



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

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

**CONFLICT-OF-INTEREST CODES**

**AMENDMENT**

**MULTI-COUNTY:**

Paso Robles Joint Unified School District

**STATE AGENCY:**

San Francisco Bay Conservation & Development Commission State Compensation Insurance Fund

**ADOPTION**

**MULTI-COUNTY:** Inland Library System

A written comment period has been established commencing on March 17, 2023 and closing on May 1, 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 May 1, 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 2. STATE  
ALLOCATION BOARD**

**RELATING TO THE CALIFORNIA  
PRESCHOOL, TRANSITIONAL  
KINDERGARTEN AND FULL-DAY  
KINDERGARTEN FACILITIES  
GRANT PROGRAM**

**PROPOSED AMENDMENTS TO THE  
FOLLOWING REGULATION SECTIONS**

- 1860.2, 1860.3, 1860.4, 1860.5, 1860.5.1, 1860.6, 1860.14, 1860.15, AND 1860.19

**PROPOSED AMENDMENTS TO THE  
FOLLOWING FORMS:**

- Form SAB 70-01, *Application for Funding*, (Rev. 09/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- Form SAB 70-03, *Expenditure Report*, (Rev. 09/22), which is incorporated by reference and referenced in Regulation Section 1860.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to adopt and amend the above-referenced regulation sections, as well as three associated forms and the grant agreement templates, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

**AUTHORITY AND REFERENCE CITATIONS**

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Sections 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(h) of the Education Code; 16304 and 16304.1 of the Government Code. The proposals interpret and make specific reference Sections 17070.15, 17075.10, 17280, 17375, 17375(a), 17375(b), 17375(b)(3), 17375(b)(4), 17375(h) of the Education Code; 1771.5, Labor Code.

**INFORMATIVE DIGEST/POLICY  
OVERVIEW STATEMENT**

At its meeting on September 21, 2022, the SAB adopted on an emergency basis proposed regulatory amendments, as well as amendments to two associated forms. Initially, the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program (Program) was created through Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018, and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing classrooms for full-day kindergarten programs. Since that time, however, several bills became law that appropriated, rescinded, and re-appropriated general fund dollars. The latest bill, AB 181, Chapter 52, Statutes of 2022, was signed by the Governor on June 30, 2022, and made \$100 million from the General Fund available to the SAB for apportioning one-time grants to school districts that lack the facilities to provide full-day California preschool, transitional kindergarten and kindergarten programs. In addition to the \$100 million, the Legislature has declared its intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year to the SAB for the same purposes. The bill allows California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria.

*Funds Impacted*

- General Fund appropriation in the amount of \$100 million for the 2022/2023 fiscal year.

Attached to this Notice is the specific regulatory language of the proposed regulations and two associated forms. The proposed regulations and the two associated forms will be accessible and can be viewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, scroll down to "California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program, FDK Pending Regulatory Changes." Copies of the proposed regulations and the two associated forms will be mailed to any person re-

questing this information by using OPSC's contact information set forth below in this Notice. The proposed regulations implement the Program's Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.8, Regulations relating to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program.

*Background and Problem Being Resolved*

As mentioned above, AB 1808, Chapter 32, Statutes of 2018 [Committee on Budget. Education Finance: education omnibus trailer bill] was originally signed by the Governor on June 27, 2018 and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full-day kindergarten classrooms. On July 1, 2019, the Governor signed Senate Bill (SB) 75, Chapter 51, Statutes of 2019, into law [the Education Finance: Education Omnibus Trailer Bill]. This bill appropriated an additional \$300 million from the General Fund to the SAB for the 2019/20 fiscal year. School districts that wished to convert part-day kindergarten programs to full-day kindergarten programs, and for those school districts lacking the facilities to provide full-day kindergarten instruction could apply for these one-time grants to construct new school facilities or retrofit existing school facilities. On June 29, 2020, the Governor signed SB 98, Chapter 24, Statutes of 2020, which rescinded the \$300 million in additional program funding previously appropriated in SB 75 but maintained Program provisions such as the local matching share for school districts that were converting from a part-day program to a full-day program and allowed school districts to retain project savings. AB 130, Chapter 44, Statutes of 2021, provided \$490 million from the General Fund for the 2021/22 fiscal year to the SAB to provide one-time grants. School districts that lacked the facilities to provide full-day California preschool, full-day transitional kindergarten, and/or full-day kindergarten programs could apply for these one-time grants to construct new school facilities and retrofit existing school facilities. The latest bill, AB 181, Chapter 52, Statutes of 2022, provides \$100 million in the 2022/23 fiscal year to the SAB to continue providing one-time grants for the construction of new school facilities and the retrofitting of existing school facilities for preschool, transitional kindergarten, and kindergarten pupils in full-day programs. It is the Legislature's intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year for the same one-time purposes. The bill also expands the Program to allow California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria.

The problem being resolved is not a problem, but rather a funding opportunity in which the Program ex-

pands to community colleges to construct new classrooms or retrofit existing classrooms to house full-day California state preschool programs. In addition to the new Program funding, there are clarifications to Program requirements for the inclusion of community colleges, as well as changes to the dates for the fourth filing round. Beginning February 1, 2023 through March 2, 2023 applicants will be able to submit applications for the Program. OPSC and the California Department of Education (CDE) will work collaboratively, on a project-by-project basis, to determine if an application should be limited to a retrofit project, or whether the applicant can choose between funding to retrofit existing facilities or to build new facilities. This will ensure a prudent use of general fund dollars, integrity of school projects, and prevents the funding from being expended to unnecessarily construct new classrooms.

OPSC performed a search on whether the proposed regulatory amendments are consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 181, Chapter 52, Statutes of 2022, [the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill], was created to expand, clarify, and make modifications to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts, or include California community colleges, for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments and the two associated forms will enhance applicants' awareness when partnering with the State and will help to maintain Program integrity.

*Anticipated Benefits of the Proposed Regulations*

There are benefits associated with the proposed amendments. School districts will benefit in order to provide kindergarten classrooms if they lack the facilities and have the need to operate full-day transitional kindergarten and full-day kindergarten programs. School districts, county offices of education, and community colleges will also benefit in order to build new or expand existing classrooms to house full-day California state preschool programs. In addition, the State of California will benefit from the proposed regulations as the regulations may generate the need for school construction-related industries to expand their businesses, or in some cases may create new businesses, based on the demand on these industries when general fund dollars are released to school districts,

county offices of education, and community colleges to complete their projects.

The proposed regulations are therefore determined to be consistent and compatible with existing State laws and regulations. As stated above, OPSC performed a search on whether the proposed regulations were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 181, Chapter 52, Statutes of 2022, [the Committee on Budget. Education Finance: Education Omnibus Budget Trailer Bill], was created to expand, clarify, and make modifications to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts, or include California community colleges, for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs.

Therefore, the proposed regulations are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments and the two associated forms will enhance applicants' awareness when partnering with the State while defining the responsibilities of funding applicant projects. This will ensure program oversight and expenditure accountability.

The proposed regulations and the two associated forms will not have a negative impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities. In addition, the proposed regulations will not impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

#### *Summary of the Proposed Regulatory Amendments*

A summary of the proposed regulatory amendments, including the two associated forms, are as follows:

Existing Regulation Section 1860.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed amendments expand the definition of "School District" by including community college districts that operate a preschool program on behalf of, or in lieu of, a school district or county office of education. This is in alignment with the statute. Two of the Program forms (SAB 70-01 and SAB 70-03) are being revised which changes the revision dates.

Existing Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. Specifically, participating school districts are required to complete and file with OPSC the Form SAB 70-01, *Application for Funding*, (which is incorporated by reference), and all required documents as identified in the Specific Instructions section of the Form SAB 70-01. The proposed amendments set forth the statute by which these amendments are being made and sets forth the General Fund appropriation for the expanded Program.

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all applicants that participate in the program. The proposed amendments specify where the funding is being made available [subsection (c) is for the 2022/23 Budget Act and subsection (d) is for the 2023/24 Budget Act] and sets forth the date by which the funding must be encumbered (June 30, 2025 and June 30, 2026, respectively). It is further clarified that any funds returned prior to this date will be returned to the program account, while funds returned after this date will be returned to the General Fund. The encumbered dates of June 30, 2025 and June 30, 2026 are subject to statute, specifically Government Code Sections 16304 and 16304.1.

Existing Regulation Section 1860.5 sets forth eligibility criteria that school districts must meet in order to apply for full-day kindergarten program funding. The proposed amendments set forth requirements that kindergarten classrooms must meet in order to ensure new construction and/or retrofit funding is used to construct classrooms that match Title 5 requirements. To ensure funding is provided for full-day kindergarten classrooms that can be repurposed if needed, the regulations require newly constructed and retrofit classrooms to be 1,350 square feet, unless an exemption is provided by CDE. In no case may a classroom be less than 1,250 square feet.

Existing Regulation Section 1860.5.1 sets forth eligibility criteria that school districts must meet in order to apply for transitional kindergarten program funding. The proposed amendments set forth requirements that kindergarten classrooms must meet in order to ensure new construction and/or retrofit funding is used to construct classrooms that match Title 5 requirements. To ensure funding is provided for transitional kindergarten classrooms that can be repurposed if needed, the regulations require newly constructed and retrofit classrooms to be 1,350 square feet, unless an exemption is provided by CDE. In no case may a classroom be less than 1,250 square feet.

Existing Regulation Section 1860.6 sets forth the application submittal process, which established two 30-calendar day funding rounds for school districts to request apportionments of available program funds.

The proposed amendments change the fourth funding round in subsection (d) from April 1, 2023 and on or before April 30, 2023 to February 1, 2023 and on or before March 2, 2023. This change allows for additional time to review the applications received because there is \$100 million in General Fund allocations from the 2022/23 Budget Act that will have been appropriated to projects in this filing round.

Existing Regulation Section 1860.14 sets forth criteria for school districts applying for financial hardship, as allowed in Education Code Section 17375(b)(2)(A). If a school district is unable to meet the financial requirements for either all or a portion to match their share of the project with the state and can prove a financial hardship, then they may qualify for hardship assistance pursuant to Education Code Section 17075.10. This Section is identical to the financial hardship provisions as defined in the SFP Regulations. OPSC will review financial records of the school district to determine if the school district qualifies for financial hardship. The analysis will include all capital facility accounts, including but not limited to developer fees, Certificates of Participation, federal grants, bond funds either encumbered, unencumbered or authorized but not sold, etc. Any funds that have not been encumbered, either through contracts or otherwise, will be considered available funds for the matching share. The proposed amendment deletes the language in subsection (a)(4) that allows school districts to request financial hardship using “other evidence” as approved by the SAB and adds County Superintendent of Schools to qualify automatically for financial hardship status. This is consistent with Education Code Section 17375(b)(2)(A).

Existing Regulation Section 1860.15 specifies that if the number of Approved Applications received exceeds the funding available for the funding round, then the funding priority will be based on a school district’s preference points. Education Code Section 17375(b)(2) states that priority for Program grants will be given to school districts that qualify for financial hardship and/or that have a high population of pupils who are eligible for Free and Reduced Price School Meals (FRPM). This Section creates a system of preference points in order to determine project funding order. A maximum of 80 preference points may be earned in each funding round for each school district. A school district’s preference points will be calculated into two categories. Based on a sliding scale currently used in the SFP for the Charter School Facilities Program, a sliding scale was created to determine the percentage of students a school district has eligible for FRPM. Points begin at four points for 60–65 percent of students eligible for FRMP, while 40 points will be earned if 100 percent of students within the school district qualify for FRPM. If a school district has been

qualified for financial hardship by OPSC and is unable to contribute a portion or all of its matching share, the school district earns 40 points. The proposed amendments in subsection (b)(1) adds community colleges as part of the funding criteria for the calculation of preference points. This is in alignment with the statute. The stand-alone sentence under subsection (b)(1) has been numbered as (2). This is considered a non-substantive change.

Existing Regulation Section 1860.19 specifies how remaining funding may be used after project completion. Project savings and unexpended funds are different types of remaining funds from Program projects. School districts that are not financial hardship are able to expend their project savings, including interest, that are not needed for the Program project on other high priority capital facility needs of the school district. Any savings not expended within one year of project completion must be returned to the State. School districts that are financial hardship that have any unexpended funds from the Program project, that were not spent on eligible expenditures, and the project was funded from the funding in Section 1860.3(a), must be returned to the State upon completion of the project. Any interest earned on State funds for financial hardship grant funding that is not expended on eligible project expenditures must also be returned to the State to help reduce the financial hardship contribution for that project. A school district is only required to return unexpended funds up to the amount of the financial hardship grant provided by the SAB. The proposed amendment provides that all projects receiving funding under Section 1860.3(b) and 1860.3(c) are not required to return savings, including interest earned on State funds, if expended or encumbered for professional development or instructional materials to build capacity for the implementation of a California State preschool program, transitional kindergarten program, a full-day kindergarten program, or high priority capital outlay purposes identified by the school district.

Existing Form SAB 70–01, *Application for Funding*, (which is incorporated by reference) is used by school districts to apply for program funding. The form also serves as a certification from the district regarding compliance with requirements of the law and Program Regulations. School districts must submit this form during the funding rounds described in Regulation Section 1860.6. OPSC will use this form in order to collect the information necessary to calculate the amount of grants applicable to the project and to determine project funding order. The proposed amendments: 1) page 1, under “Specific Instructions” #1.a. A New Construction Grant, fourth and fifth (new) bullets, as well as #1.c. A Retrofit Grant, fourth and fifth (new) bullets are being added as these are

documents the SAB requires in order to support the funding of projects and to efficiently administer the Program; and 2) page 2, #2. School Site Enrollment Data, 5<sup>th</sup> and 7<sup>th</sup> sentences: adding the “T” before K–12 and the “P” before K–12 refers to Transitional Kindergarten and PreK (preschool).

Existing Form SAB 70–03, *Expenditure Report*, (which is incorporated by reference) is used by school districts to report their project savings and unexpended funds. Expenditure reports must be submitted within one year of final fund release or at the completion of the Program project. A final savings report must be submitted within one year of the completion of the project. Financial hardship projects must submit their unexpended funds at the completion of their project. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for Program projects comply with statute and other applicable State requirements pertaining to construction. The proposed amendments: 1) page 1, 2<sup>nd</sup> column, last sentence “through OPSC Online or to” was added to inform applicants that document submittals could be submitted electronically through the OPSC Online system; and 2) page 2, #4. the fourth bullet was struck out and relocated as the last bullet.

After conducting a review, the SAB has concluded that these are the only regulations on this subject area (construction of and/or retrofit of existing school facilities for the sole purpose of providing preschool, transitional kindergarten and kindergarten classrooms), and therefore, the proposed regulations are neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulations are within the SAB’s authority to enact regulations for the Program under Education Code Section 17375(h) and Government Code Section 15503.

#### *Statutory Authority and Implementation*

Education Code Section 17375(h). The State Allocation Board may adopt regulations to implement this section. Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless

otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

#### *Determination of Inconsistency or Incompatibility with Existing State Regulations*

As mentioned on page 1, the Program was created through AB 1808, Chapter 32, Statutes of 2018, and included a one–time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full–day kindergarten classrooms. Since that time, however, several bills became law that appropriated, rescinded, and re–appropriated general fund dollars. The latest bill, AB 181, Chapter 52, Statutes of 2022, was signed by the Governor on June 30, 2022, and made \$100 million from the General Fund available to the SAB for apportioning one–time grants to school districts that lack the facilities to provide full–day California preschool, transitional kindergarten and kindergarten programs. In addition to the \$100 million, the Legislature has declared its intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year to the SAB for the same purposes. In addition to the new Program funding, there are clarifications to Program requirements for the inclusion of community colleges, as well as changes to the dates for the fourth filing round. Beginning February 1, 2023 through March 2, 2023 applicants will be able to submit applications for the Program. OPSC and the CDE will work collaboratively, on a project–by–project basis, to determine if an application should be limited to a retrofit project, or whether the applicant can choose between funding to retrofit existing facilities or to build new facilities. This will ensure a prudent use of general fund dollars, integrity of school projects, and prevents the funding from being expended to unnecessarily construct new classrooms.

OPSC performed a search on whether the proposed regulatory amendments are consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 181, Chapter 52, Statutes of 2022, [the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill], was created to expand, clarify, and make modifications to the existing Program. There are no other programs or regulations in existence that provide one–time grants to school districts, or include California community colleges, for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full–day California preschool, full–day transitional kindergarten and full–day kindergarten programs. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory



amendments and the two associated forms will enhance applicants' awareness when partnering with the State and will help to maintain Program integrity. This will also ensure program oversight and expenditure accountability.

*Forms Incorporated by Reference*

- Form SAB 70–01, *Application for Funding*, (Rev. 09/22), which is incorporated by reference and referenced in Regulation Section 1860.2
- Form SAB 70–03, *Expenditure Report*, (Rev. 09/22), which is incorporated by reference and referenced in Regulation Section 1860.2

IMPACT ON LOCAL AGENCIES  
OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations, along with two associated forms, do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

DISCLOSURES REGARDING THE  
PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non–discretionary costs or savings to local agencies.
- The proposed regulations create no costs to any local agency or school district requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC  
IMPACT ANALYSIS

*Impact to Businesses and Jobs in California*

The proposed regulations expand the Program to not only include California preschool and transitional kindergarten classrooms in addition to full–day kindergarten classrooms but allows California community colleges to apply for one–time grants for preschool classrooms provided they meet the eligibility criteria. School districts benefit in order to provide kindergarten classrooms if they lack the facilities and have the need to operate full–day transitional kindergarten and full–day kindergarten programs. School districts and county offices of education benefit in order to build new or expand existing classrooms to house full–day California state preschool programs. Additionally, the proposed regulations may generate the need for school construction–related industries to expand their businesses, or in some cases may create new businesses, based on the demand on these industries when general fund dollars are released to school districts and county offices of education to complete their projects.

The proposed regulations and the two associated forms will not have a negative impact to various business, manufacturing, and construction-related industries such as architecture, engineering, trades and municipalities. In addition, the proposed regulations will not negatively impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulations will result in the elimination of existing businesses or jobs within California.

*Benefits to Public Health and Welfare, Worker's Safety, and the State's Environment*

- The proposed regulations promote fairness and/or social equity by providing general fund dollars to those school districts, county offices of education and California community colleges that may be able to construct new facilities or retrofit existing facilities in an effort to provide preschool, transitional kindergarten and/or kindergarten programs.
- The State of California will benefit because its inventory of school facilities will increase due to the expansion of the Program to include California community colleges.
- There are benefits to health, safety, and welfare of California residents (school children and school faculty) because California preschool, transitional kindergarten and kindergarten facilities would be built stronger and safer. There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work

on school construction projects and although the proposed regulations would not directly impact worker's safety, existing law provides for the availability of a skilled labor force. Further, public health and safety would be enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code-compliant and safer for use by pupils, staff, and other occupants on the site.

- There is no impact to the State's environment from the proposed regulations.

The SAB finds the proposed regulations fully consistent with the stated purposes and benefits.

#### EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulations will not have a negative impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The proposed regulations expand the Program to include California community colleges for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full-day California preschool programs

#### SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, email or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, email or fax must be received at OPSC no later than May 1, 2023. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, email or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address:

Office of Public School Construction  
707 Third Street, 4<sup>th</sup> Floor  
West Sacramento, CA 95605

Email Address: [Lisa.Jones@dgs.ca.gov](mailto:Lisa.Jones@dgs.ca.gov)

#### AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to

Lisa Jones at (279) 946–8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946–8463.

#### ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

#### SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

#### RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/>

[Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations](#), scroll down to “California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program,” then “California Preschool, Transitional Kindergarten and FDK Pending Regulatory Changes” and click on one of the linked documents, such as the 45-day Public Notice, the Initial Statement of Reasons, the proposed regulatory text and the two associated forms.

### ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. No alternatives were considered. Statute requires the implementation of this Program through regulations. If no regulations, the SAB would be in violation of the statute.

### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be made available and copies may be requested from the agency’s regulation coordinator named in this notice or may be accessed on the website listed above.

## TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

### PESTICIDE DECONTAMINATION SITES DPR REGULATION NO. 23-001

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6720, 6732, 6734, 6738.4, 6771, and 6793. This proposal will affect pesticide regulatory program activities pertaining to pesticide worker safety. In summary, the proposed action will amend decontamination requirements for employees handling pesticides, improve eyewash regulation compliance, and clarify language between sections that mention eyewash equipment or decontamination supplies. This proposed action will require that employees, who handle pesticides having a high potential for eye injury,

have access to an eyewash station that meets the requirements found in the American National Standards Institute (ANSI) Z358.1-2014 standard. Additionally, it will require employers of employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity to provide a decontamination site at the mixing/loading site or fumigation site for employees, regardless of the pesticide signal word. The proposed action will also clarify language pertaining to decontamination equipment, remove duplicative requirements, and ensure standardization. Lastly, the proposed action will clarify a personal protective equipment (PPE) exemption that applies when handling liquid fumigants.

### SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on May 2, 2023. Comments regarding this proposed action may also be transmitted via email to <[dpr23001@cdpr.ca.gov](mailto:dpr23001@cdpr.ca.gov)> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

### EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR’s mission is to protect public health and the environment from adverse effects of pesticide use. DPR regulates pesticide product evaluation and registration, statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers, conducts environmental monitoring, and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

FAC sections 12980 and 12981 specifically require that DPR adopt regulations to ensure safe working conditions for persons handling pesticides and working in and about pesticide-treated areas. DPR’s current regulatory requirements for decontamination are designed to reduce the risk of pesticide exposure and

<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

injuries among employees who handle pesticides and other workers who may be exposed to pesticides in treated areas.

The U.S. Environmental Protection Agency (U.S. EPA) acts under the authority and mandate of the Federal Insecticide, Fungicide, and Rodenticide Act. U.S. EPA protects agricultural workers and agricultural pesticide handlers from exposure to pesticides through the Worker Protection Standard (WPS), which is in Title 40 of the Code of Federal Regulations (40 CFR), part 170, Agricultural WPS. In 2017, U.S. EPA updated the WPS to further reduce agricultural worker and agricultural pesticide handler exposure to pesticides. To ensure DPR's existing worker safety regulations remained consistent with the revised federal WPS, DPR adopted and amended certain regulations in 3 CCR. These regulations became effective on January 2, 2017, and included modifications to decontamination requirements for pesticide handlers and added prescriptive requirements for eyewash facilities (3 CCR section 6734).

Under existing law, DPR has established requirements to ensure and protect the safety of workers who handle, store, or transport pesticides, or may be exposed by working in areas treated with pesticides (3 CCR section 6700 et seq.). Existing regulations recognize compliance with applicable 8 CCR regulations (3 CCR section 6720), require employers to provide change areas (3 CCR section 6732) and decontamination facilities to these workers (3 CCR section 6734), establish PPE exemptions (3 CCR section 6738.4) and requirements for early entry of a treated field (3 CCR section 6771), and provide safety use requirements for handlers working with minimal exposure pesticides (3 CCR section 6793). Section 6734(b)(6) requires employers of employees handling pesticides for production agriculture uses to provide an eyewash station that meets prescriptive requirements if the product labeling requires protective eyewear or if a closed mixing system is used. In section 6734(c), employers are required to provide a decontamination site within 100 feet of the mixing/loading site if the pesticide label bears a signal word (indicating the level of toxicity) of "DANGER" and "WARNING" for employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity.

The proposed regulations modify current requirements in ways that will improve worker protections. Specifically, the proposed regulations will require eyewash stations that meet the ANSI Z358.1-2014 standard if the pesticide product labeling requires employees who are mixing or loading pesticides or handling a liquid fumigant to wear protective eyewear, or if employees are using a closed system. In addition, eyewash station requirements will be relocated from subsection 6734(b) to subsection 6734(a) so that they

will apply to all employees handling pesticides and not just employees handling pesticides for production agriculture uses, and so decontamination site requirements will be expanded to apply to pesticide uses other than those for the commercial or research production of an agricultural commodity, including, but not limited to, structural pest control, landscape maintenance, applications to rights-of-way, vertebrate pest control, and fumigation of food and non-food commodities, regardless of signal word. The proposed regulations also make a number of editorial changes intended to clarify the meaning of the regulatory text, remove redundancies, add consistency, and improve enforceability. Additionally, the proposed action incorporates some terms and standards from the ANSI standard into the proposed regulations, including what qualifies as eyewash fluid and a technical clarification of a temperature range for eyewash fluid that will not cause injury or illness to the user. As a result of the proposed amendments to section 6734, section 6720(c), which recognizes compliance with applicable sections in 8 CCR, under the authority of the California Department of Industrial Relations (DIR), as compliant with 3 CCR pesticide worker safety requirements, will be modified to add the equivalent 8 CCR regulation for emergency eyewash requirements (8 CCR section 5162). Additionally, as a result of proposed amendments to section 6734, cross-references in section 6732 will be updated accordingly, section 6771 will be reworded to align with proposed changes to section 6734 and the ANSI standard, and a duplicative requirement concerning washing facilities will be removed from section 6793(b). Lastly, the proposed action will clarify that the PPE exemption in section 6738.4 applies when handling liquid fumigants.

The proposed regulations will benefit employees who handle pesticides. This proposal is likely to result in more worker protection from potential exposure to pesticides, including pesticides that could cause eye injury. The federal WPS requirements for eye decontamination that were incorporated into 3 CCR in 2017 will be enhanced by requiring equipment that meets the ANSI Z358.1 standard. Eyewash equipment required by the current regulation omits an essential safety feature of an ANSI Z358.1-2014-compliant eyewash station: once activated, the eyewash station must be able to perform without the use of the operator's hands. This function is necessary so that the operator can use their hands to hold their eyes open while flushing. The equipment required by the proposed regulation provides additional worker protection measures including hands-free operation. Additionally, requiring an ANSI Z358.1-2014-compliant eyewash station will help enforce the safety and welfare of pesticide workers by way of standardization. Employees who mix and load pesticides for uses other than the

commercial or research production of an agricultural plant commodity will benefit from these regulations by having access to a decontamination site, regardless of the signal word of the pesticide in use. The ability to properly decontaminate and change clothes in the event of an accidental exposure should decrease the severity of injuries and illnesses for these workers.

During the development of the proposed regulations, DPR conducted a search for similar regulations on this topic and concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and DIR's Division of Occupational Safety and Health both have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq.

#### OTHER NONDISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

DPR has determined that some nondiscretionary costs or savings imposed upon local agencies or school districts may result from the proposed regulatory action. Based on school site pesticide use data, some school districts and local agencies currently apply pesticide products that would necessitate the availability of an eyewash station and/or the availability of a decontamination site under the proposed regulations. If these school districts and local agencies continue to use these pesticide products, there may be costs related to the purchase of an ANSI Z358.1-compliant eyewash station, including eyewash fluid, or decontamination site supplies. In some cases, alternative pesticide products and/or revised pest management practices may negate the need for the procurement of an eyewash station or decontamination supplies.

On average, the cost of an ANSI Z358.1-compliant eyewash station is \$250. Regarding eyewash fluid, costs may be negligible if using potable water or may be an average of \$50 annually if using buffered saline solution. Based on school site pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed regulations will initially be \$181,000 for all school sites if they choose to use potable water and up to \$217,200 for all school sites if they choose to

use buffered saline solution. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$181,000 for all school sites if they choose to use potable water and up to \$362,000 if they choose to use preserved buffered saline solution. Based on local agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed regulations that necessitate the procurement of an eyewash station will initially be \$581,250 for local agencies if they choose to use potable water and up to \$697,500 if they choose to use preserved buffered saline solution. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$581,250 for all local agencies if they choose to use potable water and up to \$1,162,500 if they choose to use preserved buffered saline solution.

The average cost of decontamination supplies is \$55. Additionally, if all decontamination supplies are replaced annually, with the exception of water containers, DPR estimates an equal cost of \$35 per decontamination site per year. Based on school site pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed decontamination site regulations will initially be \$193,105 for all school sites. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$684,645 for all school sites. Based on local agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed decontamination site regulations will initially be \$108,625 for all local agencies. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$385,125 for all local agencies.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR anticipates some increased costs to state agencies will result from the proposed regulatory action. A total of 12 state agencies are estimated to currently use pesticide products that would necessitate the availability of an ANSI Z358.1-compliant eyewash station or decontamination site supplies under the proposed regulations. On average, the cost of an ANSI Z358.1-compliant eyewash station is \$250. Regarding eyewash fluid, costs may be negligible if using potable water or may be an average of \$50 per year if using a costlier option like buffered saline solution. Based on state agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed eyewash station regulations will initially be \$310,000 for all state agencies if they choose to use potable water and up to \$372,000 for all state agencies if they choose to use buffered saline solution. Over the lifetime of these regulations, mitigation and other regulatory costs associated with the eyewash station regulations are anticipated to be \$310,000 for all state

agencies if they choose to use potable water and up to \$620,000 if they choose to use preserved buffer saline solution.

Regarding the decontamination site requirements, an equal cost of \$55 for decontamination supplies is estimated for a decontamination site. Additionally, assuming all decontamination supplies will be replaced annually, with the exception of water containers, an equal cost of \$35 per decontamination site per year is anticipated. Based on state agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed decontamination site regulations will initially be \$104,500 for all state agencies. Over the lifetime of these regulations, mitigation and other regulatory costs associated with the decontamination site regulations are anticipated to be \$370,500.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

#### EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of these 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.

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

In reasonable compliance with the proposed regulations, farmers and pest control businesses may be affected by the proposed amendments to the eyewash station requirement. Some businesses affected by this requirement may already have ANSI-compliant eyewash stations. However, those that do not already have these stations will have to purchase them and may incur initial costs of approximately \$250 per eyewash station. The recurring costs of upkeep may be negligible if using potable water, or may be minor (approximately \$50 per year) if using supplemental additives to sterilize the eyewash fluid.

Pest control businesses, who handle pesticides for purposes other than the commercial or research pro-

duction of an agricultural plant commodity, and that do not currently use pesticides with the signal word “DANGER” or “WARNING,” may be affected by the proposed requirements that update decontamination site supply and location requirements. The proposed action will require decontamination sites to be available for employees using any pesticide, regardless of signal word. Many businesses affected by this requirement already have decontamination sites. For those who do not have decontamination sites, the cost of decontamination supplies (excluding eyewash fluids) is estimated to be \$55 for pest control businesses, and would only need to be replenished if used. The recurring costs of replenishing the decontamination supplies is estimated to be \$35 annually.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

**Impact on the Creation, Elimination, or Expansion of Jobs/Businesses:** DPR determined that it is not likely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California. This action clarifies the existing eyewash equipment requirement and aligns it with other standards and regulations that are currently in place for other similar industries. The decontamination facility expansion is expected to cost \$100 or less for most businesses that use pesticides for purposes other than the commercial or research production of an agricultural plant commodity and is therefore not expected to affect creation, elimination, or expansion of jobs/businesses.

**The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** The proposed regulations will benefit employees who handle pesticides. This proposal is likely to result in more worker protection from potential exposure to pesticides, including pesticides that could cause eye injury. The federal WPS requirements for eye decontamination that were incorporated into 3 CCR in 2017 will be enhanced by requiring equipment that meets the ANSI Z358.1 standard. This equipment provides additional worker protection measures including hands-free operation. Additionally, requiring equipment that meets the ANSI standard will help reinforce the safety and welfare of pesticide workers. Employees who mix and load pesticides for uses other than the commercial or research production of an agricultural plant commodity will benefit from these regulations by having access to a decontamination site, regardless of the signal word of the pesticide in use. The ability to properly decontaminate and change clothes after an accidental exposure

should decrease the severity of injuries and illnesses for these workers. The proposed regulations will not affect the health and welfare of California residents or the state's environment.

#### CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. The proposed amendments will bring DPR's worker safety regulations into alignment with DIR's eyewash regulations in 8 CCR section 5162, which requires an ANSI eyewash station, while maintaining equivalency with U.S. EPA's WPS, 40 CFR, part 170. Additionally, the proposed changes to decontamination facility requirements for uses other than the commercial or research production of an agricultural plant commodity will provide increased worker protection that is not found in other laws or regulations.

#### AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 12981.

#### REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12973, 12980, and 12981.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulations may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulations permanent if they remain substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

#### AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulations; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist  
(Specialist)  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
(916) 445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Emily Bryson, MPH, Senior Environmental  
Scientist (Supervisory)  
Worker Health and Safety Branch  
(916) 324-6344

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

**TITLE 10. DEPARTMENT OF  
FINANCIAL PROTECTION  
AND INNOVATION**

PUBLIC HEARING

UNDER THE CALIFORNIA CONSUMER  
FINANCIAL PROTECTION LAW AND THE  
CALIFORNIA FINANCING LAW, CALIFOR-  
NIA DEFERRED DEPOSIT TRANSACTION  
LAW, AND CALIFORNIA STUDENT LOAN  
SERVICING ACT PRO 01–21

The Department has not scheduled a public hearing on this proposed action but will hold one if any interested person or authorized representative makes a written request for a hearing to the Department’s designated contact person below, no later than 15 days prior to the close of the written comment period.

The Department of Financial Protection and Innovation (“Department”) proposes to adopt the following sections to Title 10, Chapter 3, of the California Code of Regulations:

WRITTEN COMMENT PERIOD

Any interested person or authorized representative may submit written comments regarding this proposed regulatory action to the Department, addressed as follows, by postal or electronic mail:

- Sections 1000, 1001, 1002, 1003, 1004, 1010, 1011, 1012, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1030, 1031, 1032, 1033, and 1034 to Article 1, Sections 1040, 1041, 1042, 1043, 1044, and 1045 to Article 2, and Sections 1048, 1050, 1051, and 1052 to Article 3 of Subchapter 4;
- Section 1430.1 to Article 3, and Sections 1461, 1462, 1462.5, 1463, 1464, 1465, and 1466 to Article 4 of Subchapter 6;
- Section 2030.5 to Article 3 of Subchapter 13; and
- Section 2044.1 to Article 6 of Subchapter 15.

*By Postal Mail*

Department of Financial Protection and  
Innovation  
Attention: Araceli Dyson  
2101 Arena Boulevard  
Sacramento, California 95834

*By Electronic Mail*

Comments may be submitted electronically to [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov) with a copy to [Peggy.Fairman@dpfi.ca.gov](mailto:Peggy.Fairman@dpfi.ca.gov). Please identify the comments as PRO 01–21 in the subject line.

Written comments must be submitted by **May 2, 2023**.

The proposed regulations implement, interpret, and make specific the registration requirements for covered persons under Financial Code section 90009 of the California Consumer Financial Protection Law (CCFPL)<sup>1</sup> and the requirements for exemption from registration under the CCFPL for licensees under the California Financing Law (CFL), California Deferred Deposit Transaction Law (CDDTL), and Student Loan Servicing Act (SLSA), and clarify the regulation of advances pursuant to Financial Code section 22150 of the CFL<sup>2</sup> administered by the Department.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

On September 25, 2020, Governor Newsom signed Assembly 1864<sup>3</sup> establishing the CCFPL,<sup>4</sup> which enhanced the Department’s oversight authority to cover business activity that was previously unregulated,<sup>5</sup> including, but not limited to, debt collection, debt settlement, credit repair, check cashing, rent-to-own contracts, retail sales financing, consumer credit reporting, and lead generation.<sup>6</sup> Among other things, the Legislature intended for the CCFPL to protect consumers from discrimination and unfair, unlawful, deceptive, and abusive acts and practices by covered persons in connection with financial products and services.<sup>7</sup>

AUTHORITY

Financial Code sections 22150, 22154, 22159, 23015, 23026, 28106, 28146, 90007, 90009, and 90010; and Government Code section 7929.000.

REFERENCE

Financial Code sections 22100, 22154, 22159, 22200, 22203, 22307, 22335, 23026, 28146, 90003, 90005, 90006, 90007, 90009, 90009.5, 90010, 90015, 90018; and Government Code section 7929.000.

<sup>3</sup> Stats. 2020, ch. 157 (Assem. Bill No. 1864), § 7, eff. Jan. 1, 2021.

<sup>4</sup> Financial Code, § 90000 et seq.

<sup>5</sup> This is a summary of the state-of-affairs before the CCFPL’s enactment. It is not intended to represent a determination of law that the listed activities, or others covered by the CCFPL, are not subject to other laws under the Department’s jurisdiction.

<sup>6</sup> Sen. Banking and Financial Institutions Com., Rep. on Assem. Bill No. 1864 (2019–2020 Reg. Sess.) as amended Aug. 25, 2020, p. 4.

<sup>7</sup> Financial Code, § 90000, subdivision (b)(3).

<sup>1</sup> Financial Code, § 90000 et seq.

<sup>2</sup> Financial Code, § 22000 et seq.



The CCFPL empowers the Department to require registration of covered persons engaged in the business of offering and providing a consumer financial product or service, but it does not specify requirements for registration. Financial Code section 90009 of the CCFPL leaves it to the Department to prescribe rules regarding these requirements. The proposed regulations would clarify and make specific the registration of covered persons, including specifying the persons who are subject to regulation under the CCFPL, establishing the registration application and application process, and specifying the application fee and annual renewal fee.

Financial Code section 90009, subdivision (a)(2)(A), of the CCFPL exempts from registration certain covered persons who provide consumer financial products or services within the scope of their licenses issued under other Department laws. The code section, however, does not specify who is exempt from registration. The proposed regulations would specify the persons who are exempt and the conditions for exemption.

Financial Code section 90009, subdivision (f)(2), of the CCFPL provides that the Department may require registrants to file annual reports to enable the Department to fulfill its responsibilities to monitor, assess, and report on the activities of registrants. The code section does not specify the requirements and leaves it to the Department’s discretion to prescribe the form of the report and other reporting requirements. The proposed regulations would establish annual reporting requirements and the process for filing annual reports with the Department, including the reporting period, and specify the information that registrants must provide in the reports.

Financial Code section 90007, subdivision (b), of the CCFPL provides that the Department may charge registrants an annual registration fee for the reasonable costs of the registration program, which may be based on the size or market participation of the registrant. The code section, however, does not specify the amount of the fee, the process for paying the fee, or other requirements. The proposed regulations would establish the annual assessment fee and specify the requirements for paying the assessment to the Department.

Financial Code section 22150 authorizes the Commissioner to make rules and regulations to enforce the CFL. The proposed regulations would clarify certain provisions of the CFL relating to advances to be repaid from a consumer’s future earned or unearned pay.

*Anticipated Benefits of the Proposed Regulations*

This regulatory action implements the Legislature’s broad intent in enacting the CCFPL: to strengthen consumer protections by expanding the ability of the Department to improve accountability and transparency of financial products and services and protect con-

sumers from unfair, unlawful, deceptive, or abusive financial practices, while prioritizing the prevention of unethical businesses from harming the most vulnerable populations.<sup>8</sup> The specific benefits anticipated from the proposed regulations are increased protection of consumers, particularly vulnerable consumers, from unfair or illegal business practices by requiring persons who provide debt settlement, student debt relief, education financing, and income-based advances products and services to register and report on their business practices, the products and services they are providing to consumers, where they are operating, and how they are providing the products and services to consumers, and by limiting higher costs to consumers who take out income-based advances.

*Summary of Existing Laws and Regulations, and Effect of Proposed Action*

Existing law authorizes the Department to prescribe the registration requirements for covered persons engaged in the business of offering or providing a consumer financial product or service.<sup>9</sup> This proposed regulatory action implements the statutory requirements by:

- Defining the terms used in the proposed rules;
- Identifying the persons who must register under the proposed rules as persons who provide the following products and services: debt settlement, student debt relief, education financing, and income-based advances;
- Requiring separate registration for each subject product offered or provided by an applicant;
- Clarifying the prohibitions against making false or misleading statements in an application or annual report and making any representation that a registrant’s practices or business has been approved by the Department;
- Establishing the process for registering with the Department, including the application form and the information that must be submitted as part of the application, requiring the application to be submitted to the Department through the Nationwide Multistate Licensing System and Registry (“NMLS”), and requiring registrants to pay an application fee of \$350;
- Establishing the processes, including time frames, for approving registrations and the abandonment of registrations;
- Establishing the process for registrants to report changes to the application information to the Department and the time frames for reporting the information;

<sup>8</sup> Financial Code, § 90000, subdivision (a)(4).

<sup>9</sup> Financial Code, § 90009, subdivision (a)(1).

- Requiring registrants to establish a designated email address to enable the Department to send notices and other communications to registrants;
- Providing that the applications and annual reports are not subject to public disclosure; and
- Establishing the requirements for revoking and surrendering registrations.

Existing law exempts from CCFPL registration certain licensees who provide consumer financial products or services “within the scope of” their licenses issued under other Department laws.<sup>10</sup> This proposed regulatory action clarifies the meaning of “within the scope of” and specifies that licensees under the CFL and the CDDTL are exempt from registering under the CCFPL and requires exempt licensees who provide products or services that would otherwise be subject to registration under the CCFPL to submit supplemental information on these activities in their annual reports required under their license.

Although an SLSA license does not confer upon a licensee the authority to originate financing within the scope of their license, the regulations exempt SLSA licensees from registration requirements for education financing when they meet specified requirements.

Existing law authorizes the Department to require reports from registrants to obtain information about their activities and to detect and assess risks to consumers and markets.<sup>11</sup> This proposed regulatory action requires each registrant to submit annual reports to the Department by March 15 of each year, beginning March 15, 2025, and specifies the information that must be included in the annual report, provides that the Department may summarily revoke a registration for failing to file an annual report, and permits a registrant whose registration is revoked to reinstate their registration by submitting a written request and paying an administrative fine, and establishes the time frames for submitting written requests and the amount of the administrative fines.

Existing law authorizes the Department to set and collect an annual registration fee from each registrant.<sup>12</sup> This proposed regulatory action establishes the amount of the annual assessment and sets forth the process and time frames for paying the assessment to the Department with the first assessment payment due by December 31, 2024, provides that the Department may by order summarily revoke a registration for failure to payment the annual assessment, and permits a registrant whose registration is revoked to reinstate their registration by submitting a written request and paying an administrative fine, and establishes the time

frames for submitting written requests and the amount of the administrative fines.

Existing Law authorizes the Department to promulgate rules under the CFL.<sup>13</sup> This proposed regulatory action clarifies the applicability of the CFL to certain activities by:

- Clarifying that an advance of funds to be repaid from a consumer’s future earned or unearned pay is a loan subject to the CFL;
- Exempting from licensure under the CFL providers of income-based advances and education financing who are registered under the CCFPL and whose charges do not exceed the charges permitted under the CFL;
- Clarifying that the prohibition on collecting loan payments within 15 days of the date of originating the loan does not apply to loans that are collected in a single payment;
- Clarifying that monthly subscription fees are not charges under the CFL if the fees meet certain consumer protection requirements;
- Clarifying that tips or other voluntary payments are charges under the CFL; and
- Clarifying that a loan contract complies with the CFL’s requirement of equal periodic payments if the contract provides the borrower with the option of making payments based on a fixed percentage of the borrower’s income or making equal periodic payments; and
- Clarifying that a contract complies with the CFL’s requirement that the first loan payment be within one month and 15 days from the date the loan is made if the loan contract does not accrue charges during the period of forbearance.

*Existing Federal Regulation or Statute*

There are no comparable federal registration or annual information reporting requirements. The proposed regulatory action is not inconsistent with existing federal statutes and regulations.

*Determination Concerning Inconsistency/Incompatibility with Existing State Regulations*

The Department evaluated the proposed regulations for consistency and compatibility with existing state regulations and has concluded that these are the only regulations pertaining to registration and regulation of covered persons under the CCFPL or the regulation of advances to be repaid from a consumer’s earned or unearned pay under the CFL. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

<sup>10</sup> Financial Code, § 90009, subdivision (a)(2)(A).

<sup>11</sup> Financial Code, § 90009, subdivision (f)(2).

<sup>12</sup> Financial Code, § 90007, subdivision (b).

<sup>13</sup> Financial Code, § 22150.

*Forms Incorporated by Reference*

This proposed regulatory action incorporates the following forms by reference: NMLS Company Form, Version 11.0, dated 09/12/15; and NMLS Individual Form, Version 9, dated 9/12/2016.

The Department has determined that it would be cumbersome, burdensome, and impractical to publish the NMLS forms in the California Code of Regulations because the forms are lengthy with specific formatting requirements. The forms are uniform for every Department law that requires the use of NMLS and therefore it would be impractical and unduly expensive to include the same uniform forms within each law's regulations. The application forms are the basis for an interactive electronic filing of the information contained in the forms and publishing the forms in the California Code of Regulations may confuse an applicant or registrant and result in the applicant or registrant attempting to file the form rather than submitting the information electronically. Further, NMLS provides extensive information to applicants and registrants on how to navigate the NMLS system and file or upload the requested information and publishing the forms may confuse an applicant or registrant seeking information on how to submit the information. The forms are readily available to the public through the NMLS website. Live links to the forms are provided on the Department's website and both the Department and NMLS maintain call centers to assist applicants and registrants in accessing the uniform forms. Applicants who operate financial services businesses in other states are likely already familiar with the NMLS forms because many states require registration or licensure of financial services providers through NMLS.

DISCLOSURES REGARDING  
THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

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

Cost or savings to any state agency: Costs to implement the proposed regulations are absorbable within existing resources. Ongoing costs are estimated to be \$9,032,644 and are recoverable via registration and annual assessment fees.

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

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

Effect on housing costs: No significant effect.

ADVERSE ECONOMIC IMPACT  
ON BUSINESS

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

EFFECT ON SMALL BUSINESS

This regulatory action may impact small business.

COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSON OR BUSINESS

Applicants will likely incur initial costs estimated at \$5,790 to register with the Department. The initial costs include a \$350 Department application fee and estimated costs of \$1,680 to prepare the application and \$3,760 to develop an annual reporting system. The costs to complete and file an application are anticipated to be reasonable for applicants because the Department is not requiring applicants to provide fingerprints of their key personnel, submit to criminal background investigations, or register their branch offices. Costs may be less for those applicants who are registered or licensed with other states through NMLS because they are already familiar with the NMLS application and filing protocols.

Registrants will likely incur annual estimated costs of approximately \$12,944 to comply with the requirements to maintain a registration. Annual costs include a \$100 annual fee to renew the registration through NMLS and estimated costs of \$544 to prepare and file the annual report with the Department and to report changes to the information in the registrant's application to the Department, if any, and the annual assessment, which is set at a minimum amount of \$500 each year. The Department estimates that the amount of the annual assessment is \$12,300, based on 385 registrants and assuming the same gross income for all registrants. The actual amount of the annual assessment for each registrant, however, will depend on the number of registrants, the Department's costs of administering the registration program for the year, and the registrant's gross income for the year. There is no fee for filing an annual report or reporting changes to the application information.

RESULTS OF THE ECONOMIC  
IMPACT ANALYSIS

The Department has determined:

- The proposed action is unlikely to create or eliminate jobs within California;

- The proposed action is unlikely to create new businesses or eliminate existing businesses within California;
- The proposed action is unlikely to affect the expansion of businesses currently doing business within California;
- The proposed action may benefit the health and welfare of California residents by improving accountability and transparency of financial products and services and protecting consumers from abusive business practices and high cost products; and
- No benefits or adverse impacts to worker safety or to the state’s environment are anticipated from this regulatory action.

#### BUSINESS REPORTING REQUIREMENT

The Department has determined it is necessary for the health, safety, or welfare of the people of this state that the reports required in this regulatory action apply to businesses.

#### CONSIDERATION OF ALTERNATIVES

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

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

The Department will make the entire rulemaking file, including this notice, the initial statement of reasons, and the proposed text of the regulations, available for inspection and copying throughout the rulemaking process at the address provided, and from the persons identified, in the “Contact Persons” section of this notice.

#### AVAILABILITY OF THE DOCUMENTS ON THE INTERNET

The notice, initial statement of reasons, and proposed text are also available on the Department’s website at [www.dfpi.ca.gov](http://www.dfpi.ca.gov). To access the documents from the Department’s website, click on “Laws and Regulations” under the “Licensees” tab at the top of

the home page, then on the “Regulations/Rulemaking” link, and then on the “California Consumer Financial Protection Law” link.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if scheduled, and considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications 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 prior to adopting the revised regulations. Requests for a copy of any modified regulation(s) must be addressed to the contact persons named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be available when completed. Copies may be requested from the contact person named in this notice or accessed on the website listed above.

#### CONTACT PERSONS

Please direct all inquiries concerning the proposed rulemaking action (including requests for copies of the proposed text of the regulations, the initial statement of reasons, or the modified text of the regulation, and questions regarding the timelines or rulemaking status) to:

Araceli Dyson  
Department of Financial Protection and  
Innovation  
2101 Arena Boulevard  
Sacramento, California 95834  
Telephone: (916) 576–8620  
email: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

The backup contact person for these inquiries is:

Peggy Fairman  
Department of Financial Protection and  
Innovation  
2101 Arena Boulevard  
Sacramento, California 95834  
Telephone: (916) 576–4959  
email: [Peggy.Fairman@dfpi.ca.gov](mailto:Peggy.Fairman@dfpi.ca.gov)

Dated: March 7, 2023 Sacramento, California

**TITLE 11. DEPARTMENT OF JUSTICE**

**DIVISION 1. ATTORNEY GENERAL  
CHAPTER 10. BUREAU FOR PRIVATE  
AND POSTSECONDARY EDUCATION  
EXEMPTION VERIFICATION**

The Department of Justice (Department) proposes to adopt section 940 of title 11, division 1, chapter 10 of the California Code of Regulations concerning the Attorney General’s verification of an institution of higher education’s nonprofit status.

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on May 2, 2023, at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice  
Office of the Attorney General  
Charitable Trusts Section  
Attention: Scott Chan, Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102–7004  
(415) 510–3430  
[Scott.Chan@doj.ca.gov](mailto:Scott.Chan@doj.ca.gov)

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

**AUTHORITY AND REFERENCE**

Authority: Section 94874.1, Education Code.  
Reference: Sections 94874.1 and 94874.9, Education Code.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

**Summary of Existing Laws and Regulations:**

In 2009, the Legislature passed the Private Postsecondary Education Act (the “Act”) creating a new

oversight board within the Department of Consumer Affairs, the Bureau for Private Postsecondary Education (the “Bureau”). (See <https://www.bppe.ca.gov>.) The Bureau is generally responsible for protecting consumers and students against fraud, misrepresentation, and other business practices that may lead to loss of students’ tuition and related educational funds; and for imposing minimum standards for ethical business practices, fiscal integrity, and instructional quality of private postsecondary education institutions. (Education Code, § 94800 et seq.)<sup>1</sup>

The Bureau oversees in–state institutions, as well as certain out–of–state institutions offering online instruction to California residents. The Act exempts certain types of institutions from the Bureau’s regulatory oversight if specific criteria are met. (§ 94874.) Institutions meeting the Act’s definition of “nonprofit corporation” or “public institution of higher education” are exempt from certain requirements imposed on out–of–state institutions. (§ 94801.5.)

Effective January 1, 2022, the Bureau is prohibited from verifying the exemption of, or contracting to handle complaints for, a nonprofit institution if it operated as a for–profit institution during any period on or after January 1, 2010, unless the Attorney General verifies specified information about the conversion. (§ 94874.1, subdivision (a).) The Attorney General must provide written notification of its verification to the institution and to the Bureau within 90 days of receipt of all information the Attorney General determines is necessary for the verification. (*Id.*, subdivision (d).) The Attorney General’s verification notice may be appealed to the superior court. (*Id.*, subdivision (b).)

**Effect of the Proposed Rulemaking:**

The proposed regulation creates a procedure for the Attorney General to verify the nonprofit status of an institution of higher education. The “Application for Verification,” Form CT–SCHOOL–1, has been created for this purpose.

**Anticipated Benefits of the Proposed Regulations:**

Financial restrictions at nonprofit and public colleges make it difficult for school leaders to profit from bad behavior. Being a nonprofit has traditionally required an institution to devote all of its revenues to its educational purpose, and prohibit any form of profit–taking, so that those in control are not tempted to take advantage of students or the public. These restrictions have been so effective in protecting students that state and federal laws frequently provide funding only to nonprofit and public institutions, or apply stricter guidelines if for–profit colleges seek access to taxpayer funds.

<sup>1</sup> All references are to the Education Code unless otherwise indicated.

The Legislature amended the Act in 2020 because some for-profit colleges deceptively converted and claimed nonprofit or public status to lure new students and escape regulatory oversight. These colleges used complicated financial schemes and shell corporations to wrongfully claim nonprofit status without adopting the restrictions that actually protect students. By creating a procedure for the Attorney General to verify the nonprofit status of a higher education institution that once operated as a for-profit entity, the proposed regulation protects students and ensures that appropriate oversight remains.

**Comparable Federal Regulations:**

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

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

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the Attorney General’s verification of an institution of higher education’s nonprofit status.

**Forms Incorporated by Reference:**

None.

**Other Statutory Requirements:**

None.

DISCLOSURES REGARDING  
THE PROPOSED ACTION

**The Department’s Initial Determinations:**

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

*Cost or savings to any state agency:* The regulations are expected to have an ongoing fiscal impact on the Department of \$41,250 per year.

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

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

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

*Cost impacts on representative person or business:* The Department has determined that any cost impact to businesses from the proposed regulations would be minimal. The Department estimates that it will take no more than an hour to complete and submit the required form or any additional information requested by the Attorney General.

*Significant effect on housing costs:* None.

*Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:* The Department has made an initial determina-

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

**Results of the Economic Impact Assessment (EIA):**

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

The Department also concludes that:

- (1) The proposal would benefit the health and welfare of California residents by verifying the nonprofit status of institutions of higher learning and ensuring that students and taxpayers are not misled by untruthful claims.
- (2) The proposal would not benefit worker safety because it does not regulate worker safety standards.
- (3) The proposal would not benefit the state’s environment because it does not change any applicable environmental standards.

*Business report requirement:*

Section 94874.1, subdivision (a), requires the Attorney General to verify specified information before the Bureau verifies the nonprofit institution is exempt from the Act. The “Application for Verification,” Form CT-SCHOOL-1, has been created for this purpose.

The Department finds it is necessary for the health, safety or welfare of the people of this state that proposed section 940, which requires a report, applies to businesses.

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

CONSIDERATION OF ALTERNATIVES

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

The Department has determined that the proposed regulations are the most effective way to verify an in-

stitution of higher education's nonprofit status. A simple form was created for the institution to provide the necessary information to the Department. The applicant has to answer only four "yes" or "no" questions on the form and provide a narrative description of the transaction. A narrative description of the transaction should already be readily available to the applicant because the salient details of the transaction should be memorialized in transaction documents or the minutes of board of director meetings. The proposed procedures and form are the least burdensome way to ensure that the institution provides all required information to the Department.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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

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

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

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the "express terms" of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any informa-

tion upon which the proposed rulemaking is based are available on the Department's website at <https://oag.ca.gov/charities/laws>. Please refer to the contact information listed above to obtain copies of these documents.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

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

### TITLE 13. NEW MOTOR VEHICLE BOARD

**NOTICE IS HEREBY GIVEN** that the California New Motor Vehicle Board ("Board"), pursuant to the authority vested in the Board by subdivision (a) of Vehicle Code section 3050 proposes to adopt the proposed regulation as described below, after considering all comments, objections, and recommendations regarding the proposed regulatory action.

**PROPOSED REGULATORY ACTION**

The Board proposes to add section 551.26 of Title 13 of the California Code of Regulations pertaining to representation in protests and petitions.

**PUBLIC DISCUSSIONS PRIOR TO NOTICE**

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed General Meeting held on November 7, 2022. Fourteen (14) days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the November 7, 2022, General Meeting in relation to the regulation in this notice, and no further public discussion was held prior to publication of the notice.

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

Any person interested, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Board by e-mail at [danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov) or [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). The written comment period closes at midnight on May 2, 2023. The Board will only consider comments received at the Board's offices by that time. Submit comments to:

Danielle R. Phomsopha, Senior Staff Counsel  
New Motor Vehicle Board  
2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, CA 95818  
(916) 244-6777 Teams/direct line  
(916) 445-1888 main line  
[danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov)

**AUTHORITY AND REFERENCE**

Vehicle Code section 3050, subdivision (a), authorizes the Board to amend the proposed regulation. The proposed regulation implements, interprets, and makes specific Vehicle Code section 3050.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The adopted mission of the Board is to “enhance relations between dealers and manufacturers throughout the State by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.” The adopted vision statement provides that the Board “demonstrate professionalism, integrity, and accountability in securing fair resolutions to motor vehicle industry disputes.”

While the Board's current regulations include references to attorneys, agents, and representatives, which implicitly suggests that non-attorney representatives are allowed, the regulations lack a clear authorization for non-attorney representatives, such as other agencies have adopted by regulation or through statutory authority. Consequently, promulgation of a new regulation that makes this exercise of discretion explicit would be beneficial.

Non-California-attorney representatives have appeared before the Board for decades. A revised practice expressly allowing for non-attorney representatives, including out-of-state attorneys, would benefit parties, particularly those that often retain counsel who specialize in this practice area but are located outside of California and are not licensed by the California State Bar.

In the absence of a regulation, the Board has relied on the *pro hac vice* provisions in the California Rules of Court with out-of-state attorneys submitting an application to appear *pro hac vice* identifying associated California counsel. The Board is seeking to eliminate this process by proposing to add Section 551.26 to Title 13 of the California Code of Regulations.

**OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATION**

The broad objective of the regulation is to clarify for litigants that appear before the Board the information necessary to effectively represent themselves or their clients.

The specific benefit anticipated from the regulation is promoting the expeditious and economical resolution of statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. It provides a uniformity of decisions across the state, allowing franchisors and their dealers to conduct their business in compliance with California law.



EVALUATION OF INCONSISTENCY/  
INCOMPATIBILITY WITH EXISTING  
STATE REGULATIONS

The Board conducted an evaluation of the proposed regulation's potential inconsistency or incompatibility with existing state regulations and has found that they are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING  
THE PROPOSED ACTION

The Board has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business:  
The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant, statewide adverse economic impact directly affecting businesses, including the ability of California business to compete with businesses in other states: None.
- Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS/ASSESSMENT

The Board concludes that the proposed regulation will not (1) create any jobs within the State of California, (2) eliminate any jobs within the State of California, (3) create any new businesses within the State of California, (4) eliminate any existing businesses within the State of California, or (5) cause the expansion of businesses currently doing business within the State of California.

BENEFITS OF THE REGULATION

The proposed regulation will promote the expeditious and economical resolution of disputes between new motor vehicle dealers and their manufacturers or

distributors. The proposed regulation is not expected to affect worker safety or the state's environment.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulation will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation. The proposed regulation merely clarifies case management for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest or petition with the Board.

CONSIDERATION OF ALTERNATIVES

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

The Board invites interested persons to present comments, statements or arguments with respect to alternatives to the proposed regulation, during the written comment period or at the public hearing, if one is requested.

CONTACT PERSONS

Please direct requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Phomsopha at the following address:

Danielle R. Phomsopha, Senior Staff Counsel  
New Motor Vehicle Board  
2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, CA 95818  
(916) 244-6777 Teams/direct line  
(916) 445-1888 main line  
[danielle.phomsopha@nmvb.ca.gov](mailto:danielle.phomsopha@nmvb.ca.gov)

The backup contact person for these inquiries is:

Robin P. Parker, Chief Counsel  
New Motor Vehicle Board  
2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, CA 95818  
(916) 244-6776 Teams/direct line  
(916) 445-1888 main line  
[robin.parker@nmvb.ca.gov](mailto:robin.parker@nmvb.ca.gov)

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices by appointment. Please contact the contact persons listed above should you wish to make an appointment for in-office inspection and copying. 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, the initial statement of reasons, the Economic and Fiscal Impact Statement, and all the information upon which the proposal is based. Copies may be obtained by contacting the contact persons identified above.

**AVAILABILITY OF CHANGED  
OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the addresses indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available to the public.

**AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS**

Upon completion of the Final Statement of Reasons, copies thereof may be obtained by contacting Ms. Phomsopha or Ms. Parker at the above address.

**AVAILABILITY OF DOCUMENTS  
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in

underline and strikeout font can be accessed through the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov).

**TITLE 14. FISH AND  
GAME COMMISSION**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 200, 205, 265, 270, 315, 316.5, 399 and 2084 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 265, 270, 316.5 and 2084 of said Code, proposes to amend Sections 5.87 and 7.40, Title 14, California Code of Regulations, relating to Klamath River Basin Sport Fishing 2023.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

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

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall-run Chinook Salmon (*Oncorhynchus tshawytscha*) through a cooperative system of state, federal, and tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River Basin (in-river) sport fisheries which are consistent with federal fishery management goals.

Tribal entities within the Klamath River Basin maintain fishing rights for ceremonial, subsistence, and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by individual tribal governments.

KLAMATH RIVER  
FALL-RUN CHINOOK SALMON

Adult Klamath River fall-run Chinook (KRFC) Salmon harvest allocations and natural spawning escapement goals are established by PFMC. The KRFC harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The Klamath River Basin in-river sport salmon fishery is managed using adult quotas. For the purpose of implementing the California Department of Fish and Wildlife (Department) salmon fishery harvest assessment, within the Klamath River Basin, the Department currently considers 23 inches total length as a provisional cutoff. Salmon greater than 23 inches total length are defined as adult salmon (ages three through five), and salmon less than or equal to 23 inches total length are defined as grilse salmon (age two).

PFMC OVERFISHING REVIEW

KRFC stocks have been designated as “overfished” by PFMC. This designation is the result of not meeting conservation objectives for these stocks. Management objectives and criteria for KRFC are defined in the PFMC Salmon Fishery Management Plan (FMP). The threshold for overfished status of KRFC is a three-year geometric mean less than or equal to 30,525 natural area adult spawners. This overfished-threshold was met for KRFC during the 2015–2017 period. The 30,525 KRFC natural area adult spawners is considered the minimum stock size threshold, per the FMP. The KRFC adult natural area spawning escapement for 2021 was 30,196 natural area adult spawners, which is below the one-year conservation threshold of 40,700 natural area adult spawners. The most recent three-year geometric mean of 29,908 is still less than the required 40,700 natural area adult spawners conservation threshold, therefore the KRFC are still considered as an “overfished” stock.

Accordingly, the FMP outlines a process for preparing a “rebuilding plan” that includes assessment of the factors that led to the decline of the stock, including fishing, environmental factors, model errors, etc. The rebuilding plan includes recommendations to address conservation of KRFC, with the goal of achieving rebuilt status. Rebuilt status requires meeting a three-year geometric mean of 40,700 adult natural area KRFC spawner escapement. The plan developed by representatives of National Marine Fisheries Service (NMFS), PFMC, U.S. Fish and Wildlife Service, the Department, and tribal entities, was submitted to PFMC in February 2019, adopted by PFMC in June 2019, and submitted to NMFS in August 2019. Forthcoming recommendations from the rebuilding plan

may alter how KRFC are managed in the future, including changing the in-river allocation number, and/or allocating less than the normal target number.

KRFC ALLOCATION MANAGEMENT

The PFMC 2022 allocation for the Klamath River Basin sport harvest was 2,119 adult KRFC. The PFMC allocation for the Klamath River Basin sport harvest is normally a minimum of 15 percent of the non-tribal PFMC harvest allocation of KRFC. Preseason stock projections of 2023 adult KRFC abundance will not be available from PFMC until March 2023. The 2023 basin allocation will be recommended by PFMC in April 2023. That allocation will inform the quota that the Department proposes to the Commission for adoption as a quota for the in-river sport harvest at the Commission’s May 2023 teleconference meeting.

The annual KRFC in-river sport harvest quota is specified in subsection 7.40(b)(50)(D)1. The quota is split among four geographic areas with a subquota for each area, expressed as a percentage of the total in-river quota, specified in subsection 7.40(b)(50)(D)2. For angler convenience, the subquotas, expressed as the number of fish, are listed for the affected river segments in subsection 7.40(b)(50)(E). The in-river sport subquota percentages are shown in Figure 1, and are as follows:

1. for the main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec — 17 percent of the in-river sport quota;
2. for the main stem Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth — 50 percent of the in-river sport quota;
3. for the main stem Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat — 16.5 percent of the in-river sport quota; and
4. for the main stem Trinity River downstream of the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River — 16.5 percent of the in-river sport fishery quota.

PROPOSED CHANGES

Because the PFMC recommendations are not known at this time, ranges are shown in [brackets] in the proposed regulatory text below of bag and possession limits which encompass historical quotas. All are proposed for the 2023 KRFC fishery in the Klamath and Trinity rivers.

The final KRFC bag and possession limits will align with the final federal regulations to meet biological and fishery allocation goals specified in law or established in the FMP.

**KRFC ADULT STOCKS (SPORT FISHERY QUOTA MANAGEMENT)**

Quota: For public notice requirements, the Department recommends the Commission consider a quota range of [0–67,600] adult KRFC in the Klamath River Basin for the in–river sport fishery. This recommended range encompasses the historical range of the Klamath River Basin allocations and allows PFMC and Commission to make adjustments during the 2023 regulatory cycle.

Subquotas: The proposed subquotas for KRFC stocks are as follows:

1. Main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec — 17 percent of the total quota equates to [0–11,492];
2. Main stem Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth — 50 percent of the total quota equates to [0–33,800];
3. Main stem Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat — 16.5 percent of the total quota equates to [0–11,154]; and
4. Main stem Trinity River downstream of the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River — 16.5 percent of the total quota equates to [0–11,154].

Seasons: No changes are proposed for the Klamath River and Trinity River KRFC seasons:

- Klamath River — August 15 to December 31
- Trinity River — September 1 to December 31

Bag and Possession Limits: As in previous years, no retention of adult KRFC is proposed once the subquota has been met.

*KRSC Sport Fishery*

No regulatory changes are proposed in this rulemaking for the general KRSC opening and closing season dates, and bag, possession, and size limits.

Implementing a range of lengths for determination of grilse/adult KRFC

Size Limits: the proposed regulations shall now include a range of size limits shown in [brackets] to determine between grilse and adult Chinook Salmon. This allows for annual variation in size cutoffs, as informed by previous year(s) data to more effectively manage the harvest of the adult KRFC quota.

The Department is proposing a grilse salmon size limit cutoff range of less than or equal to 20 inches (50–8 cm) to 24 inches (58.4 cm) total length (TL) for discussion before the Department makes a final recommendation. Considered in this context, the size limit cutoff discussion is a trade–off between restricting take of the available adult salmon and quota man-

agement versus increasing harvest of two–year–old grilse salmon. The range of proposed bag and possession limits for KRFC stocks are as follows:

- Bag Limit — [0–4] Chinook Salmon — of which no more than [0–4] fish over [20–24] inches total length may be retained until the subquota is met, then 0 fish over [20–24] inches total length.
- Possession limit — [0–12] Chinook Salmon of which no more than [0–4] fish over [20–24] inches total length may be retained when the take of salmon over [20–24] inches total length is allowed.

*Removal of Quota Exceptions for re–opening sections after hatchery production goals have been met.*

The regulations currently include Fall Run Quota Exceptions that apply to both the Upper Klamath and Upper Trinity River sub–areas. These exemptions allow for the reopening of adult KRFC harvest in sub–areas that had previously been closed due to sub–area quota attainment. Reopening is triggered independently for each river when Iron Gate Hatchery and Trinity River Hatchery reach adult KRFC returns of 8,000 and 4,800 respectively.

The Fall Run Quota Exceptions were originally developed to allow for the recreational harvest of “surplus hatchery–origin fish.” The sections that re–open are immediately downstream of the hatcheries and the fish present have historically been comprised of a large fraction of hatchery–origin KRFC. The specific areas of the Klamath and Trinity rivers affected by the quota exception are: 3,500 feet below Iron Gate Hatchery downstream to the Interstate 5 bridge on the Klamath River, and from 3,500 below Trinity River Hatchery downstream to the mouth of Indian Creek on the Trinity River.

The validity of the quota exceptions has been frequently challenged by basin partners and is no longer meeting the needs of the Department. The Department is committed to equal sharing of KRFC and allowing for over harvest of this stock is not consistent with the goals of the Department. In addition, the quota exception impacts the hatcheries’ ability to meet production goals and is not consistent with current hatchery management of operating the facilities as integrated programs. The removal of Iron Gate Hatchery in 2024 will make the quota exception on the Klamath River obsolete. As a result, the Department proposes the Commission remove these two quota exceptions, described in 7.40(b)50 2a and 7.40(b)50 6b, for the Upper Klamath and Upper Trinity River sectors, respectively.

*Removal of Duplicate Size Limit (non–substantive)*

Grilse/jack size limits are currently specified in sections 7.40 and 5.87. The size limits that appear in Section 5.87 shall be replaced with cross–reference to the subsection of 7.40 in which size limits are described.

This will minimize the potential for conflicting information that would prove confusing to anglers.

*Removal of Obsolete Form Number (non-substantive)*

The North Coast Salmon Report Card was previously a numbered form (FG 684) that is specified in Section 5.87, but is not incorporated by reference. The North Coast Salmon Report Card is now issued through the Department's Automated License and Data System (ALDS) and is not associated with a form number. The form number shall be removed from this section.

*Correct Capitalization of Fish Names (non-substantive)*

Current regulations in Section 5.87 use an outdated rule for the capitalization of fish species names, in which the common names of fish species are not capitalized. Following the adoption of new rules applicable to the names of fish species by the American Fisheries Society in 2013, common names shall be capitalized.

BENEFIT OF THE REGULATIONS

The benefits of the proposed regulations are conformance with federal fishery management goals, sustainable management of Klamath River Basic fish resources, health and welfare of California residents, and promotion of businesses that rely on salmon sport fishing in the Klamath River Basin.

CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

Article IV, Section 20 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 authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. Commission staff has searched the California Code of Regulations and has found no other state regulations related to sport fishing in the Klamath River Basin.

PUBLIC PARTICIPATION

**NOTICE IS 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**, or as soon thereafter as the matter may be heard. Instructions for participation

in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://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 teleconference hearing originating in 715 P Street, Sacramento, California, on **Wednesday, May 17, 2023 at 8:30 a.m.**, or as soon thereafter as the matter may be heard.

It is requested, but not required, that written comments be submitted on or by 5:00 p.m. Thursday, May 4, 2023 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on Friday, May 12, 2023.** All comments must be received no later than Wednesday, May 17, 2023 at the teleconference hearing originating in 715 P Street, Sacramento, California. 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.

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](http://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, P.O. 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](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number. **Senior Environmental Scientist Karen Mitchell, Department of Fish and Wildlife, ((916) 205-0250) has been designated to respond to questions on the substance of the proposed regulations.**

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 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 projected to range from minor to no impact on the net revenues to local businesses servicing sport fishermen. If the 2023 KRFC quota is reduced, visitor spending may correspondingly be reduced, and in the absence of alternative visitor activities, the drop in spending could induce some business contraction. If the 2023 KRFC quota remains similar to the KRFC quotas allocated in previous years, then local economic impacts are expected to be unchanged. Neither scenario is expected to directly affect the ability of California businesses to compete with businesses in other states.

- (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:

An estimated 30–50 businesses that serve sport fishing activities are expected to be directly and/

or indirectly affected depending on the final KRFC quota. The impacts range from no impact (Projection 1 under the Economic Impact Assessment (EIA), below) to small adverse impacts (Projection 3, EIA, below).

Depending on the final KRFC quota, the Commission anticipates the potential for some impact on the creation or elimination of jobs in California. The potential adverse employment impacts range from no impact to the loss of 13 jobs. Under all alternatives, due to the limited time period of this regulation’s impact, the Commission anticipates no impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

For all of the proposed scenarios, the possibility of growth of businesses to serve alternative recreational activities exists. Adverse impacts to jobs and/or businesses would be less if fishing of other species and grilse KRFC is permitted, than under a complete closure to all fishing. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long–term intent of the proposed regulatory action is to increase sustainability in fishable salmon stocks and, consequently, promote the long–term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon sport fishery encourages a healthy outdoor activity and the consumption of a nutritious food.

The Commission anticipates benefits to the environment by the sustainable management of California’s salmonid resources. The Commission does not anticipate any benefits to worker safety because the proposed action does not affect working conditions.

- (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 Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 205, 265, 270, 315, 316.5, 399 and 2084 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 265, 270, 316.5 and 2084 of said Code, proposes to amend Section 7.40, Title 14, California Code of Regulations, relating to Central Valley sport fishing regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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

Current regulations in subsections (b)(4), (b)(43), (b)(66), and (b)(80) of Section 7.40 prescribe the 2022 seasons and daily bag and possession limits for Sacramento River fall-run Chinook Salmon (*Oncorhynchus tshawytscha*; SRFC) sport fishing in the American, Feather, Mokelumne, and Sacramento rivers,

respectively. Collectively, these four rivers constitute the “Central Valley fishery” for SRFC for purposes of this document. Each year, the Department of Fish and Wildlife (Department) recommends new Chinook Salmon bag and possession limits for consideration by the Fish and Game Commission (Commission) to align the fishing limits with up-to-date management goals, as set forth below.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The PFMC will develop the annual Pacific coast ocean salmon fisheries regulatory options for public review at its March 2023 meeting and will adopt its final regulatory recommendations at its April 2023 meeting based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season. Based on the April 2023 recommendation by PFMC, the Department will recommend specific bag and possession limit regulations to the Commission at its April 19, 2023 meeting. The Commission will then consider adoption of the Central Valley sport fishing regulations at its May 17, 2023 meeting.

**Proposed Regulations**

**SACRAMENTO RIVER FISHING BOUNDARY REVISION**

On the Sacramento River between the Dechutes Road Bridge and the Highway 113 bridge (i.e., subsections 7.40(b)(80)(C) and (D)), the Department is proposing to move the geographic fishing boundary from Red Bluff Diversion Dam (river mile 244) to Woodson Bridge (river mile 220). All of the SRFC spawning tributaries and the vast majority of the mainstem SRFC spawning habitat is located upstream of Woodson Bridge. Moving the fishing boundary to Woodson Bridge is necessary to allow adults escaping the fishery to stage unmolested below their natal tributaries, reducing overall harvest rates but still providing recreational opportunity within productive historic fishing grounds below Woodson Bridge.

**SACRAMENTO RIVER LATE-FALL RUN FISHERY OPPORTUNITY**

On the Sacramento River between Dechutes Road Bridge and Woodson Bridge (i.e., subsection 7.40(b)(80)(C)), the Department is proposing to split the current fishing season of August 1 through De-

ember 31 into two separate seasons from August 1 through October 31 and November 1 through December 31. The majority of SRFC spawning occurs above Woodson Bridge from August through October. This split season will allow for better management options for SRFC and Sacramento River late–fall–run Chinook Salmon (SRLFC) populations. Fall–run spawner escapement surveys conducted by the Department indicate that SRFC spawn in the Sacramento River, and its tributaries, above Woodson Bridge at least through November. Spawning by late–fall–run Chinook Salmon follows shortly thereafter.

**CHINOOK SALMON BAG AND POSSESSION LIMITS**

The Department recognizes the uncertainty of SRFC in–river harvest projections. Therefore, for the 2023 Central Valley fishery, the Department is presenting four regulatory options for the Commission’s consideration to tailor 2023 Central Valley fishery management to target 2023 in–river fisheries harvest projections. The Commission may adopt these options for each river section independently, or in combination to meet PPMC SRFC management objectives and maximize recreational salmon fishing opportunities in the Central Valley

- Option 1 is the most liberal of the options, and allows take of any size Chinook Salmon up to the daily bag and possession limits.
- Option 2 allows for take of a limited number of adult Chinook Salmon, with grilse Chinook Salmon (two–year old salmon) making up the remainder of the daily bag and possession limits.
- Option 3 is the more conservative option, and allows for a grilse–only Chinook Salmon fishery.
- Option 4 is the most conservative option, and prohibits the take and possession of Chinook Salmon in all anadromous areas of and tributaries to the American, Feather, Mokelumne, and Sacramento rivers.

All options would be applicable to the following river segments and time periods:

American River, subsection 7.40(b)(4):

- (B) From the USGS gauging station cable crossing near Nimbus Hatchery to the SMUD power line crossing the southwest boundary of Ancil Hoffman Park, July 16 through October 31
- (C) From the SMUD power line crossing at the southwest boundary of Ancil Hoffman Park to the Jibboom Street bridge, July 16 through December 31
- (D) From the Jibboom Street bridge to the mouth, July 16 through December 16

Feather River, subsection 7.40(b)(43):

- (D) From the unimproved boat ramp above the Thermalito Afterbay Outfall to 200 yards above the Live Oak boat ramp, July 16 through October 31
- (E) From 200 yards above the Live Oak boat ramp to the mouth, July 16 through December 16

Mokelumne River, subsection 7.40(b)(66):

- (A) From Comanche Dam to Elliott Road, July 16 through October 15
- (B) From Elliott Road to the Woodbridge Irrigation District Dam and including Lodi Lake, July 16 through December 31
- (D) From the Lower Sacramento Road bridge to the mouth, July 16 through December 16

Sacramento River below Keswick Dam, subsection 7.40(b)(80):

- (C) From Deschutes Road bridge to Woodson Bridge, August 1 through October 31, and November 1 through December 31.
- (D) From Woodson Bridge to the Highway 113 bridge, July 16 through December 16.
- (E) From the Highway 113 bridge to the Carquinez Bridge, July 16 through December 16.

The following options are provided for Commission consideration:

**OPTION 1 — ANY SIZE CHINOOK SALMON FISHERY**

This option is the Department’s preferred option if the 2023 SRFC stock abundance forecast is sufficiently high to avoid the need to constrain in–river SRFC harvest.

- Bag limit of [0–4] Chinook Salmon.
- Possession limit — [0–12] Chinook Salmon.

**OPTION 2 — LIMITED ADULT AND GRILSE SALMON FISHERY**

Bag limit of [0–4] Chinook Salmon of which no more than [0–4] fish over 27 inches total length may be retained.

Possession limit — [0–12] Chinook Salmon of which no more than [0–12] fish may be over 27 inches total length.

**OPTION 3 — GRILSE SALMON FISHERY ONLY**

Bag limit of [0–4] Chinook Salmon less than or equal to 27 inches total length.

Possession limit — [0–12] Chinook Salmon less than or equal to 27 inches total length.



OPTION 4 — NO SALMON FISHING IN ALL  
CENTRAL VALLEY RIVERS, STREAMS,  
AND TRIBUTARIES

No take or possession of Chinook Salmon.

ALL OPTIONS

Under all options, non-substantive edits are proposed for consistency with other subsections of Section 7.40.

BENEFITS OF THE PROPOSED  
REGULATIONS

The Commission anticipates benefits to the environment in the sustainable management of Central Valley Chinook Salmon resources. Other benefits of the proposed regulations are consistency with federal fishery management goals, health and welfare of California residents, and promotion of businesses that rely on Central Valley Chinook Salmon sport fishing.

CONSISTENCY AND COMPATIBILITY  
WITH EXISTING REGULATIONS

Article IV, Section 20 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 regulate sport fishing in waters of the state (Fish and Game Code sections 200, 205, 315 and 316.5). 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 California Code of Regulations and finds no other state agency regulations pertaining to Chinook Salmon sport fishing seasons, bag, and possession limits for Central Valley sport fishing.

PUBLIC PARTICIPATION

**NOTICE IS 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**, or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://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 teleconference hearing originating in 715 P Street, Sacramento, California, on **Wednesday, May 17, 2023** at 8:30 a.m., or as soon thereafter as the matter may be heard.

It is requested, but not required, that written comments be submitted on or by 5:00 p.m. Thursday, May 4, 2023 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on Friday, May 12, 2023.** All comments must be received no later than Wednesday, May 17, 2023 at the teleconference hearing originating in 715 P Street, Sacramento, California. 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.

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](http://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, P.O. 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](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number. **Senior Environmental Scientist Karen Mitchell, Department of Fish and Wildlife, ((916) 205-0250) has been designated to respond to questions on the substance of the proposed regulations.**

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 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 changes are necessary for the continued preservation of the resource, while providing inland sport fishing opportunities and thus, the prevention of adverse economic impacts.

**(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 significant adverse economic impacts but acknowledges the potential for short-term negative impacts on the creation or elimination of jobs within the state. The Commission anticipates no adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The management of an ongoing Chinook Salmon sport fishery with annual variations in the bag and possession limits and/or the implementation of a size limit is not anticipated to significantly impact the volume of business activity.

The loss of up to 22 jobs with Option 2, 43 jobs for Option 3, and 108 jobs for Option 4 is not expected to eliminate businesses because projected

reduction in fishing days is expected to be partially offset by opportunities to fish for grilse Chinook Salmon and other species for Option 2 and 3 and continued opportunities for other non-salmonid species for Option 4. The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a Chinook Salmon sport fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the environment by the sustainable management of Chinook Salmon resources in the Central Valley.

**(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 22. DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION**

**PRESCRIPTION DRUG PRICING FOR PURCHASERS**

The Department of Health Care Access and Information (the Department) proposes revisions to Chapter 9.5. Prescription Drug Pricing for Purchasers of Title 22 of the California Code of Regulations, which implemented Chapter 9. Prescription Drug Pricing for Purchasers (Health and Safety Code section 127675 et seq.) added by Senate Bill (SB) 17 (Chapter 603, Statutes of 2017). The Department proposes to adopt the revisions described below after considering all comments, objections, and recommendations regarding the proposed action.

Senate Bill (SB) 17 (Chapter 603, Statutes of 2017) made a number of changes to California law to increase transparency in prescription drug pricing. The bill authorized the Department to adopt regulations and issue guidance for the implementation of Chapter 9. Prescription Drug Pricing for Purchasers in Part 2 of Division 107 of the Health and Safety Code (section 127675 et seq.). The Department subsequently adopted the regulations in Chapter 9.5 of Division 7 of Title 22, Sections 96060–96087.

The proposed revisions are needed to effectuate the intent of the law by improving the quality, clarity, and completeness of reported prescription drug pricing data, and will increase compliance with data submission requirements as well as overall program efficiency.

In addition, the proposed revisions would update web and email addresses due to the 2021 reorganization of the Office of Statewide Health Planning and Development (OSHPD) into the Department.

**I. PUBLIC HEARING**

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

**II. WRITTEN PUBLIC COMMENT PERIOD AND CONTACT PERSON**

Any interested person, or his or her authorized representative, may submit written comments relevant to

the proposed regulatory action. All comments must be received by the Department by 5:00 p.m. Pacific Daylight Time on May 2, 2023. Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by email are suggested. Comments may also be faxed, hand delivered, or mailed.

Jacob Rivera, Staff Services Manager I  
 Information Services Division  
 Department of Health Care Access and Information  
 Telephone: (916) 326–3837  
 Email: [jacob.rivera@HCAI.ca.gov](mailto:jacob.rivera@HCAI.ca.gov)

Mailing address:  
 2020 West El Camino Avenue, Suite 1100  
 Sacramento, CA 95833–1880

Inquiries and comments may also be directed to the backup contact person at the same mailing address:

Dionne Evans–Dean, Staff Services Manager II  
 Information Services Division  
 Department of Health Care Access and Information  
 Fax: (916) 324–9242  
 Telephone: (916) 326–3937  
 Email: [dionne.evans-dean@HCAI.ca.gov](mailto:dionne.evans-dean@HCAI.ca.gov)

**III. AUTHORITY AND REFERENCE**

Health and Safety Code section 127685 authorizes the Department to adopt these proposed regulations. These proposed regulations implement, interpret, and make specific sections 127675, 127677, 127679, and 127681 of the Health and Safety Code.

**IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

*a. Summary of Existing Laws and Effect of the Proposed Regulations*

The existing regulations in Chapter 9.5 of Division 7 of Title 22, Sections 96060–96087 were adopted to implement Chapter 9. Prescription Drug Pricing for Purchasers in Part 2 of Division 107 of the Health and Safety Code (section 127675 et seq.). The primary purpose of these proposed regulatory changes is to clarify reporting thresholds and requirements for prescription drug manufacturers when they introduce certain new prescription drugs and when they execute certain price increases on prescription drugs.

In addition to updating web, email, and physical addresses due to the organizational change from OSHPD to the Department, the regulations proposed in

this rulemaking action would effectuate the following changes:

- Under Health and Safety Code sections 127679 and 127681, a prescription drug manufacturer must report information regarding drugs to the Department, as specified. Section 96062 of Chapter 9.5. of Title 22 of the California Code of Regulations currently requires prescription drug manufacturers to register on the Department’s website for the purpose of reporting such information prior to submitting reports. The proposed change to section 96062, subdivision (b) (2), would provide clarification regarding who should register a prescription drug manufacturer account in the Department system, which would help to ensure that important communications are received in a timely manner.
- Under Health and Safety Code section 129679(a), a prescription drug manufacturer must report information, as specified, to the Department for each drug for which an increase in wholesale acquisition cost (WAC) is described in Health and Safety Code section 127677. Health and Safety Code section 127677 identifies the particular threshold at which a prescription drug manufacturer must report the information required by section 127679. Section 96065 of Chapter 9.5 of Title 22 of the California Code of Regulations currently provides clarification regarding the threshold identified in Health and Safety Code section 127677.
  - The proposed change to section 96065, subdivision (b), would add clarifying language regarding the baseline date for calculating cumulative WAC increases when determining whether a WAC increase report is required.
- Under Health and Safety Code section 129679, a prescription drug manufacturer must report information, as specified, to the Department for each drug for which an increase in wholesale acquisition cost (WAC) is described in Health and Safety Code section 127677. Section 96070 of Chapter 9.5 of Title 22 of the California Code of Regulations currently specifies the information prescription drug manufacturers must report to the Department as required by Health and Safety Code section 127679.
  - The proposed change to section 96070, subdivision (b)(8), would require prescription drug manufacturers to submit, in a WAC increase report, the total volume of sales in United States dollars instead of total number of units of a drug product sold, which would resolve issues of conflicting interpretation regarding unit sales.
- Under Health and Safety Code section 127681 subdivision (b)(3), for a new prescription drug introduced to market at a specified threshold specified in subdivision (a), a prescription drug manufacturer must report to the Department the estimated volume of patients that may be prescribed the drug. Section 96076 of Chapter 9.5 of Title 22 of the California Code of Regulations currently identifies the specific information that a prescription drug manufacturer must report to the Department under Health and Safety Code 127681.
  - The proposed change to section 96076, subdivision (b)(2), would provide prescription drug manufacturers additional guidance and clarification regarding the required reporting of the estimated number of patients with a condition for which a new prescription drug may be prescribed.
- Under Health and Safety Code sections 127679 and 127681, a prescription drug manufacturer must provide notice and report information regarding drugs to the Department, as specified. Section 96078 currently specifies the two methods that prescription drug manufacturers can use to submit notices and reports pursuant to Sections 96070, 96075, and 96076. The proposed change to section 96078 would update the format and file specifications for submitting a report via electronic file to account for the proposed change to section 96070, subdivision (b), described above.
- Under Health and Safety Code sections 127679 subdivision (f) and 127681 subdivision (g), assessment of a civil penalty for late reporting of information may, at the request of a prescription drug manufacturer, be reviewed on appeal, and the penalty may be reduced or waived for good cause. Section 96082 currently provides the steps that a prescription drug manufacturer must take to appeal a penalty assessment. The proposed change to section 96082, subdivision (c), would add a requirement that prescription drug manufacturers send a copy of a penalty appeal request directly to program staff in addition to filing the request with the Department Hearing Officer. This proposed change will help to ensure timely communications between parties.
- Under Health and Safety Code sections 127679 subdivision (f) and 127681 subdivision (g), a penalty assessed against a prescription drug manufacturer for late reporting may be reduced or waived for good cause. The proposed addition of section 96082.5 would interpret section 127679

subdivision (f) and 127681 (g) by providing a standard for good cause.

- Under Health and Safety Code sections 127679 subdivision (f) and 127681 subdivision (g), assessment of a civil penalty for late reporting of information may, at the request of a prescription drug manufacturer, be reviewed on appeal. Section 96083 of Chapter 9.5 of Title 22 of the California Code of Regulations provides contact information for the submission of penalty appeal hearing requests and related communications. The proposed revision to section 96083 would provide prescription drug manufacturers with updated contact information for submitting hearing-related communications, including contact information for situations in which the Office of Administrative Hearings (OAH) is designated to hear a penalty appeal.
- Under Health and Safety Code sections 127679 subdivision (f) and 127681 subdivision (g), assessment of a civil penalty for late reporting of information may, at the request of a prescription drug manufacturer, be reviewed on appeal. Section 96084 provides specific instructions to prescription drug manufacturers for requesting a change to the hearing setting from in-person to remote, as provided by Health and Safety Code sections 127679 and 127681. The proposed revision to section 96084 would remove the specification that in-person hearings take place in Sacramento. This would allow for necessary flexibility and efficiency in scheduling and conducting penalty appeal hearings.
- Under Health and Safety Code sections 127679 subdivision (f) and 127681 subdivision (g), assessment of a civil penalty for late reporting of information may, at the request of a prescription drug manufacturer, be reviewed on appeal. Section 96085 provides specific details regarding the conduct of a penalty appeal hearing, as provided by Health and Safety Code sections 127679 and 127681. The proposed revision to section 96085 would allow for an administrative law judge from OAH to serve as hearing officer over a penalty appeal hearing, which will allow for greater flexibility and efficiency in the penalty appeals process.
- Under Health and Safety Code sections 127679 subdivision (f) and 127681 subdivision (g), assessment of a civil penalty for late reporting of information may, at the request of a prescription drug manufacturer, be reviewed on appeal, and the penalty may be reduced or waived for good cause. Section 96087 currently provides that a final penalty appeal decision of the Director shall

be made within 90 calendar days after the conclusion of the hearing. The proposed revision to section 96087, subdivision (c), would remove the requirement that a final decision be made within 90 calendar days after the conclusion of the hearing. This change would provide administrative flexibility in the penalty appeals process necessary to properly effectuate Health and Safety Code sections 127679 and 127681.

b. *Objectives and Anticipated Benefits of the Proposed Regulations*

The overall objective of the proposed regulations is to clarify the thresholds and reporting requirements in these regulations to ensure that prescription drug manufacturers have the information they need to submit accurate, complete, and timely data to the Department.

The anticipated benefits of the proposed regulations would be the collection of accurate, complete, and timely data, the availability and provision of more complete and accurate prescription drug pricing information to the public, and improved program efficiency.

c. *Determination of Inconsistency/Incompatibility with Existing State Regulations*

As required by Government Code section 11346.5(a)(3)(D), the Department evaluated the language contained in the proposed regulations. The Department has determined that these proposed regulations are not inconsistent with or incompatible with existing state regulations. These regulations are necessary to enhance the clarity and efficacy of a statutorily mandated program.

d. *Documents Incorporated by Reference*

Format and File Specifications for Submission of Prescription Drug Reports Version 2.0 dated May 19, 2022.

V. DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- a. Mandate on local agencies and school districts: None.
- b. Cost or savings to any state agency: None.
- c. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- d. Other nondiscretionary cost or savings imposed on local agencies: None.
- e. Cost or savings in federal funding to the state: None.

- f. Cost impact on a representative person or business: Revisions to Title 22 Chapter 9.5 are required to increase data accuracy and program efficiency/efficacy. Approximately 1,000 prescription drug manufacturers may incur one-time costs for staff time to evaluate and modify existing business practices related to the reporting requirements of SB 17. For each individual business, this cost is estimated to be no more than 4 hours of staff time at approximately \$50 per hour for an estimated statewide one-time cost of \$200,000.
- g. Statewide adverse economic impact directly affecting businesses and individuals: The Department has made an initial determination that the 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.
- h. Significant effect on housing costs: None.
- i. Cost impact on small business: This proposed action does not affect small business because no entities regulated under the proposed action are small businesses. The Department is not aware of any manufacturer of a prescription drug that qualifies as a small business.

#### VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)

The Department originally tailored these regulations in a way that imposes only minor additional reporting or other requirements on any businesses, organizations, or individuals. The proposed revisions do not change the scope or nature of that original burden.

Therefore, the Department concludes that:

- (1) this regulatory action will not create jobs within the state;
- (2) this regulatory action will not eliminate jobs within the state;
- (3) this regulatory action will not create new businesses;
- (4) this regulatory action will not eliminate existing businesses;
- (5) this regulatory action will not affect the expansion of businesses currently doing business in the state; and
- (6) the benefits of the regulations to the health and welfare of California residents are to achieve the goals of SB 17, as related to Chapter 9. Prescription Drug Pricing for Purchasers. Health and Safety Code section 127676 includes the following statements: “The Legislature finds and declares that

the State of California has a substantial public interest in the price and cost of prescription drugs. ...It is the intent of the Legislature in enacting this chapter to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing.” This regulatory action will have no anticipated benefit to worker safety or the state’s environment.

#### VII. REASONABLE 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 action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed rulemaking action during the written comment period.

#### VIII. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address given for the contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, the Format and File Specifications document incorporated by reference, the initial statement of reasons, an economic impact analysis contained in the initial statement of reasons, and information upon which this proposed rulemaking is based. Copies may be obtained by contacting the listed contact person using the contact information above.

#### IX. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

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 the regulations as revised.

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on the website at <https://www.HCAI.ca.gov/Laws-Regs.html>. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**X. AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Final Statement of Reasons, including all of the comments and responses, will be available, after its completion, through the Department’s website at <https://www.HCAI.ca.gov/Laws-Regs.html>. The Final Statement of Reasons will also be available for review from the above designated contact person.

**XI. AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the proposed regulations, and the Format and File Specifications for Submission of Prescription Drug Reports Version 2.0 can be accessed through the Department’s website at <https://www.HCAI.ca.gov/Laws-Regs.html>.

**TITLE 22/MPP. DEPARTMENT OF SOCIAL SERVICES**

**PROTECTIVE SUPERVISION PRORATION, NONSELF-DIRECTION CLARIFICATION, AND NONSELF-DIRECTING DEFINITION**

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  
Telephone: (916) 657-2856,  
Fax: (916) 653-7395  
Email: [ord@dss.ca.gov](mailto: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 May 2, 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 30, Sections 30-701, 30-757, and 30-763.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

- a) The regulations contained in this regulations package concern In-Home Supportive Services (IHSS) applicants who receive or are potentially eligible for protective supervision (PS) pursuant to MPP Section 30-757.17. These amendments also clarify and further define eligibility criteria for the IHSS PS service.

Existing regulation at MPP Section 30-763.331 states, when two or more recipients living in the same household are eligible for PS, the need is considered to be met in common and the hours shall be prorated (MPP Section 30-763.331). As PS proration was eliminated in the fiscal year 2020-2021 Governor’s budget, effective July 1, 2020, proration was no longer applied to companion cases where two or more recipients living

in the same home are receiving PS. (All County Letter 20–111). Consistent with the elimination of PS proration for shared living arrangements in the California Budget, Fiscal Year 2020–2021, the proposed action repeals Section 30–763.331 in order to remove language related to PS proration for shared living arrangements. The amendment repeals the regulation for those IHSS recipients who are living in the same home as another IHSS recipient who is also receiving PS. This action then amends Section 30–763.33 by combining the language from Section 30–763.332 into Section 30–763.33 in order to provide clarity to this section of the regulation.

- (b) These proposed regulations further amend regulations pertaining to eligibility for IHSS PS pursuant to MPP Section 30–757.17 [*Marshall v. McMahon* (1993) 17 Cal.App.4th 1841 and *Calderon v. Anderson* (1996) 45 Cal.App.4th 607]. These amendments also clarify and further define eligibility criteria for the IHSS PS service.
- (c) There is no current existing definition for nonself–direction. The proposed action adds a special definition to Section 30–701(n)(3) defining nonself–direction. The proposed amendments also clarify that in order to be eligible for PS, an individual must be both nonself–directing and mentally ill or mentally impaired.
- (d) The benefits of this regulatory action to the health and welfare of California residents, worker safety, and the state’s environment are as follows: To improve and clarify criteria for the IHSS PS service; to protect the health and safety of IHSS recipients receiving PS; to safeguard recipients who receive PS by recognizing there may not be a need met in common with another recipient who is also receiving PS and that the type of care a recipient needs may be unique; and to improve the IHSS program by ensuring the MPP is updated and current. There are no anticipated benefits to worker safety or the state’s environment.
- (e) The department conducted a review of existing regulations and evaluated the proposed regulations for any inconsistency or incompatibility. The proposed regulations are in alignment and consistent with existing state regulations, existing policy, and current case law.

**COST ESTIMATE**

- 1. Costs or Savings to State Agencies: There are no new fiscal effects on state government from this regulatory action. While state general fund was previously budgeted for this action, the costs are now built in.

- 2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500–17630: N/A.
- 3. Nondiscretionary Costs or Savings to Local Agencies: There are no new fiscal effects on local government from this regulatory action. Local governments do not pay directly for IHSS costs, and this regulatory action is not anticipated to affect local government’s Maintenance of Effort contributions.
- 4. Federal Funding to State Agencies: There are no new fiscal effects on federal funding from this regulatory action. While state general fund was previously budgeted for this action, the costs are now built in.

**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 mandated in *Marshall v. McMahon* (1993) 17 Cal.App.4th 1841 and *Calderon v. Anderson* (1996) 45 Cal.App.4th 607.

**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 because the regulations only apply to specified individuals within the IHSS program.

**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 IHSS applicants and recipients.

**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.



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 IHSS recipients receiving PS. This regulatory action promotes the health and safety of IHSS recipients receiving PS and will safeguard recipients by recognizing there may not be a need met in common with another recipient who is also receiving PS and that the type of care a recipient needs may be unique. This action also improves the IHSS program by ensuring the Manual of Policies and Procedures is updated and current. There are no anticipated benefits to worker safety or the state's environment.

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.

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 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 Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific *Marshall v. McMahan* (1993) 17 Cal. App.4th 1841 and *Calderon v. Anderson* (1996) 45 Cal. App.4th 607.

CDSS REPRESENTATIVE REGARDING  
THE RULEMAKING PROCESS OF  
THE PROPOSED REGULATION

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

**TITLE 28. DEPARTMENT OF  
MANAGED HEALTH CARE**

**SUBJECT:**

Average Contracted Rate; Inflation Adjustment,  
Amending section 1300.71.31 in Title 28,  
California Code of Regulations; Control  
Number 2023-ACRIA.

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Department) proposes to amend a regulation under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act<sup>1</sup>). The proposed amendments update section 1300.71.31 (Methodology for Determining Average Contracted Rate; Default Reimbursement Rate) in Title 28, California Code of Regulations (CCR) to add an inflation adjustment requirement to the methodology for determining the Average Contracted Rate (ACR) paid to out-of-network providers for services rendered to health plan enrollees. The purpose of these amendments is to ensure that noncontracting providers of services receive reimbursements that more accurately reflect current contracted rates.

Before undertaking this rulemaking action, the Director of the Department (Director) will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing pursuant to section 11346.8(a) of the Government Code. The written request for hearing must be received by the Department's contact person, designated below, no later than 15 days before the close of the written comment period.

<sup>1</sup> Health & Safety Code, §§ 1340, et seq.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written statements, arguments, or contentions (hereafter referred to as comments) relating to the proposed regulatory action by the Department. Comments must be received by the Department, Office of Legal Services, by **May 1, 2023**, which is hereby designated as the close of the written comment period.

Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Senior Legal Analyst. Comments may be transmitted by standard U.S. mail or email:

Email: [regulations@dmhc.ca.gov](mailto:regulations@dmhc.ca.gov)

Mail:

Department of Managed Health Care  
Office of Legal Services  
Attention: Senior Legal Analyst  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814

Please note: If comments are sent via email, there is no need to send the same comments by standard U.S. mail. All comments, including via email or standard U.S. mail, should include the author's name and a U.S. mailing address so the Department may provide commenters with notice of any additional proposed changes to the Rule text.<sup>2</sup>

Please identify the action by using the Department's rulemaking title and control number, **Average Contracted Rate; Inflation Adjustment, Control No. 2023-ACRIA**, in any of the above inquiries.

CONTACTS

Inquiries concerning the proposed adoption of this Rule may be directed to the following persons:

**Fabiola Murillo**

Attorney IV  
Department of Managed Health Care  
Office of Legal Services  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814  
(916) 255-2395 (phone)  
[fabiola.murillo@dmhc.ca.gov](mailto:fabiola.murillo@dmhc.ca.gov)

**Kim Bollenbach**

Senior Legal Analyst  
Department of Managed Health Care  
Office of Legal Services  
980 9<sup>th</sup> Street, Suite 500  
Sacramento, CA 95814  
(916) 414-0790 (phone)  
[kim.bollenbach@dmhc.ca.gov](mailto:kim.bollenbach@dmhc.ca.gov)

AVAILABILITY OF DOCUMENTS

The Department prepared and has available for public review the Initial Statement of Reasons, text of the proposed Rule, and all information upon which the proposed Rule is based (rulemaking file). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9<sup>th</sup> Street, Sacramento, CA 95814, Attention: Senior Legal Analyst.

The Notice of Proposed Rulemaking Action, the proposed text of the Rule, and the Initial Statement of Reasons are also available on the Department's website at <http://www.dmhc.ca.gov/LawsRegulations.aspx#open>.

You may obtain a copy of the Final Statement of Reasons once it is completed by making a written request to the Senior Legal Analyst named above.

AVAILABILITY OF MODIFIED TEXT

The full text of any modified Rule, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the Department adopts the Rule. A request for a copy of any modified Rule(s) should be addressed to the Senior Legal Analyst. The Director will accept comments via mail or email on the modified regulation for 15 days after the date on which the modified text is made available. The Director may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

California Health and Safety Code section 1341, subdivision (a), authorizes the Department to regulate health care service plans (health plans) and health care service plan business.

Health and Safety Code section 1341.9, vests the Director with all duties, powers, purposes, responsibilities, and jurisdiction as they pertain to health plans and the health plan business.

Health and Safety Code section 1344 grants the Director the authority to adopt, amend, and rescind such rules, forms, and orders as necessary to carry out the provisions of the Knox-Keene Act.

Health and Safety Code section 1371.31, enacted by Assembly Bill (AB) 72 (Bonta, 2016), grants the Director the authority to specify a methodology that health plans and delegated entities (collectively, "payers") shall use to determine the ACR for health care services most frequently subject to Health and Safety Code section 1371.9.

<sup>2</sup> References to "Rule" are to sections in the CCR, title 28.

Health and Safety Code section 1371.9, enacted by AB 72, requires that if an enrollee receives covered health care services from an in-network facility at which, or as a result of which, the enrollee receives services from a non-contracted individual health professional, the enrollee shall pay no more than the same amount the enrollee would have paid if the health care services were received from a contracted individual health professional.

#### PURPOSE OF REGULATION

In 2016, the Legislature enacted AB 72, codified in Health and Safety Code section 1371.31, to end the problem of “surprise balance billing” for nonemergency services.<sup>3</sup> AB 72 prohibits “surprise balance billing” and ensures noncontracting providers receive reasonable reimbursement for certain health care services provided by establishing a default reimbursement rate that health plans will pay the noncontracting provider.<sup>4</sup> AB 72 also authorized the Department to implement regulations specifying a payment methodology for the health plans to use. Health and Safety Code section 1371.31, subdivision (a)(2)(B) required that, until the Department specified the standardized methodology, a health plan and the plan’s delegated entities adjust the rate initially established pursuant to Health and Safety Code section 1371.31, by the Consumer Price Index (CPI) for Medical Care Services (CPI-M).<sup>5</sup>

In 2018, the Department promulgated CCR, Title 28, section 1300.71.31 (hereinafter “Rule 1300.71.31”) implementing the requirements of AB 72. Rule 1300.71.31 requires health plans, and their delegated entities use a payment methodology developed by the Department to determine the ACR for certain services received by health plan enrollees from out-of-network providers.<sup>6</sup> The ACR is an average of the contracted commercial rates paid by the payor for the same or similar services in the geographic region, in the applicable calendar

year. The applicable calendar year is two years prior to the year in which the health care service was rendered.<sup>7</sup> The Department’s developed payment methodology did not require health plans adjust payments to reflect inflation rates because the Department determined that the inflation adjustment was not necessary to effectuate the purpose of Health and Safety Code section 1371.31. The Department was concerned an inflation adjustment would put upward pressure on rates and potentially increase costs of health care.

Subsequently, the California Department of Insurance promulgated CCR, Title 10, section 2238.11 implementing its methodology for calculating the ACR for insurers and included an inflation adjustment requirement. In 2020, Congress passed the Consolidated Appropriations Act of 2021 (Pub. L. No. 116-260 (January 3, 2020) 134 Stat. 1182.). Among other provisions, this omnibus appropriations bill contained the No Surprises Act (NSA). The NSA prohibits health care service plans, as well as providers and facilities, from surprise balance billing consumers in specified nonemergency, emergency, and air ambulance circumstances. The NSA also established requirements related to the total amount paid by a plan or issuer for items and services subject to its provisions. In the absence of a specified state law which sets enrollee cost-sharing and determines provider reimbursement or an All-Payer Model Agreement<sup>8</sup>, health plans must pay the qualifying payment amount.<sup>9</sup> The qualifying payment amount is the median contracted rate adjusted for inflation.

During the rulemaking process in 2018, the Department was concerned with avoiding inflation of the ACR beyond the actual market trends. However, excluding the inflator from the ACR methodology raises the concern that the ACR is out of step with the market, because a retrospective-based ACR lags two years behind actual contracted rates in existence at the time of service. The Department has also become aware of concerns regarding the financial impact of the pandemic on provider practices.

For the reasons explained above, the Department is proposing to amend Rule 1300.71.31 to adopt an inflation adjustment requirement to ensure noncontracted providers of services receive reimbursements that more accurately reflect current contracted rates.

<sup>3</sup> Surprise balance billing occurs when a health plan’s enrollee receives covered health care services from an in-network facility at which, or as a result of which, the enrollee receives services from a noncontracting individual health professional, and the enrollee is billed by the noncontracting provider more than the enrollee’s in-network cost-sharing amount.

<sup>4</sup> The default reimbursement rate is the greater of the ACR or 125 percent of the amount Medicare reimburses on a fee-for-services basis for the same or similar health care services in the general geographic region in which the services were rendered.

<sup>5</sup> Health and Safety Code section 1371.31 became effective on January 1, 2017. Health plans were required to implement a payment methodology as described in Health and Safety Code section 1371.31, subdivision (a) until the Department implemented regulations specifying a methodology for the health plans to use. The Department promulgated Rule 1300.71.31 to specify the ACR methodology.

<sup>6</sup> Health and Safety Code section 1371.31 only applies to limited services most frequently subject to section 1371.9.

<sup>7</sup> Cal. Code of Regs., title 28, § 1300.71.31(a)(1).

<sup>8</sup> All-Payer Model Agreement under Section 1115A of the Social Security Act provides a method for determining the total amount payable under a group health plan or group or individual health insurance coverage with respect to the out-of-network items and services furnished by the provider or facility.

<sup>9</sup> Health plans and providers can also negotiate privately over the amount to be paid or ask for an Independent Dispute Resolution process to decide the payment amount.

INFORMATIVE DIGEST

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

Existing law, the Knox–Keene Act, provides for the licensure and regulation of health plans by the Department.

Existing law requires, for health care services subject to Health and Safety Code section 1371.9, effective July 1, 2017, unless otherwise agreed to by the noncontracting individual health professional and the health plan, that a health plan or its delegated entity shall reimburse the greater of the ACR or 125 percent of the amount Medicare reimburses on a fee–for–service basis for the same or similar services in the general geographic region in which the health care services were rendered.

Existing law defines ACR as the claims–volume weighted average of the contracted commercial rates paid by the payor for the same or similar services in the geographic region, in the applicable calendar year, for services most frequently subject to section 1371.9 of the Health and Safety Code. The applicable calendar year is two years prior to the year in which the health care service was rendered.

Existing law specifies the methodology payors shall use to determine the ACR for health care services most frequently subject Health and Safety Code section 1371.9.

The proposed amendments update Rule 1300.71.31 to add an inflation adjustment requirement to the methodology payors shall use in determining the ACR for health care services most frequently subject to Health and Safety Code section 1371.9.

*Objectives and Anticipated Benefits of the Proposed Regulation*

Pursuant to Government Code section 11346.5, subdivision (a)(3)(C), the broad objective of the proposed amendments is to add an inflation adjustment requirement to the methodology for determining the ACR to ensure providers of out–of–network services are paid fairly for rendered services.

Subdivision (a)(1) of Rule 1300.71.31 establishes and defines the meaning of ACR. The proposed amendments add the requirement to adjust the ACR to the date the service was rendered, by the inflation rate described in Health and Safety Code section 1371.31(a)(2)(B). Further, the proposed amendments provide the date of when health plans will be required to begin applying the inflation adjustment proposed by these amendments. During informal comment, the Department learned health plans adjust the ACR in the beginning of the year, therefore the Department’s proposed amendment provides the compliance date as January 1. The benefit of the inflation adjustment is that it will ensure reimbursements received by non-

contracting providers of services more accurately reflect current contracted rates and ensure fair compensation for services rendered. Further, the addition of the implementation date informs regulated entities of when the compliance date begins. Providing the compliance date in the Rule is beneficial to health plans and other payors who will need to prepare payment systems to accommodate the inflation adjustment.

Subdivision (c)(1) of Rule 1300.71.31 establishes the methodology for how a health plan is to determine the ACR by specifying the calculation payors are to use when determining payment for out–of–network services received by health plan enrollees and is existing law. Rule 1300.71.31(c)(1) also provides an example rate calculation for health plans to follow when calculating the ACR. The proposed amendments to this subdivision add the requirement to adjust the ACR to the date the service was rendered, by the inflation rate described in Health and Safety Code section 1371.31(a)(2)(B). The amendments also add the inflation adjustment requirement to the calculation example provided. Further, the proposed amendments provide the date of when health plans will be required to begin applying the inflation adjustment proposed by these amendments. The benefit of the inflation adjustment is that it will ensure that reimbursements received by noncontracting providers of service more accurately reflect current contracted rates. Further, the addition of the implementation date informs regulated entities of when the compliance date begins. Providing the compliance date in the Rule is beneficial to health plans and other payors who will need to prepare payment systems to accommodate the inflation adjustment.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations*

The Rule proposed in this rulemaking action is neither inconsistent nor incompatible with existing state regulations. The Department compared the following related existing Rule, Rule 1300.71, and found no inconsistencies or incompatibilities with the proposed Rule.

*Federal Regulations or Statutes*

As an alternative to the proposed amendments, the Department considered the inflation adjustment adopted in the NSA. The NSA provides that the inflation adjustment be calculated by the percentage increase in the CPI for all Urban Consumers (CPI–U) for all items. The Department did not adopt the alternative because the CPI–U does not keep pace with the growth in health care expenditures. While the CPI–M has increased an average of 3 percent annually since 2012, CPI–U has only increased by 1.8 percent. The CPI–M is a more appropriate index for reflecting the value of the medical services at the time they were provided and is specifically described in Health and

Safety Code section 1371.31, subdivision (a)(2)(B) as the appropriate measure.

#### ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency (1) would be more effective in carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to affected private persons than the proposed action, or (3) would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. As described in the Initial Statement of Reasons for this rulemaking action, the Department has determined that there are no known alternatives that meets standards (1)–(3), described above.

The Department invites interested persons to present statements or arguments with respect to alternatives to the requirements of the proposed Rule during the written comment period.

#### SUMMARY OF FISCAL IMPACT

- Mandate on local agencies and school districts: None.
- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.
- Costs to private persons or businesses directly affected: The Department has determined that this regulation will have cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action. As described in the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action, the impact is estimated to be \$124,752 per payor annually.
- Effect on Housing Costs: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Small business: As described in the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action, the Department has determined that the proposed Rule minimally affects a small number of small businesses. An estimated range of 974–2,505 individual providers may be impacted, but the

proportion of those that are small businesses is unknown. The Department estimates that approximately 136 payors will be required to incorporate the proposed inflation adjustment when calculating the ACR. Health care service plans are not considered a small business under Government Code section 11342.610. However, some health plans have delegated relevant claims payment responsibility to non-health plan payors of which an estimated four percent may be small businesses. The Department anticipates that providers will see a corresponding increase in payments from payors in the cases where the inflation adjusted ACR results in payments exceeding 125 percent of the Medicare fee-for-service rate.

#### DETERMINATIONS

The Department has made the following initial determinations:

- The Department has determined the Rule will not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with section 17500) of Division 4 of the Government Code.
- The Department has determined the Rule will have no significant effect on housing costs.
- As described above and in the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action, the Department has determined that the proposed Rule minimally affects a small number of small businesses. An estimated range of 974–2,505 individual providers may be impacted, but the proportion of those that are small businesses is unknown. The Department estimates that approximately 136 payors will be required to incorporate the proposed inflation adjustment when calculating the ACR. Health care service plans are not considered a small business under Government Code section 11342.610. However, some health plans have delegated relevant claims payment responsibility to non-health plan payors of which an estimated four percent may be small businesses.
- The Department has determined the Rule 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. Please see the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action for additional information about this initial determination.

- The Department has determined that this proposed rulemaking will have no cost or savings in federal funding to the state.

### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Initial Statement of Reasons for this rulemaking action describes the basis for the following Economic Impact Assessment results:

#### *Creation or Elimination of Jobs Within the State of California*

No new jobs will be created or eliminated in the state of California as a result of the inflation adjustment. This inflation adjustment pertains to a narrow subset of health care claims, including only health care services subject to Health and Safety Code section 1371.9 where the inflation adjusted ACR is greater than 125 percent of the Medicare fee-for-service rate. As required by Health and Safety Code section 1371.31 and Rule 1300.71.31, payors already reimburse noncontracted providers the greater of the ACR or 125 percent of the Medicare rate. While the current methodology to calculate the ACR does not include an inflation adjustment, the amount of work necessary to determine the adjusted inflated amount should not increase substantially.

#### *Creation of New Businesses or the Elimination of Existing Businesses Within the State of California*

The inflation adjustment proposed in the amendments to the Rule will neither create new businesses nor eliminate existing businesses. The inflation adjustment has a narrow application and will not greatly affect the general rate paid for health care services in California, as it applies only for those health care services most frequently subject to Health and Safety Code section 1371.9 where the inflation adjusted ACR is greater than 125 percent of the Medicare fee-for-service rate. Additionally, the Department anticipates no significant impact on the ability of health plan enrollees to receive health care services.

#### *Expansion of Businesses Currently Doing Business Within the State of California*

The inflation adjustment proposed in the amendments to the Rule will not result in expansion of businesses currently doing business within the state of California. The adjustment has a narrow application and will not greatly affect the general rate paid for health care services in California, as it applies only for those health care services most frequently subject to Health and Safety Code section 1371.9 where the inflation adjusted ACR is greater than 125 percent of the Medicare fee-for-service rate.

#### *The Benefits to the Health and Welfare of California Residents*

Since 2012, the CPI-M has increased an average of 3 percent annually. The Department's inflation adjustment will benefit the health and welfare of California residents by ensuring providers of health care services receive an accurate payment for services provided. The Department's proposed inflation adjustment ensures the ACR accurately reflects the value of the services at the time they were rendered. The Department anticipates providers will see an increase in payments in the cases where the inflation adjusted ACR results in payments that exceed 125 percent of the Medicare fee-for-service rate. The Department does not anticipate any benefits related to worker safety or the state's environment.

### BUSINESS REPORT

The proposed amendments in this rulemaking package do not require a report from businesses.

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FISH AND WILDLIFE

#### HABITAT RESTORATION AND ENHANCEMENT ACT

#### CONSISTENCY DETERMINATION NUMBER 1653-2023-106-001-R1

**Project:** Cottonwood Creek Accelerated Wood Recruitment Project Phase II

**Location:** Siskiyou County, CA

**Applicant:** David Johnson

**Notifier:** United States Fish and Wildlife Service (USFWS)

#### **Background**

*Project Location:* The project is located within Cottonwood Creek, a tributary to the Klamath River. The project area is approximately 2.6 creek miles south of the Hilt Road bridge. Coordinates of the project are 41.95655° N, 122.61817° W (upstream extent) and 41.95926° N, 122.62077° W (downstream extent).

*Project Description:* This project will load large wood within an approximately 900-foot long reach of Cottonwood Creek by felling live creek-side Douglas-fir and Ponderosa pine trees into the creek. Up to 30 trees, located within 80 feet of the creek and with diameters between 14 and 30 inches, will be felled

within the project area. Trees will be surveyed and marked by USFWS prior to falling, with provisions in place for the protection of trees that are stabilizing the banks, and for trees that have unique structures making them more likely to be utilized by wildlife. Under the guidance of USFWS staff, hand crews will move and position the felled logs using a block and tackle pulley system to create up to five logjams of three to six logs each. One cubic yard of clean spawning gravel will then be placed immediately downstream of each log jam in a 5 foot by 5 foot area.

An existing logging road provides vehicle access to the staging area, which is within 0.6 miles from the project reach. From there, the project reach must be accessed either on foot or ATV. Spawning gravel will be transported via 5-gallon bucket and ATV from the staging area to the project reach, whereupon the bucket will be hand-carried to the suitable location and the gravel placed within the stream. No heavy equipment will enter the project area. Turbidity levels will be visually monitored downstream of operations during implementation. If turbidity levels exceed 20 percent over baseline, project activities will cease until turbidity returns to the baseline condition.

*Project Size:* The total area of ground disturbance associated with the Project is approximately 0.513 acres and 120 linear feet of waterway. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

Temporary Impacts to jurisdictional resources: 0.513 acres, 120 linear feet of streambed, bank, and/or channel.

*Project Associated Discharge:* Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: placement of approximately 30 trees into the stream channel and placement of up to 5 cubic yards of spawning gravel into the stream channel.

*Project Timeframes:*

- Start date: September 1, 2023
- Completion date: October 15, 2023
- Seasonal work window:  
September 1 to October 15, 2023
- Number of workdays: Approximately 5 days

*Water Quality Certification Background:* Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California, the Central Valley Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water

Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) Waste Discharge Identification (WDID) No. 1A22153WNSI for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided supplemental documents that set forth measures to avoid and minimize impacts to fish and wildlife.

*Receiving Waters:* Cottonwood Creek, a tributary to the Klamath River.

*Filled or Excavated Areas:* No excavation is required. Project-associated fill is in the form of tree trunks that will be placed within the waterway, and up to 5 cubic yards of spawning-sized gravel (1 cubic yard at each log jam) that will be placed in a 5x5 foot arrangement at each of the log jams.

*Discharge volume:* Approximately 30 trees, ranging from 14-30 inches in diameter, and up to 5 cubic yards of clean spawning-sized gravel shall be discharged into the waterway.

*Project location:* The project is located within Cottonwood Creek, a tributary to the Klamath River. The project area is approximately 2.6 creek miles south of the Hilt Road bridge. Coordinates of the project are 41.95655° North, 122.61817° West (upstream extent) and 41.95926° North, 122.62077° West (downstream extent).

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

On 2/2/2023, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on 2/2/2023, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2023-0202-01) on 2/17/2023. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

**Determination**

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

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

**Avoidance and Minimization Measures**

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an addendum to the NOI. The specific avoidance and minimization measures as well as water quality protection measures are found in the addendum titled: *BiologicalResourcesReport.pdf*

**Monitoring and Reporting**

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a description of the monitoring and evaluation objectives for the project, as well as a reporting outline for the data generated. Specific requirements of the plan are found in the supplemental document titled: *MonitoringandReportingPlan.pdf*

**Notice of Completion**

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

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

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant's NOI. Applicant shall include the project name and WDID number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: [R1HABCONRedding@wildlife.ca.gov](mailto:R1HABCONRedding@wildlife.ca.gov).

**Project Authorization**

Pursuant to Fish and Game Code section 1654, CDFW's approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in

lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

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

**DEPARTMENT OF FISH AND WILDLIFE**

**CONSISTENCY DETERMINATION NUMBER 2080R-2023-001-01**

**Project:** Kopta Slough Multi-Benefit Project

**Location:** Tehama County

**Applicant:**

California Department of Water Resources

**Background**

The California Department of Water Resources (Applicant) proposes to remove approximately 5,600 feet of rock revetment from the Sacramento River bank, restore approximately 176 acres of agricultural land to native riparian floodplain habitat, and transfer the Kopta Slough Property to federal government (United States Fish and Wildlife Service) ownership. The overall objectives of the proposed project are to restore, enhance, and conserve Sacramento River floodplain habitat, restore hydrologic and geomorphic function to the Sacramento River, improve fish and wildlife habitat, reduce flood management responsibilities and maintenance costs, and facilitate the enhancement of recreational opportunities. The Kopta Slough Multi-Benefit Project (Restoration Project) includes the Kopta Slough Property (Property), which lies within the natural meander belt of the Sacramento River where the main channel once flowed across the lower portion of the Property. In 1963 the U.S. Army Corps of Engineers (USACE) and Central Valley Flood Protection Board (CVFPB) (formerly the Reclamation Board) placed rock revetment along the Sacramento River right bank from River Mile (RM) 220 to approximately RM 221 to protect orchards on the Property, reduce erosion, stabilize the main river



channel, and reduce sediment in the river. The orchard lands have since been restored to riparian forest that thrives with periodic flooding and no longer requires bank protection. The removal of the rock revetment would provide an opportunity to restore natural Sacramento River fluvial floodplain processes, which would restore and enhance riparian habitat.

The Restoration Project activities, specifically the removal of the rock revetment, have the potential to take<sup>1</sup> chinook salmon (*Oncorhynchus tshawytscha*) of the Sacramento River winter–run Evolutionarily Significant Unit (ESU) and the Central Valley spring–run ESU (Covered Species) where those activities take place within and along the right (west) bank of the Sacramento River between RM 219 and RM 222. In particular, the Covered Species could be subject to lethal take as a result of using an excavator with a bucket to remove rock revetment from the river. Chinook salmon of the Sacramento River winter–run ESU are designated as endangered pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). Chinook salmon of the Sacramento River spring–run ESU are designated as threatened pursuant to both the federal ESA and CESA. (See Cal. Code Regs., title 14, § 670.5, subdivisions (b)(2)(C) and (a)(2)(M).)

The Covered Species are documented as using the stretch of the Sacramento River adjacent to the Restoration Project area as a migration corridor. Due to the possibility of the Covered Species being within the river during excavation activities associated with the Project, the National Marine Fisheries Service (Service) determined that the Project has the potential for take of the Covered Species.

According to the Service, with respect to the Covered Species, the Restoration Project will result in the temporary impacts to 5,600 linear feet of aquatic habitat (the removal of rock revetment). The Restoration Project will result in an increase in habitat quality and quantity along the river bank, as well as enhancement of 176 acres of riparian habitat that will be reconnected with overtopping flows from the river.

Because the Restoration Project may result in take of a species designated as threatened (chinook salmon of the Sacramento River spring–run ESU) and endangered (chinook salmon of the Sacramento River winter–run ESU) under the federal ESA, the Service consulted with itself, the USACE and the U.S. Fish and

Wildlife Service (USFWS), as required by the ESA. On August 31, 2018, the Service issued a programmatic biological opinion, entitled National Oceanic and Atmospheric Administration Restoration Center’s (NOAA RC) Program to Facilitate Implementation of Restoration Projects in the Central Valley of California, (Service file No. WCR–2017–8532) (PBO) to the NOAA RC, USACE, and USFWS for eligible restoration projects. The PBO describes eligible restoration projects and requires all project applicants operating under the PBO to comply with terms of the PBO and its incidental take statement (ITS). The Applicant submitted a project–specific application for the Restoration Project dated February 17, 2022, a copy of which is attached hereto and incorporated herein as Exhibit 1. The Service issued a project–specific approval to the Applicant for the Restoration Project on October 21, 2022, a copy of which is attached hereto and incorporated herein as Exhibit 2. The Service’s project–specific approval for the Restoration Project requires the Applicant to comply with the terms of the ITS, along with the accompanying PBO, project–specific application, and project–specific approval, when carrying out the Restoration Project.

On February 1, 2023, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS, along with the accompanying PBO, project–specific application, and project–specific approval, is consistent with CESA for purposes of the Restoration Project and the Covered Species. (Cal. Reg. Notice Register 2023, No. 7–Z, p. 159.)

### Determination

Upon evaluation of the Project, CDFW has determined that the ITS, along with the accompanying PBO, project–specific application, and project–specific approval, is consistent with CESA as to the Restoration Project and the Covered Species because the measures contained in the ITS, along with the accompanying PBO, project–specific application, and project–specific approval, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (a) and (c), for authorizing take of CESA–listed species. Specifically, CDFW finds that: (1) take of the Covered Species will be for management purposes; (2) the measures required are roughly proportional in extent to any impact on the Covered Species that is caused by the Restoration Project; (3) the measures required maintaining the Permittee’s project purpose to the greatest extent possible; and (4) the Restoration Project will not jeopardize the continued existence of the Covered Species.

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

*Avoidance, Minimization, and Mitigation Measures. The avoidance, minimization, and mitigation measures in the ITS, along with the accompanying PBO, project-specific application, and project-specific approval, include, but are not limited to, the following:*

- 1) **Work Windows:** The general construction season shall be from June 15 to October 31. Restoration, construction, fish relocation, and dewatering within any wetted or flowing stream channel shall only occur within this period. Excavation of rock revetment within the Sacramento River is restricted to a work window of August 1 to October 31. Revegetation activities may continue beyond October 31, if necessary.
- 2) **Rock Revetment Removal:** The rock revetment removal along the Sacramento River shall be performed using a long-reach excavator from the bank. All equipment shall be prewashed, properly maintained to minimize grease and contaminants, and utilizing biodegradable hydraulic fluids where possible. The excavator operator shall “tap” the water first with the bucket, and then proceed slowly to the toe of the revetment slope and begin excavation. Revetment removal shall begin on the downstream end of the project area and proceed upstream. Excavation of revetment shall occur for no more than 12 hours of any 24 hour period. Spill containment kits and a spill response plan shall be in place prior to beginning construction.
- 3) **Species Handling:** All seining, electrofishing, and relocation activities shall be performed by a qualified biologist and will adhere to the specific requirements listed in the PBO. For water drafting, all pump intakes shall be screened according to current Service guidance for screen size and allowable velocity. Stockwater ponds and wells will be located at least 100 feet from the edge of the active channel so that juvenile salmonids are not stranded during flood events.
- 4) **Erosion Control and Sediment:** The permittee has outlined a series of best management practices to reduce sediment release into the Sacramento River from upland construction activities. All disturbed soils shall be stabilized with erosion control measures and further revegetated as outlined in the *Post-Construction Restoration Plan for the Kopta Slough Multi-Benefit Project*. Water quality monitoring shall be performed throughout the duration of in-water work and work shall cease if water quality parameters are outside of levels outlined in the Section 401 Clean Water Act certification for the project.
- 5) **Vegetation and Habitat disturbance:** The permittee shall adhere to the protection measures

outlined in the PBO regarding insecticide, herbicide and other chemical application to reduce impact to non-target species and surface waters. This will include a minimum of a 100-foot buffer from the water’s edge during broadcast spraying, a minimum of a 15-foot buffer with a bottle spray application, and within 15 feet with hand applications.

- 6) **General Measures for Protection of Wildlife:** The permittee has outlined specific measures for the protection of avian nesting and rearing, as well as bat nesting and rearing. Monitoring protocol has been proposed to survey for reptiles and amphibians prior to construction activities in or near wetted areas. Surveys for sensitive plant species have been performed. Where necessary, sensitive plants shall be flagged and avoided based on the recommended buffers for that plant. Mature cottonwood and other tree species on the banks of the Sacramento River shall be avoided during revetment removal to the greatest extent possible.

*Monitoring and Reporting Measures.* The potential for lethal take is deemed to be low based on the combination of setting and protective measures. The applicant will adhere to the monitoring and reporting requirements outlined in the PBO, including pre- and post-monitoring and reporting (See section 1.3.7 of the PBO). Post-Project monitoring following restoration will ideally be conducted for 2–5 years, subject to NOAA RC project review. Longer-term monitoring of physical and biological habitat features over time and continued fish use of the restored habitat is recommended to determine the long-term sustainability of the site and whether additional actions are needed to improve habitat function. For revegetation and other site restoration activities, the Applicant has proposed and will adhere to monitoring and reporting measures included in the *Application for Inclusion in the NOAA RC Central Valley Office Programmatic Biological Opinion*. Applicant has provided additional post-construction monitoring information in Exhibit 2. Restoration Plan — Kopta Slough.

Although not a condition of the ITS, or the accompanying PBO, project-specific application, or project-specific approval, CDFW requests a copy of any monitoring reports.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Restoration Project for take of the Covered Species, provided the Applicant implements the Restoration Project as described in the ITS, along with the accompanying PBO, project-specific application, and project-specific approval, including adherence to all measures contained therein, and complies with the measures and other conditions described in the ITS, along with the accompanying PBO, project-specific

application, and project-specific approval. If there are any substantive changes to the Restoration Project, including changes to the measures, or if the Service amends or replaces the ITS, accompanying PBO, or project-specific approval, the Applicant shall be required to obtain a new consistency determination or a CESA take permit for the Restoration Project from CDFW. (See generally Fish & Game Code, §§ 2080.1, 2081, subdivisions (a) and (c)).

CDFW's determination that the ITS, along with the accompanying PBO, project-specific application, and project-specific approval, is consistent with CESA is limited to the Covered Species and the Restoration Project.

## DEPARTMENT OF FISH AND WILDLIFE

### CONSISTENCY DETERMINATION NUMBER 2080-2023-002-01

**Project:** Humboldt Redwood Company –  
Habitat Conservation Plan for Northern  
California Summer Steelhead (*Oncorhynchus*  
*mykiss*)

**Location:** Humboldt County

**Applicant:** Humboldt Redwood Company

#### Background

The Pacific Lumber Company, Scotia Pacific Company, LLC, and Salmon Creek Corporation (collectively referred to as PALCO) developed a fifty-year Habitat Conservation Plan (HCP) (Project) (effective 3-1-1999) supporting the issuance of authorizations from the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) that allow limited take of an anadromous salmonid, Northern California steelhead (*Oncorhynchus mykiss*), incidental to forest management activities on commercial timberlands. The HCP covers approximately 209,000 acres of land spread throughout Humboldt County in California (Project Area). A Map of the Project Area is included in the HCP as Figure 1. In 2008, Humboldt Redwood Company (HRC) assumed responsibility for the HCP and its associated federal and state permits, Implementation Agreement (IA) and AB 1986 Agreement by means of an Assignment and Assumption Agreement following PALCO's bankruptcy and reorganization.

HRC's HCP covers timber operations and related management activities including, but not limited to: felling and bucking timber, yarding timber, loading and other landing operations, salvaging timber products, transporting timber and rock products, construc-

tion, decommissioning and maintenance of roads, constructing and operating rock pits, water drafting for dust abatement and fire suppression, maintaining equipment, site preparation (prescribed burning, blasting, and other slash treatment), early season continuous operations, planting, pre-commercial thinning, and pruning, commercial thinning, and collecting and transporting minor forest products, monitoring and research (Project Activities).

The Project Activities described above have the potential to incidentally take<sup>1</sup> Northern California steelhead where those activities take place within Northern California coastal watersheds within the Project Area. In particular, fish could be incidentally taken as a result of impingement during water drafting and from stream dewatering and handling during relocation for road construction<sup>2</sup>. The Northern California distinct population segment of steelhead (Northern California steelhead) is designated as "threatened" pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). A subset of this species, the summer-run ecotype (Northern California summer steelhead), is also designated as "endangered" pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(5)(G).)

Because Project activities may result in take of species designated as "threatened" under the federal ESA, PALCO prepared an HCP and IA in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(b) of the ESA. The IA was completed in February 1999, and NMFS issued an ITP (NO. 1157) for the Project on March 1, 1999. The ITP requires full implementation of, and compliance with, all conservation measures listed in the HCP and IA for avoidance, minimization, and mitigation for impacts to the salmonid species.

The USFWS and NMFS approved a Biological and Conference Opinion (BO) (FWS 1-14-99-18) for the ITP on February 24, 1999. The BO describes the Project, requires HRC to comply with terms of the BO and the ITP, and incorporates additional measures.

HRC assumed all of the responsibilities of the above-mentioned HCP, IA, ITP, and BO in 2008. On February 7, 2023, the Director of the Department of Fish and Wildlife (CDFW) received a notice from

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

<sup>2</sup> The federal Incidental Take Permit also authorizes incidental take in the form of harm related to habitat degradation, but this Consistency Determination is limited to take as defined in Fish and Game Code section 86.

HRC requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITP are consistent with CESA for purposes of the Project and the anticipated incidental take of Northern California summer steelhead. (Cal. Reg. Notice Register 2023, No. 9–Z.)

**Determination**

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

*Avoidance and Minimization Measures*

Section 10(a)(2)(A) of the ESA requires that an HCP specify the measures that the permittee will take to minimize and mitigate to the maximum extent practicable the impacts of the taking of any ESA-listed species as a result of activities covered by the HCP. The following measures help illustrate how the HCP measures including prescriptions for Class I and II riparian management zones, Class III Equipment Exclusion Zones, roads, mass wasting, and set asides result in consistency with CESA. These measures are designed to protect riparian resources and water quality. This combination of conservation measures is expected to minimize and mitigate, to the maximum extent practicable, the impacts of take of the anadromous fish species, including Northern California steelhead, addressed in the HCP.

1. The HCP sets aside for the life of the HCP approximately 6,000 acres of unharvested, partially harvested, and second growth forest stands in the Marbled Murrelet Conservation Areas that are intended to benefit marbled murrelets, northern spotted owls, anadromous salmonids, and other covered species.

The Marbled Murrelet Conservation Areas (MMCA) are a key conservation measure of the HCP. The HCP was developed by focusing on the requirements of selected species (focus species)

while also addressing the needs of other species in the same habitat. This tiered approach is an essential feature of the HCP’s terrestrial and aquatic conservation strategies. The marbled murrelet and northern spotted owl are the focus species for the terrestrial strategy, and the measures for these two birds are designed to benefit a broad range of other species in HRC’s managed forests. Some measures, such as the establishment of the MMCA, preserve and protect the focus and other species in specific locations, such as the focus aquatic species, including Coho salmon, Chinook salmon, the steelhead trout, and the cutthroat trout.

The MMCA are set aside for the life of the permit. Management of the MMCA is limited to road maintenance and potentially thinning of second growth stands if it will be beneficial to the marbled murrelet and its habitat. The MMCA are a total of approximately 6,530 acres, of which more than half (3,693 acres) is unentered old growth and residual old growth forest. The location of the MMCA encompasses forests that include, or are near the headwaters of the North Fork Elk River, and Bell, Lawrence, Booths Run, Shaw, Allen, and Cooper Mill Creeks, and Elkhead Springs. Thus, the MMCA provide a source of cold water to downstream salmonid habitat.

Details of MMCA Riparian Management Zones are as follows:

**MMCA Riparian Detail**

Class I stream length	18.6 Miles
Class II stream length	24 Miles
Class I No Harvest RMZ	288.2 Acres
Class I Selection Harvest RMZ	707.4 Acres
Class II No Harvest RMZ	235.7 Acres
Class II Selection Harvest RMZ	658.9 Acres

2. HCP aquatic management objectives with the goal of maintaining or achieving over time properly functioning aquatic systems similar to those found in unharvested forests. Key variables are water temperature, canopy cover, sediment, in-stream large wood, large wood recruitment, pool frequency, and pool quality.

The goal of the HCP’s Aquatics Conservation Plan is to maintain, or achieve over time, a properly functioning aquatic habitat condition. This condition, as defined by NMFS, is essential for the long-term survival of anadromous salmonids and is identified in a matrix with habitat variables necessary to achieve this goal. Habitat variables are derived from the literature for unentered forest conditions. The matrix is known as the

Properly Functioning Conditions (PFC) Matrix. The HCP requirement of implementing practices that are intended to move the aquatic environment towards these goals is not required by the California Forest Practice Rules (FPRs).

Progress towards the PFCs is monitored through the HCP's Aquatic Trends Monitoring program. Long-term monitoring of fish-bearing (Class I) streams was initiated with adoption of the HCP in 1999 with the goal to collect data to determine if salmonid habitat conditions across the property meet or are trending towards the PFCs. Representative stream reaches included in the Aquatic Trends Monitoring program were chosen for a variety of factors that included access, distribution, gradient, percentage of HCP coverage in the watershed, and watershed interest.

Currently, habitat conditions are assessed at 44 sites and stream temperature is recorded at 50 sites. While monitoring in and of itself is not a mitigation for impacts to salmonids, it provides relevant data into the adaptive management feedback loop so that mitigation measures such as Riparian Management Zones (RMZs) can be adjusted over time to adapt habitat conditions to better conserve the focus species.

3. RMZs stratified by watershed for Class I–III waters. Some watersheds meet or exceed those required by the California Forest Practice Rules for Anadromous Salmonid Protection.
4. Procedures for controlling sediment from roads, hillslopes, and other sources, including road upgrading, stormproofing, and decommissioning. Wet weather road restrictions designed to limit use of roads during wet weather periods, thereby reducing the potential for sediment delivery to streams.
5. The HCP exceeds the FPRs relative to Road Maintenance (HCP 6.3.3.4) and Road Inspections (HCP 6.3.3.5). Once a road has been brought to the stormproofed standard it must be maintained as stormproofed, similar with upgraded roads. In the FPRs roads only need to be maintained during the life of the Timber Harvesting Plan (THP) and the defined maintenance period which is typically three years for Anadromous Salmonid Protection watersheds. Regarding road inspections, the FPRs only require “monitoring” of roads associated with a THP and the monitoring is only required for the life of the THP, and the prescribed maintenance period. The HCP requires annual inspections of the entire road system (with some exceptions). The HCP also has clear timelines for performing necessary maintenance discovered during required inspections.

The HCP restricts road use for hauling for a longer period during wet weather than is required by the FPRs. The HCP defines the wet weather period as occurring between October 15 and May 31. The FPRs define the Winter Period as November 15 to April 1. In 2015 the FPRs added a definition for “Extended Wet Weather Period,” which means the period from October 15 to May 1, which brings the FPRs closer to the HCP but the HCP requirement still has 30 more days of wet weather restrictions.

The HCP includes rainfall triggers for *property-wide inspections of roads* as follows:

- 3–inches of rain in 24 hours at the Scotia Rain Gauge (HCP Section 6.3.3.5, Item 2), requires property-wide inspection of upgraded and seasonal roads.
- Five-year rain event at Scotia Rain Gauge (based on Scotia long term record) (HCP Section 6.3.3.5, Item 2), requires property-wide inspection of all closed and decommissioned roads.

6. Hillslope management measures designed to reduce landslides and erosion, including no harvest restrictions, and/or review by a licensed geologist, for areas most prone to mass wasting. Conducting periodic watershed analysis revisitation of all major watersheds on HRC lands using a process designed to develop site-specific prescriptions based on the best available science.
7. Some of the Watershed Analysis prescriptions (e.g., Van Duzen River and Lower Eel/Eel Delta (LEED)) require Steep Streamside Area protection that exceed FPRs. In addition, the HCP requirement of a Note 45 Geologic Report is above FPR requirements.

The HCP includes rainfall and earthquake triggers for *landslide inspections* as follows:

- 3–inches of rain in 24 hours at the Scotia Rain Gauge (Yager, LEED, Van Duzen, and Mattole WA prescriptions), requires landslide inspection of basins.
  - Triggering earthquake per Keifer (1984) influence zone (Freshwater, Elk River, Yager, LEED, Van Duzen, and Mattole WA prescriptions). Landslide inspection of basins.
8. Maintaining a robust aquatic monitoring program that includes compliance, effectiveness, and habitat trends monitoring elements.
  9. Use of adaptive management, informed by aquatic monitoring, to change and improve the effectiveness of conservation measures.
  10. Funding of a third-party HCP monitor to help ensure HRC's compliance with HCP obligations.

*Monitoring, Mitigation and Reporting Measures*

1. The HCP requires an adaptive management program that ensures that take of Northern California steelhead is minimized and fully mitigated over the fifty-year term of the HCP.  
The HCP requires HRC to comprehensively monitor the effectiveness of the plan's aquatic conservation measures. When effectiveness monitoring demonstrates the conservation measures are not succeeding, adaptive management measures will be triggered and the HCP adjusted, within the range of changes identified in the HCP, to ensure the conservation strategy will meet the HCP objectives.
2. HRC is required to prepare and submit annual fisheries reports to USFWS, NMFS, and CDFW each year during the life of the HCP including aquatic trends, amphibian and reptile monitoring, and an established Road Best Management Practices Evaluation Program.
3. HRC will also continue to report on animals encountered during bridge clearing activities and THP related watercourse classification and will specifically identify any juvenile salmon or steelhead that were encountered within the range of Northern California steelhead.

*Security*

The HCP Implementation Agreement and the Agreement Related to Enforcement of AB 1986 require HRC to provide a security to CDFW in the amount of \$2,000,000, adjusted annually for inflation for the life of the HCP. The Securities Account Disbursement Agreement, dated May 1, 2022, ensures this funding in accordance with the IA. The current escrow balance is \$3,766,000.00.

*Conclusion*

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

CDFW's determination that NMFS's ITP and HCP are consistent with CESA is limited to Northern California summer steelhead.

**DEPARTMENT OF HEALTH  
CARE SERVICES**

**SECTION 1115  
DEMONSTRATION APPLICATION**

This abbreviated public notice provides information of public interest regarding submission of a proposed Section 1115 demonstration request to the federal Centers for Medicare & Medicaid Services (CMS), titled California's Reproductive Health Access Demonstration (CalRHAD). The Department of Health Care Services (DHCS) is seeking this demonstration to strengthen the State's reproductive health provider safety net, with an emphasis on ensuring access to sexual and reproductive health services as well as the services and supports to access to these services by addressing health-related social needs (HRSNs).

Through this demonstration application, DHCS proposes to create a new CalRHAD grant program to enhance capacity and access for sexual and reproductive health services, including family planning, for individuals enrolled in Medi-Cal, as well as other individuals who may need assistance to access such services. CalRHAD grants would be available to reproductive health providers to support transitional non-service expenditures (e.g., equipment, technology investments) and investments to strengthen the accessibility, capacity, and sustainability of California's sexual and reproductive health provider safety net, potentially in partnership with community-based organizations (CBOs). Providers that receive CalRHAD grants would *not* be permitted to use those funds for abortion services. California currently covers abortion services for individuals enrolled in Medi-Cal and others using State funds, without federal Medicaid matching funds.

The State is requesting expenditure authority for \$200 million over a three-year demonstration term. The demonstration would promote the objectives of the Medicaid program by helping to assure access to sexual and reproductive health services covered by Medi-Cal and bolstering the sustainability and capacity of the providers who offer these critical services.

A copy of the proposed CalRHAD Section 1115 application and initial notice of public interest, both posted on March 16, 2023, is available on the DHCS website at <https://www.dhcs.ca.gov/provgovpart/Pages/CalRHAD.aspx>.

**PUBLIC REVIEW & COMMENTS**

DHCS will host the following public hearings to solicit stakeholder comments. The public hearings will be held electronically to mitigate the spread of COVID-19 and maximize opportunities for participa-

tion. The meetings will have online video streaming and telephonic conference capabilities to ensure state-wide accessibility.

- March 29, 2023 — First Public Hearing
  - 10:00–11:00 a.m. PT
  - Register for Zoom conference link: [https://manatt.zoom.us/webinar/register/WN\\_nCmc8aMqRfKzcOLZ2zcMKw](https://manatt.zoom.us/webinar/register/WN_nCmc8aMqRfKzcOLZ2zcMKw)
    - Please register in advance to receive your unique login details and link to add to calendar
  - Call-in information (312) 626–6799 or (888) 788–0099 (Toll Free)
    - Webinar ID: 934 7718 5979
    - Passcode: 032923
    - Callers do not need an email address to use the phone option and do not need to register in advance
- April 3, 2023 — Second Public Hearing
  - 9:00–10:00 a.m. PT
  - Register for Zoom conference link: [https://manatt.zoom.us/webinar/register/WN\\_HN7m0tXLTLCyWiL9X8H6IQ](https://manatt.zoom.us/webinar/register/WN_HN7m0tXLTLCyWiL9X8H6IQ)
    - Please register in advance to receive your unique login details and link to add to calendar
  - Call-in information (312) 626–6799 or (888) 788–0099 (Toll Free)
    - Webinar ID: 935 9888 3169
    - Passcode: 040323
    - Callers do not need an email address to use the phone option and do not need to register in advance

Written comments may be sent to the following address; please indicate “CalRHAD Section 1115 Application” in the written message:

Department of Health Care Services  
 Director’s Office  
 Attention: Jacey Cooper and Rene Mollow  
 P.O. Box 997413, MS 0000  
 Sacramento, California 95899–7413

Comments may also be emailed to [1115waiver@dhcs.ca.gov](mailto:1115waiver@dhcs.ca.gov). Please indicate “CalRHAD Section 1115 Application” in the subject line of the email message.

To be assured consideration prior to submission of the CalRHAD Section 1115 application to CMS, comments must be received no later than 11:59 p.m. (Pacific Time) **Monday, April 17, 2023**. Please note that comments will continue to be accepted after April 17, 2023, but DHCS may not be able to consider those comments prior to the initial submission of the CalRHAD Section 1115 application to CMS.

## 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.

Secretary of State  
 File # 2023–0120–01  
 Conditional Voter Registration

This action makes permanent an emergency regulation that added a method for military and overseas voters and voters with disabilities to complete conditional voter registration and cast a provisional or non-provisional ballot.

Title 02  
 Adopt: 2024.5  
 Amend: 20021, 20022, 20023, 20024, 20025, 20026, 20027  
 Filed 03/01/2023  
 Effective 03/01/2023  
 Agency Contact:  
 Rachelle Delucchi (916) 764–5934

California Pollution Control Financing Authority  
 File # 2023–0221–01  
 California Capital Access Program for Small Businesses

This emergency readoption removes the recapture mechanism designed to recycle contributions supporting future loan enrollments in the Capital Access Loan Program (CalCAP) for Small Business. This emergency is deemed pursuant to Health and Safety Code section 44520(b).

Title 04  
 Amend: 8070, 8072, 8073  
 Filed 03/03/2023  
 Effective 03/03/2023  
 Agency Contact:  
 Kamika McGill (916) 653–0289

Citizens Redistricting Commission  
 File # 2023–0214–04  
 Conflict–Of–Interest Code

This is a conflict–of–interest code filing that has been approved by the Fair Political Practices Commission

and is being submitted for filing with Secretary of State and printing only.

Title 02  
Amend: 59750  
Filed 03/01/2023  
Effective 03/31/2023  
Agency Contact: Tim Treichelt (916) 425-4938

Department of Insurance  
File # 2023-0118-04  
CLCA Plan of Operations Rate Filing LC 22-03

The Department of Insurance submitted this file and print action to amend the California Automobile Insurance Low Cost Program (CLCA) Plan of Operations. This action is exempt from the Administrative Procedure Act pursuant to California Insurance Code section 11620(c).

Title 10  
Amend: 2498.6  
Filed 03/01/2023  
Effective 03/01/2023  
Agency Contact:  
Michael Riordan (415) 798-4245

Department of Insurance  
File # 2023-0118-06  
CLCA Plan of Operations LC 22-02

The Department of Insurance submitted this file and print action to amend the California Automobile Insurance Low Cost Program (CLCA) Plan of Operations. This action is exempt from the Administrative Procedure Act pursuant to California Insurance Code section 11620(c).

Title 10  
Amend: 2498.6  
Filed 03/01/2023  
Effective 03/01/2023  
Agency Contact:  
Michael Riordan (415) 798-4245

Division of Workers' Compensation  
File # 2023-0209-02  
Workers' Compensation — Official Medical Fee  
Schedule — Outpatient — ASC

The Division of Workers' Compensation, within the Department of Industrial Relations, submitted this action to update the Workers' Compensation Official Medical Fee Schedule: Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule. These changes were submitted to OAL for filing and printing only, exempt from the APA pursuant to Labor Code section 5307.1(g)(2).

Title 08  
Amend: 9789.39  
Filed 03/01/2023  
Effective 03/01/2023  
Agency Contact: John Cortes (510) 286-0519

Department of Toxic Substances Control  
File # 2023-0117-01  
Mercury Thermostat Repeal

This action without regulatory effect repeals Chapter 24 (commencing with Section 66274.1) of Division 4.5 of Title 22 of the California Code of Regulations as required by Health and Safety Code section 25214.8.17. Chapter 24 contained regulations implementing the Mercury Thermostat Collection Act of 2008 which was replaced by the Mercury Thermostat Collection Act of 2021.

Title 22  
Repeal: 66274.1, 66274.2, 66274.3, 66274.4, 66274.5, 66274.7, 66274.8  
Filed 03/01/2023  
Agency Contact:  
Jackie Buttle (916) 322-4563

California Pollution Control Financing Authority  
File # 2023-0119-01  
CPCFA Bond Program — SBAF Fee Waiver

In this rulemaking, the California Pollution Control Financing Authority (CPCFA) waives the fee on Small Business Assistance Fund (SBAF) bond program financing transactions between the effective date of this rulemaking and December 31, 2026.

Title 04  
Amend: 8035(e)-(f)  
Filed 03/03/2023  
Effective 07/01/2023  
Agency Contact:  
Andrea Gonzalez (916) 651-7284

State Water Resources Control Board  
File # 2023-0120-03  
RUST Grant and Loan Program

This rulemaking action by the State Water Resources Control Board amends grant and loan application requirements for replacing, removing, or upgrading underground storage tanks (RUST) to align with statutory changes and reflect current practices.



Title 23

Adopt: 3421.1, 3422.1, 3423.1, 3424, 3425

Amend: 3420, 3421, 3422, 3423, 3426, 3427, 3428

Repeal: 3424, 3425

Filed 03/06/2023

Effective 07/01/2023

Agency Contact:

McLean Reich

(916) 322-6593

**PRIOR REGULATORY  
DECISIONS AND CCR  
CHANGES FILED WITH THE  
SECRETARY OF STATE**

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit [oal.ca.gov](http://oal.ca.gov).

