



California Regulatory Notice Register

REGISTER 2023, NUMBER 3-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

JANUARY 20, 2023

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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.

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

PROPOSED ACTION ON REGULATIONS

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TITLE 2. WORKFORCE DEVELOPMENT BOARD

CONFLICT-OF-INTEREST CODE

NOTICE IS HEREBY GIVEN that the California Workforce Development Board, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on January 20, 2023 and closing on March 6, 2023. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include:

1. Three new classifications added,
2. Abolished 2 classifications because the classification no longer exists, and
3. Renamed 3 classifications to include all levels of that classification.

Information on the code amendment is available and attached to this email in the 2022 Summary of Changes document.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than *March 5, 2023* or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than *February 18, 2023*.

The California Workforce Development Board has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Jeffrey Jacobstein at Jeffrey.Jacobstein@cwdb.ca.gov or by phone at 916-698-5538.

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:

- River Delta Unified School District
- Santa Clarita Valley Water Agency
- West Hills Community College District

A written comment period has been established commencing on January 20, 2023 and closing on March 6, 2023. 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 March 6, 2023. 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**

**QUALIFIED MEDICAL
EVALUATOR REGULATIONS
(SECTIONS 1, 11, 11.5, 14, 33, 35, 35.5, 50, 51, 52,
54, 55, 56, 57, 63, 10133.54 & 10133.55)**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers’ Compensation (hereafter “Administrative Director”), proposes to adopt, amend and repeal 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, 4600, 4604.5, and 4660 through 4663 regarding the examination, appointment, reappointment and discipline of Qualified Medical Evaluators (QMEs) and the procedures for obtaining 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, Articles 1, 2, 3, 5, 6 & 7.5, sections 1, 11, 11.5, 14, 33, 35, 35.5, 50, 51, 52, 54, 55, 56, 57, 63, 10133.54 & 10133.55. 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 the appointment of Qualified Medical Evaluators and the procedures concerning medical evaluations.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers’ Compensation, proposes to adopt, amend or repeal the following regulations in Division 1, Chapter 1, Articles 1, 2, 3, 5, 6 & 7.5 of Title 8, California Code of Regulations, commencing with Sections 1, 11, 11.5, 14, 33, 35, 35.5, 50, 51, 52, 54, 55, 56, 57, 63, 10133.54 & 10133.55. The proposed changes in-

volve 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. A comprehensive summary of the proposed change to each affected section 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

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following date:

Date: March 13, 2023
Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

PLEASE BE ADVISED: All visitors to this building are required to go through a security screening which includes passing through metal detectors, and the x-raying and inspection of all personal belongings.

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 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the public hearing 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 Medical–Legal Fee Schedule to the Department of Industrial Relations, Division of Workers’ Compensation. The written comment period closes on March 13, 2023. 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 March 13, 2021.

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 regulation, 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

BACKUP CONTACT PERSON

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

Winslow F. West, Industrial Relations Counsel
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: (wwest@dir.ca.gov)

The telephone number of the backup contact persons 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 section 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

Reference is made to Labor Code sections 139.2, 139.4, 139.45, 3716, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, 4628 and 4660; Government Code sections 6254, 14755; and Business and Professions Code section 730.

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, repeal and add to various regulations that govern the examination, appointment, reappointment and discipline of physicians who are certified as Qualified Medical Evaluators as provided in sections 1, 11, 11.5, 14, 31.3, 33, 35.5, 50, 51, 52, 54, 55, 56, 57 & 63 of Title 8 of the California Code of 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 proposed changes are also necessary as a result of recent challenges to the administration of the QME program based upon inconsistent statutory and regulatory analysis as between the DWC and physician users of the QME program. The proposed changes add functionality to the regulatory scheme by instituting a system for electronic service of medical-legal reports and allow for expedited adjudication of QME discipline actions. The proposed changes are also necessary as a result of the need to educate physician providers of the possible occurrence of bias in Medical-Legal

reporting and to prevent such bias. In addition, other changes are proposed to improve the overall operation of the QME system for those who use it. The proposed changes also correct typographical errors in the existing regulations, update the use of gender pronouns and correct erroneous citations in the existing regulations. A fuller summary of the proposed changes is provided in the Initial Statement of Reasons.

Finally, this rulemaking proposes numerous "changes without regulatory effect", within the meaning of section 100 of Title 1 of the California Code of Regulations, because the proposed amendments correct the punctuation, capitalization, grammar, syntax, number or letter sequencing, or cross references in the text.

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 regulations related to the administration of the Qualified Medical Evaluator program. The proposed regulations implement, interpret, and make specific Labor Code sections 139.2, 139.3, 139.31, 139.4, 139.43, 3716, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604, 4604.5, 4660, 4600.1, 4610.5, 4628, 4661, 4661.5, 4662, 4663, 4664, 5307.3, 5307.27, 5710, & 6254 as follows:

Article 1. General (§ 1)

Section 1: The definitions section, which applies to §§ 1 through 122, is amended to eliminate the definition of "Agreed Panel QME" which is no longer operative after a deletion in the implementing statute.

Article 2. QME Eligibility (§§ 10-19)

Section 11 is amended to add the requirement of two hours of anti-bias training to the eligibility requirements to become a QME.

Section 11.5 is amended to change the parameters of the requirements for the report writing course that candidates must take to become eligible to serve as a QME. The total course hour requirement is increased from 12 to 16, two hours of anti-bias training are added and two hours of case law review are also added. Non-substantive changes are made regarding renumbering to allow for the additions to the regulation.

Section 14 is amended to reduce the hours of required chiropractic education from 44 to 25. The amount of allowable distance learning hours is adjusted and two hours of anti-bias training are added to bring the requirements into compliance with the amendments to sections 11 and 11.5.

Article 3. Assignment of Qualified Medical Evaluators, Evaluation Procedure (§§ 29-39.5)

Section 33 is amended to make non-substantive minor clerical corrections to the regulation.

Section 35 is amended to add requirements for the procurement of medical records from a primary treating physician.

Section 35.5 is amended to add a requirement that a declaration under penalty of perjury be added to every medical legal evaluation report attesting that the evaluator did not discriminate in any way against the parties to the action or the injured worker in the evaluation process or in the content of the report.

Article 5. QME Reappointment (§§ 50–57)

Section 50 is amended to add the requirement that a QME must be in compliance with all regulations and relevant statutes in order to be reappointed. The section is also amended to add a requirement that a QME must cooperate with any investigation instituted by the administrative director into the QMEs practice. The regulation is also amended to bring it into compliance with current gender specific pronouns.

Section 51 is amended and restructured to add some of the specific criteria upon which the Administrative Director can base a decision to deny reappointment as a QME. As part of the regulatory restructuring the provisions of former regulation sections 52, 54, 56 and 57 are made part of subdivisions that are added to the restructured regulation 51.

Section 52 is repealed as a result of its provisions being moved to amended section 51.

Section 54 is repealed as a result of its provisions being moved to amended section 51.

Section 55 is amended to expand the required continuing education hours for QME reappointment from 12 to 16 and delineate the minimum number of hours required in certain specified subject matter categories of continuing education.

Section 56 is repealed as a result of its provisions being moved to amended section 51.

Section 57 is repealed as a result of its provisions being moved to amended section 51.

Article 6. QME Discipline (§§ 60–65)

Section 63 is amended to allow the Administrative Director to reappoint a QME to a probationary period as a condition of reappointment. This subdivision is also amended to add procedures that allow the Administrative Director to assign hearings to a hearing officer to act as an administrative law judge, notwithstanding Government Code § 11502, in cases where the hearing relates to the denial of appointment or reappointment of a QME. The regulation is also amended to enumerate conditions related to a QME’s failure to comply with Labor Code section 139.2, irregularities with the physician’s licensing, or a physician’s violation of Labor Code section 139.21 that will make the physician ineligible for reappointment as a QME.

Non-substantive renumbering is applied to the regulation to account for the numbering of sections that add the new elements of the regulation.

Article 7.5. Supplemental Job Displacement Benefits (§§ 10133.31–10133.60)

Section 10133.54 is repealed as a result of a binding judicial decision vesting jurisdiction over SJDB disputes with the WCAB.

Section 10133.55 is repealed as a result of a binding judicial decision vesting jurisdiction over SJDB disputes with the WCAB.

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 reports 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.
- **Statement of the results of the Economic Impact Assessment (EIA):**
 1. **Other impacts on Jobs and Businesses:** 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.
 2. **Anticipated Benefits of the Proposed Regulations:** The Administrative Director has determined that the changes proposed

in this rulemaking will not: (1) benefit the health and welfare of California residents; (2) benefit worker safety; or (3) benefit the State's environment.

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 are required by existing law to comply with the statutes and regulations governing QMEs. Physicians are required to meet certain criteria in order to be certified as QMEs. Once appointed, Physicians serve a two-year term, and must be re-appointed 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 compiling the panel of three QMEs, from which to select randomly, 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 and amendments to the existing regulations relate to the criteria for initial appointment and reappointment as a QME, the educational requirements for such appointments and reappointments, and 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 and amendments to the 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 regulations.

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:** None.
- **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, would be as effective and less burdensome to the affected private persons than the proposed action of this rulemaking, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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:

Winslow F. West, Industrial Relations Counsel
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: wwest@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 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 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, commencing with section 1. 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 11. COMMISSION ON PEACE
OFFICER STANDARDS AND TRAINING**

PEACE OFFICER SELECTION STANDARDS

COMMISSION REGULATIONS
1953, 1954, AND 1955

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 2 of Title 11, of the California Code of Regulations, as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

PUBLIC COMMENTS DUE BY
MARCH 6, 2023

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-2801, by email to *Melani Singley* at melani.singley@post.ca.gov, or by letter to:

Commission on POST
Attention: Melani Singley
860 Stillwater Road, Suite 100
West Sacramento, CA 95605-1630

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code (PC) section 13503 (authority of POST), PC section 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific PC section 13503(f), (h), and (i), which authorizes POST to investigate and determine the fitness of any person to serve as a peace officer within the Peace Officer Standards and Training program or as defined in PC section 13510.1 in the state of California; to audit any law enforcement agency that employs peace officers described in subdivision (a) of Section 13510.1, without cause and at any time; and to do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific changes to Commission Regulation 1953 (Peace Officer Background Investigation), 1954 (Peace Officer Medical Evaluation), and 1955 (Peace Officer Psychological Evaluation).

Currently, Commission Regulation 1953 (Peace Officer Background Investigation) provides specific requirements for conducting a thorough background investigation to ensure that peace officer candidates are of good moral character and have no past behaviors indicative of unsuitability for peace officer employment.

Background requirements include verification of employment eligibility, reference checks, criminal and other qualification records checks, employment and military history, neighborhood checks, and a social media check, and other areas. The background investigation must also consider the background investigation dimensions and relevant information from the Bias Assessment Framework and requires the completion of a narrative report that contains sufficient information for a department to make a hiring decision.

The narrative report, along with any other relevant information, must also be provided to the screening psychologist as required for their evaluation. Currently, there is no mandated format for the required narrative report.

The regulation changes proposed in this rulemaking action will require specific information and sequencing of information in the background narrative report, consistent with the current required areas of investigation. This will ensure that the narrative report provides all necessary and relevant information to assist agencies with making an effective hiring decision and provide the psychological evaluator with the requisite background information. It will also provide consistency across departments and background investigations, ultimately providing for a more effective and efficient review of background information by the hiring department, screening psychologist, and POST auditors conducting compliance inspections.

Current Commission Regulations 1954 (Peace Officer Medical Evaluation) and 1955 (Peace Officer Psychological Evaluation) provide requirements for determining medical and psychological suitability of peace officer candidates. The medical and psychological evaluations require that the candidate be free from any physical, emotional, or mental condition including bias, that may adversely affect their ability to exercise peace officer powers. The regulations also provide specific evaluation and documentation requirements, including a suitability declaration signed by the screening physician and psychologist. Currently, there is no required form. Rather, the regulation requires limited information that must be included on the suitability declaration. This has led to declarations not including the information required by regulation or an abundance of unnecessary information included on the suitability declaration, making it difficult to ensure evaluations have been conducted in compliance with POST requirements.

The regulations proposed in this rulemaking action will address these issues by requiring the use of POST-developed suitability declaration forms. The forms identify the specific requirements for the evaluations and include a statement of suitability, which confirm that that evaluations were conducted in accordance with POST regulations and will, in turn, provide consistency in reporting the information to the hiring agencies and during mandatory POST compliance audits.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments to the regulation will provide efficacy and consistency in peace officer selection, which will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving

peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the state’s environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

POST has determined that these proposed amendments are not inconsistent nor incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, POST has concluded that these are the only regulations that concern processes and procedures for peace officer eligibility in the state.

FORMS INCORPORATED BY REFERENCE

- Medical Suitability Declaration (POST 2–363) (new).
- Psychological Suitability Declaration (POST 2–364) (new).

DISCLOSURES REGARDING THE PROPOSED ACTION

POST has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Costs 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.

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

Cost impacts on a representative private persons or business: POST 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 California businesses: POST has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

Small Business Determination: POST has determined that the proposed regulations will not affect small business because the regulations only affect state agencies that are adopting, amending, or repealing regulations. Additionally, the Commission’s main function to select and maintain training standards for law enforcement has no effect financially on small businesses.

RESULTS OF ECONOMIC IMPACT ANALYSIS/ASSESSMENT

POST concludes that it is (1) unlikely the proposal will create nor eliminate jobs in the state of California, (2) unlikely that the proposal will create nor eliminate any businesses, and (3) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

Benefits of the Proposed Action: As stated above under the Informative Digest/Policy Statement Overview, the benefits of the regulation will increase the efficiency of the state of California in delivering services to stakeholders by providing clarity to the requirements for background inquiries when evaluating a candidate for peace officer selection. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the State’s environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), POST must determine that no reasonable alternative it considered, or that has otherwise identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as 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 than the proposed action.

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to *Melani Singley*, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605–1630, at (916) 227–4258. General questions regarding the regulatory process may be directed to *Katie Strickland* at (916) 227–2802.

TEXT OF PROPOSAL

Individuals may request copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to: the Commission on POST at 860 Stillwater Road, Suite 100, West Sacramento, CA 95605–1630. These documents are also located on the *POST Website* at <https://post.ca.gov/Regulatory-Actions>.

**ADOPTION OF PROPOSED REGULATIONS/
AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons.

To request a copy of the Final Statement of Reasons once it has been approved, submit a written request to the contact person(s) named above.

**TITLE 13. DEPARTMENT OF
MOTOR VEHICLES**

The Department of Motor Vehicles (department) proposes to amend Section 125.02 in Article 2.55, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to the certification of ignition interlock devices.

PUBLIC HEARING

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

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than **March 6, 2023**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code sections 1651 and 13386, in order to implement, interpret, or make specific Vehicle Code section 1652, 13386, 23575, and 23575.3.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Vehicle Code section 13386 grants the department the authority to oversee the ignition interlock device program. Vehicle Code section 23573 requires the department, upon receipt of a court's abstract of conviction of Vehicle Code section 14601.2, 14601.4 or 14601.5, subsequent to prior convictions of various Vehicle Code sections related to driving a vehicle under the influence of alcohol, to notify the convicted person of their requirement to have an ignition interlock device installed in their vehicle.

Prior to authorizing the use of an ignition interlock device in California, the department is required to certify that each ignition interlock device operates in a manner for which it was certified and requires the manufacturer to ensure that the functionality of the device cannot be changed or altered from the certified criteria. Article 2.55 in Title 13 establishes the process by which an ignition interlock device manufacturer can apply to the department to have its device certified for use.

This action amends the Application for Certification of Ignition Interlock Device, form DL 9, to remove the requirement that the ignition interlock device manufacturer include the corporate seal on the form. Removing this requirement will allow manufacturers to submit their certification application online. As more of its services are offered virtually, the department anticipates this amendment will benefit manufacturers and the department by creating a more efficient application process.

CONSISTENCY AND COMPATIBILITY
WITH STATE REGULATIONS

The department has conducted a review of other state regulations and has concluded that these are the only regulations related to the certification of ignition interlock devices in California. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES
OR STATE REGULATIONS

The federal guidelines for the performance and uniform testing of ignition interlock devices are identified in the Federal Register (Vol. 78, No. 89, Wednesday, May 8, 2013, on pages 26849–26867). The department’s rules establish the process by which ignition interlock device manufacturers can prove to the department the device meets the federal specifications. There are no existing federal statutes or regulations that govern the administration of confidential record programs.

DOCUMENTS INCORPORATED
BY REFERENCE

The following document is incorporated by reference in the proposed regulations:

- Application for Certification of Ignition Interlock Device, form DL 9 (Rev. 6/2022)

The form DL 9 will not be published in the California Code of Regulations because it would be impractical and cumbersome to do so as the form has tables; however, the document is readily available to interested parties by contacting the department representative identified below.

ECONOMIC AND FISCAL
IMPACT DETERMINATIONS

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

- *Cost or Savings to Any State Agency:* None.
- *Other Non–Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Effects on Housing Costs:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Cost Impact on Representative Private Persons or Businesses:* The department is not aware of

any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- *Small Business Impact:* This proposed action may impact small businesses. The rules adopt a form amendment that will allow for certification documents to be submitted electronically. This action could benefit businesses by allowing for another means by which to submit documentation to certify an ignition interlock device for use in California.
- *Local Agency/School District Mandate:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:* The department has made the initial determination that this action will not have a significant statewide adverse economic impact directly affecting businesses nor will it impact the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC
IMPACT STATEMENT

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

This proposed action is unlikely to 1) create or eliminate jobs within the State of California; 2) create or eliminate businesses within the State of California; or 3) expand businesses currently doing business in the State of California.

This action may benefit the health, welfare, and safety of California residents by creating an efficient process by which a manufacturer can have an ignition interlock device certified for use in California. This proposed action is unlikely to benefit worker safety or the state’s environment.

PUBLIC DISCUSSIONS OF
PROPOSED REGULATIONS

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

ALTERNATIVES CONSIDERED

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

CONTACT PERSON

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

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

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

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

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

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In

addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <https://www.dmv.ca.gov/portal/about-the-california-department-of-motor-vehicles/california-dmv-rulemaking-actions>.

AVAILABILITY OF MODIFIED TEXT

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 265 and 355 of the Fish and Game Code and to implement, interpret or make specific sections 265, 355 and 356 of said Code, proposes to amend Section 502, Title 14, California Code of Regulations, relating to waterfowl, migratory, American coot and common moorhen (common gallinule).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and daily bag and possession limits for hunting of waterfowl. The proposed Frameworks for the 2023-24 season were approved by the four regional Flyway councils in August and at the U.S. Fish and Wildlife Service (Service's) Regulations Committee meeting in October. The Frameworks allow for a liberal duck season which includes: a 107-day season; a 7 daily duck limit including 7 mallards but only 2 hen mallards, 1 pintail, 2 canvasback, 2 redheads, and 2 scaup (during an 86-day season); and closing no later than January 31. The duck daily bag limits and season length, as well as the season lengths for geese, are provided as ranges below, to allow the Commission flexibility in determining the final regulations.

A range of season length and bag limit (zero bag limit represents a closed season) are also provided for black brant. The range is necessary, as the black brant Framework cannot be determined until the Pacific Flyway Winter Brant Survey is conducted in January 2023. The black brant regulatory package is determined by the most current Winter Brant Survey, rather than the prior year survey. The proposed season length and bag limit will be updated per the Black Brant Harvest Strategy pending results of the January 2023 survey. See the Summary of Proposed Waterfowl Hunting Regulations for 2023–24 table, below.

Lastly, Federal regulations provide that California’s hunting regulations shall conform to those of Arizona in the Colorado River Zone and those of Oregon in the North Coast Special Management Area.

The Department recommended changes to Section 502 are:

- 1) Increase the duck season length to 103 days in subsection 502(d)(2)(B) for the Southern San Joaquin Valley Zone, in subsection 502(d)(3)(B) for the Southern California Zone, and in subsection 502(d)(5)(B) for the Balance of State Zone.
- 2) Increase the goose season length to 103 days in subsection 502(d)(2)(B) for the Southern San Joaquin Valley Zone and in subsection 502(d)(3)(B) for the Southern California Zone.
- 3) Combine the Youth and Veterans and Active Military Personnel waterfowl hunting days in subsections 502(e)(1)(B) and 502(f)(1)(B) for the Northeastern California, Southern San Joaquin Valley, Southern California and Balance of State zones.
- 4) Allow up to two days of falconry–only season in subsection 502(g)(1)(B) for the Northeastern California, Southern San Joaquin Valley, Southern California and Balance of State zones.

Minor editorial changes are also proposed to clarify and simplify the regulations and to comply with existing federal Frameworks.

Benefits of the regulations

The benefits of the proposed regulations are consistency with federal law and the sustainable management of the state’s waterfowl resources. Continued benefits to jobs and/or businesses that provide services to waterfowl hunters will be realized with the continued adoption of waterfowl hunting seasons in 2023–24.

Evaluation of incompatibility with existing regulations

The Commission has reviewed its regulations in Title 14, CCR, and conducted a search of other regulations on this topic and has concluded that the proposed amendments to Section 502 are neither inconsistent nor incompatible with existing State regulations. No

other State agency has the authority to promulgate waterfowl hunting regulations.

A summary of proposed waterfowl hunting regulations for 2023–24 in table format is available in the Initial Statement of Reasons.

PUBLIC PARTICIPATION

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before April 6, 2023 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 14, 2023. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244–2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Headquarters Building Auditorium, 715 P Street, Sacramento, CA 95814, which will commence at 8:30 a.m. on Wednesday, February 8, 2023, and may continue at 8:30 a.m. on Thursday, February 9, 2023, or as soon thereafter as the matter may be heard. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916–653–4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing which will commence at 8:30 a.m. on Wednesday, April 19, 2023, and may continue at 8:30 a.m., on Thursday, April 20, 2023. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916–653–4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon

which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Maurene Trotter at FGC@fgc.ca.gov or at the preceding address or phone number. **Melanie Weaver, Senior Environmental Scientist, Department of Fish and Wildlife, (916-502-1139 or Melanie.Weaver@wildlife.ca.gov) has been designated to respond to questions on the substance of the proposed regulations.**

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 355 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION/ RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations are expected to maintain a similar level of recreational waterfowl hunting opportunity for the public. Shifting days for general duck season affects available days for falconry-only seasons, which must also be adjusted annually so total season length does not exceed 107 days.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California. The proposed waterfowl regulations will set the 2023-24 waterfowl hunting season dates and bag limits within the federal Frameworks. A total hunting season length of 107 days and shifts in days amongst the season types suggest that the number of hunter-days remains similar to that in previous years, with little to no impacts to jobs and/or businesses that provide services to waterfowl hunters. The Commission anticipates that the proposed 2023-24 waterfowl hunting regulations provide benefit for the health and welfare of California residents by providing opportunity for outdoor activity. The Commission expects no benefits to worker safety but does expect benefit to the environment in that setting these regulations facilitates maintenance of sufficient waterfowl populations and their habitats while providing for the public's beneficial use and enjoyment. The most recent Service National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California estimated that migratory bird hunters contributed about \$169 million to the state economy during the 2011 migratory bird hunting season. However, minor variations in hunting regulations such as the ones proposed for waterfowl are, by themselves, unlikely to provide notable economic stimulus to the state. Businesses that support waterfowl hunting are generally small businesses employing a few individuals and, like all small businesses, are subject to failure for a variety of causes. The long-term intent of the proposed

regulations is to sustainably manage waterfowl populations, and consequently, the long-term viability of the same small businesses.

- (c) **Cost Impacts on a Representative Private Person or Business:**
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:**
None.
- (e) **Nondiscretionary Costs/Savings to Local Agencies:**
None.
- (f) **Programs Mandated on Local Agencies or School Districts:**
None.
- (g) **Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:**
None.
- (h) **Effect on Housing Costs:**
None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, 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.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 713, 1050, 2365, 7075, 7078, 8254, 8259 and 9005 of the

Fish and Game Code and to implement, interpret or make specific sections 200, 205, 255, 265, 270, 275, 713, 1050, 2365, 7050, 7055, 7056, 7071, 7075, 7078, 7852.2, 8026, 8043, 8046, 8250, 8250.5, 8251, 8254, 9002, 9005, 9006 and 9010 of said Code, proposes to amend sections 29.80, 29.90, 29.91, 121, 121.5, 122, 122.1, 122.2, and 705, Title 14, California Code of Regulations, relating to commercial and recreational take of California spiny lobster and recreational hoop net requirements for take of crustaceans.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The recreational and commercial spiny lobster fisheries are managed under the authority of the 2016 California Spiny Lobster Fishery Management Plan (FMP) adopted by the Commission on April 13, 2016 and implementing regulations adopted the same year which went into effect April 1, 2017.

Existing implementing regulations for recreational take of spiny lobster, and regulations regarding the use of hoop nets for the recreational take of saltwater crustaceans specify:

- Authorized methods of take (spiny lobster by hoop nets or by hand only; crab by hoop nets, crab traps and crab loop traps north of Point Arguello, or by hand).
- Hoop net limits (five per person south of Point Arguello, ten per vessel south of Point Arguello, and two per person from a public pier statewide), maximum hoop net service interval of two hours, and the two prescribed types of hoop nets allowed in California.
- A requirement to mark hoop nets that are deployed from a vessel with a buoy, and a requirement to mark hoop net buoys with identification of the owner or operator of the hoop net.
- Open season, daily bag and possession limit, minimum size limit, and report card requirements for California spiny lobster.

Existing, implementing regulations for the commercial spiny lobster fishery specify the open season, minimum size, limited entry permit requirements, restricted fishing areas, fishing log requirements, authorized methods of take, prescribed configuration of traps and buoys, trap limit, trap tag requirement, a requirement to report lost traps, maximum trap service interval of 168 hours, a prohibition of abandoning traps, and a prohibition against tampering with another person's trap except to retrieve derelict traps.

The proposed changes focus on fine-tuning existing regulations controlling the recreational and commercial spiny lobster fisheries. The amendments proposed here represent the culmination of the California Department of Fish and Wildlife’s (Department) internal dialogue as well as the various outreach efforts to the recreational and commercial user groups. The framework established in the FMP is still sound and no FMP amendment is being proposed. The proposed changes are necessary to help improve the current regulations.

In addition to these adjustments, this proposal would also amend existing regulations on the recreational use of hoop nets beyond the scope of spiny lobster fishing in southern California. These additional changes to hoop net regulations are part of the ongoing effort by the Department to mitigate marine life entanglements in California. In 2021, new restrictions went into effect for recreational trap use in the recreational crab fishery due to ongoing concerns over potential marine life entanglements. Department staff have since noted the increased use of hoop nets as well as development of hoop nets that behave more like traps. These developments prompted the Department to propose broader regulatory changes on hoop net use in this package. These changes were first implemented through an emergency rulemaking by the Commission on October 13, 2022. Those changes would be adopted here through the standard rulemaking process.

The proposed changes are as follows:

Recreational Changes

- 29.80(b)(1) Refine the specifications for the allowed types A and B hoop nets in line with the emergency regulation: For both types A and B hoop nets, require that the soft mesh be non-metallic. For Type B hoop nets, restrict the number of rings to two, require that rigid support arms be straight, and prohibit additional openings.
- 29.80(b)(1) For Type B hoop nets, specify that if a bait ring is used, it must be attached to the bottom half of the net and may not be attached to any part of the rigid frame.
- 29.80(b)(2) and (3) Reorganize the requirement that the owner or operator of a hoop net shall raise the hoop net to the surface and inspect the contents of the hoop net at intervals not to exceed two hours and clarify that the required service interval applies statewide.
- 29.80(b)(4) Specify the number of hoop nets that may be deployed in different parts of the state.
- 29.80(b)(5) Clarify hoop net buoy marking requirements and establish marking requirement for hoop nets deployed by a vessel in California waters.
- 29.80(b)(6) Prohibit the use of hoop nets for any purposes south of Point Arguello for the 24-hour

period prior to the recreational spiny lobster season opening.

- 29.90(a) Change the start of the recreational season for spiny lobster from 6:00 am of the Saturday preceding the first Wednesday in October to 6:00 pm of the Friday preceding that first Wednesday.
- 29.90(c) Clarify that when a spiny lobster is first taken it must be measured immediately and that any undersize lobster must be released with none kept in possession.
- 29.91(b) Clarify that the month, day, location, and gear code must be entered on the first line of a Spiny Lobster Report Card prior to a hoop net being deployed or diver entering the water.

Commercial Changes

- 121.5(b) Clarify that lobsters must be measured immediately when any trap is raised to the surface.
- 122(a)(2) Change the boundary of where commercial fishing may occur on the southern Catalina Island coast to the more identifiable landmark Church Rock.
- 122.1(b) Require lobster receiver buoys to be marked with the identification of their owners.
- 122.1(c) and 705(c)(5) Move the incorporation by reference of Form DFW 1701 (Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit) from Section 705 to Section 122.1.
- 122.2(f) and 705(c)(7) Extend the deadline of the End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020) from April 15 to April 30. Move the incorporation by reference of form DFW 1020 from Section 705 to Section 122.2.
- 122.2(h) Add “disturb” to the prohibited actions for a lobster trap or receiver not one’s own. Specify that every commercial permit holder retrieving another individual’s trap to first obtain the trap owner’s written permission; the permit holder could then retrieve up to six lost or derelict traps per trip during the fishing season.

Form DFW 1020 (Rev. 10/10/22) Reformat the trap loss affidavit. Insert a Privacy Notice in accordance with Civil Code subdivision 1798.17(b).

Non-substantive editing and renumbering to improve the clarity and consistency of the regulatory language have been made in sections 29.80, 29.90, 29.91, 121, 121.5, 122, 122.1, and 122.2.

Benefit of the Regulations:

The proposal improves enforceability of the regulations governing spiny lobster fishing, the commercial business’ operations, and the user experience for various stakeholders. In addition, the broader changes to recreational hoop net usage, specifically those applicable to northern California recreational crab fish-

ery, would help mitigate ongoing entanglement risk of endangered marine life.

Consistency and Compatibility with Existing Regulations:

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing lobster fishing and fishing generally (California Fish and Game Code sections 200, 205, 7075, 7078, and 8254). No other state agency has the authority to adopt regulations governing commercial and recreational take of spiny lobster and use of hoop nets for recreational fishing. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of fishing regulations and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

PUBLIC PARTICIPATION

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before April 6, 2023 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed or emailed to the Commission office, must be received before 12:00 noon on April 14, 2023. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Headquarters Building Auditorium, 715 P Street, Sacramento, California, which will commence at 8:30 a.m. on Wednesday, February 8, 2023, and may continue at 8:30 a.m., on Thursday, February 9, 2023. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing which will commence at 8:30 a.m. on Wednesday, April 19, 2023, and may continue at 8:30 a.m., on Thursday, April 20, 2023. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Sherrie Fonbuena at FGC@fgc.ca.gov or at the preceding address or phone number. **Dr. Jenny Hofmeister, Environmental Scientist, Department of Fish and Wildlife, (lobster@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

**IMPACT OF REGULATORY ACTION/
RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed amendments to current regulations are not anticipated to introduce additional costs for commercial or recreational fishers. The volume of recreational and commercial activity in the fishery is not expected to change as a result of the proposed amendments. The proposed refinements of spiny lobster and recreational hoop net regulations clarify details of the existing regulations including zone boundaries and simplify marking requirements that should save time while also achieving management ends.

For the most recent season of 2021–2022, the Department has data on 238 businesses that could possibly be affected: 132 active commercial lobster operators; 39 commercial passenger fishing vessels (CPFV) that offer lobster trips; and 67 CPFVs that offer Dungeness crab trips. Only the CPFV operators would be affected by the recreational hoop net changes, and not many, if any, CPFVs have been deploying the new hoop net gear for the take of spiny lobster or crab. Commercial lobster fisheries do not use recreational hoop nets so will not be affected by this change.

The demarcation of the boundary of where commercial fishing may occur on the southern Santa Catalina Island coast to a more identifiable landmark (Section 122) is not anticipated to impact fuel or other costs. The boundary is proposed to be moved by about 150 feet to a more readily identified landmark. This amendment will expand the fishable areas that lobster vessel operators may choose to fish though some may choose to stay within the previously defined boundary

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

The Commission does not anticipate impacts on the creation or elimination of jobs within the state, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California because the proposed regulations are unlikely to change the demand

for goods or services related to the commercial and recreational spiny lobster fisheries and recreational crab fishery. The Commission does not anticipate direct benefits to the general health and welfare of California residents; however, the proposal would benefit California residents generally by benefitting the state’s environment.

Benefits to worker safety are anticipated, with the reduction in the risks incurred by the Department’s Law Enforcement Division (LED) during dark hour openers and long shifts. Benefits to the state’s environment are anticipated including preservation of the lobster fishery resource through regulatory oversight, and a reduction in the number of marine life entanglements in fishing gear.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission 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 proposed regulatory action is not anticipated to introduce new monetary costs that would be necessarily incurred in reasonable compliance with the proposed amendments to the current regulations. Under current regulations, commercial lobster receivers are required to be marked with a buoy, but no buoy marking requirements are specified. In response to fishery feedback, marking requirements for buoys for commercial lobster receivers were specified to be the same as those in use for commercial traps. The proposed marking requirements for hoop nets north of Point Arguello will not have cost impacts because hoop nets deployed from a vessel would already have buoys attached with identifying marks. The proposed regulation will require that the buoy be marked with the GOID, which can be done with a permanent marker or other low–cost methods.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Commission estimates that program implementation will involve some increase or shift in work effort for staff within the Department’s LED totaling approximately \$18,618 annually that is absorbable within currently existing budgets.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:
None.
- (h) Effect on Housing Costs:
None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, 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.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 203, 203.1, 265, 332 and 1050 of the Fish and Game Code and to implement, interpret, or make specific sections 332, 1050, 1570, 1571, 1572, 1573 and 1574 of said Code, proposes to amend Sections 364 and 364.1 of Title 14, California Code of Regulations related to elk hunting.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations in Section 364 provide definitions, hunting zone descriptions, season opening and closing dates, methods of take (e.g., general methods, archery only, muzzleloader only), tag designations (e.g., bull, spike bull, antlerless, and either-sex), tag quotas (total number of hunting tags to be made available), and bag and possession limits for elk hunting. Section 364.1 provides season opening and closing dates, methods of take, tag designations, tag quotas, and bag and possession limits for elk hunting administered through the SHARE hunt program. Individuals are awarded an elk hunting tag through the Department's Big Game Drawing or SHARE hunt program drawing.

ment's Big Game Drawing or SHARE hunt program drawing.

Harvest of an elk is authorized for an individual awarded a tag for a respective hunt zone or SHARE property and season. Tag quotas are established based on a variety of factors including population density and abundance, age and sex composition, elk distribution, and human-elk conflict levels, among other population objectives, factors, and considerations. The Department has identified the following areas where increased public elk hunting opportunities are feasible and support achievement of population objectives:

Tejon Rocky Mountain Elk Management Unit.
Currently there is no hunt zone established which authorizes public elk harvest in the Tejon Rocky Mountain Elk Management Unit

Bear Valley and Cache Creek Tule Elk Hunt Zones.
Current (2022) public tag quota for these zones are 1 antlerless tag and 2 bull tags (Bear Valley), and 1 apprentice bull tag, 2 antlerless tags, and 2 bull tags (Cache Creek).

Siskiyou Roosevelt Elk Hunt Zone. Current (2022) public tag quota for the Siskiyou Hunt Zone is 20 antlerless tags and 20 bull tags. The bull and antlerless hunt periods are concurrent.

Northwestern Roosevelt Elk Hunt Zone. Current (2022) public tag quota for the Northwestern Hunt Zone is 15 antlerless tags, 3 bull tags, and 3 either-sex tags.

La Panza Tule Elk Hunt Zone and Central Coast Tule Elk Management Unit. Current (2022) public tag quotas for the La Panza Hunt Zone is 1 apprentice antlerless tag, 11 antlerless tags across two hunt periods (5 and 6 tags, respectively), and 12 bull tags across two hunt periods (6 and 6, respectively). There is currently no authorized public elk harvest in the Central Coast Tule Elk Management Unit.

The proposed regulatory changes will:

Siskiyou Roosevelt Elk Hunt Zone. Set public tag quota for the Siskiyou Hunt Zone to 20 bull tags and 30 antlerless tags. Shift the bull season from September to October.

Northwestern Roosevelt Elk Hunt Zone. Set public tag quota for the Northwestern Hunt Zone to 25 bull tags, 15 antlerless tags, and 3 either-sex tags.

Bear Valley and Cache Creek Tule Elk Hunt Zones. Modify adjacent Hunt Zone boundaries to bound demographically and genetically interacting populations.

The goals and benefits of the regulations are to help achieve management objectives related to current environmental, biological, and social conditions related to relevant elk populations.

Tejon Rocky Mountain Elk Management Unit. Create a Tehachapi Rocky Mountain Elk Hunt Zone and General Methods Hunt, with tag allowances set at 5 bull and 10 antlerless.

La Panza Tule Elk Hunt Zone and Central Coast Tule Elk Management Unit. Decrease the size of the La Panza Hunt Zone, create a new Gabilan Tule Elk Hunt Zone, and create a new Central Coast Tule Elk Zone, which incorporates the existing Camp Roberts Tule Elk Management Unit. For each of the new Hunt Zones, create a General Methods Hunt, with tag allowances set at: 6 bull and 5 antlerless (La Panza Period 1), 6 bull and 5 antlerless (La Panza Period 2), 10 bull and 10 antlerless (Central Coast), and 4 bull and 6 antlerless (Gabilan).

The Department is proposing changes to the following regulations in Title 14, CCR:

- Section 364. Elk Hunts, Seasons, and Number of Tags
- Section 364.1. Department Administered Shared Habitat Alliance for Recreational Enhancement (SHARE) Elk Hunts

Benefit of the Regulations:

The proposed regulatory action is designed to help achieve management objectives related to current environmental, biological, and social conditions, as outlined in the Elk Conservation and Management Plan.

Consistency and Compatibility with Existing Regulations:

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Commission staff has searched the California Code of Regulations and has found no other state regulations that address the definitions, hunting zone descriptions, season opening and closing dates, methods of take (e.g., general methods, archery only, muzzleloader only), tag designations (e.g., bull, spike bull, antlerless, and either-sex), tag quotas (total number of hunting tags to be made available), and bag and possession limits for elk hunting. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other big game mammal regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

PUBLIC PARTICIPATION

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the **California Natural Resources Agency Headquarters 1st Floor Auditorium, 715 P Street, Sacramento, California, 95814** commencing at **8:30 a.m. on Wednesday, February 8, 2023**, and may continue at **8:30 a.m. on Thursday, February 9, 2023**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference will commence at **8:30 a.m. on Wednesday, April 19, 2023**, and may continue at **8:30 a.m. on Thursday, April 20, 2023**. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

It is requested, but not required, that written comments be submitted by 5:00 p.m. on April 6, 2023 at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 14, 2023.** If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, 715 P Street, 16th Floor, Sacramento, CA 95814.

AVAILABILITY OF DOCUMENTS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, 16th Floor, Sacramento, California 95814, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or David Haug at FGC@fgc.ca.gov or at the preceding address or phone number.

Elk and Pronghorn Coordinator, Thomas Batter, Department of Fish and Wildlife, (Thomas.Batter@wildlife.ca.gov or (916)373-6627), has been designated to respond to questions on the substance of the proposed regulations.

Elk and Pronghorn Coordinator, Thomas Batter, Department of Fish and Wildlife, (Thomas.Batter@wildlife.ca.gov or (916)373-6627), has been designated to respond to questions on the substance of the proposed regulations.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION/
RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States
The proposed regulation 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. This regulatory action will not impose cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed regulation.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment.

The Commission does not anticipate impacts on the creation or elimination of jobs within the state, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California because the expected economic impacts of the proposed regulations are unlikely to be substantial enough to substantially stimulate demand for goods or services related to elk hunting. If greater numbers of hunters visit the areas in the state with increased opportunities, businesses that provide goods and services to elk hunters could benefit from small increases in sales. The Commission does not anticipate direct benefits to the general health and welfare of California residents, the environment, or to worker safety, however California residents will benefit generally through access to the expanded recreational opportunities created by the proposed changes.

- (c) Cost Impacts on a Representative Private Person or Business
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State
The Department anticipates an estimated \$57,891 increase in tag sales revenue with the implementation of the proposed regulation for the potential sale of 111 resident elk tags and 1 non-resident elk tag. Changes to elk hunt zone boundaries and the creation of new zones is not anticipated to have a costs or savings impact, as existing zones for other species under Department jurisdiction will overlap with those proposed. Therefore, no operational changes are necessary.
- (e) Nondiscretionary Costs/Savings to Local Agencies
None.
- (f) Programs Mandated on Local Agencies or School Districts
None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code
None.
- (h) Effect on Housing Costs
None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, 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.

**TITLE 15. DEPARTMENT OF
CORRECTIONS
AND REHABILITATION**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend Sections 3075, 3097, 3122, 3161, 3375.2, 3376.1, and 3377.2 into Title 15, Division 3, Chapter 1, regarding the Condemned Inmate Transfer Program.

PUBLIC HEARING

Date and Time:

March 8, 2023 — 10:00 a.m. to 11:00 a.m.

Place:

Department of Corrections and Rehabilitation
Conference Room 150
1515 S Street — North Building
Sacramento, CA 95811

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period begins **January 20, 2023** and closes on **March 8, 2023**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpbm@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

Primary Contact

Josh Jugum
Telephone: (916) 445-2266
Regulation and Policy Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

Tracy Snyder
Telephone: (916) 324-6808
Division of Adult Institutions

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

On November 8, 2016, the people of the state of California voted in support of the passage of Proposition 66, known as the Death Penalty Reform and Savings Act of 2016. As a result of the passage of this legislation, sections of the California Penal Code (PC) governing how the California Department of Corrections and Rehabilitation (CDCR or the department) manages the condemned population were adopted or amended. Section 3600 of the PC was amended to reflect that CDCR may transfer male condemned inmates to alternate institutions which it has determined can provide a level of security sufficient for that inmate. Previously, PC section 3600 mandated that male condemned inmates be housed at the prison designated by CDCR for the execution of the death penalty, which is San Quentin State Prison (SQSP).

The proposed regulatory changes implement and make specific the statutory authority to move male condemned inmates from SQSP to other institutions throughout the state commensurate with their case factors and security needs. Female condemned inmates will continue to be housed solely at Central California Women’s Facility (CCWF) in compliance with PC sections 3601 and 3602, but transitioned to general population housing or other housing consistent with their case factors and security needs.

In addition, Proposition 66 also resulted in the adoption of PC section 2700.1 which requires that condemned inmates in the custody of CDCR be required to work as prescribed by the rules and regulations of the department. This statute also requires that when a condemned inmate owes a restitution fine or order, CDCR shall deduct 70% or the balance owing, whichever is less, from the condemned inmate’s trust account deposits, regardless of the source of the income. CDCR is then required to transfer those funds to the California Victim Compensation Board (formally known as the California Victims Compensation and Government Claims Board).

The penal code now mandates that condemned inmates be required to work and pay larger amounts of trust account balances towards restitution fines and direct restitution orders. The institutional design of the condemned housing at SQSP and CCWF limits the availability of work assignments so that the department is unable to fully meet the work mandate as required in the penal code. The proposed regulatory changes will facilitate greater compliance with PC section 2700.1; therefore, CDCR has elected to move male condemned inmates to other institutions and re-house female condemned inmates in the general population at CCWF, consistent with their custody and security levels.

The inmate classification score system (ICSS) assigns a numerical preliminary score and placement score to each inmate. Preliminary scores are determined by a review of an inmate’s case factors, including but not limited to: age at first arrest, age at reception to CDCR, length of prison term, and prior incarceration behavior. A mandatory minimum score is a classification score that is applied when an inmate has a case factor that requires that he or she be housed no lower than a specific security level. A mandatory minimum score, if greater than the preliminary score, supersedes the preliminary score and becomes the inmate’s placement score. If a mandatory minimum score is less than the preliminary score, the preliminary score is the inmate’s placement score. A lower placement score indicates lesser security control needs and a higher placement score indicates greater security control needs. Currently condemned inmates have a mandatory minimum placement score of 60 points, making their housing level placement no lower than that of a Level IV facility. The proposed mandatory minimum placement score of 19 points would allow placement no lower than a Level II facility, except when authorized by the Departmental Review Board (DRB). This change to the mandatory minimum would more accurately reflect the current demographic of the preliminary scores of the condemned population, of which over 50% reflect preliminary scores consistent with Level III and Level IV security levels.

Custody level is another term used to define a level of security assigned to each inmate. CDCR’s inmate custody designation determines where an inmate is housed, the jobs that the inmate is eligible to be considered for, and the level of staff supervision that is required to ensure institutional security and public safety. Currently, CDCR houses condemned inmates as MAXIMUM custody at SQSP and CCWF. This designation is due to the fact that the condemned population is segregated from the rest of the inmate population at each of these facilities in a more restrictive housing unit. Under the proposed regulatory change, CDCR would assign condemned inmates to a Close Custody designation for at least five years. This custody level will afford CDCR the highest custody level for an inmate in a non-segregated environment, while still allowing for the integration of the condemned population into the general population.

This action will:

- Bring the department into compliance with Proposition 66, passed by California voters in 2016, which amended PC section 3600 to allow condemned male inmates to be housed at any CDCR institution which has a sufficient security level for that specific inmate.

- Bring the department into compliance with PC section 2700.1 which, as a result of the passage of Proposition 66, requires condemned inmates to work as prescribed by the rules and regulations of the department, and pay restitution when so ordered.
- Establish that condemned inmates shall not be housed in a facility with a security level lower than that which is authorized to house inmates sentenced to life without the possibility of parole.
- Clarify that all condemned male inmates shall be delivered to San Quentin State Prison, and all condemned female inmates shall be delivered to the Central California Women’s Facility, upon arrival in CDCR custody, consistent with PC sections 3600 and 3602, respectively.
- Establish that the department shall deduct 70% or the balance owing, whichever is less, from a condemned inmate’s wages and trust account deposits, pursuant to PC section 2700.1, subject to specified exemptions.
- Ensure condemned inmates are able to continue with appeals of their capital conviction, irrespective of which institution they are housed at.

**SPECIFIC BENEFITS ANTICIPATED
BY THE PROPOSED REGULATIONS**

The proposed regulations will bring the department into compliance with Proposition 66, the Death Penalty Reform and Savings Act of 2016. Additionally, victims of crime may receive increased restitution funds as a result of the new requirement that condemned inmates must work and pay greater restitution amounts than previously required.

**DOCUMENTS INCORPORATED
BY REFERENCE**

None.

**EVALUATION OF INCONSISTENCY/
INCOMPATIBILITY WITH EXISTING
LAWS AND REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern the housing of condemned inmates.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500–17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *Savings of \$21,258,000 annually.*
- Cost to any local agency or school district that is required to be reimbursed: *None.*
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

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

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

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESS**

The department has made an initial determination that the proposed regulations 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, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

**RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT**

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within

California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on worker safety or the state's environment. The proposed regulations may benefit the welfare of California residents by helping victims of crime receive restitution.

CONSIDERATION OF ALTERNATIVES

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, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications 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, amends or repeals the regulations

as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TITLE 18. FRANCHISE TAX BOARD

Pursuant to California Government Code section 11346.4, the Franchise Tax Board ("FTB") hereby gives notice of its intention to amend California Code of Regulations, title 18, section ("Regulation") 25137, relating to alternative apportionment method petition procedures.

PUBLIC HEARING

The FTB has not scheduled a public hearing on this proposed action. However, the FTB 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 indicated below. The request should be submitted to the FTB officer named below. In addition, Government Code section 15702, subdivision (b) provides for consideration by the three-member Board ("the Board, itself"), of any proposed regulatory action if any person makes such request in writing.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the FTB. The written comment period closes on **March 7, 2023**. The FTB will consider only comments received at the FTB offices by that time. The FTB encourages submission of comments in electronic form, rather than in paper form. Comments may be submitted by email to Ftbregulations@ftb.ca.gov

Comments in paper form may be submitted to:

Hanna Cho, Tax Counsel III
Legal Division, MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Fax: (916) 845-7298

AUTHORITY AND REFERENCE

California Revenue and Taxation Code section ("Section") 19503 authorizes the FTB to prescribe regulations necessary for the enforcement of Part 11 (commencing with section 23001) of the Revenue and

Taxation Code. The proposed amendments to Regulation 25137 implement, interpret, and make specific provisions in Section 25137 which is included in Part 11 of the Revenue and Taxation Code.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

**SUMMARY OF EXISTING
LAWS AND REGULATIONS**

Section 25137 permits a taxpayer to petition for the use of an alternative apportionment method if the standard allocation and apportionment provisions do not fairly reflect the extent of a taxpayer's business activity in California. Regulation 25137, subsection (d), currently provides that, in cases deemed appropriate, the FTB may elect to hear and decide petitions filed pursuant to Section 25137 instead of having this function performed by the staff, and that consideration of said petitions will be heard in open-session by the Board, itself at a regularly scheduled meeting.

EFFECT OF THE PROPOSED ACTION

The effect of the proposed rulemaking action is to give taxpayers certainty by providing clear guidance related to petitions filed with the Board, itself, pursuant to Section 25137. The proposed amendments will provide clear rules, conditions, and deadlines for filing petitions with the Board, itself, clarify the briefing process and specify the procedures related to hearings on said petitions, as well as address the application of the ex-parte communication rule. Such procedural guidance will streamline the petition process and ensure consistent application of procedures to all petitions filed pursuant to Section 25137.

The proposed amendments to Regulation 25137, subsection (d), streamlines the subject matter and serves as an introductory paragraph to the procedural amendments that follow it. Subsection (d)(1) provides definitions of key terms used throughout the proposed regulation. Subsection (d)(2) provides clear procedures, conditions, and deadlines for filing a petition with the Board, itself. This subsection also specifies that any records submitted to the Board, itself, as well as the decision of the Board, itself, are subject to the California Public Records Act and the Bagley-Keene Act and clarifies the briefing process. Subsection (d)(3) of the proposed regulation addresses procedures related to hearings on petitions filed pursuant to Section 25137. Subsection (d)(4) provides the general ex-parte communication rule and provides specific exceptions to the general rule. This subsection also provides procedures to be followed in the event an ex-parte communication occurs. Subsection (d)(5) creates an appli-

cability date to provide clarity as to when the proposed amendments to Regulation 25137 will apply.

OBJECTIVES OF PROPOSED AMENDMENTS

The broad objective of the proposed rulemaking action is to ensure that taxpayers, their representatives, and the state of California have certainty surrounding the petition process when petitioning the Board, itself, for the use of an alternative apportionment method pursuant to Section 25137, and to provide clarity on the procedures related to hearings on said petitions, as well as the application of the ex-parte communication rule during the petition process.

**ANTICIPATED BENEFITS OF
THE PROPOSED REGULATION**

The proposed regulatory action will benefit taxpayers, tax practitioners, and the State of California by providing clarity that does not currently exist through guidance for procedures for Section 25137 petitions filed with the Board, itself. The proposed regulatory action will clarify procedural rules related to filing of petitions, provide deadlines, and set forth the conditions under which petitions will be considered by the Board, itself. It will also provide procedural rules for the briefing process, hearings on petitions, and the ex-parte communication rule. The clarity from the proposed regulatory action will reduce confusion for taxpayers and tax practitioners, facilitate tax administration for the State of California by providing clear rules, and effect consistency throughout the petition process. These benefits are the result of goals developed by the FTB with input from interested parties and based on broad statutory authority.

**CONSISTENCY AND COMPATIBILITY WITH
EXISTING STATE REGULATIONS**

During the process of developing this proposed regulation, the FTB, pursuant to Government Code Section 11346.5, subdivision (a)(3)(D), conducted a search of any similar state regulations and has concluded that this proposed regulation is neither inconsistent nor incompatible with any existing state regulations.

COMPARISON TO FEDERAL REGULATIONS

There is no comparable federal law.

**DISCLOSURES REGARDING THE
PROPOSED REGULATORY ACTION**

Mandate on local agencies and school districts:
None.

Cost or savings to any state agency: The proposed regulation provides procedural guidance for petitions filed by taxpayers pursuant to Section 25137. The amendments would identify, implement, and streamline these procedures. To the extent that the adoption of the proposed regulation reduces the amount of staff time spent on these procedures, it may result in some cost savings but, the FTB anticipates these potential cost savings to be insignificant.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code section 17500, of Division 4: None.

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

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

Cost impacts on a representative private person or business: The proposed regulation provides procedural guidance for petitions filed by taxpayers. To the extent that the proposed regulation would identify, implement, and streamline these procedures, it could result in minor cost savings for multistate businesses doing business within and without California.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The proposed regulation provides procedural guidance for petitions filed by taxpayers. The amendments would identify, implement, and streamline these procedures. Therefore, the proposed regulation would not have any statewide adverse economic impact on California business.

Significant effect on housing costs: None.

Effect on small business: The FTB has determined that the proposed regulation would not affect tax owed by small businesses. The proposed regulation provides procedural guidance for petitions filed by taxpayers pursuant Section 25137. To the extent that the proposed regulation would identify, implement, and streamline these procedures for petitions filed by multistate small business taxpayers, it could result in minor cost savings.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

In accordance with Government Code section 11346.3(b), the FTB has determined in the economic impact assessment regarding the proposed regulatory action: The proposed regulation would not affect the creation of California jobs, the creation of new businesses nor would it affect the expansion of existing California businesses. The FTB does not anticipate any elimination of jobs or elimination of existing businesses within California as a result of the proposed clarification to this proposed regulation. The proposed amendments would provide the benefit of giving clar-

ity to taxpayers and tax preparers regarding petitions filed by taxpayers, however, there is no expected significant direct change to the health and welfare of California residents, worker safety or California's environment as a result of the proposed amendments.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the FTB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the FTB 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 FTB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period or if a hearing is requested at the scheduled hearing.

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Hanna Cho, Tax Counsel III
Legal Division, MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Telephone: (916) 845-7298
Email: FTBRegulations@ftb.ca.gov

The backup contact person for these inquiries is:

Jayson Gottman
Legal Division, MS A260
Franchise Tax Board
P.O. Box 1720
Rancho Cordova, CA 95741-1720
Telephone: (916) 845-4576
Email: FTBRegulations@ftb.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Gottman at the above address or send the request by email to FTBRegulations@ftb.ca.gov.

AVAILABILITY OF DOCUMENTS

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

The FTB will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. Copies can be obtained on the FTB's website at www.ftb.ca.gov or by contacting Mr. Gottman at the address, phone number or email address listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period and considering all timely and relevant comments received, the FTB may amend the proposed regulation substantially as described in this Notice. If the FTB makes substantive modifications sufficiently related to the proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the FTB amends the regulation as revised. Copies of the modifications will be published on the FTB's website at ftb.ca.gov and mailed to anyone who submitted written comments to the FTB, and to anyone who has expressed an interest in receiving the modification information. Please send requests for copies of any modified regulations to the attention of Mr. Gottman at the address, phone number or email address indicated above. The FTB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be published on the FTB's website at www.ftb.ca.gov may also be obtained by contacting Mr. Gottman using the contact information provided above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations can be accessed through the FTB's website at www.ftb.ca.gov

TITLE 22/MPP. DEPARTMENT OF SOCIAL SERVICES

ORD #0922-07

ITEM # Two-Year Establishment Timeframe for CalWORKs Non-fraudulent Overpayments

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the public comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of Social Services
Office of Regulations Development
744 P Street, MS 8-4-192
Sacramento, CA 95814
Tel: (916) 657-2856, Fax: (916) 653-7395
Email: ord@dss.ca.gov

Statements or arguments relating to the proposals may be submitted in writing, e-mail, or by facsimile to the address/number listed above. All comments must be received by March 7, 2023.

Following the public comment period, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed above. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at *CDSS Public Comment Period for Proposed Regulations* (<https://www.cdss.ca.gov/inforesources/letters-regulations/legislation-and-regulations/regulations-home-page/cdss-regulation-changes-in-process-and-completed-regulations/public-hearing-information>). Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed above. Following the public comment

period, copies of the Final Statement of Reasons will be available at the above address.

CHAPTERS

CDSS Manual of Policies and Procedures,
Division 44, Section 44–350.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

California Work Opportunity and Responsibility to Kids (CalWORKs) is a public assistance program that provides cash aid and services to eligible families that have a child(ren) in the home.

Assembly Bill (AB) 135 (Chapter 85, Statutes of 2021) and Senate Bill (SB) 187 (Chapter 50, Statutes of 2021) amended the program as follows:

- Overpayments established on or after August 1, 2021, for the benefit months of April 2020 through June 30, 2022, shall be classified as administrative error (AE).
- Classification of overpayment claims that include any months during the COVID–19 pandemic emergency period beginning in April 2020 through June 2022 as AE.
- Overpayment claims classified as AE shall not be reclassified after the state of emergency related to the COVID–19 pandemic ends, but shall remain an AE, except when the overpayment claim has been determined to be an intentional program violation (IPV).
- A county shall only establish a nonfraudulent overpayment if all or a portion of the overpayment occurred within 24 months prior to the date of discovery.
- The date of discovery is defined as the date that the county determined by computation that an overpayment has occurred.
- An overpayment claim will be considered established as of the date that the initial demand letter or written notice was sent to the recipient.
- When calculating an overpayment claim, the county must not include any overpaid months that occurred more than 24 months prior to the date that the overpayment was discovered, unless the overpayment claim has later been determined to be an IPV, at which time the county shall reclassify the claim to include any overpaid months that fall beyond the 24–month limit.

The benefits of this regulatory action to the health and welfare of California residents, worker safety, and the state’s environment are as follows: AB 135 intends to help minimizing the impact of COVID–19 on CalWORKs families through classification of all

CalWORKs overpayments that incurred during the benefit months falling under COVID–19 pandemic emergency as AE. AB 135 also aims to ensure that County Welfare Departments are only collecting nonfraudulent overpayments that occurred within 24–months timeframe prior the date that the county discovered the overpayment. This will reduce the overpayment amount that families will have to repay and support the alignment effort for CalWORKs and CalFresh programs. There are no anticipated benefits to worker safety or the state’s environment.

The department conducted a review of existing regulations and evaluated the proposed regulations for any inconsistency or incompatibility. The proposed regulations are neither inconsistent nor incompatible with existing state regulations but do fulfill the intent of the legislation in enacting AB 135 and SB 187.

COST ESTIMATE

1. Costs or Savings to State Agencies: There is no cost or savings associated with either policy. The reclassification of Inadvertent Household Errors to Administrative Errors would prolong the time in which grant reductions occur but would not impact the total amount collected. The establishment of overpayment claims in the 24 months preceding the date of discovery does not have a fiscal impact because overpayments would be determined within the 24–month window during the Semi–Annual Reporting, and Annual Reporting periods.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500–17630: There is no cost to local agencies or school districts.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: There is no federal funding impact to state agencies, for the reasons referenced above.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no “state–mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the Government Code.

**STATEMENT OF SIGNIFICANT ADVERSE
ECONOMIC IMPACT ON BUSINESS**

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact the CalWORKs population to aid and strengthen needy families towards achieving economic self-sufficiency.

**STATEMENT OF POTENTIAL COST IMPACT
ON PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action is designed to impact only the CalWORKs population in order to aid and strengthen needy families and there are no known expected costs associated to the individuals.

SMALL BUSINESS IMPACT STATEMENT

The Department has determined that there is no impact on small businesses because of filing these regulations because these regulations are only applicable to state and county agencies. These regulations are mandated by AB 135 and SB 187 and are applicable to CalWORKs recipients; therefore, they do not have a cost impact on the private sector, including small businesses.

**STATEMENT OF RESULTS OF
ECONOMIC IMPACT ASSESSMENT**

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The implementation of this regulatory action will benefit CalWORKs recipients by minimizing the economic impact brought forth by the COVID-19 pandemic emergency. CalWORKs recipients will be able to retain more of their cash aid payment during the pandemic. In addition, the proposed amendments also support program alignment which will reduce county workload and the potential for payment errors. There are no additional benefits for worker safety or the state's environment, as the regulations only affect individuals receiving CalWORKs aid.

**STATEMENT OF EFFECT
ON HOUSING COSTS**

The proposed regulatory action will have no effect on housing costs.

**STATEMENT OF
ALTERNATIVES CONSIDERED**

In developing the regulatory action, the Department did not consider any other alternatives as there were no other alternatives proposed. These regulations are mandated by Welfare and Institutions Code (WIC) sections 11004 and 11004.1 adopted and/or amended by AB 135 and SB 187.

The Department must determine that no other reasonable alternative was identified and brought to the attention of the Department that would be more effective in carrying out the purpose for which the regulations are proposed or would be 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.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Section 11004, Welfare and Institutions Code. Subject regulations implement and make specific Sections 11004 and 11004.1, Welfare and Institutions Code.

**CDSS REPRESENTATIVE REGARDING
THE RULEMAKING PROCESS
OF THE PROPOSED REGULATION**

Contact Person: Everardo Vaca (916) 657-2586
Backup: Oliver Chu (916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code section 11346.4.

**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 Conservation
File # 2022-1228-01
SB 1137 First Emergency Implementation
Regulations

This emergency action adopts regulations which prohibit the Geologic Energy Management Division (Division) of the Department of Conservation from approving any notice of intention to commence the drilling of a well for oil and gas extraction, within a Health Protection Zone, except for reasons related to preventing or responding to a threat to public health, safety, or the environment, complying with a court order, or to plug and abandon an existing well, among other related provisions.

Title 14
Adopt: 1765, 1765.1, 1765.2, 1765.3, 1765.4,
1765.4.1, 1765.5, 1765.5.1, 1765.6, 1765.7, 1765.8,
1765.9, 1765.10
Filed 01/06/2023
Effective 01/06/2023
Agency Contact: Justin Turner (916) 216-9143

California Film Commission
File # 2022-1230-01
California Soundstage Filming Tax Credit Program

This emergency rulemaking action by the California Film Commission readopts regulations originally adopted in emergency matter 2022-0330-03E, and readopted with modifications in emergency matter 2022-0921-01EE, that implement a tax credit for qualified expenditures paid or incurred during a taxable year by a qualified motion picture produced in California at a certified studio construction project as provided for in Revenue and Taxation Code sections 17053.98(k) and 23698(k).

Title 10
Adopt: 5530, 5531, 5532, 5533, 5534, 5535, 5536,
5537, 5538, 5539, 5540, 5541
Filed 01/09/2023
Effective 01/10/2023
Agency Contact: Hedvig Marx (323) 817-4115

Commission on Peace Officer Standards and Training
File # 2022-1117-02
Section 100 Changes to Regulations 1950 and 1953

The Commission on Peace Officer Standards and Training makes non-substantive changes to 11 CCR sections 1950 and 1953 to bring authority and reference citations into compliance with updated statutes and to add regulatory requirements based on the California Law Enforcement Accountability Reform Act of 2022.

Title 11
Amend: 1950, 1953
Filed 01/04/2023
Agency Contact: Melani Singley (916) 227-4258

Board of Behavioral Sciences
File # 2022-1123-01
Exam Waiting Periods; Corporations; Accreditation

This rulemaking action by the Board of Behavioral Sciences amends regulations relating to education and degree requirements for licensure, examinations, and requirements when forming a professional corporation.

Title 16
Amend: 1805.05, 1850.6, 1850.7, 1854
Repeal: 1832
Filed 01/10/2023
Effective 04/01/2023
Agency Contact: Christy Berger (916) 574-7995

Board of Pharmacy
File # 2022-1123-06
Compounding Self-Assessment

This action repeals and replaces the Community Pharmacy and Hospital Outpatient Pharmacy Compounding Self-Assessment form that is incorporated by reference to (1) update citations/references since the last revision in 2012; (2) correct previously misstated references and typographical errors; (3) make formatting changes; and (4) incorporate references to new regulatory or statutory requirements.

Title 16
Amend: 1735.2
Filed 01/09/2023
Effective 04/01/2023
Agency Contact: Lori Martinez (916) 518-3078

Bureau of Real Estate Appraisers
File # 2022-1122-01
Forms

This action (1) adopts a complaint form implementing Assembly Bill 948 (Holden) Chapter 352, Stats. 2021; and (2) updates existing forms to align with other statutory requirements and meet current bureau policies.

Title 10
Amend: 3527, 3561, 3563, 3568, 3570, 3575, 3602, 3603, 3681, 3726
Filed 01/09/2023
Effective 01/09/2023
Agency Contact: Whitney Spatz (916) 610-9927

Central Valley Flood Protection Board
File # 2022-1123-03
Flood Control Encroachment Permit Revocation

This action by the Central Valley Flood Protection Board amends requirements regarding the flood control encroachment permit revocation process.

Title 23
Adopt: 28.1
Amend: 5, 28
Filed 01/04/2023
Effective 04/01/2023
Agency Contact: Sarah Backus (916) 574-1448

Office of Energy Infrastructure Safety
File # 2022-1118-03
Confidential Information

This action adopts requirements for submitting documents containing confidential information to the Office of Energy Infrastructure Safety.

Title 14
Adopt: 29200
Filed 01/05/2023
Effective 01/05/2023
Agency Contact: Jeff Brooks (916) 926-1672

**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.