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Authority II

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ADOPTION

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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:

Caliber Schools
Schools Insurance Group Northern Alliance Joint Powers Authority II

STATE AGENCY:

Department of Social Services

ADOPTION

MULTI-COUNTY:

San Francisco International Airport/Community Roundtable

A written comment period has been established commencing on October 28, 2022 and closing on December 12, 2022. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government

Code Section 87302, employees who must disclose certain investments, interests in real property and income.

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than December 12, 2022. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

**EFFECT ON HOUSING
COSTS AND BUSINESSES**

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite

3000, Sacramento, California 95811, telephone (916) 322-5660.

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

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

**TITLE 4. DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL**

The Department of Alcoholic Beverage Control (ABC) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

ABC has scheduled a public hearing on this proposed action. This public hearing will take place in person and via Zoom.

PUBLIC HEARING SCHEDULED

December 13, 2022

10:00 a.m. to 2:00 p.m.

IN PERSON: Dept. of Alcoholic Beverage
Control Headquarters
3927 Lennane Dr.
Sacramento, CA 95834 or
VIA ZOOM: link TBD

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period closes at 5:00 pm on Tuesday, December 13, 2022. ABC will consider only written comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit– Beer Price Posting
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Comments may also be submitted by email to RPU@abc.ca.gov, please include “Beer Price Posting” in the subject line of your email.

AUTHORITY AND REFERENCE

Authority: Sections 25000, 25006 and 25750, Business and Professions Code; Section 22, Article XX of the California Constitution.

Reference: Section 24208, 25000, 25001, 25002, 25003, 25004 and 25753, Business and Professions Code.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Summary of Existing Laws and Regulations

Business and Professions code section 25000 requires beer manufacturers, importers, and wholesalers to file a schedule of beer prices with ABC for each county in which their customers have a premises.

Business and Professions code section 25006 allows for ABC to adopt rules to foster and encourage the orderly wholesale marketing and wholesale distribution of beer.

Summary of Effect

The proposed regulations seek to formally implement standards for promotional allowances, define beer price posting terminology, and modernize the method in which beer price schedules are posted. The regulatory package was created in response to a petition from the beer industry for guidance regarding promotional allowances. These proposed regulations will clarify the boundaries within which promotional price posting allowances can exist and create standard terminology for beer price schedules.

Comparable Federal Statute or Regulations

ABC has determined that this proposed regulation does not have a comparable federal statute or regulation.

Policy Statement Overview

The mission of ABC is to provide the highest level of service and public safety to the people of the State through licensing, education, and enforcement. This proposed regulation supports the commitment that ABC has to its licensees and communities by establishing policies that foster fair and equitable business practices while standardizing and modernizing the beer price posting process.

Benefits Anticipated

By establishing the policies and procedures for beer price posting and promotional pricing allowances, the anticipated benefit of this action will not only clarify commonly used terms but also ensure a fair and uniform process throughout California for beer price promotion programs.

Determination of Inconsistency/Incompatibility with Existing State Regulations

ABC has examined the relevant statutes and regulations that apply to beer price posting and beer price promotion practices in California. Through this examination, ABC has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

Effect Upon Small Businesses in California

Promotional prices offered by manufacturers could benefit small businesses in California by making the market more competitive. Small businesses will have the option to pursue the same promotional allowances offered to larger wholesalers by manufacturers because promotional pricing must be offered statewide instead of targeting specific markets or specific favored customers. All wholesalers, large and small, as well as retailers would be able to enlarge their product base by utilizing manufacturers’ promotional allowances and possibly passing those savings on to retail customers. Consumers would also benefit from this newly competitive market as more local retailers would be offering similar products at different price points. This would promote a level playing field with a diverse marketplace that has more product availability for consumers at the retail level.

Modernization of the beer price posting system is also beneficial to beer manufacturers, importers, and wholesalers that must post their pricing. The process will be more streamlined and reduce the need for beer price posting on paper via fax or email. This will be more efficient and provide some form of cost savings to ABC, the beer industry, and the public through the use of an easily searched and updated online system.

Although licensees are often small business owners, this proposed regulation will have negligible regulatory effect on them when acting within the law for price promotions. It only seeks to make clear and concise ABC’s policy for the promotional allowances and modernize the beer price posting process.

Disclosures Regarding the Proposed Action

The ABC has made the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Costs or Savings to any state agency: None.
3. Cost to any local agency or school district that is required to be reimbursed by the state: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impacts on housing costs: None.

Determination of Statewide Adverse Economic Impact on Business

The ABC has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability to compete.

Results of the Economic Impact Assessment:

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) that the proposal will not likely create any jobs, (3) that the proposal will not likely create any new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state. It is unlikely that the proposed legislation will impact worker safety.

ABC has determined that the proposed regulation has a no effect upon the current health and welfare of California residents.

ABC has determined this proposed regulation will have no effect upon the environment.

Description of All Economic Impacts That a Representative Private Person or Business Would Necessarily Incur in Reasonable Compliance with the Proposed Action

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on private persons or businesses. There is no foreseeable impact on private persons or businesses based on the process laid out in the proposed regulation.

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

The Need to Require Report from Businesses

ABC is not requiring a report that is not otherwise required by statute, thus the Legislature has determined that this report is necessary for the health, safety, and welfare of the people of the state. The proposed regulation clarifies how beer price posting must be completed as a requirement from certain ABC licensees. It streamlines and eases the statutory burden of beer price posting on beer manufacturers, importers, and wholesalers by mandating the process to be within an electronic and easily searchable system rather than through a paper filing system with ABC.

Consideration of Alternatives

ABC must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to effected private persons than the proposed action, or would be more

cost-effective to effected private persons and equally effective in implementing the statutory policy or other provision of law. ABC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

Agency Contact Person

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Assistant General Counsel, (916) 419-8958, (designated backup contact) Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823-1310 or via email at RPU@abc.ca.gov.

Availability of Documents

ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC’s website listed below or may be obtained from the Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after *October 28, 2022*.

ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Change to the Proposed Full Text of the Regulation Action

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at least 15 days prior to the date on which the department adopts the resulting regulation.

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the department contact persons in this notice or may be accessed on ABC’s website listed below.

Internet Access

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC’s website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>.

TITLE 11. DEPARTMENT OF JUSTICE

**DIVISION 1. ATTORNEY GENERAL
CHAPTER 4.6. NONPROFIT RAFFLE
PROGRAM REGULATIONS
CHAPTER 9 OF PART 1,
TITLE 9, PENAL CODE
(SECTION 320.5, PENAL CODE)**

The Department of Justice (Department) proposes to amend sections 410, 411, 415, 416, 417, 418, 419.2, 419.3, 420, 421, 422, 423, 424, 425, and 426 of title 11, division 1, chapter 4.6 of the California Code of Regulations concerning the Nonprofit Raffle Program.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on December 13, 2022, at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Office of the Attorney General
Charitable Trusts Section
Attn: Scott Chan, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3430
Scott.Chan@doj.ca.gov

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

AUTHORITY AND REFERENCE

Authority: Section 320.5, Penal Code; Section 12599.6, Government Code.

Reference: Section 320.5, Penal Code; Sections 12581, 12585, 12586, 12586.1, 12591.1, 12598, and 12599.6, Government Code.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

Penal Code section 320.5 permits an eligible non-profit organization, as defined in subdivision (c), to legally conduct raffles for the purpose of directly supporting beneficial or charitable purposes of the eligible organization or that of another nonprofit organization. Eligible nonprofit organizations must register with the Department prior to conducting a raffle and subsequently must file an annual report providing the gross receipts and direct costs from the operation of the raffles.

Penal Code section 320.5, subdivision (h), authorizes the Department to adopt regulations necessary to effectuate the statute. Nonprofits are currently required to register with the Department by September 1. (Cal. Code Regs., title 11, § 417.) The registration fee is \$30. (*Id.*, § 418.) Nonprofits are currently required to file annual reports by October 1. (*Id.*, § 420.)

Effect of the Proposed Rulemaking:

The proposed rulemaking modifies the registration deadline to January 1 and the reporting deadline to February 1 of the following year. The Application for Registration/Nonprofit Raffle Program (“Form CT-NRP-1”) and Nonprofit Raffle Report (“Form CT-NRP-2”) are revised to reflect the new deadlines.

The proposed rulemaking also clarifies that to conduct a raffle, an eligible organization must be registered and in good standing with the Nonprofit Raffle Program. The organization’s corporate and tax-exempt status must also be in good standing.

Lastly, the proposed rulemaking clarifies that the Attorney General may impose penalties under Government Code section 12591.1 if a person or entity subject to the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Government (Gov.) Code, § 12580 et seq.) submits false or misleading information, or fails to provide required information, in either the registration form or the raffle report.

Anticipated Benefits of the Proposed Regulations:

The proposed amendments clarify and make technical and grammatical changes to existing regulations and forms. These amendments will lessen confusion and promote the submission of accurate and truthful information as well as increase transparency for the Nonprofit Raffle Program.

The Nonprofit Raffle Program increases funding of charitable works by enabling private nonprofit organizations to conduct raffles, without violating existing criminal law. Eligible organizations are required to register with the Department prior to conducting a raffle and subsequently must file an annual report providing the gross receipts and direct costs from the

operation of the raffles. The registration and reporting ensure appropriate oversight over these charitable activities.

Revising the registration period to the calendar year will promote compliance and lessen confusion among applicants because January 1 is a common annual deadline.

The proposed rulemaking also clarifies that the Attorney General may impose penalties under Government Code section 12591.1 if a person or entity subject to the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.) submits false or misleading information, or fails to provide required information, in either the registration form or the raffle report. This will deter organizations from submitting false or incomplete information.

Comparable Federal Regulations:

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

Determination of Inconsistency/Incompatibility with Existing State Regulations:

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

Forms Incorporated by Reference:

Application for Registration/Nonprofit Raffle Program (“Form CT-NRP-1” Rev. 08/2022): Sections 411 and 415.

Nonprofit Raffle Report (“Form CT-NRP-2” Rev. 08/2022): Sections 411 and 420.

Other Statutory Requirements: None.

DISCLOSURES REGARDING
THE PROPOSED ACTION

The Department’s Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

Significant effect on housing costs: None.

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

Results of the Economic Impact Assessment (EIA):

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

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of California residents because eligible nonprofits will have an easier time registering to conduct raffles to raise money for charitable purposes.
- (2) The proposal would not benefit worker safety because it does not regulate worker safety standards.
- (3) The proposal would benefit the state’s environment because allowing the Department to provide electronic confirmation of registration will reduce paper use. The regulations will also prevent the misuse of donations made to nonprofits supporting environmental causes.

Business report requirement: None. Penal Code section 320.5 requires eligible nonprofit organizations to register with the Department and report gross receipts and expenses from raffles conducted. The existing regulations require and effectuate this reporting. The proposed regulatory action merely amends the registration and reporting deadlines.

Small business determination: The Department has determined that this proposed action does not affect small businesses because nonprofits are exempt from the definition of “small business.” (Gov. Code, § 11342.610, subdivision (b)(6).)

CONSIDERATION OF ALTERNATIVES

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

The Department has determined that the proposed regulations are the most effective way to supervise the Nonprofit Raffle Program. Revising the registration period to the calendar year will promote compliance and lessen confusion among applicants because January 1 is a common annual deadline.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Office of the Attorney General
Charitable Trusts Section
Attn.: Scott Chan, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3430
Scott.Chan@doj.ca.gov

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

Marlon Martinez
Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6437
regulations@doj.ca.gov

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

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

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department's website at <https://oag.ca.gov/charities/laws>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the express terms, the revised forms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/charities/laws>.

**TITLE 12. DEPARTMENT OF
VETERANS AFFAIRS**

NOTICE IS HEREBY GIVEN that the California Department of Veterans Affairs (CalVet) is proposing to take the action described in the Informative Digest after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing. However, any interested person or his or her authorized representative may request a hearing no later than fifteen (15) calendar days prior the end of the written comment period. Submit a request to Phil McAllister at the address below.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to CalVet. Comments may also be submitted by facsimile (FAX) at (916) 653-2456 or by e-mail to Phil McAllister at, Phil.McAllister@calvet.ca.gov. The written comment period closes at **5:00 p.m. on December 13, 2022**. CalVet will consider only comments received at CalVet offices by that time. Submit comments to:

Phil McAllister, Regulatory Actions Coordinator
California Department of Veterans Affairs
1227 O Street, Suite 500
Sacramento, California 95814

AUTHORITY AND REFERENCE

Authority: Sections 79.3, 79.4, 1023, and 1044, Military and Veterans Code (MVC). Reference: Sections 1012 and 1043, MVC.

**INFORMATIVE DIGEST/ POLICY
STATEMENT OVERVIEW**

A. Informative Digest

These proposed regulations would provide rules related to the interfacility transfer of a Veterans Home Member. The goal is to provide a fair and equitable process for the transfer of a Veterans Home Member to another Veterans Home without taking a bed identified for a current Member or applicant of the receiving Veterans Home, except as allowed by the proposed regulation. The two types of transfers are:

- A Priority Interfacility Transfer is required for the health or safety of the Member, to change the level of care, and/or for the Member to receive necessary services not available at the current Veterans Home.
- An Elective Interfacility Transfer is a discretionary transfer between Veterans Homes, which is not required for the health and safety of the Member.

Currently there are no guidelines set in regulation addressing how Interfacility Transfers are facilitated. Most Veterans Home regulations existed prior to CalVet expanding to eight Veterans Homes. With the additional Veterans Homes, it has become imperative to have a new regulation to delineate the rules on how transfers may take place within the system of Veterans Homes. This Interfacility Transfer regulation is necessary to achieve CalVet's goal to provide a fair and equitable process for the transfer of a Veterans Home Member to another CalVet Veterans Home, without unfairly bypassing applicants on a waiting list.

This rulemaking action codifies and clarifies the process for handling transfer requests.

Proposed 12 CCR § 505.10 would provide as follows:

Section 505.10(a)

Defines terms used in the regulations. This is necessary for the reader to be able to easily understand the meaning of the defined term or phrase as used in the regulation. This also helps set the parameters by which Interfacility Transfers are administered.

Section 505.10(b)(1)

This is necessary as it outlines the basic requirements for an Interfacility Transfer to be approved.

Section 505.10(b)(1)(A)

This section is necessary because the California Department of Public Health (CDPH) and the California Department of Social Services (CDSS) require that an applicant admitted to a specific level of care be appropriate for the services available at that level of care, and safe in the environment with the staffing standard set by licensing for supervision at that level of care. All levels of care at the Veterans Homes also are certified for federal per diem by the U.S. Department of Veterans Affairs (USDVA) and must meet similar federal standards.

Section 505.10(b)(1)(B)

This is required because services and programs may be available at one Veterans Home, but not at another, such as skilled nursing memory care or medication management.

Section 505.10(b)(1)(C)

This is necessary because a vacant bed is required at the appropriate level of care for the Member being transferred. This requirement can be found at 12 CCR§ 505. Further, a bed may be temporarily vacant but may be held open for a current Member of the Home following hospitalization or other short-term displacements.

Section 505.10(b)(1)(D)

This is necessary because criteria for appropriateness for the defined levels of care within the CalVet Veterans Homes are set by the licensing agencies. Additionally, state and federal laws and regulations define eligibility for admission to the Veterans Homes. Licensing and certification agencies may include, but are not limited to, the USDVA, the CDPH and the CDSS.

Section 505.10(b)(2)(A)

This is necessary to ensure the Member's transfer can be safely facilitated between two Veterans Homes, and that all medical records, care needs, and personal preferences are shared to ensure continuity of care.

Section 505.10(b)(2)(B)

This section is necessary to facilitate appropriate placement and to provide the beginning of a basic orientation for the Member prior to transfer.

Section 505.10(b)(2)(C)

This is necessary because the criteria for appropriateness for the defined levels of care are set by (a) the licensing agencies and (b) state and federal laws and regulations.

Section 505.10(b)(2)(D)

This is necessary to ensure that the administration of the receiving Veterans Home has made preparations to receive the transferring Member and agrees the Home is staffed and equipped to meet the care needs of the Member.

Section 505.10(c)(1)

This is necessary to ensure that Members with documented clinical needs receive appropriate treatment as required by law. If not admitted ahead of waitlisted applicants or Members seeking an elective transfer, Members in need of priority transfers may instead be involuntarily discharged or evicted.

Section 505.10(c)(2)

On occasion, multiple Members may be in need of priority transfers, but a Veterans Home may not have enough capacity to serve all of them. This section is necessary to allow CalVet to make a clinical determination based on the urgency of each Member's needs and further prioritize transfers accordingly.

Section 505.10(c)(3)

This section is necessary for when there is an emergency, allowing the Deputy Secretary or designee to declare all impacted residents eligible for a Priority Interfacility Transfer, so they may be moved to a safer location. For example, all or part of a Veterans Home may be under evacuation orders due to a wildfire, rendering the facility uninhabitable and requiring immediate relocation of all Members.

Section 505.10(c)(3)(A)

This is necessary as it provides residents the option of discharging from the Veterans Home if they do not wish to transfer to another Veterans Home during an emergency.

Section 505.10(c)(3)(B)

This section is necessary to include that the transfer may be temporary or a permanent move and is determined by the Deputy Secretary or designee. A permanent transfer may be necessary when all or part of a Veterans Home is uninhabitable permanently or for an extended period.

Section 505.10(d)(1)

This is necessary to allow for Members or their legal representatives to submit a request for an elective transfer between Veterans Homes.

Section 505.10(d)(2)

This section is necessary to outline the requirements for an Elective Interfacility Transfer.

Section 505.10(d)(2)(A)

This section is necessary to clarify that Members requesting transfers must have resided at the Veterans Home for at least 12 months. Allowing for more frequent transfers would overburden CalVet’s resources and disrupt operations, care planning, and resident placements.

Section 505.10(d)(2)(B)

This section is necessary to ensure a Code of Conduct Violation has not occurred within a 12 month period when considering an Elective Interfacility Transfer, and that the Member would not cause further disruptions at the receiving Veterans Home.

Section 505.10(d)(2)(C)

This section is necessary to ensure that a Member with delinquent fees who wishes to transfer, does not become an undue financial burden on CalVet or the General Fund and continues to pay all fees and charges required by law.

Section 505.10(d)(3)(A)

This section is necessary to show applications are processed in the the order received to ensure fairness and equity. It also clarifies that Elective Interfacility Transfers are processed after waitlisted applicants who submitted their applications prior to the date of the Member’s transfer request.

Section 505.10(d)(3)(B)

This section is necessary to ensure Priority Interfacility Transfers will be allowed before an Elective Interfacility Transfer, in accordance with section 505.3.

Section 505.10(d)(4)

This section ensures that Members can still be transferred even if they do not meet the criteria outlined in Section 505.10(d)(2) if the circumstances necessitate a transfer. For example, a transfer may be requested to alleviate anxiety or depression by providing a new environment or moving closer to friends and family; in this scenario, there would not be a strict medical requirement for a priority transfer, but the transfer may be deemed important nonetheless.

Section 505.10(e)(1)

This section is necessary to ensure the continuation of CalVet’s practice of prioritizing the care of their current Member residents of a home when there is an evident health or safety need requiring a Priority Interfacility Transfer. CalVet covers the cost of transfer if not covered through the Member’s available insurance plan.

Section 505.10(e)(1)(A)

This section is necessary to ensure accurate and current fee calculations, and to clarify that those cal-

culations are based on the estimated cost of transferring the Member.

Section 505.10(e)(1)(B)

This section is necessary to ensure the Member is able to bring along their personal effects and any necessary devices compatible with the receiving Veterans Home as part of their transfer.

Section 505.10(e)(2)

This section allows CalVet to directly facilitate an Elective Interfacility Transfer if resources are available and not otherwise needed. This may occur when two Veterans Homes are near each other geographically and have vehicles and drivers available. If resources are not available, such as if the Veterans Homes are hundreds of miles apart, CalVet would have the discretion to not directly transfer the Member and instead require the Member to manage their own transportation.

Section 505.10(e)(2)(A)

This section is necessary to ensure the Member is aware they must cover the cost of an Elective Interfacility Transfer. In situations in which there are no costs to CalVet, the Member shall not be charged. Examples in which transfers would result in no costs to CalVet include a) a Member transfers themselves to another Veterans Home, either because they choose to do so or because CalVet does not have the resources to conduct the transfer; and b) transportation is already scheduled for other purposes between the transferring and receiving Veterans Homes, and space is available to transfer the Member and their belongings.

Section 505.10(e)(3)

This section is necessary to assist with CalVet’s budgeting process, as it applies to home transfer costs.

B. Policy Statement Overview

CalVet proposes this rulemaking action to make permanent CCR, Title 12, Section 505.10. This rulemaking action will make specific how CalVet administers Interfacility Transfers within the Veterans Home system in accordance with the MVC.

This regulation would create uniformity and ensure fairness in the prioritization of existing Members and new applicants under different circumstances, as appropriate. The prioritization of existing Members under certain circumstances is in keeping with CalVet’s commitment to provide appropriate medical care to meet the residents’ levels of care as defined by regulatory agencies. The prioritization of new applicants under other circumstances is in keeping with CalVet’s commitment to honor the application date and waiting list order, except when other governing laws or unavoidable operational requirements dictate the order be changed. The regulation also would ensure the state is not obligated to cover moving costs for those Mem-

bers whose medical care, or similar service–related reason, is not the primary factor in the relocation.

Without a regulation defining CalVet’s response in these scenarios, CalVet risks not having a uniform approach in addressing these Members’ needs or wishes. Further, without a regulation, CalVet risks not having a uniform approach to Members’ history with code of conduct violations or payment of fees and charges, as well as different approaches regarding the use of CalVet staffing or financial resources in the relocation of Members and their personal belongings.

The Veterans Homes, which provide long–term health care services for more than two thousand aged and/or disabled veterans and their spouses, are certified by the USDVA and licensed by the CDPH and the CDSS, allowing them to carry out CalVet’s goal of providing care for aged and/or disabled veterans and their spouses and widows of Medal of Honor recipients and widows of former Prisoners of War.

The specific problem being addressed in this regulatory action is stated in regulation; how CalVet administers Interfacility Transfers within the Veterans’ Home system in accordance with the MVC.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

After conducting an evaluation for any regulations related to this area, CalVet has found that this proposed regulation is not inconsistent with existing regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

CalVet has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

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

Significant effect on housing costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

CalVet does not anticipate that there will be significant impacts on the public, private persons, or business due to the proposed regulation. CalVet does not anticipate that there will be an expansion of existing business in California. No jobs will be created; none will be eliminated. No new businesses will be created; no existing businesses will be eliminated. CalVet anticipates that the regulation will benefit the health and welfare of Members of the Veterans Homes of California.

CalVet has not identified any benefits in the areas of worker safety or the state’s environment. The reason no benefits were identified is that the regulation does not address worker safety or the state’s environment.

Benefits of the Proposed Action:

The proposed regulation, CCR Section 505.10 Interfacility Transfers, will clarify how CalVet administers Interfacility Transfers within the Veterans Home system in accordance with the MVC.

Small Business Determination:

CalVet has determined that the proposed regulation will not affect small business. This proposed regulation does not apply to small business in any manner.

Business Report

The proposed regulation does not require a business report.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Phil McAllister, Regulatory Actions Coordinator
California Department of Veterans Affairs
1227 O Street, Suite 500
Sacramento, Ca 95814
Telephone: (916) 202–0846
Email: phil.mcallister@calvet.ca.gov

The backup contact person for these inquiries is:

Andra Pechal, Manager
 California Department of Veterans Affairs
 1227 O Street, Suite 500
 Sacramento, Ca 95814
 Telephone: (916) 272-4503
 Email: andra.pechal@calvet.ca.gov

AVAILABILITY OF DOCUMENTS
 ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations can be accessed through our website at <https://www.calvet.ca.gov/about-us/laws-regulations>.

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Phil McAllister at the above address.

GENERAL PUBLIC INTEREST

FISH AND GAME COMMISSION

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

NOTICE OF FINDINGS FOR
 PACIFIC LEATHERBACK SEA TURTLE
(Dermochelys coriacea)
 October 14, 2022

CalVet will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the text of these proposed regulations and relevant state and federal law. Copies may be obtained by contacting Phil McAllister at the address or phone number listed above.

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at a meeting on October 14, 2021, found pursuant to California Fish and Game Code, Section 2075.5, that the information contained in the petition to list Pacific leatherback sea turtle (*Dermochelys coriacea*) (hereinafter “Pacific leatherback”) and other information in the record before the Commission, warrants adding Pacific leatherback to the list of endangered species under the California Endangered Species Act (CESA; California Fish and Game Code, Section 2050 et seq.). (See also California Code of Regulations, Title 14, Section 670.1, subsection (i).)

AVAILABILITY OF CHANGED
 OR MODIFIED TEXT

After considering all timely and relevant comments received, CalVet may adopt the proposed regulations substantially as described in this notice. If CalVet makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before CalVet adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Phil McAllister at the address indicated above. CalVet will accept written comments on the modified regulations for 15 days after the date on which they are made available.

NOTICE IS ALSO GIVEN that, at its October 12–13, 2022 meeting, the Commission adopted the following findings outlining the reasons for its determination.

I. Background and Procedural History
Petition History

On January 23, 2020, the Center for Biological Diversity and Turtle Island Restoration Network submitted to the Commission a petition to list Pacific leatherback sea turtle as endangered (Petition) pursuant to CESA. The Commission referred the Petition to the California Department of Fish and Wildlife (Department) on February 3, 2020 for evaluation, in accordance with Fish and Game Code Section 2073 and published a formal notice of receipt of the Petition on February 14, 2020 (California Regulatory Notice Register (Notice Register) 2020, No. 7–Z, p. 243).

AVAILABILITY OF THE FINAL
 STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Phil McAllister at the above address.

On June 2, 2020, the Department provided the Commission with its evaluation of the Petition to assist the Commission in making a determination as to whether the petitioned action may be warranted based on the sufficiency of scientific information (Fish and Game Code, sections 2073.5 and 2074.2; California Code of Regulations, Title 14, Section 670.1, subdivisions (d)

& (e)). The Department recommended that the Commission accept the Petition.

At its August 19, 2020 meeting, the Commission found that sufficient information existed to indicate the petitioned action may be warranted and accepted the Petition for consideration. Upon publication of the Commission’s Notice of Findings on September 4, 2020, the Pacific leatherback sea turtle was designated a candidate species (Notice Register 2020, No. 36–Z, p. 1220).

Status Review Overview

The Commission’s action designating Pacific leatherback as a candidate species triggered the Department’s process for conducting a status review to inform the Commission’s decision on whether to list the species.

The Department transmitted its report to the Commission, titled “A Status Review of Pacific Leatherback Sea Turtle (*Dermochelys coriacea*) in California” (Status Review) on July 20, 2021. And on August 18, 2021, the Commission formally received the Department’s Status Review. On October 14, 2021, the Commission found that the information contained in the petition to list Pacific leatherback and the other information in the record before the Commission warrants listing Pacific leatherback as an endangered species under the California Endangered Species Act.

Species Description

Leatherback Sea Turtle

Leatherback sea turtle is the largest turtle species in the world and the fourth largest living reptile (McClain et al. 2015). Adults weigh an average of 453 kilograms (1,000 pounds) with the carapace length commonly exceeding 1.5 meters (4.9 feet) (McClain et al. 2015, Davenport et al. 2011). The skin covered carapace is predominantly black with pale spotting. (CDFW 2021; NMFS & USFWS 1998). The carapace is lined with seven longitudinal ridges, notably white in hatchlings, that taper posteriorly to a blunt point (Pritchard 2015). The underside is often mottled with white to pinkish to black coloration, and the degree of pigmentation is variable (NMFS & USFWS 1998). Leatherback hatchlings, in addition to their white longitudinal ridges, have a mottled underside and are covered with small polygonal bead-like scales (CDFW 2021). Unlike other sea turtle species, leatherback sea turtles have clawless flippers, with proportionally longer front flippers that span up to 2.7 meters (8.9 feet) wide in adults (NMFS & USFWS 1998). Leatherback sea turtles also have pointed tooth-like cusps in their upper jaw that, in addition to backward pointing keratinized papillae in the mouth and throat, aid in the capture and ingestion of gelatinous prey (Pritchard 2015).

Leatherback sea turtles exhibit a shallow phylogeny as shown through mitochondrial deoxyribonucleic

acid (mtDNA) analysis (Dutton et al. 1999). Significant extirpation events during the early Pleistocene glaciation likely reduced the species to a single lineage for the basis of current populations (Dutton et al. 1999, Dutton 2004, Dutton et al. 2013). Unlike other sea turtle species which each have multiple mtDNA lineages, the genetic structure of leatherback sea turtles shows an expansion from a single mtDNA lineage approximately 0.17 million years ago (Bowen and Karl 1997, Dutton et al. 1996, Dutton et al. 1999, Duschene et al. 2012). Consequently, shared haplotypes between leatherback populations are most likely a result of common ancient ancestry rather than from gene flow through interbreeding (NMFS & USFWS 2020).

As mentioned in section 1.3 of the Status Review, there are seven federally recognized subpopulations that each meet the discreteness and significance criteria of the “Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Federal ESA” (i.e., DPS Policy; 61 FR 4722; February 7, 1996). All subpopulations are discrete, exhibit genetic discontinuity representative of marked separation from one another, and are each significant to the global population (Wallace et al. 2010, NMFS and USFWS 2020). As such, each subpopulation can be considered nearly independent from other subpopulations. Any loss of one or more subpopulations would result in a significant gap in the global nesting range and reduce the overall genetic diversity of the species globally (NMFS and USFWS 2020).

Pacific Leatherback Sea Turtle

Two subpopulations of leatherback sea turtle exist in the Pacific Ocean — the West Pacific population and the East Pacific population (CDFW 2021). Pacific leatherback sea turtle subpopulations (east and west) account for two of the seven federally recognized subpopulations. Analysis of mtDNA showed a significant genetic differentiation between East Pacific population nesting sites (Mexico, Costa Rica) and West Pacific population nesting sites (Solomon Islands, Indonesia, Papua New Guinea), verifying the discreteness between the two populations (Barragan et al. 1998, Dutton et al. 1999, Dutton et al. 2000b, Dutton et al. 2005, Dutton et al. 2006, Dutton et al. 2007). Though the East Pacific and West Pacific populations are genetically different, the two populations overlap in their marine foraging areas.

II. Statutory and Legal Framework

The Commission, as established by the California State Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (California Constitution, Article IV, Section 20, Subdivision (b); Fish and Game Code, Section 2070.) The CESA listing process began in the present case with the petitioners’ submittal of the Petition to the Commission. The

regulatory and legal process that ensued is described in some detail in the preceding section above, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal. App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600;
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal. App.4th 1104, 1111–1116;
- *Central Coast Forest Association v. California Fish and Game Commission* (2017), 2 Cal. 5th 594, 597–598; and
- *Central Coast Forest Association v. California Fish and Game Commission* (2018) 18 Cal. App. 5th 1191, 1196–1197.

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

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

The Commission also considered Title 14, Section 670.1, subsection (i)(1)(A), of the California Code of Regulations in making its determination regarding Pa-

cific leatherback. This provision provides, in pertinent part, that Pacific leatherback shall be listed as endangered or threatened under CESA if the Commission determines that its continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or
6. other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA (Fish and Game Code, Section 2055). This policy direction does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally.’” (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal. App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish and Game Code, sections 2051 and 2052.)

Finally, in considering these factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (see, e.g., *Id.*, sections 2071, 2074.4, 2078; California Code of Regulations, Title 14, Section 670.1, subsection (h)). The related notice obligations and public hearing opportunities before the Commission are also considerable (Fish and Game Code, sections 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; California Code of Regulations, Title 14, Section 670.1, subsections (c), (e), (g), (i); see also Government Code, Section 11120 et seq.). All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a review of the candidate species’ status culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science

(Fish and Game Code, sections 2073.4, 2073.5, 2074.4, 2074.6; California Code of Regulations, Title 14, Section 670.1, subsections (d), (f), (h)).

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

The factual and scientific bases for the Commission’s determination that designating the Pacific leatherback as an endangered species under CESA is warranted are set forth in detail in the Commission’s record of proceedings including the Petition; the Department’s petition evaluation report; the Department’s status review report; written and oral comments received from members of the public, the regulated community, tribal entities, and the scientific community; and other evidence included in the Commission’s record of proceedings.

The Commission determines that the continued existence of Pacific leatherback in the state of California is in serious danger or threatened by one or a combination of the following factors as required by the California Code of Regulations Title 14, Section 670.1, subsection (i)(1)(A):

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or
6. other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission’s record constitutes the best scientific information available and establishes that designating Pacific leatherback as an endangered species under CESA is warranted. Similarly, the Commission determines that Pacific leatherback is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

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

Background

The Commission bases its “is warranted” finding for Pacific leatherback on the significant threats posed

by four of the six listing factors (all except competition and disease).

Qualification for listing

The Petition requests that the Commission list Pacific leatherback. Pacific leatherback sea turtles are comprised of two subpopulations (CDFW 2021). The two subpopulations are reproductively isolated as mating occurs off nesting beaches and not at foraging sites (CDFW 2021). Both subpopulations may occur within the California Current Ecosystem. (Dutton et al. 2007).

The Department ultimately concluded that the petitioned action to list Pacific leatherback was warranted and recommended that the Commission do so (CDFW 2021). Pacific leatherback constitutes two subpopulations, which, while they can be genetically differentiated, have substantial geographic overlap within foraging habitat (Dutton et al. 2007; CDFW 2021). Based on the foregoing factors, the Commission finds Pacific leatherback qualifies for listing under CESA.

Threats

Pacific leatherback is threatened due to:

1. Present or threatened modification of its habitat,
2. overexploitation,
3. predation, and
4. other natural events or human related activities.

Present or Threatened Modification or Destruction of Habitat

Based on review of the best available science, the destruction or modification of nesting habitats is a threat to Pacific leatherback.

In Indonesia, the monsoon season beginning in September has been documented to remove entire beaches at Jamursba–Medi, making the beach unsuitable for nesting (Hitipeuw et al. 2007). In the 2003–2004 nesting season, 80% of marked nests at Jamursba–Medi were washed away before hatching (Hitipeuw et al. 2007). A similar threat occurs at Wermon, with 23% and 26% of nests lost due to beach inundation during the 2003–2004 and 2008–2009 nesting seasons, respectively (NMFS and USFWS 2020). Beach erosion at less consistently monitored beaches in Papua New Guinea and Vanuatu has also been documented, with low hatching success in years with turbulent water activity caused by storms, floods, and high tides (Petro et al. 2007, Pilcher 2008, WSB 2016 referenced in NMFS and USFWS 2020).

Despite recent research showing California’s leatherback foraging habitat is not contributing to the declining abundance and population trends, climate change has the potential to reduce prey availability by altering ocean productivity (CDFW 2021). This change in prey availability can alter foraging behavior and would have unknown consequences on Pacific

leatherback survival and reproduction (Benson et al. 2020; CDFW 2021).

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

Overexploitation

The harvest of leatherback sea turtles and eggs occurs in all four countries where the West Pacific population nests and is well documented (Bellagio Sea Turtle Conservation Initiative 2008, Jino et al. 2018, Kinch et al. 2009, Petro et al. 2007, Suarez and Starbird 1996, Tiwari et al. 2013a, NMFS and USFWS 2013, Tapilatu et al. 2017, NMFS and USFWS 2020). In Indonesia, leatherback turtle and egg take at Jamursba–Medi and Wermon has been eliminated since the enactment of the monitoring program in 1993 (Hitipeuw et al. 2007). However, recent surveys show leatherback turtle eggs are harvested from other Indonesian beaches and sold in local markets. Between 2016 and 2017 at Buru Island, Indonesia, it is estimated three to five nesting females were killed and approximately 114 of 203 leatherback nests were harvested (CDFW 2021). It is estimated that three to five females are killed annually at Buru Island (USFW and NMFS 2020). The killing of leatherback turtles (juveniles and adults) in the Kei Islands foraging habitat is also an ongoing threat to the population (NMFS and USFWS 2020). Prior information on the local tradition of hunting Pacific leatherback turtles in the Kei Islands suggested up to 100 adult leatherbacks are killed annually (Kinan 2005). Similarly, in Papua New Guinea, leatherback sea turtles have been protected since 1976, but illegal take of turtles and eggs continues throughout the country due to lack of enforcement and long-standing community-based traditions (Bellagio Sea Turtle Conservation Initiative 2008). Kinch (2009) documented the taking of 21 nesting females in Bougainville Island, Papua New Guinea. From 2008 to 2013, a conservation measure providing financial rewards to locals for non-harvest of eggs and turtles increased hatchling emergence success by 60% (Pilcher 2013 referenced in NMFS and USFWS 2020). However, egg and turtle harvest resumed when the program ended in 2013 (NMFS and USFWS 2020). Egg and turtle harvest have also been well documented in Vanuatu and the Solomon Islands despite similar conservation efforts (NMFS and USFWS 2020). In 2011 at Isabel Island, Solomon Islands, nearly all the eggs in 315 leatherback nests were taken (USFWS and NMFS 2020). On Vangunu Island, Solomon Islands, Jino et al. (2018) found that approximately 10–20 nesting females are taken annually.

Harvest of West Pacific leatherback eggs and turtles remains a major threat to the population. Though regulatory mechanisms exist in all four nations where the population nests, the laws are rarely enforced. Lack of community buy-in and conservation funding com-

bined with the continued practice of traditional customs has made mitigation from the threat of harvest difficult (Kinch 2006, Gjersten and Pakiding 2012, Von Essen et al. 2014). Though the exact number of West Pacific leatherback turtles removed from the population via harvest is unquantified, the removal of West Pacific leatherback turtles and eggs reduces both abundance and productivity (NMFS and USFWS 2020). The taking of female turtles directly removes reproductive individuals from the population, reducing the overall reproductive potential of the population. Similarly, egg harvest reduces future population recruitment. The continued harvest of leatherback turtles and eggs in the West Pacific adversely impacts the population.

The Commission finds that overexploitation is a significant threat to the continued existence Pacific leatherback.

Predation

Predation of leatherback sea turtle eggs is a well-documented threat to the West Pacific population. Nest predation by feral pigs, feral dogs, and monitor lizards (*Varanus salvator*) occurs at many beaches in Indonesia, Papua New Guinea, and Solomon Islands (Bellagio Sea Turtle Conservation Initiative, 2008; NMFS and USFWS 2020). For example, between June and July of 2005, 29.3% of nests were destroyed by pigs at Jamursba–Medi (Tapilatu and Tiwari 2007). At Wermon, 21% of nests were lost to predation during the 2004–2005 nesting season (Wurlianty and Hitipeuw 2005). In Papua New Guinea, predation by village dogs is a significant threat to nests. All nests laid during the 2003–2004 and 2004–2005 nesting season were lost to predation by dogs (NMFS and USFWS 2020).

The Commission finds that predation is a significant threat to the continued existence of Pacific leatherback.

Other Natural Occurrences or Human-Related Activities

Fishery Bycatch

The West Pacific population's foraging range and migratory routes expose the population to coastal and pelagic fisheries in many nations and international waters. Information on bycatch and Pacific leatherback mortality in international pelagic and coastal fisheries suggests these fisheries negatively impact the population, though few studies accurately quantify mortality in international fishery interactions due to inconsistent reporting and lack of information on small-scale coastal fisheries (CDFW 2021). Annual fisheries interaction and mortality rates of leatherback sea turtles are only reliably available for U.S. fisheries. U.S.-managed fisheries operate under strict regulatory management regimes designed to mitigate sea turtle bycatch and mortality that have significantly reduced

Pacific leatherback sea turtle interactions. NMFS currently estimates approximately 13.3 leatherback sea turtle interactions have occurred between 2001 and 2018 in the drift gill net fishery, with approximately 7.7 mortality/serious injury occurrences (Carretta 2020).

In California, the Department's Risk and Mitigation Program and its Lost and Abandoned Dungeness Crab Trap Gear Retrieval Program are designed to reduce the entanglement risks of Pacific leatherback sea turtles in the commercial Dungeness crab fishery, and the state's Drift Gill Net Transition Program is designed to reduce potential bycatch in the large-mesh drift gill net fishery. Nonetheless, any mortality of females (including those in California) reduces the population's productivity (CDFW 2021).

Although this threat is mitigated by existing regulations in California and the United States, its severity is significantly greater in certain international fisheries.

Therefore, fishery bycatch is a threat to the persistence of the Pacific leatherback.

Climate Change

The Earth's climate is warming, and the primary causes are greenhouse gas emissions and deforestation (IPCC 2007; USGCRP 2009; USGCRP 2017). Since 1900 global average temperature has increased 0.7° C (NRC 2006) due to carbon dioxide emissions. Ice core data indicates that atmospheric carbon dioxide is currently 30% greater than its peak in the last 800,000 years. If current conditions remain unchanged, studies project that global climate will change drastically. Projections include an increase of 1.1 – 6.4° C in average global surface temperature (USGCRP 2009), sea level rise of 1 – 3 m (IPCC 2007; USGCRP 2009; USGCRP 2017).

Increased frequency of abnormal environmental conditions as a result of climate change can impact the survivability of Pacific leatherback turtles. Rising sea levels adversely change nesting habitat and increase the risk of beach erosion (Benson et al. 2015). Warmer temperatures at nesting sites have the potential to increase the occurrence of lethal incubation temperatures, alter incubation times, and change hatchling sex ratios (Benson et al. 2015). In 2007, Tapilatu and Tiwari attributed low hatching success and a female skewed sex ratio to high average sand temperatures (Tapilatu and Tiwari 2007). In Papua New Guinea, incubation duration was observed to decrease as beach temperatures warmed (Steckenreuter et al. 2010).

For Pacific leatherback sea turtles foraging off the California Coast, an additional impact of climate change is the effect on prey availability. Benson et al. (2007a) found a correlation between annual abundance of West Pacific leatherback sea turtles foraging off California between 1990 and 2003 and the strength of upwelling each year, indicating the West Pacific cohort that forages off California may be impacted by

ocean productivity. Weak upwelling and lower ocean productivity, particularly if exacerbated by climate change, has the potential to reduce prey availability and alter West Pacific leatherback foraging behavior.

Therefore, climate change is a threat to the persistence of Pacific leatherback.

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

IV. Final Determination by the Commission

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

Based upon the evidence in the record, the Commission has determined that the best scientific information available indicates that the continued existence of Pacific leatherback is in serious danger or threatened by present or threatened modification or destruction of the species' habitat, overexploitation, predation, or other natural events or human-related activities, where such factors are considered individually or in combination (see generally California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A); Fish and Game Code, sections 2062 and 2067). The Commission determines there is sufficient scientific information to indicate that designating Pacific leatherback as an endangered species under CESA is warranted at this time and that, with adoption and publication of these findings, Pacific leatherback, for purposes of its legal status under CESA, shall be listed as endangered.

V. Citations

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OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING AND BUSINESS MEETING

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 **December 15, 2022**, at 10:00 a.m.
in the Council Chambers of the Rancho
Cordova City Hall
2729 Prospect Park Drive, Rancho Cordova,
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 **December 15, 2022**, at 10:00 a.m.
in the Council Chambers of the Rancho
Cordova City Hall
2729 Prospect Park Drive, Rancho Cordova,
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. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

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

Department of Corrections and Rehabilitation
File # 2022-0831-03
Youth Parole Eligible Date

In this certificate of compliance, the Department makes permanent its emergency regulations which adopted definitions for youth offenders and established criteria for calculating their Youth Parole Eligible Date (YPED). It also amends regulations to allow

the YPED of a youth offender inmate to be advanced based on Educational Merit Credit.

Title 15
Adopt: 3498.1, 3498.2
Amend: 3043, 3043.5
Filed 10/13/2022
Effective 10/13/2022
Agency Contact: Sarah Pollock
(916) 445-2308

Division of Workers' Compensation
File # 2022-1010-03
QME Regulations in Response to COVID-19

In this emergency action, the Division of Worker's Compensation (DWC) re-adopts an emergency regulation regarding medical-legal evaluations in response to continued COVID-19 pandemic. Due to the continued spread of Covid-19, the DWC adopts this emergency regulation, which is similar to section 46.2. This emergency regulation allows Qualified Medical Evaluators (QME), Agreed Medical Evaluators (AME), or other medical-legal evaluations to be performed via telehealth.

Title 08
Adopt: 46.3
Filed 10/18/2022
Effective 10/18/2022
Agency Contact: Nicole L. Richardson
(510) 286-0656

State Council on Developmental Disabilities
File # 2022-0927-03
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 02
Amend: 41000
Filed 10/19/2022
Effective 11/18/2022
Agency Contact: Brian Weisel
(916) 263-8122

Board of Occupational Therapy
File # 2022-0901-04
Remove Post-Professional; Applications Approvals in Advanced Practice

This action without regulatory effect (1) adds language about education timing requirements to some application forms to align with existing regulatory requirements; (2) removes references to form instructions on forms with no instructions; (3) amends regulatory language to gender neutral terms; and (4) de-

letes references to “post professional” from headers in applicable forms.

Title 16
Amend: 4150, 4151, 4152, 4153, 4154, 4155
Filed 10/14/2022
Agency Contact: Ranjila Sandhu (916) 274–1078

Department of Corrections and Rehabilitation
File # 2022–1006–03
Program and Credit Earning Revisions

This change without regulatory effect changes the State Operations Manual code number assigned to the National Center for Construction Education and Research Plumbing Level 3 course, in Schedule 1 of the Milestone Completion Credit program, from V130412 to V130415.

Title 15
Amend: 3043.3
Filed 10/17/2022
Agency Contact: Sarah Pollock
(916) 445–2308

Department of Health Care Services
File # 2022–0831–02
Repeal of California Code of Regulations, Title 22,
Section 53872

This action by the Department of Health Care Services repeals California Code of Regulations, title 22, section 53872 regarding civil penalties as a change without regulatory effect.

Title 22
Amend: 53861
Repeal: 53872
Filed 10/13/2022
Agency Contact: Erika Drayton–Jebali
(916) 345–8404

Board of Forestry and Fire Protection
File # 2022–1007–02
Spotted Owl Resource Plan Amendment

This action amends the definition of the term “Spotted Owl Resource Plan” (SORP) to include Timber Operations conducted under Nonindustrial Timber Management Plans and Working Forest Management Plans so as to include these methods of forest management among those that are eligible to use the SORP pathway to meet regulatory requirements for avoiding the take of Northern Spotted Owls.

Title 14
Amend: 895.1
Filed 10/17/2022
Effective 01/01/2023
Agency Contact: Jane Van Susteren
(916) 619–9795

Board of Pharmacy
File # 2022–0907–02
Pharmacy Technician

This action amends regulations pertaining to pharmacy technicians to require a course work administrator or instructor to inform applicants of background check and drug screening standards and risks, limit instruction eligibility to applicants aged 18 and older, and require a final exam testing applicable knowledge. This action also approves two certification programs for pharmacy technician training and makes clarifying amendments to various application forms.

Title 16
Adopt: 1793.65
Amend: 1793.5, 1793.6
Filed 10/19/2022
Effective 01/01/2023
Agency Contact: Lori Martinez
(916) 518–3078

Board of Registered Nursing
File # 2022–0901–02
Prelicensure Nursing Programs

In this rulemaking the Board of Registered Nursing (“the board”) makes three substantial changes to its regulations. First, in 16 CCR 1423 the board makes concealing material facts from the board a cause for denial of an application or revocation of an approved program. Second, in section 1432, the board requires nursing programs applying to add new locations to use an existing form (EDP–I–01 Rev 3/10), updated in this rulemaking to EDP–I–01 Rev 10/22. Third, in section 1432, the board requires nursing programs to apply for approval for any increase in enrollment numbers. The board also makes non–substantive edits to Section 1421(a) to update the name of Form EDP–I–01.

Title 16
Amend: 1421, 1423, 1432
Filed 10/14/2022
Effective 01/01/2023
Agency Contact: Marissa Clark
(916) 574–7438

Department of Food and Agriculture
 File # 2022-0901-03
 Commercial Feed FSMA Incorporation

This action by the Department of Food and Agriculture makes changes to the Commercial Feed Regulatory Program to align with federal standards of the Food Safety Modernization Act.

Title 03
 Amend: 2675, 2675.1, 2681, 2694
 Filed 10/13/2022
 Effective 01/01/2023
 Agency Contact: Erika Lewis
 (916) 661-1213

Department of Insurance
 File # 2022-0901-05
 Mitigation in Rating Plans and Wildlife Risk Models

In this regular rulemaking action, the Department of Insurance adopts requirements for insurers to reflect and take into account specified mitigation factors in their rating plans for the purposes of segmenting rates, creating a risk differential, or surcharging a premium due to wildfire risk.

Title 10
 Adopt: 2644.9
 Filed 10/14/2022
 Effective 10/14/2022
 Agency Contact: George Teekell
 (415) 538-4390

Board of Psychology
 File # 2022-0901-06
 Retired License Status

This is a resubmittal of OAL Matter No. 2022-0509-03S which adopted requirements for psychologists applying to put their license in retired status and restore it to active status.

Title 16
 Adopt: 1381.10
 Amend: 1392, 1397.69
 Filed 10/13/2022
 Effective 01/01/2023
 Agency Contact: Jason Glasspiegel
 (916) 574-7137

Board of Registered Nursing
 File # 2022-0913-01
 Prelicensure Nursing Programs — Clinical Facilities

This action would require nursing programs to report changes in their use of clinical facilities to the board.

Title 16
 Amend: 1427
 Filed 10/13/2022
 Effective 01/01/2023
 Agency Contact: Marissa Clark
 (916) 574-7438

Commission on Peace Officer Standards and Training
 File # 2022-0926-03
 Peace Officer Certification Updates — SB 2

This action by the Commission on Peace Officer Standards and Training (POST) implements Senate Bill 2 (Chapter 409, Statutes of 2021) to provide for additional peace officer hiring eligibility requirements and to certify peace officers as well as take action against those certifications should POST determine that serious misconduct occurred.

Title 11.
 Adopt: 1202
 Amend: 1007, 1010, 1011
 Filed 10/17/2022
 Effective 01/01/2023
 Agency Contact: Michelle Weiler
 (916) 227-4870

**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.