that govern the administration of the QME program.

The Administrative Director has determined that there is either no, or a *de minimus* amount of added expense to the QME by virtue of the proposed regulations. Therefore, the Administrative Director has concluded there is no significant adverse economic impact on QMEs as small businesses by the adoption of these proposed regulation.

At the current time, the best estimate by the Division of Workers' Compensation indicates that employers will not be affected in any substantial pecuniary fashion by the proposed regulations and amendments to the existing regulations.

FISCAL IMPACTS

- **Costs or savings to state agencies or costs/savings in federal funding to the State:** Savings of \$2,087,600.00 over the ten-year life of the regulation. This is based anticipated decrease in panel QME assignments and administration of the panel QME process.
- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of division 4 of the Government Code:** None (See Local Mandate bullet above).
- **Other nondiscretionary costs/savings imposed upon local agencies:** None (See Local Mandate bullet above).

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Administrative Director's attention, would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of laws, than the proposed action of this rulemaking.

The Administrative Director 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 DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public review and comment for at least ten days through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking comments and the Form 399. Also included are the documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the Qualified Medical Evaluator Regulations link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking

file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the Regulations Coordinator.

**CONTACT PERSON FOR
GENERAL QUESTIONS**

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

**CONTACT PERSON FOR
SUBSTANTIVE QUESTIONS**

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Nicole L. Richardson, Attorney
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: nrichardson@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

**AVAILABILITY OF CHANGES
FOLLOWING PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, sections 31.3, 31.5, 34, 46.3 and forms 31.5 & 108. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

**TITLE 16. SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY AND
HEARING AID DISPENSERS BOARD**

UNIFORM STANDARDS

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her 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

Written comments relevant to the action proposed, 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 Tuesday, November 15, 2022, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 2531.06 and 2531.95 of the Business and Professions Code (BPC) and Sections 11400.20 and 11425.50(e) of the Government Code, and to implement, interpret, or make specific BPC Sections 315, 315.2, and 315.4, the Board is considering amending sections 1399.102 and 1399.131, adding section 1399.131.1 to Division 13.3, and amending sections 1399.155 and 1399.155.1 of Division 13.4, of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

This proposed regulation will enhance the Board's mission to protect the public by adopting consistent standards to apply when dealing with substance-abusing licensees. The Board is a state agency vested with the authority to regulate the practices of speech-language pathology, audiology, and hearing aid dispensing under BPC Section 2530.1. The Board's mandate and its mission is to protect the public while exercising its licensing, regulatory, and disciplinary functions (BPC Section 2531.02). The Board regulates approximately 35,000 licenses for speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispenser licenses. To protect the public, the Board is authorized to discipline licensees who may endanger the health, welfare, and safety of the public (BCP Section 2533).

Existing law, under BCP Sections 2531.06 and 2531.95, authorizes the Board to adopt or repeal regulations to execute any provisions of the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act. The Board intends to use its authority to amend and add regulations regarding DCA's Uniform Standards for the discipline of substance-abusing licensees.

Existing law, under BPC Section 315, established the Substance Abuse Coordination Committee (Committee) within the Department of Consumer Affairs (DCA) and required the Committee to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program. This proposed regulation will add CCR sections 1399.131.1 and 1399.151.1 to incorporate the DCA's Uniform Standards by reference into regulations. This must be done in two separate divisions of title 16 of the CCR as a result of the merger of the Speech-Language Pathology

and Audiology Board and the Hearing Aid Dispensers Bureau of 2010.

Existing law, under BPC Section 315.2, specifies that a healing arts board within DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. Furthermore, the cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings. This proposed regulation includes this provision from the DCA's Uniform Standards being incorporated by reference into regulations in this rulemaking.

Existing law, under BPC Section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards amended and authorized under BPC section 315. Furthermore, the cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings. This proposed regulation includes this provision from the DCA's Uniform Standards which is being incorporated by reference into regulations by this rulemaking.

Existing law, under Government Code Section 11400.20 authorizes an agency to amend regulations to govern an adjudicative proceeding. This proposed regulation will amend CCR sections 1399.131 and 1399.155 to permit the Board to use the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

Existing law, under Government Code Section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, and order standard of general application or other rule unless it has been adopted as a regulation. This proposed regulation will amend CCR sections 1399.131 and 1399.155 to permit the Board to use the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

Existing regulations, under CCR Sections 1399.131 and 1399.151, specify that the Board shall consider the disciplinary guidelines in reaching a decision on a disciplinary action under the Administrative Procedures Act. This proposed regulation will amend these sections and add sections 1399.131.1 and 1399.155.1 to require the Board to apply the DCA's Uniform Standards in reaching a decision on disciplinary actions for substance-abusing licensees.

There is no existing federal regulation or statute comparable to this proposed regulation.

Substance abuse is an increasing problem in the health care professions, where the impairment of a

health care practitioner for even one moment can mean irreparable harm to a patient.

This regulatory proposal will incorporate by reference into regulation the DCA document entitled “Uniform Standards Regarding Substance–Abusing Healing Arts Licensees, March 2019” (Uniform Standards). Incorporating this document enhances the Board’s mission to protect the public by providing the Board with consistent standards in dealing with substance–abusing licensees. The Board also seeks to make various technical, non–substantive, changes for the purpose of clarity, readability, and consistency.

The following is a summary of the proposed changes the Board seeks to make:

Amend Section 1399.102 of Article 1 of Division 13.3 of Title 16 of the CCR

This section is amended for technical, non–substantive changes and to add a new term to the list of definitions for the hearing aid dispenser regulations. These changes are for the purpose of clarity, readability, and consistency with regulations this Board has for the practices of speech–language pathology and audiology in Section 1399.150.2 of Article 1 of Division 13.4.

Amend Section 1399.131 of Article 6 of Division 13.3 of Title 16 of the CCR

This section is amended to add an exception to the disciplinary guidelines related to substance–abusing licensees in the practice of hearing aid dispensing. The added language specifies that the Uniform Standards will be used in reaching a decision under the Administrative Procedure Act on disciplinary actions for substance–abusing licensees regulated by the Board. This change is required by statute and will bring uniformity to the discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation.

There are also technical, non–substantive changes for the purpose of clarity, readability, and consistency with regulations this Board has for the practice of speech–language pathology and audiology in Section 1399.155 of Article 6 of Division 13.4.

Add Section 1399.131.1 to Article 6 of Division 13.3 of Title 16 of the CCR

This section is added to incorporate by reference DCA’s Uniform Standards and permit the Board to impose additional terms or conditions of probation that are not specified in the Uniform Standards. This increases public protection by ensuring the Board has consistent standards for disciplining substance–abusing licensees and all substance–abusing licensees

are held to the same strict disciplinary standards. Giving the Board the ability to determine the probation terms and conditions based on the nature and severity of the licensee’s violation further maintains the public safety while promoting the rehabilitation of the substance–abusing licensee. It would be unduly cumbersome, expensive, and otherwise impractical to publish the Uniform Standards twice within the California Code of Regulations. It is available on the Board’s website and from the Board upon request.

Amend Section 1399.155 of Article 6 of Division 13.4 of Title 16 of the CCR

This section is amended to add an exception to the disciplinary guidelines related to substance–abusing licensees in the practices of speech–language pathology and audiology. The added language specifies that the Uniform Standards will be used in reaching a decision under the Administrative Procedure Act on disciplinary actions for substance–abusing licensees regulated by the Board. This change is required by statute and brings uniformity to the discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards, and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation.

There are also technical, non–substantive changes for the purpose of clarity, readability, and consistency with regulations this Board has for the practice of speech–language pathology and audiology in Section 1399.131 of Article 6 of Division 13.3.

Amend Section 1399.155.1 of Article 6 of Division 13.4 of Title 16 of the CCR

This section is added to incorporate by reference DCA’s Uniform Standards and permit the Board to impose additional terms or conditions of probation that are not specified in the Uniform Standards. This increases public protection by ensuring that along with consistent standards for disciplining substance–abusing licensees the Board retains the ability to determine the probation terms and conditions based on the nature and severity of the licensee’s violation. This both maintains the public safety while promoting the rehabilitation of the substance–abusing licensee. It would be unduly cumbersome expensive, and otherwise impractical to publish the Uniform Standards twice within the California Code of Regulations. It is available on the Board’s website and from the Board upon request.

Adoption of “Uniform Standards regarding Substance–Abusing Healing Arts Licensees, March 2019”

The “Uniform Standards Regarding Substance–Abusing Healing Arts Licensees, March 2019” will be incorporated by reference in section 1399.131.1 of Article 6 of Division 13.3 and section 1399.155.1 of Article 6 of Division 13.4. This is because the Board has two separate divisions of Title 16 of the California Code of Regulations, used for the licensees of the Board as of the result of the merger of the Speech–Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau in 2010. The Board uses CCR Division 13.3 for hearing aid dispensers and CCR Division 13.4 for the speech–language pathologists and audiologists.

The Uniform Standards specify sixteen standards implemented by DCA to promote consistency in dealing with substance–abusing healing arts licensees and better protect the public from harm. Adopting the DCA Uniform Standards also ensure all substance–abusing licensees are held to the same disciplinary standard.

ANTICIPATED BENEFITS OF PROPOSAL

This regulatory proposal will enhance the Board’s mission to protect the public by adopting consistent standards to apply when dealing with substance–abusing licensees. These Uniform Standards will bring uniformity to the discipline recommended by administrative law judges and imposed by the Board. It enables the Board to comply with its public protection mandate by ensuring licensees who have been identified as substance abusing are held to the same strict disciplinary standards, and makes these strict standards available to licensees and the public by placing the Uniform Standards in regulation.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

INCORPORATION BY REFERENCE

Uniform Standards Regarding Substance–Abusing Healing Arts Licensees, March 2019

DISCLOSURES REGARDING THIS PROPOSED ACTION

The Board has made the following initial determinations:

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to any Local Agency or School District for which Government Code Sections 17500–17630 Require Reimbursement: None.

Significant Effect on Housing Costs: None.

FISCAL IMPACT ESTIMATES

The Board does not anticipate an increase in workload or cost with the proposed regulatory action because the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensee when drafting settlement or decision during the administrative disciplinary process.

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. This proposal provides a more accurate overview of the Board’s disciplinary actions related to substance abusing licensees by outlining relevant and transparent standards directly related to violations prescribed in current law.

The regulations do not result in costs or savings in federal funds to the state.

BUSINESS IMPACT ESTIMATES

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

- The Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.
- The Board historically has less than one (1) percent of its licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation.

The Board’s authority is over licensees and not over all businesses within the industries the Board regulates. The Board regulates over 35,000 licensees who provide services in various settings such as schools, medical, community–based facilities, and private practice. The Board only maintains data on business where hearing aid dispensers and dispensing audiologists are authorized to sell hearing aids in accordance with BPC sections 2538.33 and 2538.34. The Board does not maintain data relating to the number of businesses for other license types or the types of business

(e.g., private, nonprofit, public, or small business) in which licensees are employed. As a result, the Board cannot provide any estimates for the total number or types of businesses that may be impacted.

Cost Impact on 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 action.

The Board is not aware of any other economic costs that may occur. The Board is also not aware of any effect that the proposed regulatory action will have on housing cost or impact to local agencies or federal funding to the State.

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

Impact on Jobs/Businesses

The Board has determined that:

This regulatory proposal will not create new businesses or jobs within the State of California because the regulation is related to licensees and public safety within the industries the Board regulates and not enhancing industry growth.

This regulatory proposal will not eliminate existing businesses or jobs within the State of California because the regulation is not a barrier to industry growth within the industries the Board regulates. The Board historically has less than one (1) percent of the licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation. Under these historical conditions, the Board has seen growth in its licensed population.

This regulatory proposal will not affect the expansion of businesses currently doing businesses within the State of California because the regulation is related to licensees and public safety within the industries the Board regulates and not enhancing industry growth.

Anticipated Benefits of Proposal

This regulatory proposal benefits the health and welfare of California residents because the regulation protects consumers from receiving services from an unfit licensee and provides the Board with an effective and consistent standard to intervene quickly and discipline substance-abusing licensees.

This regulatory proposal benefits worker safety because the regulation protects the workplace from unfit licensees and provides the Board with an effective and consistent standard to intervene quickly and discipline substance-abusing licensees.

Benefits such as public safety, worker safety, and transparency are unquantifiable and cannot be easily measured or estimated but the Board expects that they

will remain the same as the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.

This regulatory proposal does not affect the State's environment because the regulation is related to licensees and public safety within the industries regulated by this Board and not the environment.

Business Reporting Requirements

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

Effect on Small Business

The Board has made the initial determination that the proposed regulatory action would affect small business. This initial determination is based on the following facts:

- The Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.
- The Board historically has less than one (1) percent of its licensed population per year who faces disciplinary actions and are subject to drug testing as part of probation.

The Board's authority is over licensees and not over all businesses within the industries the Board regulates. The Board regulates over 35,000 licensees who provide services in various settings such as schools, medical, community-based facilities, and private practice. The Board only maintains data on business where hearing aid dispensers and dispensing audiologists are authorized to sell hearing aids in accordance with BPC sections 2538.33 and 2538.34. The Board does not maintain data relating to the number of businesses for other license types or the types of business (e.g., private, nonprofit, public, or small business) in which licensees are employed. As a result, the Board cannot provide any estimates for the total number of small businesses that may be impacted.

The Board is not aware of costs that small businesses may incur to comply with this regulation over its lifetime as the Board currently requires, or has the discretion to use, the provisions found in the Uniform Standard for its substance abusing licensees when drafting settlement or decision during the administrative disciplinary process.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and

brought to its attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 1601 Response Road, Suite 260 Sacramento, CA 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, 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.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1601 Response Road, Suite 260 Sacramento, CA 95815.

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.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file

which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSONS

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

Name: Maria Liranzo; Legislation, Regulations, and Budget Analyst
Address: Speech–Language Pathology and Audiology and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone Number: (916) 905–5441
E–Mail Address: SpeechandHearingRegulations@dca.ca.gov

The backup contact person is:

Name: Cherise Burns, Assistant Executive Officer
Address: Speech–Language Pathology and Audiology and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone Number: (916) 905–5454
E–Mail Address: SpeechandHearingRegulations@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board’s website at: https://www.speechandhearing.ca.gov/board_activity/lawsregs/proposed_regulations.shtml

TITLE 18. BOARD OF EQUALIZATION

SECTION 462.520, EXCLUSION FROM CHANGE IN OWNERSHIP — INTERGENERATIONAL TRANSFERS

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to amend California Code of Regulations, title 18, section (Rule or Property Tax Rule) 462.520, *Exclusion from Change in Ownership — Intergenerational Transfers*. This Rule implements, interprets,

and makes specific certain change in ownership exclusion provisions provided in section 2.1 of article XIII A of the California Constitution (Section 2.1) and section 63.2 of the Revenue and Taxation Code.¹

PUBLIC HEARING

The Board will conduct a meeting on November 17–18, 2022, in–person and via teleconference. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. on November 17, 2022, or as soon thereafter as the matter may be heard at the Board’s November 17–18, 2022 meeting. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of amendments to Property Tax Rule 462.520 (the Proposed Amendments).

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Article XIII A, section 2.1, California Constitution; and Revenue and Taxation Code (RTC) sections 60 and 63.2

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of one percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines full cash value to mean a county assessor’s valuation of real property as shown on the 1975–76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. In general, properties are reassessed to current market value only upon a change in ownership or the completion of new construction, establishing a new “base year value” for property tax purposes. The California Legislature codified the definition of “change in ownership” in section 60 and codified additional Revenue and Taxation Code sections

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

regarding whether a transfer of property results in a change in ownership or is excluded from the definition of “change in ownership” or allows for the transfer of a property’s base year value to a replacement property. (RTC §§ 61 through 69.6.)

Relevant to this Rule, voters amended Article XIII A of the constitution to add two exclusions from change in ownership. Specifically, Proposition 58, effective November 6, 1986, excluded from change in ownership certain transfers of real property between parents and children and Proposition 193, effective March 27, 1996, excluded from change in ownership certain transfers of real property from grandparents to grandchildren, provided that all of the parents of the grandchildren who qualify as children of the grandparents are deceased as of the date of transfer. These two constitutional amendments are reflected in section 2, subdivision (h) of article XIII A of the California Constitution, codified at section 63.1 of the RTC, and are referred to as the Parent–Child and Grandparent–Grandchild Exclusions, respectively.

In the November 3, 2020 general election, the voters amended the constitution by approving Proposition 19 (Prop 19), which, amongst other things, created a new intergenerational transfer exclusion (by adding Section 2.1, subdivision (c) to article XIII A of the California Constitution) and adopted a sunset date of February 15, 2021 (pursuant to Section 2.1, subdivision (d)) for the Parent–Child and Grandparent–Grandchild Exclusions.

Beginning on and after February 16, 2021, section 2.1, subdivision (c) of article XIII A of the California Constitution provides that the terms “purchased” and “change in ownership” do not include the purchase or transfer of a family home or family farm of the transferor in the case of a transfer between parents and their children or grandparents and their grandchildren, only if the property continues as the family home or family farm of the transferee. This exclusion is available only up to a calculated amount. If the fair market value of the property is greater than that amount, partial relief is available. These provisions also apply to a purchase or transfer of a family home or family farm between grandparents and their grandchildren, as long as all of the parents of those grandchildren, who qualify as children of the grandparents, are deceased as of the date of the purchase or transfer. No provision is made for the exclusion from change in ownership of the transfer of any other type of property between parents and children or grandparents and grandchildren.

On September 30, 2021, the Governor approved Senate Bill (SB) 539,² which, among other things, added section 63.2 to the Revenue and Taxation Code. SB 539 went into immediate effect. Section 63.2 codifies

² Statutes 2021, chapter 427, section 3.

the intergenerational transfer exclusion provisions of Proposition 19.

Effects, Objectives, and Benefits of the Amendments to the Property Tax Rule

Under the authority of Government Code section 15606, subdivision (c), which authorizes the Board to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing, the Board promulgated Property Tax Rule 462.520, *Exclusion from Change in Ownership — Intergenerational Transfers* to implement, interpret, and make specific the intergenerational transfer exclusion provisions instituted by Proposition 19 through the regular rulemaking process. Rule 462.520 became effective on January 1, 2022.

Following the promulgation of Rule 462.520, additional amendments were deemed necessary to further implement, interpret, and make specific section 63.2. Pursuant to authority granted under section 63.2, amendments to the Rule were made through the emergency rulemaking process. The emergency amendments became effective on July 18, 2022 and will expire on January 18, 2023. To make the emergency amendments to Rule 462.520 permanent and to make additional amendments to the Rule, the Board initiated the certificate of compliance and regular rulemaking process.

The emergency amendments to Rule 462.520 made the following changes:

- Improve clarity. These amendments reorganize subdivision (f) into two paragraphs, one dealing with the filing of the Homeowners’ or Disabled Veterans’ Exemption claim forms and one dealing with the filing of the Exclusion claim form. Since both forms are required to be filed, creating a paragraph for each form makes the Rule more readable and understandable. Further, Examples 9 and 10 were added to the end of subdivision (c). These examples demonstrate the operation and calculation of subdivisions (a)(1)(B) and (C), (a)(5), (b), and (c) of the Rule.
- Definitions. Definitions of “foster child,” “third-party transfer,” and “legal parcel” were added at subdivision (e)(1)(E) and subdivision (e)(10) of the Rule respectively. “Foster child” was defined by section 63.2, subdivision (e)(1)(E) and its inclusion in the Rule increases the usability of the Rule. “Third-party transfer” is defined as in prior Board guidance (Assessors’ Handbook section 401, p. 99). Its inclusion increases the convenience and usability of the Rule. The phrase “legal parcel” is used in section 63.2, subdivision (a)(2) to identify portions of property to which the exclusion may be applied is not defined. Because the

Legislature’s intent was to allow the exclusion for portions of property that can be recognized as a separate parcel for legal purposes, it is necessary to create or reference an existing standard to determine when a parcel is recognized as separate. Instead of creating a standard, reference is made to the Subdivision Maps Act which determines when a portion of property may be sold separate from other land of which it may be a part.

- Subdivision (e)(11)(A) clarifies that a principal residence does not cease to become the principal residence of a transferor on the death of the transferor. This is consistent with administrative practice under Proposition 58 and 193, and with the administration of the homeowners’ exemption.
- Accessory Dwelling Units. Subdivision (e)(11)(B) includes “accessory dwelling unit” (ADU) and “junior accessory dwelling unit” (JADU) as part of the principal residence. This is consistent with recent legislation governing ADUs and JADUs and simplifies administration of the exclusion.
- Subdivision (f)(1) and (5) clarifies that transferees are entitled to a refund of any amounts paid erroneously if the homeowners’ exemption claim form is filed timely and to prospective relief if the homeowners’ exclusion claim form is filed late. Eligibility for the exclusion is dependent on the condition that the property is the principal residence of the eligible transferee. The filing of the homeowners’ exemption claim form merely evidences this fact. Whether the exclusion available or lost forever is not conditioned upon the filing of the form. Rather, a more reasonable interpretation of Section 2.1 is that although the homeowners’ exemption claim form must be filed at the time of the purchase or transfer of the property, if the form is filed within one year the transferee is eligible for the exclusion and entitled to a refund of amounts previously owed or paid between the date of the purchase or transfer and the date the transferee claims the homeowners’ exemption claim form. If the homeowners’ exemption claim form is not filed within one year the transferee is eligible for the exclusion, the transferee is not entitled to refunds, but may qualify for the exclusion prospectively. This is also consistent with prospective-only relief for late filing of the exclusion claim form.

Additional amendments to Rule 462.520 make the following changes:

- A description of calculations was corrected in Example 6 and a calculation was corrected in Example 8, Part B.
- Example 11-1 was amended to clarify the date by which an exclusion claim must be filed.

- The last sentence of subdivision (f)(1)(B) was removed as it was inadvertently added. That sentence originally directed the assessment of the \$1 million exclusion for “other property.” Proposition 19 removed the \$1 million exclusion for “other property.” Thus, that sentence is improperly included.

The above amendments are reasonably necessary for the efficient and fair administration of the change in ownership provisions under section 63.2 and section 2.1 of article XIII A of the California Constitution applicable to base year value transfers. The Board anticipates that the Proposed Amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and owners of property potentially eligible for an intergenerational transfer exclusion provided by section 63.2. Portions of the Proposed Amendments may duplicate or overlap language found in Revenue and Taxation Code section 63.2 or in Section 2.1 of Article XIII A; however, the “nonduplication” standard found at Government Code section 11349.1, subdivision (a)(6) is met because, pursuant to 1 Code of California Regulations section 12, subdivision (b)(1), the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3). Without the duplication or overlap, the rule would be incomplete or unclear.

The Board has performed an evaluation of whether the amendments to proposed Property Tax Rule 462.520 are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the amendments to the Rule. In addition, there is no comparable federal regulation or statute to Property Tax Rule 462.520.

**NO MANDATE ON LOCAL AGENCIES
AND SCHOOL DISTRICTS**

Section 5 of SB 539 states that “[n]o reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties imposed on a local agency or school district by this act are necessary to implement, or were expressly included in, a ballot measure approved by the voters in a statewide or local election, within the meaning of Section 17556 of the Government Code.” Thus, the Proposed Amendments do not impose a mandate on a local agency that is reimbursable. The Board has also determined that the adoption of the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires

state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

FISCAL IMPACT

Board staff estimated that the amendments to this rule will result in an absorbable one-time cost of \$923 for the Board to communicate with interested parties and update its website after the rule amendment is completed assuming that the average hourly compensation costs are \$57.66 per hour³ and that it will take approximately 16 hours. There will be no savings. The Board has determined that the adoption of the Proposed Amendments will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

**NO SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT
DIRECTLY AFFECTING BUSINESS**

The Board has made an initial determination that the adoption of the Proposed Amendments will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

SMALL BUSINESS

The adoption of the Proposed Amendments is not expected to affect small business since they are only applicable to individuals.

**NO COST IMPACTS TO PRIVATE
PERSONS OR BUSINESSES**

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

³ Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Government Workers. *Employer Costs for Employee Compensation — December 2021: Table 3. Employer Costs for Employee Compensation for state and local government workers by occupational and industry group*, <https://www.bls.gov/news.release/ecec.htm>.

RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT REQUIRED BY
GOVERNMENT CODE SECTION 11346.3,
SUBDIVISION (b)

The Board assessed the economic impact of Proposed Amendments to Property Tax Rule 462.520 on California businesses and individuals and determined that the amendments do not constitute a major regulation as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the Proposed Amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the Proposed Amendments will neither create nor eliminate jobs in the State of California, nor create new businesses or eliminate existing businesses within the state, nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the Proposed Amendments will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT
ON HOUSING COSTS

The adoption of the Proposed Amendments to Property Tax Rule 462.520 will not have a significant effect on housing costs.

DETERMINATION
REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise 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 that the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the Proposed Amendments should be directed to Mr. Henry Nanjo, Chief Counsel, by telephone at (916) 274-3520, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attention: Henry Nanjo, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Honey Her, Regulations Coordinator, by telephone at (916) 274-3523, by e-mail at honey.her@boe.ca.gov, or by mail at State Board of Equalization, Attention: Honey Her, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121. Ms. Her is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on November 17, 2022, or as soon thereafter as the Board holds the public hearing regarding the Proposed Amendments during the November 17-18, 2022, Board meeting. Written comments received by Ms. Honey Her at the postal address or email address provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the Proposed Amendments. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL
STATEMENT OF REASONS AND
TEXT OF PROPOSED REGULATION

The Board has prepared a version of the Proposed Amendments to Property Tax Rule 462.520 illustrating the express terms of the Proposed Amendments and an initial statement of reasons for the adoption of the Proposed Amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the Proposed Amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834. The express terms of the Proposed Amendments and the Initial Statement of Reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED
CHANGES PURSUANT TO
GOVERNMENT CODE SECTION 11346.8

The Board may adopt the Proposed Amendments with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the original-

ly proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the Proposed Amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Ms. Her. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

If the Board adopts the Proposed Amendments, the Board will prepare a final statement of reasons, which will be made available for inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834 and available on the Board's website at www.boe.ca.gov.

TITLE 18. BOARD OF EQUALIZATION

**SECTION 462.540, CHANGE IN OWNERSHIP
— BASE YEAR VALUE TRANSFERS**

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to amend California Code of Regulations, title 18, section (Rule or Property Tax Rule) 462.540, *Change in Ownership — Base Year Value Transfers*. This Rule implements, interprets, and makes specific certain change in ownership provisions provided in section 2.1 of article XIII A of the California Constitution (Section 2.1) and section 69.6 of the Revenue and Taxation Code.¹

PUBLIC HEARING

The Board will conduct a meeting on November 17–18, 2022, in-person and via teleconference. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. on November 17, 2022, or as soon thereafter as the matter may be heard at the Board's November 17–18, 2022 meeting. At the

¹ All further statutory references are to the Revenue and Taxation Code unless otherwise indicated.

hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of amendments to Property Tax Rule 462.540 (the Proposed Amendments).

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Article XIII A, section 2.1, California Constitution; and Revenue and Taxation Code (RTC) sections 60, 69.5 and 69.6.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Current Law

Proposition 13 was adopted by the voters at the June 1978 primary election and added article XIII A to the California Constitution. Article XIII A generally limits the amount of ad valorem tax to a maximum of one percent of the full cash value of real property. For purposes of this limitation, section 2 of article XIII A defines full cash value to mean a county assessor's valuation of real property as shown on the 1975–76 tax bill, or thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. In general, properties are reassessed to current market value only upon a change in ownership or the completion of new construction, establishing a new "base year value" for property tax purposes. The California Legislature codified the definition of "change in ownership" in section 60 and codified additional Revenue and Taxation Code sections regarding whether a transfer of property results in a change in ownership, is excluded from the definition of "change in ownership," or allows for the transfer of a property's base year value to a replacement property. (RTC §§ 61 through 69.6.)

Relevant to this Rule, voters amended Article XIII A of the Constitution several times to provide specified conditions permitting the transfer of a property's base year value from a current, or original, principal residence to a replacement principal residence. Most recently, at the November 3, 2020, general election, the voters amended the constitution by approving Proposition 19. Proposition 19 defined eligibility conditions for persons, who are aged 55 or older, severely disabled, or a victim of wildfire or natural disaster, to engage in statewide base year value transfers (by adding Section 2.1, subdivisions (b) and (e) to Article XIII A).

On September 30, 2021, the Governor approved Senate Bill (SB) 539,² which, among other things, added section 69.6 to the Revenue and Taxation Code. SB 539 went into immediate effect. Section 69.6 codifies the provisions of Proposition 19 generally providing that any person over 55 years of age, or any severely and permanently disabled person, or a victim of wildfire or natural disaster who resides in property that is eligible for either the homeowners' exemption or the disabled veterans' exemption may transfer the factored base year value of that property to any replacement dwelling that is purchased or newly constructed by that person as their principal residence within two years of the sale by that person of the original property.

Effects, Objectives, and Benefits of the Proposed Amendments to the Property Tax Rule

Under the authority of Government Code section 15606, subdivision (c), which authorizes the Board to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing, the Board adopted Property Tax Rule 462.540, *Change in Ownership — Base Year Value Transfers* to implement, interpret, and make specific the base year value transfer provisions instituted by Proposition 19 through the regular rulemaking process. Rule 462.540 became effective on January 1, 2022.

Following the promulgation of Rule 462.540, additional amendments were deemed necessary to further implement, interpret, and make specific Proposition 19 and section 69.6. Pursuant to authority granted under section 69.6, amendments to the Rule were made through the emergency rulemaking process. The emergency amendments became effective on July 18, 2022 and will expire on January 18, 2023. To make the emergency amendments to Rule 462.540 permanent and to make additional amendments to the Rule, the Board initiated the certificate of compliance and regular rulemaking process.

The emergency amendments to Rule 462.540 made the following changes:

- Improve clarity. These amendments strike out the existing language at subdivision (b)(3) and places substantially the same language in subdivision (c)(3). Further, the word “dwelling” is changed to “primary residence” in subdivision (d)(3) of the Rule to make consistent with the remainder of the Rule.
- Definition of “severely and permanently disabled.” Proposition 19 allowed “severely disabled” persons to qualify for the base year value transfer but did not define “severely disabled.” The Legislature, under its authority to enact statutes that

provide applicable procedures and definitions for Proposition 19, enacted section 69.6 to allow the base year value transfer to “severely and permanently disabled” persons. Although the term “severely and permanently disabled” is not defined in section 69.6, it is defined in section 69.5, subdivision (g)(12) by reference to section 74.3, subdivision (b). This action amends subdivisions (a) and (d)(1)(B) of the Rule to add “and permanently” to “severely disabled” to be consistent with section 69.6. It also adds a definition of “severely and permanently disabled” at subdivision (c) (14) that is the definition provided in section 69.5 of the same phrase since by making the phrases the same, the Legislature has signaled its intent to make the qualification for disabled individuals the same for section 69.6 as in section 69.5.

- “Equal or lesser value.” Section 69.6, subdivision (d)(13) added a definition of the phrase “equal or lesser value.” This definition requires, depending on the time the replacement dwelling is purchased in relation to the sale of the original property, the full cash value of the original property to be adjusted not at all, by an increase of five percent, or by an increase of 10 percent. The phrase “greater value,” while not explicitly defined, in context, must mean a value that is not of “equal or lesser value.” These amendments add the definition of “equal or lesser value” to subdivision (c) (2), and a definition of “greater value” to subdivision (c)(5).

Subdivision (b)(2) of Rule 462.540 is amended to include the adjustment provided by subdivision (c)(2) when calculating the amount to be transferred to the replacement primary residence, and Example 8 is amended to demonstrate the calculation of the amount to be transferred to the replacement primary residence.

Subdivision (f)(2) of this Rule is amended to clarify that the adjustment provided by subdivision (c)(2) when calculating the amount to be transferred to a replacement primary residence that is newly constructed after an initial claim for the base year value transfer has already been granted is to be made.

- Accessory Dwelling Units. Section 69.6, subdivision (d)(5) added the provision that a multiunit dwelling does not include an accessory dwelling unit or junior accessory dwelling unit meeting several conditions. Subdivision (g)(3) of this Rule adds these conditions to the Rule and further provides definitions of “accessory dwelling unit” and “junior accessory dwelling unit” by reference to the Government Code provisions that

² Statutes 2021, chapter 427, section 3.

govern the building of accessory dwelling units and junior accessory dwelling units.

- Misfortune/Calamity. Section 69.5 stated that taxpayers that experienced a misfortune or calamity to their principal residence were eligible to use the pre-misfortune or calamity full cash value of their principal residence for the required comparison of full cash value with a replacement property. The explicit language explaining this calculation was added to section 69.5 by Stats. 2001, chapter 613 (SB 1184), § 2. Legislative intent in SB 1184 explained that the addition of that language was a mere clarification. Since section 69.6 contains the same language as section 69.5 prior to the clarification added by SB 1184, its interpretation should be the same. Therefore, subdivisions (a)(2), (c)(3), and (c)(4) of this Rule are amended to make clear that full cash value of properties damaged by misfortune or calamity compared to the full cash value of the replacement dwelling should be the full cash value of that property prior to the misfortune or calamity. Subdivision (c)(16) provides a definition of “substantially damaged or destroyed by misfortune or calamity” to make clear the amount of damage that must be done to a property to be eligible to use the pre-misfortune or calamity full cash value of the original property.
- New construction on previously owned land. Amendments to subdivisions (a)(4), (f)(1) and (f)(3), as well the addition of subdivisions (c)(4)(C) and (c)(4)(D), as well as the addition of Example 12, clarify that land can be acquired more than two years prior to the sale of the original property, and that the full cash value of both the land and the improvement is to be determined as of the new construction completion date, as required for section 69.5 by *Wunderlich v. Santa Cruz* (2009) 178 Cal.App.4th 680. In other words, the amendments clarify that underlying land may be acquired more than 2 years prior to sale of the original property (subdivision (a)(4)), and if new construction is completed within two years of the original property’s sale, the full cash value of the replacement property includes the new construction, based on the date of new construction completion, for purposes of the base year value transfer calculation (subdivisions (c)(4)(D) and (f)(3), Ex. 12). If the claim transferring the base year value has already been approved as of the date of new construction completion, the additional value of the new construction is taken into consideration in calculating the transferred base year value (subdivisions (c)(4)(C) and (f)(1)).

Additional amendments to Rule 462.540 make the following changes:

- Subdivision (c)(3) was amended to clarify that the “pre-event” factored base year value may be used for wildfire or natural disasters as well as misfortune or calamity.

The above clarifications are reasonably necessary for the efficient and fair administration of the change in ownership provisions under section 69.6 and section 2.1 of article XIII A of the California Constitution applicable to base year value transfers. The Board anticipates that the Proposed Amendments will increase openness and transparency in government and benefit the public, local boards of equalization and assessment appeals boards, county assessors, and owners of property potentially eligible for a base year value transfer provided by section 69.6. Portions of the Proposed Amendments may duplicate or overlap language found in Revenue and Taxation Code section 69.6 or in Section 2.1 of Article XIII A; however, the “nonduplication” standard found at Government Code section 11349.1, subdivision (a)(6) is met because, pursuant to 1 Code of California Regulations section 12, subdivision (b)(1), the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1, subdivision (a)(3). Without the duplication or overlap, the rule would be incomplete or unclear.

The Board has performed an evaluation of whether the amendments to proposed Property Tax Rule 462.540 are inconsistent or incompatible with existing state regulations. The Board has determined that the Proposed Amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that prescribe the provisions that would be adopted by the amendments to the Rule. In addition, there is no comparable federal regulation or statute to Property Tax Rule 462.540.

**NO MANDATE ON LOCAL AGENCIES
AND SCHOOL DISTRICTS**

Section 5 of SB 539 states that “[n]o reimbursement is required by this act pursuant to Section 6 of Article XIIB of the California Constitution because the duties imposed on a local agency or school district by this act are necessary to implement, or were expressly included in, a ballot measure approved by the voters in a statewide or local election, within the meaning of Section 17556 of the Government Code.” Thus, the Proposed Amendments do not impose a mandate on a local agency that is reimbursable. The Board has also determined that the adoption of the Proposed Amendments will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with

section 17500) of division 4 of title 2 of the Government Code.

FISCAL IMPACT

Board staff estimated that the amendments to this rule will result in an absorbable one-time cost of \$923 for the Board to communicate with interested parties and update its website after the rule amendment is completed assuming that the average hourly compensation costs are \$57.66 per hour³ and that it will take approximately 16 hours. There will be no savings. The Board has determined that the adoption of the Proposed Amendments will result in no other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT
DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the Proposed Amendments will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

SMALL BUSINESS

The adoption of the Proposed Amendments is not expected to affect small business since the rule only potentially affects the owners of family farm small businesses but not the business itself.

NO COST IMPACTS TO PRIVATE
PERSONS OR BUSINESSES

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

³ Source: Hourly compensation costs are from the U.S. Bureau of Labor Statistics. Hourly compensation costs are for State and Local Government Workers. *Employer Costs for Employee Compensation — December 2021: Table 3. Employer Costs for Employee Compensation for state and local government workers by occupational and industry group*, <https://www.bls.gov/news.release/eccc.htm>.

RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT REQUIRED
BY GOVERNMENT CODE
SECTION 11346.3, SUBDIVISION (b)

The Board assessed the economic impact of proposed new Property Tax Rule 462.540 on California businesses and individuals and determined that the Proposed Amendments are not a major regulation as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), for the Proposed Amendments and included it in the initial statement of reasons. In the EIA, the Board has determined that the adoption of the Proposed Amendments will neither create nor eliminate jobs in the State of California, nor create new businesses or eliminate existing businesses within the state, nor expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the Proposed Amendments will not affect the benefits of the rule to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT
ON HOUSING COSTS

The adoption of the Proposed Amendments to Property Tax Rule 462.540 will not have a significant effect on housing costs.

DETERMINATION
REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the Proposed Amendments should be directed to Mr. Henry Nanjo, Chief Counsel, by telephone at (916) 274-3520, by e-mail at henry.nanjo@boe.ca.gov, or by mail at State Board of Equalization, Attention: Henry Nanjo, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Honey Her, Regulations Coordinator, by telephone at (916) 274-3523, by e-mail at honey.her@boe.ca.gov, or by mail at State Board of Equalization, Attention: Honey Her, MIC: 121, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0121. Ms. Her is the designated backup contact person to Mr. Nanjo.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on November 17, 2022, or as soon thereafter as the Board holds the public hearing regarding the Proposed Amendments during the November 17-18, 2022, Board meeting. Written comments received by Ms. Honey Her at the postal address or email address provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the Proposed Amendments. The Board will only consider written comments received by that time.

**AVAILABILITY OF INITIAL
STATEMENT OF REASONS AND
TEXT OF PROPOSED REGULATION**

The Board has prepared a version of the Proposed Amendments to Property Tax Rule 462.540 illustrating the express terms of the Proposed Amendments and an initial statement of reasons for the adoption of the Proposed Amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the Proposed Amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834. The express terms of the Proposed Amendments and the Initial Statement of Reasons are also available on the Board's website at www.boe.ca.gov.

**SUBSTANTIALLY RELATED
CHANGES PURSUANT TO
GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the Proposed Amendments with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the original-

ly proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days prior to adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the Proposed Amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public form Ms. Her. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

If the Board adopts the Proposed Amendments, the Board will prepare a final statement of reasons, which will be made available for inspection at 160 Promenade Circle, Suite 200, Sacramento, CA 95834, and available on the Board's website at www.boe.ca.gov.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

**HABITAT RESTORATION AND
ENHANCEMENT ACT**

**CONSISTENCY DETERMINATION
NUMBER 1653-2022-099-001-R4**

Project: Finch Creek Fish Passage Barrier Removal Project

Location: Monterey County

Applicant: Jennifer Hunter, Hastings Natural History Reservation

Background

Project Location: The Finch Creek Fish passage Barrier Removal Project (Project) is located at 38601 East Carmel Valley Road, Carmel Valley, Monterey, California 93924, on 2 parcels, owned by the Regents of the University of California, known as the Hastings Natural History Reservation, Assessor Parcel Numbers (APNs) 418-293-026 and 418-293-027, and affects Finch Creek, a tributary to Cachagua Creek and the Carmel River. Finch Creek supports many species of fish and wildlife, including federally threatened steelhead trout (*Onchorhynchus mykiss*) and California red-legged frog (*Rana draytonii*), species of special concern Monterey dusky-footed woodrat (*Neotoma*

fuscipes Luciana), as well as California native plants, including Jolon clarkia (*Clarkia jolonensis*).

Project Description: Jennifer Hunter, from the Hastings Natural History Reservation, (Applicant) proposes to enhance or restore habitat within Finch Creek to provide a net conservation benefit for steelhead. The Finch Creek tributary system produces the greatest number of steelhead fry of any tributary in the Carmel River watershed system. In order to aid in the sustainability of this species, the Applicant proposes the removal of a 12-foot by 40-foot automobile ford at Finch Creek. This ford has undersized and buried culverts, sediment deposition upstream, and channel incision which has created a six-foot plunge pool downstream of the ford. Currently, the ford behaves as a complete barrier for adult and juvenile steelhead during low flow conditions and a partial barrier during high flow conditions. Removal of the Finch Creek ford would remove a major impediment to steelhead migration within the upper Carmel River watershed.

In addition to removal of the ford, the Applicant proposes replacement of the ford with a 35-foot long by 12.75-foot-wide precast voided slab concrete bridge deck and concrete abutments, removal of grouted rock immediately downstream of the ford, installation of approximately 200 cubic yards of rock slope protection (RSP) along the stream bank, restoration of approximately 240 feet of streambed with native streambed material and native vegetation. Removal of the ford and replacement with a free-standing bridge will allow steelhead to pass through low-flow conditions, reduce energy expenditure and delays for all life stages of migratory steelhead, improve post-spawning survival of adults, and allow access to nearly four miles of high-quality anadromy and spawning habitat in the upper tributaries of the Carmel River watershed. Project activities will rectify a piece of failing infrastructure and establish a new crossing that can be maintained in both high and low flow conditions, therefore allowing fish passage, preventing undercutting and providing bank stability.

Project Size: The total area of ground disturbance associated with the Project is approximately 0.26 acres and 371 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

Project Associated Discharge: 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) streambed simulation material (2) rock slope protection (3) aggregate base and (4) concrete bridge with concrete abutments and footings (5) gravel bag.

Project Timeframes:

Start date: August 2022

Completion date: June 2027

Work window: August 1– October 15

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, the Central Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) Number 32722WQ02) 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 fish and wildlife resources.

Receiving Water: Finch Creek

Filled or Excavated Area:

Permanent area impacted: 0.173 acres

Temporary area impacted: 0.087 acres

Length temporarily impacted: 121 feet

Length permanently impacted: 250 feet

Dredge Volume: None

Discharge Volume: 20 cubic yards of streambed simulation material, 200 cubic yards of rock slope protection (RSP), 25 cubic yards of class I RSP and class II aggregate base, 70 cubic yards of concrete for abutments and footings, and 10 cubic yards for a gravel bag dewatering dam

Project Location: Latitude 36.3788024 North and Longitude -121.5664295 (NAD 83); APN: 418-293-026 and 418-293-027

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

On August 23, 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 August 23, 2022, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2022-0823-01) on September

2, 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 meet the conditions set forth in Fish and Game Code section 1653 for authorizing the Project.

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

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI that includes construction operating period limitations and general measures to avoid and minimize impacts to biological resources, including a dewatering plan, biological pre-activity site surveys and implementation monitoring completed by a qualified biologist, flagging of biological resources, water quality protection measures and construction best management practices. The specific avoidance and minimization requirements are found in an attachment to the NOI, Finch Creek Fish Passage Barrier Removal Project — Supplemental Avoidance and Minimization Measures to Protect Fish, Wildlife, and Plant Resources.

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, Appendix B: Monitoring & Reporting Plan, Hastings Natural History Reservation — Finch Creek Fish Passage Barrier Removal Project (December 16, 2021, Revised June 16, 2022).

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; and
- 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: megan.rooney@wildlife.ca.gov and R4LSA@wildlife.ca.gov.

Project Authorization

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

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

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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

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

PUBLIC MEETING

On **November 17, 2022**, at 10:00 a.m. in the Council Chambers of the Santa Clara City Hall 1500 Warburton Avenue, Santa Clara, California as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

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

BUSINESS MEETING

On **November 17, 2022**, at 10:00 a.m. in the Council Chambers of the Santa Clara City Hall, 1500 Warburton Avenue, Santa Clara, California as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

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

DISABILITY ACCOMMODATION NOTICE:

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

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accom-

modation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

PETITION DECISION

STATE WATER RESOURCES CONTROL BOARD

DECISION ON PETITION FOR EMERGENCY RULEMAKING TO IMPLEMENT LOWER SAN JOAQUIN RIVER FLOW OBJECTIVES IN THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY/ SACRAMENTO-SAN JOAQUIN DELTA

On August 14, 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 the Natural Resources Defense Council, the Bay Institute, Tuolumne River Trust, San Francisco Baykeeper, and Golden State Salmon Association (collectively Petitioners) for an emergency rulemaking pursuant to Government Code section 11340.6 to implement the Lower San Joaquin River flow objectives in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan).

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 not identify specific provisions in the California Code of Regulations that Petitioners are requesting be adopted, amended, or repealed. Petitioners are requesting the State Water Board initiate an emergency rulemaking to implement amendments to the Bay-Delta Plan that were adopted in 2018 to update Lower San Joaquin River flows. Those amendments are 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 State Water Board’s authority to adopt emergency regulations (Water Code, § 1058.5); the Governor’s Executive Order N–7–22 declaring a state of drought emergency and incorporating the Governor’s April 12, 2021, May 10, 2021, July 8, 2021, and October 19, 2021 proclamations of emergency; 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 remains committed to expeditiously implementing the 2018 update to the Bay–Delta Plan. As part of that commitment, the State Water Board issued a notice of preparation on July 15, 2022, for a regulation to implement lower San Joaquin River flows. The standard rulemaking process, including environmental review, will allow for greater public participation and project–specific environmental analysis tiering from the Substitute Environmental Document developed and adopted as part of the 2018 Bay–Delta Plan amendment process.

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

September 14, 2022

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986

NOTICE OF INTENT TO LIST CHEMICAL
BY THE LABOR CODE MECHANISM:
ANTIMONY (TRIVALENT COMPOUNDS)

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to list antimony (trivalent compounds) as known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65¹).

This action is being proposed pursuant to the “Labor Code” listing mechanism.² OEHHA has determined that this substance meets the criteria for listing by this mechanism.

Background on listing by the Labor Code mechanism: Health and Safety Code section 25249.8(a) incorporates California Labor Code section 6382(b) (1) into Proposition 65. The law requires that certain substances identified by the International Agency for Research on Cancer (IARC) be listed as known to cause cancer under Proposition 65. Labor Code section 6382(b)(1) refers to substances identified as human or animal carcinogens by IARC. OEHHA has adopted regulations concerning these listings in Title 27, Cal. Code of Regs., section 25904. As the lead agency for the implementation of Proposition 65, OEHHA evaluates whether a chemical’s listing is required.

OEHHA’s determination: *Antimony (trivalent compounds)* meets the requirements for listing as known to the state to cause cancer for purposes of Proposition 65.

IARC has published on its website a list entitled “Agents Classified by the IARC Monographs, Volumes 1–132” (IARC, 2022). IARC concludes that *antimony (trivalent compounds)* is “probably carcinogenic to humans” (Group 2A) based on limited evidence for cancer in humans, sufficient evidence of carcinogenicity in experimental animals, and strong mechanistic evidence in human primary cells and in experimental systems (Karagas *et al.*, 2022).

¹ Health and Safety Code section 25249.5 *et seq.*

² Health and Safety Code section 25249.8(a) and Title 27, Cal. Code of Regs. section 25904.

Opportunity for comment: OEHHA is providing this opportunity to comment as to whether the chemical identified above meets the requirements for listing as causing cancer specified in Health and Safety Code section 25249.8(a), Labor Code section 6382(b) (1), and Title 27, Cal. Code of Regs., section 25904(b). Because this is a ministerial listing, comments should be limited to whether IARC has identified the specific chemical or substance as a human or animal carcinogen. Under this listing mechanism, OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by IARC when it identified these chemicals and will not respond to such comments if they are submitted (Title 27, Cal. Code of Regs., section 25904(c)).

Submission of Comments

All written comments must be submitted to OEHHA by electronic submission, mail, or hand-delivery, by **Monday, October 31, 2022**. OEHHA strongly recommends that comments be submitted electronically through our website at <https://oehha.ca.gov/comments>, rather than in paper form. Alternatively, comments can be submitted in paper form, by either mail or delivered in person.

Electronic Submission (preferred):

Through OEHHA website at: <https://oehha.ca.gov/comments>

Mailed Submission:

Attention: Esther Barajas-Ochoa
Office of Environmental Health Hazard
Assessment
P.O. Box 4010
Sacramento, California 95812-4010

In-person delivery submission:

Attention: Esther Barajas-Ochoa
Office of Environmental Health Hazard
Assessment
1001 I Street, 23rd Floor
Sacramento, California 95814

OEHHA encourages all commenters to submit their comments in a format compliant with Section 508 of the federal Rehabilitation Act, Web Content Accessibility Guidelines 2.1³ and California Government Code sections 7405 and 11135, so that they can be read using screen reader technology and those with visual impairments are able to listen to them.

Comments received during the public comment period will be posted on the OEHHA website after the close of the comment period.

OEHHA is subject to the California Public Records Act and other laws that require the release of certain

information upon request. If you provide comments, please be aware that your name, address and e-mail may be available to third parties.

If you have any questions, please contact Esther Barajas-Ochoa at Esther.Barajas-Ochoa@oehha.ca.gov or at (916) 445-6900.

References

International Agency for Research on Cancer (IARC, 2022). Agents Classified by the *IARC Monographs*, Volumes 1-132. IARC, World Health Organization, Lyon, France. Most recent list available at URL: <https://monographs.iarc.who.int/list-of-classifications/> [Accessed July 7, 2022].

Karagas MR, Wang A, Dorman DC, Hall AL, Pi J, Sergi CM, Symanski E, Ward EM, Arrandale VH, Azuma K, Brambila E, Calaf GM, Fritz, JM, Fukushima S, Gaitens JM, Grimsrud TK, Guo L, Lynge E, Marinho-Reis AP, McDiarmid MA, Middleton DRS, Ong TP, Polya DA, Quintanilla-Vega B, Roberts GK, Santonen T, Sauni R, Silva MJ, Wild P, Zhang CW, Zhang Q, Grosse Y, Benbrahim-Tallaa L, de Conti A, DeBono NL, El Ghissassi F, Madia F, Resifeld B, Stayner LT, Suonio E, Viegas S, Wedekind R, Ahmadi S, Mattock H, Gwinn WM, Schubauer-Berigan MK. Carcinogenicity of cobalt, antimony compounds, and weapons-grade tungsten alloy. *The Lancet Oncology* 23(5), 577-578. Published online April 7, 2022, doi: 10.1016/S1470-2045(22)00219-4. Available at URL: [https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(22\)00219-4/fulltext](https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(22)00219-4/fulltext) [Accessed April 18, 2022]

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986**

NOTICE TO INTERESTED PARTIES

**ANNOUNCEMENT OF THE CARCINOGEN
IDENTIFICATION COMMITTEE MEETING**

**SCHEDULED FOR DECEMBER 14, 2022;
NOTICE OF AVAILABILITY OF HAZARD
IDENTIFICATION MATERIALS FOR
BISPHENOL A (BPA)**

The California Environmental Protection Agency's
Office of Environmental Health Hazard Assessment

³ <https://www.w3.org/WAI/standards-guidelines/wcag/>

(OEHHA) will convene a meeting of the Carcinogen Identification Committee (CIC) for possible listing of bisphenol A (BPA) under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)¹. OE-HHA is also opening a 45-day public comment period on the hazard identification document for this chemical. **The public comment period will end on Monday, November 14, 2022.** A copy of the document is available on OEHHA's web site at <https://oehha.ca.gov/proposition-65>. The document may also be requested from OEHHA's Proposition 65 Implementation Office by calling (916) 445-6900.

Background

OEHHA is the lead agency for implementation of Proposition 65. The CIC advises and assists OEHHA in compiling the list of chemicals known to the state to cause cancer as required by Proposition 65². The CIC serves as the state's qualified experts for determining whether a chemical has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer.

A request for relevant information on the potential carcinogenicity of this chemical opened on January 28, 2022 and closed on March 14, 2022. Three submissions were received and are posted on the OEHHA website³. OEHHA considered these submissions in preparing the hazard identification document.

Public Meeting and Public Comment Period

BPA will be considered for possible listing under Proposition 65 at a public meeting scheduled for **Wednesday, December 14, 2022**. The meeting, which will be held virtually, will begin at 10:00 a.m. and last until all business is conducted or until 5:00 p.m. The agenda for the meeting and instructions on how to participate will be provided in a future public notice published in advance of the meeting.

The public may provide oral comments at the meeting on December 14, 2022. These comments will be limited to five minutes per commenter, except for those commenters who make a request by November 14, 2022, and receive approval from the Chair of the CIC for longer comments. Please submit a request for additional time, with an estimate of the time you will need and the reason you are requesting additional time, to P65Public.Comments@oehha.ca.gov or call the Proposition 65 Implementation Office at (916) 445-6900 by November 14, 2022.

All written comments must be submitted to OEHHA by electronic submission, mail, or hand-delivery, by **Monday, November 14, 2022**. OEHHA

strongly recommends that comments be submitted electronically through our website at <https://oehha.ca.gov/comments> rather than in paper form. Alternatively, comments can be submitted in paper form, by either mail or delivered in person.

Mailed submission via United States Postal Service:

Attention: Esther Barajas-Ochoa
Office of Environmental Health Hazard
Assessment
P.O. Box 4010, MS-12B
Sacramento, California 95812-4010

In-person delivery submission:

Attention: Esther Barajas-Ochoa
Office of Environmental Health Hazard
Assessment
1001 I Street, 12th Floor
Sacramento, California 95814

OEHHA encourages all commenters to submit their comments in a format compliant with Section 508 of the federal Rehabilitation Act, Web Content Accessibility Guidelines 2⁴ and California Government Code sections 7405 and 11135, so that they can be read using screen reader technology and people with visual impairments are able to listen to them.

All timely filed public comments will be provided to CIC members in advance of the meeting and will be posted on the OEHHA website at the close of the comment period.

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address, and e-mail may be available to third parties.

If you have any questions, please contact Esther Barajas-Ochoa at Esther.Barajas-Ochoa@oehha.ca.gov or (916) 445-6900.

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.

¹ Health and Safety Code section 25249.5 et seq.

² Health and Safety Code section 25249.8.

³ See <https://oehha.ca.gov/proposition-65/comments/comment-period-request-relevant-information-carcinogenicity-bisphenol-bpa>

⁴ <https://www.w3.org/WAI/standards-guidelines/wcag/>

California School Finance Authority
 File # 2022-0915-01
 Charter Access to Bank Loan Enhancement Program

In this readopt of OAL Matter Number 2022-0310-04E, the California School Finance Authority is establishing a program to utilize a grant award under the U.S. Department of Education's Credit Enhancement for Charter Schools Facilities Program for the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt. This action establishes relevant definitions, eligibility criteria, award allocation, and eligible uses of funds, as well as an application and fee.

Title 04
 Adopt: 10200.8, 10200.9, 10200.10, 10200.11, 10200.12, 10200.13, 10200.14, 10200.15
 Filed 09/21/2022
 Effective 09/21/2022
 Agency Contact: Ryan Storey (213) 620-6360

State Water Resources Control Board
 File # 2022-0912-02
 Emergency Action to Protect Threatened Species, Mill and Deer Creeks

In this readopt of OAL Matter Number 2021-0924-01E, the State Water Resources Control Board (the "Board") is adopting emergency curtailment and reporting regulations for Mill and Deer Creeks. The emergency regulations (1) establish emergency drought minimum flow requirements to protect threatened Central Valley spring-run Chinook salmon and threatened California Central Valley steelhead; (2) ensure continued access to water supplies for minimum health and safety needs; (3) permit local cooperative solutions in place of specified Board-issued curtailment orders; (4) prohibit inefficient domestic lawn watering practices; and (5) require curtailment order reporting.

Title 23
 Adopt: 876.5, 876.7, 878.4
 Filed 09/21/2022
 Effective 09/21/2022
 Agency Contact: David Rose (916) 341-5196

California Prison Industry Authority
 File # 2022-0902-04
 Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing.

Title 15
 Amend: 8299
 Filed 09/21/2022
 Effective 10/21/2022
 Agency Contact: Moira Doherty (916) 413-1140

Department of Justice
 File # 2022-0809-01
 Firearm Precursor Part Definitions & Guidebook

This action by the Department of Justice, submitted to OAL for courtesy filing with the Secretary of State and for printing in the California Code of Regulations, defines the term "federally regulated firearm precursor part." This action is exempt from the Administrative Procedure Act and takes effect upon filing with the Secretary of State under sections 39 and 41 of Assembly Bill 1621 (Stats. 2022, chapter 76).

Title 11
 Adopt: 4303
 Filed 09/21/2022
 Effective 09/21/2022
 Agency Contact: Marlon Martinez (213) 269-6437

Office of Administrative Law
 File # 2022-0823-04
 Conflict-of-Interest Code

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 02
 Amend: 51000
 Filed 09/15/2022
 Effective 10/15/2022
 Agency Contact: Rhea Moyer (916) 832-3257

State Personnel Board
 File # 2022-0816-02
 Training & Development Assignments

This action establishes regulations for crediting training and development assignments as qualifying experience. These regulations are exempt from the Administrative Procedure Act pursuant to Government Code section 18211.

Title 02
 Amend: 171.1, 437, 439.2, 439.4
 Filed 09/15/2022
 Effective 10/01/2022
 Agency Contact: Lori Gillihan (916) 651-1043

Board of Accountancy
File # 2022-0817-01
California Board of Accountancy's Practice Privilege Program

This nonsubstantive action from the Board of Accountancy repeals Article 4, Practice Privileges, that expired by its own terms July 1, 2013.

Title 16
Repeal: 26, 27, 28, 29, 31, 32, 33, 34, 35, 35.1
Filed 09/20/2022
Agency Contact: Sarah Benedict (916) 809-4028

Department of Public Health
File # 2022-0805-02
Clinical Laboratory Personnel Standards Article 1 Definitions Update

In this non-substantive action, the California Department of Public Health ("CDPH") renumbers sections for organizational purposes and makes minor, non-substantive grammatical changes. CDPH merges sections 17 CCR 1029.32, 1029.33, 1029.53, 1029.116, 1029.117, and 1029.124 into section 1029 and makes minor grammatical changes to section 1029.

Title 17
Amend: 1029, 1029.32, 1029.33, 1029.53, 1029.116, 1029.117, 1029.124
Filed 09/15/2022
Agency Contact: Christy Correa (279) 217-0674

Air Resources Board
File # 2022-0802-02
Small Off-Road Engine Regulations

This action amends the Small Off-Road Engine (SORE) Exhaust and Evaporative Emission Regulations and Test Procedures to accelerate the transition of SORE equipment to zero-emission equipment (ZEE). The amendments set SORE emission standards to zero in two phases. In the first phase, for engine model year (MY) 2024 and later, except generators, exhaust emission standards, except carbon monoxide, are set to zero, evaporative emission standards are set to zero, and generator emission standards are made more stringent than the existing standards. In the second phase, starting in MY 2028, emission standards for generators would be zero. This action also amends related emission reduction credit programs, sunsets the Blue Sky Series engine requirements, repeals the variance provisions in the evaporative emission regulations, amends evaporative emission test procedures, amends TP-901 regarding fuel tank testing configurations, amends evaporative emission control system certification procedure CP-902, and aligns exhaust emission test procedures with

updates to the federal test procedures since 2012 with California-specific variances.

Title 13
Adopt: 2408.2, 2754.3
Amend: 2400, 2401, 2402, 2403, 2404, 2405, 2405.1, 2405.2, 2405.3, 2406, 2407, 2408, 2408.1, 2750, 2751, 2752, 2753, 2754, 2754.1, 2457.2, 2755, 2756, 2757, 2758, 2759, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2767.1, 2771
Repeal: 2768
Filed 09/14/2022
Effective 01/01/2023
Agency Contact: Bradley Bechtold (661) 305-9128

Department of Food and Agriculture
File # 2022-0810-03
Black Fig Fly Eradication Area

This action establishes the entire counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura as a black fig fly (*Silba adipata* McAlpine) eradication area.

Title 03
Adopt: 3591.29
Filed 09/20/2022
Effective 01/01/2023
Agency Contact: Karen Olmstead (916) 403-6879

Department of Motor Vehicles
File # 2022-0808-01
Confidential Records

This regular rulemaking action by the Department of Motor Vehicles clarifies that the confidential records process applies to administrative law judges.

Title 13
Adopt: 360.00
Filed 09/15/2022
Effective 01/01/2023
Agency Contact: Randi Calkins (916) 282-7294

Board of Barbering and Cosmetology
File # 2022-0818-01
Instructional Materials

This action makes changes to the instructional materials that board approved schools must provide to students. Most significantly, it removes the requirement that textbooks be approved by the National Interstate Council of State Boards of Cosmetology (NIC) and adds a requirement that the schools provide the appropriate licensing examination translation guide to students who intend to take the examination in one of the non-English languages offered by the board.

Title 16
Adopt: 961
Repeal: 961
Filed 09/20/2022
Effective 01/01/2023
Agency Contact: Allison Lee (916) 575-7139

Department of Developmental Services
File # 2022-0810-02
Participant Directed Services Resubmittal

In this regular rulemaking, the Department of Developmental Services (“DDS”) is amending the maximum reimbursement rates for voucher services, non-residential services, and participant-directed services. Additionally, DDS is adding “personal assistance,” “independent living services,” and “supported employment” to the list of participant-directed services.

Title 17
Amend: 57310, 57332, 58886, 58888
Filed 09/15/2022
Effective 09/16/2022
Agency Contact: Amy Whiting (916) 654-4418

Department of Water Resources
File # 2022-0805-01
Enforcement Regulations — Dam Safety Program

This action establishes procedures for administrative enforcement actions to determine compliance with Part 1 of Division 3 of the Water Code and implementing regulations, including procedures for re-

questing and conducting hearings and methodologies for calculating civil penalties.

Title 23
Adopt: 306, 337, 337.2, 337.4, 337.6, 337.8, 337.10, 337.11, 337.12, 337.14, 337.16, 337.18, 337.20, 337.22, 337.24, 337.26, 337.28, 337.30, 337.32, 337.50, 337.52, 337.54, 337.56, 337.58, 337.60, 337.62, 337.64, 337.66
Filed 09/19/2022
Effective 09/19/2022
Agency Contact: Shawn Jones (916) 216-8711

**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.

