



California Regulatory Notice Register

REGISTER 2023, NUMBER 24-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

JUNE 16, 2023

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

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

PROPOSED ACTION ON REGULATIONS

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

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODE

AMENDMENT

MULTI-COUNTY: Kern Water Bank Authority
A written comment period has been established commencing on June 16, 2023 and closing on July 31, 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 code will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code will be submitted to the Commission for review.

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the

proposed conflict-of-interest code. Any written comments must be received no later than July 31, 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 this codes because these are not new programs mandated on local agencies by the code 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 code 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 code shall approve code as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest code should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 323-9103.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest code 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) 323-9103.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it by the Political Reform Act (the Act)¹ by Section 83112 of the Government Code proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **August 17, 2023** at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments should be received at the Commission offices no later than **5:00 p.m. on August 15, 2023.**

NOTICE OF INTENTION TO AMEND EXISTING CONFLICT-OF-INTEREST CODE

The Commission is providing notice of its intention to review and amend 2 Cal. Code Reg. Section 18351, the Commission’s conflict-of-interest code. Authority for this action is based on Government Code Section 87306. A written comment period has been established commencing on **June 16, 2023.** Written comments concerning the proposed amendments should be directed to the Fair Political Practices Commission, Attention: Maria Almaraz, 1102 Q Street, Suite 3050, Sacramento, California 95811. For inquiries, call (916) 322-5660 or email malmaraz-mirazo@fppc.ca.gov. Any written comments relating to the proposed action should be received no later than **August 15, 2023**, in order for them to be considered by the agency before it amends its code.

The Commission has prepared an Initial Statement of Reasons as a written explanation of the reasons for the amendments. This Initial Statement of Reasons, the regulatory language of the proposed amendment, and other information upon which the proposed amendment is based are available to interested persons at the Commission’s address listed above.

After the Commission’s public hearing, the agency’s proposed conflict-of-interest code will be submitted to the agency’s Code Reviewing Body (i.e., the Attorney General’s Office) for its review.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All further statutory references are to the Government Code. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations (hereafter Regulation).

Amend 2 Cal. Cod Regs. Section 18351: Pursuant to Government Code Section 87306 and 2 Cal. Code Regs. Section 18750, the Commission will amend its conflict-of-interest code due to changed circumstances, including the creation of new positions which must be designated pursuant to Government Code Section 87306 and relevant changes in the duties assigned to existing positions.

Cover Page

- No changes to any cover pages.

Executive Office

- Associate Governmental Program Analyst and Staff Services Analyst were added to reflect the Commission’s Executive office current organization and positions and are assigned to category three, which is the disclosure category assigned to Executive staff other than category one filers. The positions’ decision making authority is limited and category three requires disclosure of only those interests the position can affect in their decision making. The disclosure category is narrowly tailored to economic interests relating to candidates, campaign committees, lobbyists and other persons regulated by the Commission. The positions do not have broad decision making authority so category one is not appropriate. The positions do not participate in Enforcement related decisions or matters so category 2 is not appropriate. The positions will not be making or participating in making purchasing decisions for the Commission or the Executive office so categories 4 and 5 are not appropriate.

Legal Division

- The Staff Services Manager II position was added to reflect the Commission’s current organization and is assigned to category three which is the category assigned to legal staff that are not Counsel. The Staff Services Manager II’s decision making authority is limited and category three requires disclosure of only those interests the Staff Services Manager II can affect in their decision making. Category three is narrowly tailored to economic interests relating to candidates, campaign committees, lobbyists and other persons regulated by the Commission.

Enforcement Division

- Chief Investigator was retitled Supervising Special Investigator. The duties of this position have not changed.
- Supervising Management Auditor and Program Specialists were moved to the Audits and Assistance Division.

Audits and Assistance Division

- The Audits and Assistance Division is a new Commission Division and added to reflect the Commission’s current organization.
- The Division Chief, like all Division Chiefs in the Commission’s code, is assigned to category one. The Division Chief has broad decision-making authority and category one is the most appropriate disclosure category.
- The Supervising Management Auditor and Program Specialists that were previously listed in the Enforcement Division are now listed in the Audits and Assistance Division to reflect the Commission’s current organization. The duties of these positions have not changed.

Administration and Technology Division

- No changes were made.

Disclosure Categories

- No changes were made.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues. The Commission must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

The adoption of the proposed amendments: (1) will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Government Code (2) will not result in any nondiscretionary cost or savings to local agencies; (3) will not result in any cost or savings in federal funding to the state; (4) will not impose a mandate on local agencies or school districts; and (5) will not have any potential cost impact on private persons or business including small businesses.

AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposed and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 87300, 87302, 87303, 87306 and 87311.

CONTACT

Any inquiries concerning this proposal should be made to Maria Almaraz, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California 95811, telephone: (916) 322-5660 email: malmaraz-mirazo@fppc.ca.gov. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/>.

**TITLE 2. FISCAL CRISIS
MANAGEMENT AND
ASSISTANCE TEAM**

NOTICE OF INTENTION TO AMEND THE
CONFLICT-OF-INTEREST CODE

NOTICE IS HEREBY GIVEN that the **Fiscal Crisis Management and Assistance Team**, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on June 16, 2023 and closing on August 7, 2023. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include: adding the positions of Chief Operations Officer, CSIS, Deputy Operations Officer, CSIS, and Chief Analyst and also makes other technical changes.

The proposed amendment and explanation of the reasons can be obtained from the agency’s contact.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than August 7 2023, or at the con-

clusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than July 23, 2023.

The **Fiscal Crisis Management and Assistance Team** has determined that the proposed amendments:

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Michael H. Fine, Chief Executive Officer, (661) 636-4308 and mfine@fcmat.org.

TITLE 2. CALIFORNIA OCEAN SCIENCE TRUST

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE

NOTICE IS HEREBY GIVEN that the *California Ocean Science Trust*, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on June 16, 2023 and closing on July 31, 2023. All inquiries should be directed to the contact listed below.

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

Other changes to the Conflict-of-Interest code include: Updates related to the electronic filing process.

Information on the code amendment is attached to this email.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than *July 31, 2023*, or at the conclusion of the public hearing, if requested, whichever

comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than *July 16, 2023*.

The **California Ocean Science Trust** has determined that the proposed amendments:

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Lori Zook, Director of Finance & Administration, Lori.zook@oceansciencetrust.org, 510.827.7440.

TITLE 5. DEPARTMENT OF EDUCATION

AMENDMENT OF REGULATIONS REGARDING INDEPENDENT STUDIES

NOTICE IS HEREBY GIVEN that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 9 a.m. on August 1, 2023, at 1430 N Street, Sacramento, California. Any interested person may participate in the public hearing via Zoom meeting by logging in per the following instructions:

- Click the following link or paste the link to the browser to join the webinar and enter the password:
<https://us02web.zoom.us/j/82554925016>
Meeting ID: 825 5492 5016

Passcode: 985603

- To connect with audio only and no video, call one of the following telephone numbers and enter the meeting ID and password:

+1 669 219 2599 US (San Jose)

+1 213 338 8477 US (Los Angeles)

Meeting ID: 825 5492 5016

Passcode: 985603

For persons interested in participating in the public hearing via Zoom, you may test in advance whether your computer is compatible with Zoom by visiting the following links:

- Clicking on the test link: <https://zoom.us/test>
- For any issues regarding connecting with Zoom, go to <https://support.zoom.us/hc/en-us> for assistance.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in the public hearing on the proposed regulation, may request assistance by contacting Elvia González, Whole Child Division, 1430 N Street, Suite 4102, Sacramento, CA, 95814; telephone, 916-319-0277. It is recommended that assistance be requested at least two weeks prior to the hearing.

Pursuant to Government Code Section 11346.6(a)(3) and (b), because some of these regulations pertain to special education, the following provisions also apply:

Upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the CDE shall provide that person a narrative description of the additions to, and deletions from, the regulations. The description shall identify each addition to or deletion from the regulations by reference to the subdivision, paragraph, subparagraph, clause, or subclause within the proposed regulation containing the addition or deletion. The description shall provide the express language proposed to be added to or deleted from the regulations and any portion of the surrounding language necessary to understand the change in a manner that

allows for accurate translation by reading software used by the visually impaired.

The CDE shall provide the information described above within 10 business days, unless the CDE determines that compliance with this requirement would be impractical and notifies the requester of the date on which the information will be provided.

Notwithstanding any other law, if information is provided to a requester as described above, the CDE shall provide that requester at least 45 days from the date upon which the information was provided to the requester to submit a public comment regarding the proposed regulation. The CDE shall not take final action to adopt the regulation until the requester has submitted a public comment or the extended 45-day comment period expires, whichever occurs first.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Lorie Adame, Regulations Coordinator
 Administrative Support and Regulations Adoption Unit
 California Department of Education
 1430 N Street, Room 5319
 Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-322-2549 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on August 1, 2023. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

AUTHORITY AND REFERENCE

Authority: Section 51749.3, Education Code.
 Reference: Sections 35293, 48200, 48663, 48916.1, 49067, 51013, 51050, 51745, 51745.5, 51746, 51747, 51747.5, 51748, 51749.5 and 51749.6, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Independent study, codified in Education Code (EC) sections 51744-51749.6, is provided as an alternative instructional strategy. Independent study pupils work independently, according to a signed agreement and under the general supervision of a credentialed teacher or teachers. While independent study pupils follow the curriculum adopted by the local educational agency (LEA) and meet all graduation requirements, indepen-

dent study offers flexibility to meet individual pupil needs, interests and styles of learning.

The CDE has provided key information and resources on independent study programs since the legislation was first authorized in 1990–1991. Independent study was initially intended to serve child actors, aspiring Olympic athletes and other pupils whose schedules precluded regular classroom attendance. The changing needs of pupils and families has resulted in an increase in independent study participation, and, commencing with the 2015–2016 school year, an alternative to the traditional independent study model was codified in EC sections 51749.5 and 51749.6. While the traditional independent study instructional delivery is based on a time value of assignments as determined by the supervising instructor, the newer course-based independent study instructional delivery is based on enrollment in a certified LEA course or courses with attendance earned if all course requirements are met and the pupil is making satisfactory progress. Course-based independent study is not included in the current regulations.

The unprecedented impacts of the Coronavirus pandemic required an immediate statewide pivot to support instructional continuity for pupils. Independent study became the primary vehicle used to provide families with an alternative to in-person instruction. Assembly Bill (AB) Number 130 (Stats. 2021, chapter 44), as amended by AB Number 167 (Stats. 2021, chapter 252), made substantive changes to independent study to clarify and strengthen pupil learning during quarantine.

Subsequently, AB Number 181 (Stats. 2022, chapter 52), as amended by AB Number 185 (Stats. 2022, ch 571), introduced additional changes to clarify independent study requirements and increase accountability for LEAs and pupils in fiscal year 2022–2023 and future years.

The objectives of these proposed regulations include: 1) fulfilling the statutory requirements for course-based independent study; 2) the Legislature’s directives in AB Number 130/167 and 181/185 mentioned above to align the regulations to current law; 3) to provide clarity to LEAs on the statutory requirements for efficient and consistent administration and implementation of independent study programs; and 4) to elevate the flexibility inherent in independent study to enable a robust instructional program that supports continuity in learning in this alternative instructional environment.

Anticipated Benefits of the Proposed Regulation

The proposed regulatory action furthers the mission of the SSPI which is to provide world-class education for all students, from early childhood to adulthood. Benefits of enacting the proposed regulations include aligning these title 5 regulations with the statutory

changes for course-based independent study, with changes from AB Number 130 (as amended by AB Number 167) and with changes from AB Number 181 (as amended by AB Number 185). The proposed amended regulations will further clarify statutory requirements that will support LEAs in the administration and implementation of their independent study programs and will elevate the flexibility inherent in independent study to enable a robust instructional program for the pupils participating in this alternative instructional strategy.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

An evaluation of the proposed regulations has determined they are not inconsistent nor incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D). After conducting a review for any regulations that would relate to or affect this area, the SSPI has concluded that this is the only regulation that concerns Independent Study.

DISCLOSURES REGARDING THE PROPOSED ACTION/FISCAL IMPACT

The SSPI has made the following initial determinations:

Other statutory requirements: There are no other matters prescribed by statute that are applicable to the specific state agency or to any specific regulations or class of regulations.

Mandate on local agencies and school districts: None.

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None.

Cost or savings to any state agency: None.

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

Costs or savings in federal funding to the state: None

Effect on housing costs: None.

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

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

Report required: The proposed regulation does not require a report to be made.

Effect on small businesses: The proposed regulation would not have an effect on any small business

because small businesses are not involved in the proposed regulation.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment — Gov. Code Section 11346.5(a)(10):

The SSPI concludes that it is unlikely that this proposed regulation will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulations will benefit pupils and families in California who are interested in a robust and high-quality educational alternative to in-person instruction and will further benefit LEAs in their administration and implementation of independent study programs guided by these proposed regulations. There is no anticipated benefit to the health and welfare of California residents, worker safety, or the State's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the SSPI must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SSPI, 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 SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Elvia González, Education Programs Consultant
Whole Child Division,
California Department of Education
1430 N Street, Suite 4202, Sacramento, CA 95814
Telephone: 916-319-0277
Email: independentstudy@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Lorie Adame, Regulations Coordinator, or the backup analyst, Gerri White, at 916-319-0860. Both contacts may be reached by email at regulations@cde.ca.gov or by telephone at 916-319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND INFORMATION

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons (ISOR) and Fiscal and Economic Impact Statement (STD. 399). These documents upon which the proposed action is based may be obtained upon request from the Regulations Coordinator. In addition, this Notice, the text of the proposed regulations and the ISOR may also be viewed on CDE's website at <http://www.cde.ca.gov/re/lr/rr/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available to the public for at least 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations. The CDE will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the Regulations Coordinator.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified text, if any, can be accessed via CDE's website at <http://www.cde.ca.gov/re/lr/rr/>.

**TITLE 9. DEPARTMENT OF STATE
HOSPITALS**

ARCHITECTURAL AND
ENGINEERING CONTRACTS

DIVISION 1. DEPARTMENT OF
MENTAL HEALTH
CHAPTER 16. STATE
HOSPITALS OPERATIONS
ARTICLE 5. CONTRACTS

The Department of State Hospitals (Department) hereby gives notice of the proposed regulatory action described in this document. A public hearing regarding the proposal is not currently scheduled. Not later than 15 days prior to the close of the public comment period, any interested person, or their duly authorized representative, may make a written request for a public hearing pursuant to Government Code 11346.8, and a public hearing will be held. Requests for a public hearing should be sent to:

California Department of State Hospitals|
Regulations, Policy, and Operations Unit
RE: A&E Contracts Regulation
1215 O Street, MS-20
Sacramento, CA 95814
Phone: (916) 654-2478
Email: DSH.Regulations@dsh.ca.gov

WRITTEN COMMENT PERIOD AND
SUBMITTAL OF COMMENTS

Statements or arguments relevant to the proposed regulatory action may be submitted to the Department in writing, email, or facsimile to the address and number listed above. All comments must be received by **July 31, 2023**.

Comments sent to persons or addresses other than that specified or received after the date and time specified above may be included in the record of this proposed regulatory action but may not be summarized or responded to regardless of the manner of transmission.

AUTHORITY AND REFERENCE

Authority: Section 4526, Government Code; sections 4005.1, 4011, 4027 and 4101, Welfare and Institutions Code; section 11.05 of the State Contracting Manual — Volume 1.

Reference: Sections 4525–4529.5, 4526, 4527, 4528, 4529, 4529.12, 4529.14, 14120, 14825, 14837, 14838, 87100, and 87100.1, Government Code; Article XXII of the California State Constitution; sections 1102, 10105, 10115.1, 10124, 10250, 10251, and 10261, Public Contract Code; section 21065, Public Resources Code; sections 7.33, 11.05, 11.06, and 11.08, State Contracting Manual — Volume 1; sections 92 and 94, Streets and Highways Code; Los Angeles Dredging Co. v. City of Long Beach (1930) 210 Cal. 348, 354–355; Los Angeles Gas & Electric Corp. (1922) 188 Cal. 307, 319; Grayden v. Pasadena Redevelopment Agency (1980) 104 Cal App. 3d 631, 635–637; and section 999, Military and Veteran Code.

INFORMATIVE DIGEST AND
POLICY OVERVIEW

Summary of Existing Laws:

Existing law, chapter 10, division 5, title 1 of the Government Code, establishes a contracting process with private architects, engineering, land surveying, and construction project management firms. Pursuant to Section 4526, selection by the Director of the Department for professional services shall be “on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.” Section 4526 further requires the development of regulations to implement this method of selection.

Further, chapter 10, division 5, title 1 of the Government Code, requires any development of procedures to prohibit practices which may result in unlawful activities. It mandates the head of each state agency to encourage firms to submit statements of qualifications and performance data and establishes a process for the review of such data for the selection of qualified firms to negotiate a contract for the services.

Government Code section 4226 and the State Contracting Manual section 11.00 also establish that for departments to use A&E contracts, a process must be adopted into regulations.

Section 4530 et seq. of title 9 of the California Code of Regulations establishes a contracting process specific to the Department. However, the current regulations do not specify that the Department may use one Invitation for Bid to hire multiple contractors, whether it's on call retainers or project specific. Further, the current regulations do not clarify the authority for the Department to audit the contractor's performance or

claims on architectural and engineering (A&E) projects. Finally, the provisions are not in a logical order, creating confusion when following the contract processes: Without these provisions implemented, the Department cannot effectively use the regulations.

Effect of the Proposed Action:

The proposed amendments implement the A&E contractual authority the Department may utilize under the law, including providing for audit authority over the contracts. These amendments also establish a process for the procurement of a contract for services to address emergency needs as defined. Further, these amendments would present the regulations in a more logical order to clearly outline the steps required for this distinct contract process.

Broad Objectives and Anticipated Benefits of the Proposed Regulation:

The broad objectives of the regulations are to implement contractual authority the Department may use in accordance with existing law. These regulations will organize the provisions of the regulation in a more logical reading order, establish a process for the procurement of contracts on an emergency basis, and clarify the ability for a designee to be delegated by the Director of the Department, as appropriate. These amendments will make the contracting process more efficient.

The anticipated benefits of this action are an increased efficiency in the Department's contracting process for A&E services. By establishing the ability to delegate tasks to appropriate personnel, clarifying various definitions in the existing regulations, and implementing additional authority provided by law, including the ability to audit contracts for performance, the contracting process may be completed and implemented more efficiently, and the public will benefit from having a clearer understanding of the Department's process.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations:

During the development of this proposed regulatory action, the Department reviewed existing regulations on this topic and concluded that the proposed regulation is neither inconsistent nor incompatible with existing state regulations or statutes. In arriving at this conclusion, the Department reviewed the Welfare and Institutions Code, Penal Code, and title 9 of the California Code of Regulations.

FORMS INCORPORATED BY REFERENCE

None

LOCAL MANDATE STATEMENT

Mandate on local agencies and school districts: None.

FISCAL IMPACTS

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: None.

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

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

HOUSING COSTS

Significant effect on housing costs: None.

SIGNIFICANT, STATEWIDE
ADVERSE ECONOMIC IMPACT
DIRECTLY AFFECTING
BUSINESS AND INDIVIDUALS

The Department has made the initial determination that there will not be any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF RESULTS OF ECONOMIC
IMPACT ASSESSMENT

The adoption of the proposed regulations 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 Department has made the determination that there will not be any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: With the implementation of these regulations, the health and welfare of California residents, as well as worker safety, may be improved as the clarification in the contracting process may result in an increased ability to contract with the Department. The Department, through these regulations and amendments, is committed to a transparent process and working with all California businesses to have the knowledge necessary to successfully compete for contracts. However, the Department will specifically encourage small businesses and DVBE businesses by participating in outreach programs and encouraging these businesses to become certified through the De-

partment of General Services and to subscribe to the California State Contracts Register to receive advertisement notices. These actions are anticipated to be a positive for the qualified businesses of California, which will result in a more efficient economy overall, positively affecting all California residents. Lastly, these proposed amendments may benefit the State's environment by streamlining the Department's process, which may result in a reduced carbon footprint, a reduction in overall waste of resources, use of resources, and energy costs.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations do not affect small businesses nor is the Department aware of any cost impacts that a small business would necessarily incur due to the proposed regulations. The processes defined in these regulations will be performed by existing Department staff and affect only Department positions related to the A&E contracts process. These amendments do not alter the experience requirement or other criteria necessary for a business to be awarded a contract to perform the necessary services. As a result, the proposed regulation will neither create nor eliminate existing businesses within the State of California.

COST IMPACTS TO A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

STATEMENT OF ALTERNATIVES CONSIDERED

The Department has determined that no reasonable alternative considered 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 regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to submit statements or arguments with respect to alternatives to the proposed regulation during the comment period.

CONTACT PERSONS

The primary contact for this regulatory action is Anna Libonati, and the backup contact is Rachelle

Sack. They can be reached by telephone at (916) 654-2478 or email at DSH.Regulations@dsh.ca.gov.

AVAILABILITY STATEMENTS

The Department has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic impacts of the proposal and all the information upon which the proposal is based, and the proposed text (the "express terms") of the regulation. Copies of the proposed regulation text and ISOR may be accessed on the Department's website, listed below, or may be obtained from the Department using the contact information provided in this document.

Further, non-substantive inquiries concerning the proposed regulatory action may be directed to the contact person named in this document at (916) 654-2478. The Department has compiled a record of this rulemaking action, which includes all the information upon which the proposal is based and is available for inspection upon request to the contact persons.

Following the close of the public comment period or date of the public hearing, if one is held, the Department may adopt the proposed regulations substantially as described in this notice or may modify the proposed regulation if the modifications are sufficiently related to the original text. Except for non-substantive, 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 testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the contact person identified in this document.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons (FSOR) shall be available. Copies may be requested from the contact person in this notice or may be accessed on the Department's website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

This notice, the ISOR, the proposed regulation text, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Department website at <https://www.dsh.ca.gov/Publications/Regulations.html>.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

AMEND COMMISSION REGULATIONS
1005, 1007, AND 1008;
TRAINING AND TESTING SPECIFICATIONS FOR PEACE OFFICER BASIC COURSES — LEARNING DOMAIN 3: PRINCIPLED POLICING IN THE COMMUNITY

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

Public Comments Due by July 31, 2023.

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 404-5619, by email to [Jennifer Hardesty at Jennifer.Hardesty@post.ca.gov](mailto:Jennifer.Hardesty@post.ca.gov), or by letter to:

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

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code (PC) section 13503 (authority of POST), and PC § 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific PC § 13503(e), which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PC § 13510 requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers. POST is responsible for the certification of these courses and implementing instructor training requirements for the instructors who teach in these

courses. During a review of existing course content related to History of Policing, it was discovered the direction provided to instructors as it relates to that topic was very minimal and did not provide clear direction as to the types of events they should be discussing. It was also discovered during conversations with presenters of the basic courses that the amount of time dedicated to the topic was very minimal because the course curriculum lacked direction.

The implementation of these changes will provide additional direction to instructors and clarify the types of historical events to be discussed. The modifications to the learning activity will require the students to spend more time researching and presenting back on what they have learned about historical events that have shaped relationships with the communities they will serve once they become sworn peace officers.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments to the regulation will provide clarification and clearer direction to instructors of the basic courses when teaching the History of Policing and require students attending the course to research and present back on events that have impacted policing and the communities, which will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the state's environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

DOCUMENTS INCORPORATED BY REFERENCE

- *Training and Testing Specifications for Peace Officer Basic Courses — revised April 1, 2022*

DISCLOSURES REGARDING THE PROPOSED ACTION

POST has made the following initial determinations:
Mandate on local agencies or school districts: None.
Cost or savings to any state agency: None.

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

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

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

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

Significant, statewide adverse economic impact directly affecting California businesses: POST has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

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

RESULTS OF ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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

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

CONSIDERATION OF ALTERNATIVES

In accordance with GC § 11346.5, subdivision (a)(13), POST must determine that no reasonable alternative it considered, or that has otherwise identified

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

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to Jennifer Hardesty, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630, at (916) 227-3917. General questions regarding the regulatory process may be directed to Katelynn Poulos at (916) 227-4894.

TEXT OF PROPOSAL

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

ADOPTION OF PROPOSED REGULATIONS/ AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

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

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

**TITLE 11. COMMISSION ON PEACE
OFFICER STANDARDS AND TRAINING**

AMEND COMMISSION REGULATION
1208 — TEMPORARY SUSPENSION OF
CERTIFICATION

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

Public Comments Due by July 31, 2023.

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 404-5619, by email to Michelle Weiler at michelle.weiler@post.ca.gov or by letter to:

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

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code (PC) section 13503 (authority of POST), PC § 13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific PC § 13503(e), which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

On September 30, 2021, Governor Newsom signed Senate Bill (SB) 2. SB 2 made significant changes to existing Government and Penal Codes, respectively. These changes provide for additional peace officer hiring eligibility requirements. SB 2 also grants POST the authority to certify all peace officers in California, and subsequently take action against those certifications, should POST determine serious misconduct occurred. While the peace officer eligibility hiring requirements went into effect on January 1, 2022, the remaining changes to Government and Penal Codes went into effect on January 1, 2023. POST is continuing to assess the requirements of SB 2 and adopt new or amend current regulations to meet these requirements.

This rulemaking action clarifies and makes specific a peace officer's right to respond to an Order of Immediate Temporary Suspension from the POST Executive Director. The proposed amendment to Commission Regulation 1208 in this rulemaking action will create regulatory language to establish peace officers' due process right to respond to an Order of Immediate Temporary Suspension from the POST Executive Director as well as the process for doing so.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments will establish peace officers' due process right to respond to an Order of Immediate Temporary Suspension from the POST Executive Director and the process for doing so, which will increase the efficiency of the state of California in delivering services to stakeholders. Thus, law enforcement standards are maintained and effective in preserving public health, safety, and welfare in the state. The proposed amendments will have no impact on worker safety or the state's environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

POST has determined that these proposed amendments are not inconsistent nor incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, POST has concluded that this is the only regulation that concerns processes and procedures for peace officers to respond to an Order of Immediate Temporary Suspension as issued by the POST Executive Director.

FORMS INCORPORATED BY REFERENCE

There are no forms to be incorporated by reference in this proposed action.

DISCLOSURES REGARDING THE
PROPOSED ACTION

POST has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

Significant, statewide adverse economic impact directly affecting California businesses: POST has determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

Small Business Determination: POST has determined that the proposed regulations will not affect small business because the regulation impacts individuals who typically do not own or operate small businesses. Additionally, the Commission's main function to select and maintain hiring, training, and certification standards for law enforcement has no effect financially on small businesses.

RESULTS OF ECONOMIC IMPACT
ANALYSIS/ASSESSMENT

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

Benefits of the Proposed Action: As stated above under the Informative Digest/Policy Statement Overview, the benefits of the regulation will increase the efficiency of the state of California in delivering services to stakeholders by providing peace officers' an opportunity to respond to information POST has relied upon to place their certification on a temporary hold through an Order of Immediate Temporary Suspension as issued under the authority of the POST Executive Director. Thus, law enforcement licensing and enforcement procedures are equitable and serve to in preserving protection of public health, safety, and

welfare in California. There would be no impact that would affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to Michelle Weiler, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-4870. General questions regarding the regulatory process may be directed to Katelynn Poulos at (916) 227-4894.

TEXT OF PROPOSAL

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

ADOPTION OF PROPOSED REGULATIONS/
AVAILABILITY OF CHANGED OR
MODIFIED TEXT

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

modified text for 15 days after the date that the revised text is made available.

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

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

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

**TITLE 16. CONTRACTORS STATE
LICENSE BOARD**

BATTERY ENERGY STORAGE SYSTEMS

NOTICE IS HEREBY GIVEN that the Contractors State License Board (hereafter Board or CSLB) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than August 2, 2023**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) sections 7008 and 7059, and to implement, interpret, or make specific BPC sec-

tion(s) 7058 and 7059, the Board is considering amending sections in Division 8 of Title 16 of the California Code of Regulations (CCR), as described below.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

BPC section 7008 authorizes CSLB to adopt rules and regulations in accordance with the Administrative Procedure Act that are reasonably necessary to carry out the provisions of the Contractors State License Law (CSLL). Section 7058 establishes the specialty contractor license and defines “specialty contractor” as “a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.” Section 7059 authorizes the Board to adopt rules and regulations that are reasonably necessary to put into effect the classification of contractors in a manner consistent with established usage and procedure found in the construction business.

Consistent with that authority, by regulation, the Board has defined 43 specialty license subclassifications in section 832 of Article 3 of Division 8, Title 16 of the CCR. This proposed regulation affects two of those specialty license classifications: section 832.10, “Class C-10 — Electrical Contractor” and section 832.46, “Class C-46 — Solar Contractor.”

Existing law expressly authorizes the C-10 Electrical Contractor and the C-46 Solar Contractor classifications to install photovoltaic solar energy systems (PV systems), as follows:

- An electrical contractor places, installs, erects or connects any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize electrical energy in any form or for any purpose. (CCR, title 16, § 832.10.)
- A solar contractor installs, modifies, maintains, and repairs thermal and photovoltaic solar energy systems. A licensee classified in this section shall not undertake or perform building or construction trades, crafts, or skills, except when required to install a thermal or photovoltaic solar energy system. (CCR, title 16, § 832.46.)

A PV system is a solar energy system that converts energy from the sun to electricity for an end user. Battery energy storage systems (BESS) are separate electrical systems that can complement PV systems. A BESS can store electrical energy for later use when the PV system is not generating electricity — for example, at night, or on cloudy days — or provide backup power during a utility outage. A BESS can be installed initially as part of a PV system installation, added to

an existing PV system at a future date, or installed separately to store energy from the power grid without the use of a PV system. With respect to storing energy, individual BESS capacities are measured in kilowatt-hours (kWh), which describes the maximum amount of electricity stored (in hours) when the battery is full.

The Board has faced questions about the appropriate specialty license classification(s) to install BESS as between C-10 and C-46 license contractor classifications. There is no dispute section 832.10 authorizes a C-10 Electrical Contractor to install BESS (because BESS generates, transmits, transforms, and/or utilizes electrical energy, consistent with the existing scope of the C-10 classification). However, the C-46 Solar Contractor classification is limited to work on (thermal and) PV solar energy systems, and section 832.46 does not expressly include BESS.

To the contrary, section 832.46 expressly precludes the C-46 Solar Contractor from performing trades, crafts or skills outside the scope of the classification, unless required to install a thermal or PV system. Since 2016, the Board has worked with stakeholders to define the circumstances under which a C-46 Solar Contractor may install BESS.

BPC section 7059 similarly permits a specialty contractor (such as a C-10 or C-46) to contract outside of their classification to perform work in the craft or trade of another classification if that work “is incidental and supplemental to the performance of the work in the craft for which the specialty contractor is licensed.” Section 831 of Title 16 of the CCR provides such work is “incidental and supplemental” when it is “essential to accomplish the work in which the contractor is classified.”

There are no existing CSLB regulations that define BESS for the purpose of contractor license classifications. There are no CSLB regulations that expressly specify that BESS is not part of a PV system, or when a BESS is “incidental and supplemental” or essential to a specialty contractor’s installation of a PV system. This proposal seeks to adopt such regulations.

This proposal would:

- Add a new definition of “battery energy storage system” to section 810, “Definitions,” of Article 1, Division 8, of Title 16.
- Add “battery energy storage systems” to the description of the C-10 Electrical Contractor classification in section 832.10, “Class C-10 — Electrical Contractor,” of Article 3, Division 8, of Title 16. The proposal also replaces “solar photovoltaic cells” in section 832.10 with the more accurate “photovoltaic solar energy systems” from current section 832.46.
- Revise the existing section 832.46, “Class C-46 — Solar Contractor,” of Article 3, Division 8, of

Title 16, by adding two new paragraphs to establish, for the purposes of the C-46 classification, that:

- (1) a BESS, as defined, is not required to install a PV system and shall not be considered within the scope of the C-46 Solar Contractor classification except as specified in the next subdivision; and
- (2) the C-46 installation of a BESS is incidental and supplemental to the work of a C-46 Solar Contractor when the BESS is installed at the same time as PV system and the BESS rating does not exceed 80 kWh.

ANTICIPATED BENEFITS OF PROPOSAL

Defining BESS and including it within the trade descriptions of the C-10 and C-46 classifications allows CSLB to set a minimum standard for licensure for those specialty contractors who work with this technology. It allows CSLB to require license applicants to demonstrate BESS knowledge and experience and to include information about BESS in the CSLB license examinations. This ensures only those specialty contractors who are qualified to install BESS are licensed, and it prioritizes protection of the public as California advances toward its clean energy goals.

The proposed amendments will eliminate stated confusion about whether BESS is part of a PV system or a standalone electrical device for the purposes of CSLB specialty license classification descriptions. Specifying that BESS is a standalone technology strictly appropriate for the C-10 Electrical Contractor classification — except in clearly defined circumstances when a C-46 Solar Contractor is installing BESS at the same time as a PV system — ensures the Board is appropriately limiting the field and scope of the operations of licensed contractors to those in which they are classified and qualified to engage, as required by BPC section 7059. It further preserves the distinction between the two trades and their workforces.

The proposed amendments will also eliminate stated confusion about which specialty license classification(s) can install BESS paired with PV systems. For the existing C-46 Solar Contractor workforce, the proposed amendments recognize that, although BESS are separate electrical systems, they have become a desirable supplement to PV system installations, and C-46 contractors can perform BESS installations when installing PV systems as part of their trade in specified circumstances. This preserves the practical differences between BESS and PV systems by treating certain BESS installations as out-of-classification work for C-46 contractors at a specified threshold. It will aid C-46 licensees in knowing and complying

with a clear standard and aid the Board in enforcing the standard.

The proposal also benefits the public by clearly defining the BESS installations that require specialized electrical knowledge and skill. By identifying an 80-kWh threshold above which BESS installation is appropriate only for other contractors, the proposal ensures BESS is installed only by those contractors who have met the minimum qualifications, particularly the C-10 Electrical Contractor classification.

Finally, this proposal assures continuation of the businesses of C-46 Solar Contractors who are currently installing PV systems paired with BESS. CSLB recognizes deployment of renewable energy systems in residential and light commercial applications is required by the California Energy Code and is essential for California's clean energy goals. The population primarily affected by this proposal are the small share of contractors holding a C-46 classification and no other license classification that authorizes them to install BESS (i.e., a C-46 holding no C-10, "B", or "A" classification). According to 2020 Interconnection data, this population installed 601 BESS out of 13,073 total projects (4.6% of all projects), with an average BESS size of between 17.82 kWh, based on CSLB's review of 556 BESS, or 19.2 kWh, based on CSLB's review of the raw Interconnection data. (See June 2022 Staff Report, p. 13.) Even using a different data set, the Self-Generation Incentive Program (SGIP) data, between 2015 and 2020, this population installed 1,223 BESS out of 19,194 total projects (6.4% of all projects) with an average BESS size of between 14.04 kWh, based on CSLB's review of 556 BESS, and 17.15 kWh, based on CSLB's review of the raw SGIP data.

In other words, by any measure, C-46 contractors (holding no other license classification authorizing them to install BESS) typically install only a small share of BESS projects, and those projects are usually well under the 80-kWh threshold recommended in this proposal (June 2022 Staff Report). Whereas the UC Berkeley Report and other prior proposed regulatory changes would have precluded the C-46 Solar Contractor classification from installing BESS entirely, this proposal ensures the continuation of the businesses of C-46 Solar Contractors holding no other license classification consistent with the types of installations prevalent in the C-46 marketplace.

EVALUATION OF CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing this regulatory proposal, CSLB has conducted a search for any similar regulations on this topic and has concluded that

these proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. The proposed regulations do not result in a fiscal impact to the state.

The amendments are intended to clarify existing regulations by defining BESS and scope of practice for licensees and are not anticipated to result in additional costs to the state.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

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

Significant Effect on Housing Costs (and, if applicable, including any estimated costs of compliance or potential benefits of a building standard): None.

BUSINESS IMPACT ESTIMATES

The Board has made the initial determination the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses (including the inability of California businesses to compete with businesses in other states).

This initial determination is based on the following facts:

- The Board has determined the only types of businesses that may be affected are licensed contractors who hold a C-46 Solar Contractor classification and no other license classification that authorizes the contractor to install BESS (i.e., a C-46 that holds no C-10, "A", or "B" classification). Businesses holding a C-10 classification will not be adversely affected as C-10 contractors may install BESS without limitation and this regulation would continue to allow such installations.
- As of August 2022, there were 481 C-46 Solar Contractors who do not hold any other license classification authorizing them to install BESS (i.e., a C-46 and no C-10, "B", or "A" classification). Ostensible impact to the 481 licensees would be twofold, to those who are: (1) currently in the business of installing PV systems paired with a BESS; and (2) installing PV systems paired with BESS at a kWh rating higher than 80 kWh. According to the 2020 Interconnection data, this

population installed 601 BESS out of 13,073 total projects (4.6% of all projects), with an average BESS size of between 17.82 kWh, based on CSLB’s review of 556 BESS, or 19.2 kWh, based on CSLB’s review of the raw Interconnection data. (See June 2022 Staff Report, p. 13.) Even using a different data set, the SGIP data, between 2015 and 2020, this population installed 1,223 BESS out of 19,194 total projects (6.4% of all projects) with an average BESS size of between 14.04 kWh, based on CSLB’s review of 556 BESS, and 17.15 kWh, based on CSLB’s review of the raw SGIP data. In sum, the 481 C–46 contractors holding no other license classification authorizing them to install BESS only install between 4.6% and 6.4% of all BESS projects, a small share of the overall number of projects. And based on the average size of installations by this population, most of the projects they perform are at kWh capacities much lower than 80 kWh, if they install BESS at all (some solar contractors may only install PV systems and not BESS). As a result, the number of licenses potentially affected is insufficient to create a statewide adverse economic impact. Indeed, the UC Berkeley Report concluded that completely “precluding or restricting C–46 (no C–10, A, or B) contractors will have a negligible effect on the current pool of contractors, because only a tiny fraction of current BESS installations has been carried out by contractors holding only a C–46 license without an A, B, or C–10 license.” (UC Berkeley Report, p. 37.)

Cost Impact on Representative Private Person or Business

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

The Board has determined that this regulatory proposal will impact the creation of jobs and new businesses, the elimination of jobs and existing businesses, and the expansion of businesses in the State of California, as follows:

- It will not significantly create or eliminate jobs within the State of California. The UC Berkeley Report estimated as of June 2021, there were 6,317 non-electrical solar installers and 4,204 electrician solar installers (i.e., workers, not licensed contractor employers) in California. (UC Berkeley Report, p. 81.) The UC Berkeley Report

conducted an economic analysis of the workforce impact of precluding the C–46 from installing BESS entirely to make it the exclusive domain of the C–10. UC Berkeley found that if C–46 contractors holding no other license classification authorizing them to install BESS were precluded from installing BESS entirely, it might equate to the loss of between 11 and 18 full-time jobs in the residential market statewide (UC Berkeley Report, p. 29). While no comparable analysis was conducted for the commercial market, C–46 contractors mostly install BESS at sizes commonly found in the residential market, and UC Berkeley found that their participation in the commercial market was “negligible” and reported at “0%,” according to SGIP data (UC Berkeley Report, pp. 26, 28, figure 11). This proposal does not preclude C–46 contractors from installing BESS entirely. Instead, the proposed regulation will permit C–46 contractors to continue installing BESS over and above the project sizes that they already typically install. Indeed, UC Berkeley concluded that a restriction of 5 kw and 20 kWh “would basically maintain the status quo.” (UC Berkeley Report, pp. 5, 14, 31.) The Board is proposing an 80-kWh restriction, far greater than the restriction that UC Berkeley called “the status quo.” The Board therefore concludes that any job impact will be significantly less than the minimal impact established by UC Berkeley if the Board were to completely preclude C–46 contractors from installing BESS. Any C–46 Solar Contractor without another license classification seeking to install BESS above 80 kWh may opt to apply for a C–10 Electrical Contractor license for \$230.

- It will not create new businesses or eliminate existing businesses within the State of California. This proposal impacts how a single technology within an existing marketplace — the BESS-paired PV system installations — will be characterized for the purpose of defining the scope of existing specialty contractor license classifications. No existing business that already installs BESS paired with PV systems, is precluded entirely from installing BESS paired with PV systems as a result of this proposal.
- It will not adversely affect the expansion of businesses currently doing business within the State of California. BESS paired with PV systems is an emerging and expanding business already conducted by C–10 and C–46 businesses.

Benefits of Regulation

The Board has determined this regulatory proposal will have the following benefits to health and welfare

of California residences, worker safety, and the state’s environment.

- This regulatory proposal will positively affect the health and welfare of California residents. In California, in general, a contractor’s license is required to affix an electrical device to a structure if the contract exceeds \$500 for labor and materials. The California Electrical Code requires all connections regulated by the Code to be made by qualified persons (Cal. Electrical Code, title 24, Part 3, article 100). However, BESS has been undefined for the purposes of CSLB contractor license classifications. When it is unclear which license classification(s) can install which technology with an accompanying risk of electrical shock or fire, consumers are at risk. This proposal will set the minimum standards for licensure for the C–46 and C–10 specialty trades that will work with this technology. This establishes who is qualified to install BESS and in which capacities for the purpose of specialty contractor licensing, which in turn will provide public protection in the marketplace for PV systems paired with BESS.
- This regulatory proposal benefits worker safety because it ensures that only appropriately skilled workers install BESS, and safety standards are being met for licensed contractors who work with BESS and employ workers to do so. As discussed, electrical system connections required at thresholds above 80 kWh are more appropriate for C–10 contractors, and the proposed regulation ensures that only qualified contractors install BESS. Additionally, pursuant to the California Residential and Fire Codes, 80 kWh is the maximum allowable capacity for BESS that can be installed for a residential occupancy within common residential locations. (Cal. Residential Code, CCR, title 24, Part 2.5, § R328.5, Cal. Fire Code, CCR, title 24, Part 9, § 1207.11.4). Above 80 kWh, more rigorous safety standards are applied to the installation of BESS. If a C–10 license is required to equip a PV system with a BESS above 80 kWh, an installing worker may also be required to secure electrical certification that meets the requirements of California’s Division of Apprenticeship Labor Standards Enforcement (see Chapter 4.5 (commencing with § 108) of Division 1 of the Labor Code) for a skilled workforce trained in electrical safety.
- The Board preliminarily believes (1) there is no evidence that the proposed regulations, if adopted, “may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment,” and (2) that it may determine with certainty that there is no possibility the proposed regulations

may have a significant effect on the environment. (Pub. Resources Code, § 21065; CCR, title 14, § 15061, subdivision (b)(3).) Further information regarding CSLB’s preliminary determinations is provided in the Initial Statement of Reasons.

Business Reporting Requirements

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

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. Although small businesses owned by licensees of the Board may be impacted, the Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be determined.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Board in writing relevant to the above determinations at 9821 Business Park Drive, Sacramento, CA 95827 during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons, proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board, at 9821 Business Park Drive, Sacramento, CA 95827.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

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

CONTACT PERSONS

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

Name: Diana Godines
Address: Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Telephone Number: (916) 255-0541
Fax Number: (916) 364-0130
E-Mail Address: Diana.godines@cslb.ca.gov

The backup contact person is:

Name: Yeaphana La Marr
Address: Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Telephone Number: (916) 255-3977
Fax Number: (916) 364-0130
E-Mail Address: Yeaphana.lamarr@cslb.ca.gov

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the CSLB's Laws and Regulations webpage at https://www.cslb.ca.gov/about_us/library/laws/.

**TITLE 16. PROFESSIONAL
FIDUCIARIES BUREAU**

PROPOSED ACTION CONCERNING FEE
INCREASE AND INITIAL
LICENSURE PERIOD

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (Bureau) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Department of Consumer Affairs
1625 North Market Blvd
1st Floor Hearing Room, Suite # S-102
Sacramento, CA 95834
Thursday, August 3, 2023
10 a.m.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be **received by the Bureau at its office no later than Wednesday, August 2, 2023, by 5 p.m.**, or must be received by the Bureau at the hearing.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section(s) 6517 and 6538 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 6592, the Bureau is considering amending section(s) 4428, 4568, 4575, and 4580 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

This regulatory proposal will amend Title 16 CCR sections 4428, 4568, 4575, and 4580.

The amendments to regulations through this proposed rulemaking are as follows:

CCR 4428(a) will clarify that an initial professional fiduciary license expires 12 months after issuance; will remove provisions aligning an initial license expiration date with the licensee’s birth month; and, will remove the provision that no license shall be issued for less than 12 months or more than 24 months.

CCR 4428(b) will delete a cross-reference to CCR 4580 related to proration of initial licensing fees.

CCR 4568(c)(1) will clarify that the initial license period for an inactive license reinstated to active is 12 months.

CCR 4575 (c)(1) will clarify that the initial license period for a retired license reinstated to active is 12 months.

CCR 4580(a) will increase the fee for an initial application to take the licensing examination from \$400 to \$600 commencing January 1, 2024.

CCR 4580(b) will increase the fee for an initial license from \$600 to \$1,300, CCR 4580(b) is also being amended to clarify that the increased fee amount will apply to applicants who pass the examination described in section 4500 on or after January 1, 2024. CCR 4580(b) will also remove a reference to the proration of initial licensing fees.

CCR 4580(c) will increase the fee for a renewal license application from \$700 to \$1,300. Section 4580(c) is also being amended to clarify the increased renewal fee will be effective for licenses expiring on March 31, 2024.

CCR 4580(f)(3) will increase the fee for the reinstatement of an inactive license to active from \$700 to \$1,300 commencing January 1, 2024. CCR 4580(f)(3) will also remove a reference to the proration of initial licensing fees.

CCR 4580(g)(2) will increase the fee for the reinstatement of a retired license to active from \$700 to \$1,300 commencing January 1, 2024. CCR 4580(g)(2) will also remove a reference to the proration of initial licensing fees.

Anticipated Benefits of Proposal

This regulatory proposal will allow the Bureau to remain solvent while implementing new statutory requirements and continuing to carry out its consumer protection mandate. This regulatory proposal will also clarify that the duration of an initial license shall not exceed 12 months better align it to existing statute. This alignment will also reduce up-front costs for licensees, improving access to licensure, and will sim-

plify the licensing system by keeping the same length of time for initial licenses and renewal licenses.

This regulatory proposal does not affect the health and welfare of California residents, worker safety, or the state’s environment.

Evaluation of Consistency and Compatibility with Existing State Regulations

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

DISCLOSURES REGARDING THIS
PROPOSED ACTION

The Bureau has made the following initial determinations:

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Bureau indicates because the fees are already being assessed and the proposed regulations only increase the fee amount levels, no additional workload costs are anticipated.

The Bureau estimates the proposed regulations will increase revenues by approximately \$509,900 per year. The proposed fee levels are projected to result in total annual revenues of approximately \$1,104,600 per year and up to \$11,046,000 over a ten-year period.

The Bureau notes, because the inactive and retired license status designation recently became effective in January 2023, the Bureau does not currently have sufficient data to provide an estimate of individuals that may opt to reinstate and does not have fiscal workload or revenue estimates related to license reinstatement at this time.

The Bureau estimates one-time information technology (IT) costs of \$4,000 to update cashing and accounting software. Any IT costs will be absorbed within existing resources.

These regulations will not result any costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

BUSINESS IMPACT ESTIMATES

The Bureau has made the initial determination that the proposed regulatory action to increase fees may

have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; specifically, professional fiduciaries. The Bureau has made the initial determination that the proposed regulatory action to set an initial license period to one year and omit references to a prorated license fee would not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; specifically, professional fiduciaries.

Without increasing fees, the Bureau will not be able to sufficiently implement the new requirements of Chapter 417, Statutes of 2021 (AB 1194) or meet its consumer protection mandate. This initial determination is based on the following:

- The fee for an initial application would increase by 50 percent. This amount may be prohibitive for new applicants who may decide to pursue another profession with a lower barrier to entry.
- The fee for an initial license application would increase by 117 percent. This amount may be prohibitive for new applicants who may decide to pursue another profession with a lower barrier to entry.
- The fees for a renewal license application, reinstatement from inactive to active, and reinstatement from retired to active would increase by 86 percent. This amount may be prohibitive for licensees who carry a small case load or who do not meet the threshold number of clients requiring licensure. These licensees may choose not to renew due to the increase, which may negatively impact the Bureau's revenue.

The following types of businesses would be affected:

- Professional fiduciaries

The following reporting, recordkeeping or other compliance requirements are projected to result from the proposed action:

- None.

The Bureau considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit such proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (B) Consolidation or simplification of compliance and reporting requirements for businesses.
- (C) The use of performance standards rather than prescriptive standards.
- (D) Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Cost Impact on Representative Private Person or Business

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Bureau follow. The regulations will increase Bureau application and license fees as follows:

- Application: \$400 to \$600
- Initial License: \$600 to \$1,300
- Renewal License: \$700 to \$1,300
- Reinstatement from Inactive to Active: \$700 to \$1,300
- Reinstatement from Retired to Active: \$700 to \$1,300

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses

The Bureau has made the initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety and state's environment:

This regulatory proposal would benefit the welfare of California residents because it would preserve the Bureau's fiscal solvency allowing it to continue protecting consumers through the licensing and regulation of professional fiduciaries.

This regulatory proposal does not affect worker safety because it is unrelated to worker safety.

This regulatory proposal does not affect the state's environment because it is unrelated to the environment.

Business Reporting Requirements

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

Effect on Small Business

The Bureau has made the initial determination that the proposed regulatory action to raise fees may negatively impact small businesses as the proposal would increase the application fee by \$200; the initial license fee by \$700; the renewal license fee by \$600; the reinstatement of an inactive license to active by \$600; and, the reinstatement of a retired license to active by \$600. The Bureau has made the initial determination that the proposed regulatory action to set an initial li-

cense period to one year and omit references to a pro-rated license fee would not have any impact on small business.

Without increasing fees, the Bureau will not be able to sufficiently implement the new requirements of AB 1194 or meet its consumer protection mandate.

Significant Effect on Housing Costs: None.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 1625 North Market Boulevard, Suite S-209, Sacramento, California 95834.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Bureau has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the ISOR, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau at 1625 North Market Boulevard, Suite S-209, Sacramento, California 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly in-

dicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

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

CONTACT PERSONS

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

Name: Angela Cuadra
 Address: Professional Fiduciaries Bureau
 1625 North Market Boulevard, Suite S-209
 Sacramento, CA 95834
 Telephone Number: 916-574-7498
 Fax Number: 916-574-8645
 E-Mail Address: angela.cuadra@dca.ca.gov

The backup contact person is:

Name: Rebecca May
 Address: Professional Fiduciaries Bureau
 1625 North Market Boulevard, Suite S-209
 Sacramento, CA 95834
 Telephone Number: 916-574-7340
 Fax Number: 916-574-8645
 E-Mail Address: rebecca.may@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions, the ISOR, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Bureau's website at https://fiduciary.ca.gov/laws_regs/index.shtml.

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

**ITEM # CALIFORNIA WORK
OPPORTUNITIES AND RESPONSIBILITY
TO KIDS (CALWORKS)
60-MONTH TIME LIMIT**

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

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

Statements or arguments relating to the proposals may be submitted in writing, e-mail, or by facsimile to the address/number listed above. All comments must be received by August 1, 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, Sections 40-107, 42-301, 42-302, 42-431, 44-133, 44-307, 44-316, 82-504, and 82-833.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

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

The proposed regulatory amendments are the result of Assembly Bill (AB) 79, Chapter 11, Statutes of 2020, which amends time-on-aid (Welfare and Institute Codes (WIC) section 11454) effective May 1, 2022. In addition, the proposed regulations include policy clarifications; the addition of the Executive Order (EO) time limit exemptions pursuant to EOs N-29-20, N-69-20, N-75-20; and updated MAP amounts in Time-on-Aid handbook sections pursuant to SB 187 (Chapter 50, Statutes of 2022, Section 47), WIC section 11450 and AB 128, Chapter 21, Statutes of 2021, Item 5180-101-001, Provision 18.

The proposed regulatory amendments make the following revisions to the Time-on-Aid regulations:

- Replaces the CalWORKs 48-month time limit with 60 months pursuant to AB 79 (WIC section 11454).
- Gender-specific pronouns are replaced with gender neutral pronouns.
- Adds the COVID-19 CalWORKs time limit exemptions pursuant to Executive Orders N-29-20, N-69-20, N-75-20).
- Updates MAP amounts in Handbook Sections pursuant to SB 187 (WIC section 11450) and AB 128, Chapter 21, Statutes of 2021, Item 5180-101-001, Provision 18.

This regulatory action is designed to strengthen needy families by increasing the amount of time eligible adults may receive CalWORKs aid from 48 to 60 months. This impacts CalWORKs families by increasing cash aid and supportive services families receive by 12 additional months.

The department conducted a review of existing regulations and evaluated the proposed regulations for any inconsistency or incompatibility. The proposed regulations are neither inconsistent nor incompatible with existing state regulations but do fulfill the intent of the legislation in enacting AB 79.

COST ESTIMATE

1. **Costs or Savings to State Agencies:** There is no fiscal impact from these regulations beyond what is already budgeted and enacted in statute. The 2022 May Revision includes \$10,894,000 for assistance and \$22,216,000 for services totaling \$33,110,000 for the CalWORKs Time Limit restoration from 48 to 60 months.
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 is no fiscal impact from these regulations beyond what is already budgeted and enacted in statute. The 2022 May Revision includes \$1,654,000 for CalWORKs Time Limit restoration from 48 to 60 months.
4. **Federal Funding to State Agencies:** There is no fiscal impact from these regulations beyond what is already budgeted and enacted in statute. The 2022 May Revision includes \$53,608,000 for assistance, \$88,673,000 for services, and \$1,421,000 for automation totaling \$143,702,000 for the CalWORKs Time Limit restoration from 48 to 60 months.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies, nor on school districts. There are no “state–mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination is made based on the proposed regulatory action, which was designed to impact state and county agencies and recipients of the CalWORKs program and would not affect businesses.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

The CDSS has made the determination that the proposed regulations do not affect small businesses because these regulations are only applicable to state and county agencies and CalWORKs program recipients. Therefore, they do not have a cost impact on the private sector, including small businesses.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The implementation of this regulatory action will benefit CalWORKs applicants and recipients by extending the time a family can receive aid from 48 to 60 months. There are no additional benefits for worker safety or the state’s environment, as the regulations only affect individuals receiving CalWORKs aid.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, the Department did not consider any other alternatives as there were no other alternatives proposed. These regulations are mandated by Welfare and Institutions Code (WIC) sections 11454, 11454.1, and 11454.5 adopted or amended by AB 79.

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

would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

**AUTHORITY AND
REFERENCE CITATIONS**

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific Sections 11450, 11454, and 11454.1, Welfare and Institutions Code.

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

Contact Person: Everardo Vaca (916) 657-2586

Backup: Oliver Chu (916) 657-2586

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

**DIVISION 7, CHAPTER 9
SECTIONS 96040-96050**

**CHAPTER 9.2
SECTIONS: 96051-96051.37**

The Department of Health Care Access and Information (Department) proposes adding new Chapter 9.2, Hospital Fair Billing Program, sections 96051, 96051.1, 96051.2, 96051.3, 96051.4, 96051.5, 96051.6, 96051.7, 96051.8, 96051.9, 96051.10, 96051.11, 96051.12, 96051.13, 96051.14, 96051.15, 96051.16, 96051.17, 96051.18, 96051.19, 96051.20, 96051.21, 96051.22, 96051.23, 96051.24, 96051.25, 96051.26, 96051.27, 96051.28, 96051.29, 96051.30, 96051.31, 96051.32, 96051.33, 96051.34, 96051.35, 96051.36, and 96051.37 in title 22 of the California Code of Regulations (CCR), Division 7, and repealing sections 90640, 96041, 96042, 96043, 96044, 96045, 96046, and 96050 of title 22, division 7, chapter 9 of the CCR. Chapter 9.2 will implement Chapter 2.5 of the Health and Safety Code (HSC) section 127400, *et seq.*, Fair Pricing Policies: Hospital Fair Pricing Policies, amended by Assembly Bill (AB) 1020 (Chapter 473, Statutes of 2021). The Department proposes to adopt and repeal the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

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 their 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 their authorized representative, may submit written comments relevant to the proposed regulatory action. The Department must receive all comments by 5:00 pm on August 1, 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 hand delivered or mailed.

Melissa Ferkovich, Assistant Chief Counsel
Hospital Fair Billing Program
Department of Health Care Access and
Information
Telephone: (279) 220-2079
Email: hfbp@hcai.ca.gov
Mailing address:
2020 West El Camino Avenue, Suite 1101
Sacramento, CA 95833-1880

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

Renee Borunda, Staff Services Manager II
Hospital Fair Billing Program
Department of Health Care Access and
Information
Telephone: (916) 326-3626
Email: hfbp@hcai.ca.gov

III. AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 127010, 127435, and 127436 of the HSC, and to implement, interpret, or make specific sections 127400, 127401, 127405, 127410, 127420, 127425, 127426, 127430, 127435, 127436, and 127440 of the HSC, the Department is proposing to adopt the following changes by deleting Chapter 9 and creating Chapter 9.2 in Division 7 of title 22 of the CCR, as follows:

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

The Department is proposing this regulatory action to implement, interpret, and make specific Article 1

(Hospital Fair Pricing Policies, §§ 127400–127446) of Chapter 2.5, Part 2, Division 107 of the Health and Safety Code.

Summary of Existing Laws and Regulations

General Background

In 2006, California passed AB 774 (Chapter 755, Statutes of 2006), which required hospitals to offer charity care and discount payment (together financial assistance) to uninsured and underinsured patients below 350 percent of the Federal Poverty Level (FPL). It also required transparency in how patients could qualify for and apply for financial assistance, requiring hospitals to submit their policies to the Department to be made available to the public. Enforcement was placed with the California Department of Public Health (CDPH).

Since 2008, the Department has collected hospital's charity care and discount payment policies and application forms and posted them on its website. Chapter 9 of Division 7 of title 22 of the CCR provided the process hospitals follow to comply with the requirements.

Signed into law in 2021, Assembly Bill 1020 (Chapter 473, Statutes of 2021) (AB 1020), seeks to expand the number of patients eligible for financial assistance, increase protections for eligible patients, and strengthen state enforcement and oversight of the Hospital Fair Pricing Act. To that end, AB 1020 placed enforcement authority with the Department starting January 1, 2024. The Department is specifically required to promulgate regulations for the enforcement of Article 1 of Chapter 2.5, Part 2, Division 107 of the HSC, and commence enforcement by January 1, 2024.

Existing Law

Existing law codifies the Department's current process for hospital submission of policies in title 22, CCR sections 90640 through 96050. The penalties for enforcement of the Fair Pricing Policies Act, under the authority of CDPH until January 1, 2024, are codified in Title 22, CCR section 70959.

AB 1020 requires hospitals to submit to the Department their debt collection policy, in addition to their existing charity care and discount payment policies. The Department is required to review the policies starting January 1, 2023. The debt collection policy, along with discount and charity care policies, will be made available on both the Department and hospital websites. Hospitals are required to update the submissions biennially or whenever there are any significant changes made.

The law creates new requirements that prohibit hospitals from selling patient debt unless specified conditions are met, including that the hospital found the patient ineligible for financial assistance, or the patient has not responded to billing attempts or to offers of financial assistance for 180 days. It also extends ad-

verse credit reporting and commencement of civil action from 150 to 180 days after initial billing. The law raises the income level for financial assistance from 350 percent to 400 percent of FPL.

The law also requires hospitals to prominently display notice about the availability of the discount payment and charity care programs in publicly accessible locations and on their websites.

Additionally, the law requires the Department to assume enforcement of the Hospital Fair Pricing Act from CDPH beginning January 1, 2024. The Department is tasked with developing and implementing a consumer-facing program to receive complaints of improper billing and establish a procedure for investigating patient complaints. The Department will impose administrative penalties on hospitals for violations of the Hospital Fair Pricing Act. Finally, this bill requires the Department to promulgate regulations to establish criteria to be considered in determining the amount of the penalty and to establish an appeal process.

Effects of the Proposed Regulatory Action

This rulemaking package first proposes a full repeal of title 22, CCR sections 90640 through 96050, in order to make the regulations consistent with the newly developed and proposed oversight processes. These sections correspond with the Department's existing structure for collecting and reviewing hospital policies, which will be out of date with the Department's processes starting January 1, 2024. Repealing these sections will allow the Department's regulations to be updated to reflect the new processes and requirements outlined in AB 1020 and will eliminate confusion by removing out of date information from the regulations.

CCR section 70959, the penalty structure for violations identified by CDPH, will remain in place for violations that occur prior to January 1, 2024.

The newly proposed rules will be located in Articles 1 through 6 of Division 7, Chapter 9.2 of title 22 (proposed regulations).

The proposed regulations codify the Department's new processes for: collection and review of hospital policies and applications, collection and review of patient complaints, assessment of penalties, and hospital appeal process. The proposed regulations further implement the goals of AB 1020 by clarifying requirements related to accessibility, patient eligibility, patient notice, and hospital oversight. Specifically, the new regulations will do the following:

Article 1 of the proposed regulations addresses definitions, document accessibility, required notices, and hospital delegation. Section 96051 defines terms used in the Act and proposed regulations that were previously undefined or unclear. Section 96051.1 establishes accessibility standards for all documents hospitals provide to patients under the Act. Section 96051.2

specifies the requirements for hospital discount payment and charity care program eligibility determination letters. Section 96051.3 explains all notices provided to a patient under the Act, as well as billing statements, shall include a specific statement about the Hospital Bill Complaint Program. Section 96051.4 confirms that the hospital obligations outlined in the Act and proposed regulations are not waived when a hospital delegates functions.

Article 2 of the proposed regulations addresses the submission of discount payment, charity care, and debt collection policies and procedures. Section 96051.5 specifies that hospitals must have a primary and secondary contact register in the Department's online policy submission portal to receive compliance and informational communications regarding hospital policies required by HSC section 127435. This provision outlines the information required for registration and the requirement to update changes to the contacts within 10-working days. Section 96051.6 outlines information that is required to be in hospital policies pursuant to HSC section 127435, the timeframes and triggers for hospitals to submit their policies to the Department for review and posting, and the information that hospitals must submit to the Department along with their policies. Additionally, this section outlines requirements for the file type and format of documents when hospitals submit their policies to the Department. This section also provides the procedure for hospitals to respond to Department questions and correspondence through the policy review process, including how the hospital may request extensions of time and the standard by which the Department will review those requests. Section 96051.7 outlines various notice and eligibility requirements hospitals must follow related to the discount payment program required by the Act. Section 96051.8 outlines requirements for hospitals' patient facing applications for charity care and discount payment eligibility.

Article 3 of the proposed regulations addresses the notice and posting requirements of the Act. Section 96051.9 outlines requirements for hospital discharge notices. Section 96051.10 clarifies requirements for hospital postings related to discount payment and charity care. Section 96051.11 clarifies hospital website requirements related to discount payment and charity care.

Article 4 of the proposed regulations implements the patient complaint process for the Hospital Bill Complaint Program. Section 96051.12 specifies requirements for hospitals to designate a contact to register in the Department's online patient complaint portal to review and respond to complaints from the Department related to the patient complaint process. This provision outlines the information required for registration, the option for the designated contact to

add approved users to respond to complaints, the requirement to update changes to the designated contact within 10-working days, and the requirement that the designated contact and approved users must sign a statement of certification under penalty of perjury attesting to the accuracy of any responses submitted by the hospital through the online patient complaint portal. Section 96051.13 specifies the options for patients to file patient complaints online or by mail. Section 96051.14 provides the ability and the steps necessary for a patient to designate an authorized representative. This section also outlines the requirements to modify or cancel an authorized representative designation. Section 96051.15 specifies the requirement for a patient or authorized representative to sign a release of information authorizing the Department to request all information necessary to investigate the patient's complaint. Section 96051.16 outlines the requirements to file a patient complaint with the Department, including providing identifying information, contact information, demographic information, and specific information about the complaint being filed. Section 96051.17 outlines the Department's complaint review process. This provision includes a requirement that a patient must have filed an application with the hospital for discount payment or charity care prior to filing a complaint with the Department. This provision outlines the steps the Department will take upon receipt of a complaint, the deadlines and requirements for hospital responses, the steps the Department will take upon concluding the investigation, and the obligations of the hospital after a compliance determination is made. Section 96051.18 outlines the process and standard of review for a request for extension filed by the hospital during the patient complaint process. Section 96051.19 specifies that hospitals shall not submit a patient to collections and shall cease all collections activity while that patient's complaint with the Department is pending. The section further implements a penalty in the event a hospital fails to comply with this provision.

Article 5 of the proposed regulations implements the penalty process for violations of the Act and the proposed regulations. Section 96051.20 makes specific the application of the proposed penalty regulations and the Department's authority to enforce the Act beginning January 1, 2024. Section 96051.21 implements the Department's enforcement authority by adding penalties of \$1,000 per day for late submissions of required policies and applications for discount payment and charity care programs, and debt collection policies, as well as responses to requests from the Department for additional information regarding policy submissions and information regarding the patient complaint process. Section 96051.22 sets forth how the penalties arising from 96051.21 will be calculat-

ed and communicated to hospitals. Section 96051.23 implements a penalty process and structure for policies and applications submitted to the Department, hospital postings, and website postings that are not in compliance with the Act and the proposed regulations. Sections 96051.24 through 96051.27 implement penalties and the process for calculation of penalty assessments resulting from violations identified through the patient complaint system. Section 96051.24 interprets the definition of investigation as used in HSC section 127436. Section 96051.25 outlines the process of determining a base penalty for violation(s) and Section 96051.26 implements the additional factors, and the weight of the factors, the Department will consider in adjusting the base penalty. Section 96051.27 makes specific the limit of \$40,000 as applied to patient complaints. Section 96051.28 implements the requirement that if a hospital owes a reimbursement to a patient, it must reimburse the patient in a timely manner or a penalty will be assessed at \$1,000 per day with a cap of three times the amount owed to the patient, including interest. Section 96051.29 implements and makes specific how a small or rural hospital can apply for assistance in paying an assessed penalty if payment will affect access to quality care. Section 96051.30 makes specific how the Department will adjust the maximum penalty every five years as required by HSC section 127436. Section 96051.31 gives the Department authority to impose corrective action to ensure policies and procedures comply with the Act and the proposed regulations.

Article 6 of the proposed regulations implements the appeal process. Section 96051.32 provides a detailed explanation of how a hospital may file an appeal, the time limits on filing an appeal, the information required in a notice of appeal, and where to serve the notice. Section 96051.33 implements the requirements regarding communications after an appeal is filed. Section 96051.34 implements additional prehearing rules including how the parties will be notified of the appeal hearing date, the process to submit exhibits and witness lists, and how to request a change to the hearing date or to the manner of how the hearing will be held (in-person or by telephone). This section also clarifies how to request consolidation, how to request an interpreter, and how to arrange for a court reporter. Section 96051.35 implements the hearing procedure, including whether it will be held by a Department hearing officer or referred to the California Office of Administrative Hearings. It also sets forth the rules for taking of evidence. Section 96051.36 implements the ability of the parties to reach a settlement and how the settlement will be communicated to the hearing officer. Section 96051.37 makes specific the Director's final review process and the steps the Director will take to finalize the decision.

The proposed regulations are necessary to implement and administer the newly amended Hospital Fair Pricing Act.

The Department has performed an evaluation as to whether the proposed regulations are inconsistent or incompatible with existing state regulations and determined the proposed regulations are not inconsistent or incompatible with existing state regulations. The Department also determined these regulations do not substantially differ from existing federal statute or regulations.

V. OBJECTIVES AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

One of the benefits of this regulation package is increasing awareness about hospital discount payment, charity care, and the Hospital Bill Complaint Program. These regulations clarify what hospitals must do to comply with hospital written notice, posting, and website requirements. Currently, hospitals do not have robust notice requirements and patients are less likely to be aware that they may qualify for financial assistance. The requirements of these regulations will help ensure patients are aware of the hospital's discount payment and charity care programs, as well as the Hospital Bill Complaint Program.

The proposed regulations also describe the process for the Hospital Fair Billing Program to collect and review hospital discount payment, charity care, and debt collection policies. By clarifying the policy submission requirements, document requirements, policy review process, and substantive policy requirements, it is more likely that hospital policies will comply with the Act.

Another benefit of the regulations is the creation of the Hospital Bill Complaint Program, a consumer complaint process. If a patient believes they were improperly denied discount payment or charity care, the patient may file a complaint with the Department. The regulations clarify how a patient, or their authorized representative, may file a complaint through the patient complaint portal. The requirements of the regulations offer patients possible recourse if a hospital improperly denies their discount payment or charity care application.

Lastly, the regulations specify penalties for hospital violations by establishing criteria for determining penalty amounts, as well as an appeal process. By clarifying the penalty amounts as well as the process to calculate administrative penalties, hospitals will have increased transparency regarding penalty assessments. Penalties will also benefit patients because they will deter hospitals from future out of compliance behavior.

VI. DISCLOSURES REGARDING THE PROPOSED ACTION

HCAI has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Cost or savings to any state agency: No fiscal impact is anticipated on the Agency. To implement the provisions of AB 1020, the Department previously completed a Budget Change Proposal (BCP) based upon the passage of the Act (4140–029–BCP–2022–GB), which was approved by the legislature. The BCP allocated \$3.9 million (\$1.9 million General Fund) in expenditure authority in Fiscal Year (FY) 2022–23, \$3.6 million (\$1.8 million General Fund) in 2023–24, and \$3.6 million (\$1.8 million General Fund) annually thereafter to support program services associated with the implementation of AB 1020. The Department does not anticipate needing additional funds beyond what was already requested and approved.
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500–17630: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impact on a representative person or business: The Department estimates the regulations required to implement Chapter 2.5 Fair Pricing Policies: Hospital Fair Pricing Policies (HSC section 127400 *et seq.*) will be an average of \$2,887.76 per licensed hospital.
7. 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 businesses, including the ability of California businesses to compete with businesses in other states.
8. Significant effect on housing costs: None.
9. Cost impact on small businesses: This proposed action does not affect small business because no entities regulated (hospitals licensed under HSC section 1250 (a), (b) or (f)) under the proposed action are small businesses.

VII. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)

New regulations are required to implement Chapter 2.5 Fair Pricing Policies: Hospital Fair Pricing Policies (HSC section 127400, *et seq.*). The Department has

narrowly tailored the proposed regulations to implement the statutory requirements for the new program. The proposed regulations impose only minor additional requirements on any businesses, organizations, or individuals.

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 expand businesses currently doing business within the state.
6. The benefits of the regulations are to achieve the goals of AB 1020, HSC section 127400, *et seq.*, by implementing the newly mandated program. The amendments to HSC sections 127400, *et seq.*, were designed to inform patients of the availability of financial assistance, increase eligibility of uninsured and underinsured patients for financial assistance, impose additional requirements for collection of medical debt, and authorize the Department to enforce hospital compliance with the requirements of HSC sections 127400, *et seq.* The proposed regulations will make discount payment and charity care more accessible, ensuring those who qualify for assistance receive the financial assistance intended.
7. This regulatory action will not impact workers' safety.
8. This regulatory action will not impact the state's environment.

VIII. REASONABLE 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 invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

IX. 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 2020 West El Camino Avenue, Suite 800, Sacramento, CA 95833-1880. 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, information upon which proposed rulemaking is based, the initial statement of reasons, and an economic impact analysis (contained in the initial statement of reasons).

The text is available on the Department’s website at hcai.ca.gov/about/laws-regulations/.

X. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

After considering all timely and relevant comments received, HCAI may adopt the proposed regulations substantially as described in this notice. If HCAI 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 HCAI 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 hcai.ca.gov/about/laws-regulations/. HCAI will accept written comments on the modified regulations for 15 days after the date on which they are made available.

XI. AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons, including all comments and responses, will be available, after its completion, through the HCAI website at hcai.ca.gov/about/laws-regulations/. The Final Statement of Reasons will also be available for review from the designated contact person.

XII. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the proposed regulations can be accessed through the HCAI website at hcai.ca.gov/about/laws-regulations/.

TITLE 22. STATE WATER RESOURCES CONTROL BOARD

DOMESTIC WATER QUALITY AND MONITORING REGULATIONS

HEXAVALENT CHROMIUM MAXIMUM CONTAMINANT LEVEL

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) will conduct a public hearing during which time any interested person or such person’s duly authorized representative may present statements, arguments, or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

NOTICE OF PUBLIC HEARING FOR A PROPOSED HEXAVALENT CHROMIUM MAXIMUM CONTAMINANT LEVEL (MCL) REGULATIONS [Gov. Code, § 11346.5(a)(1)]

State Water Board staff will conduct an Administrative Procedure Act (APA) public hearing regarding the subject proposed regulations at the time and place noted below. At the hearing, any person may present comments orally or in writing relevant to the proposed action described in this notice. The public hearing will begin with a staff presentation summarizing the proposed regulations, followed by an opportunity for public comment. During the comment period, the public will be allowed three minutes to provide oral comments, unless additional time is approved.

DATE: August 2, 2023
 TIME: 1:00 p.m.
 PLACE: **Coastal Hearing Room
 CalEPA Building
 1001 I Street, Sacramento
 And via Video and Teleconference
 (for public commenters)**

The hearing will be recorded and will be streamed live at video.calepa.ca.gov. Use this link to watch the webcast UNLESS you intend to comment. For those who wish to make oral comments, additional information about participating remotely is available at bit.ly/dw_regs.

While a quorum of the State Water Board may be present, this hearing is for the public to provide comments in accordance with the APA. The Board will not take formal action. Final regulations are expected to be adopted by the Board later this year, after consideration of all written and oral comments. Additional

information regarding State Water Board meetings, hearings, and workshops is available on the Board's internet web page at waterboards.ca.gov/board_info/calendar/.

Language Services and Accessibility

Presentation slides will be translated into Spanish, and live Spanish interpretation will be provided. To request oral interpretation in another language or sign language services, please contact us at (916) 322-4265 or languageservices@waterboards.ca.gov by **July 1, 2023**. We highly encourage contacting us as far in advance as possible about language needs.

Telecommunications device for deaf (TDD) users may contact the California Relay Service at 711, (800) 735-2929 or voice line at (800) 735-2922.

To request other accommodations, call (916) 341-5261 on or before **July 19, 2023**.

AUTHORITY AND REFERENCE

[Gov. Code, § 11346.5(a)(2);
CCR Title 1, Div 1, Ch. 1, § 14]

The State Water Board proposes to adopt this regulation under the authority granted by Health and Safety Code (HSC) sections 116270, 116271, 116275, 116350, 116365, 116365.5, 116375, and 116385. The proposed regulation would implement, interpret, or make specific HSC sections 116275, 116365, 116365.5, 116370, 116375, 116385, 116390, 116450, and 116470.

INFORMATIVE DIGEST

[Gov. Code, § 11346.5(a)(3)]

Existing Laws and Regulations and Effect of Proposed Action

[Gov. Code, § 11346.5(a)(3)(A)]

Existing Laws and Regulations

Existing laws related to the proposed action include the following:

- HSC section 116270(f) declares California's intent to improve upon the minimum requirements of the federal Safe Drinking Water Act Amendments of 1996 and to establish a program that is more protective of public health than the minimum federal requirements.
- HSC section 116365 requires that the State Water Board establish primary maximum contaminant levels (MCL) as close to the contaminant's public health goal (PHG) as is technologically and economically feasible at the time of adoption, while placing primary emphasis on protection of public health.
 - PHGs are established by the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment

(OEHHA). In July 2011, OEHHA established a hexavalent chromium PHG of 0.02 micrograms per liter (µg/L).

- HSC section 116365.5 specifically requires establishment of a hexavalent chromium MCL that complies with the HSC section 116365 criteria by 1 January 2004.
- HSC section 116370 requires the State Water Board to adopt a finding of best available technologies (BAT) for each contaminant at the time the standard is adopted, taking into consideration the costs and benefits of BAT proven effective under full-scale field application.
- HSC section 116375, subdivision (a), requires the State Water Board to adopt regulations for the monitoring of contaminants, including the type of contaminant, frequency and method of sampling and testing, and the reporting of results.
- HSC section 116375, subdivision (f), requires the State Water Board to adopt regulations including requirements for notifying the public of the quality of water delivered to consumers.
- HSC section 116385 requires any person operating a public water system to obtain and provide at that person's expense an analysis of the water to the State Water Board, in the form, covering those matters, and at intervals prescribed by the State Water Board. HSC section 116385 further requires that the analysis be performed by a laboratory duly certified by the State Water Board.
- HSC section 116390 requires that laboratories performing tests required pursuant to the California Safe Drinking Water Act be accredited for that testing by the California Environmental Laboratory Accreditation Program (ELAP).
- HSC section 116470 requires each PWS to prepare and deliver annual Consumer Confidence Reports to their customers containing information on each detected regulated contaminant, including the level of contaminant found in the drinking water, the corresponding public health goal and primary drinking water standard, any violations of the primary drinking water standard, and a statement of health concerns that resulted in regulation of that contaminant.
- HSC section 116555 requires that any person who owns a PWS shall ensure that the system complies with primary drinking water standards.

Existing regulations related to the proposed regulation include the following:

- 22 California Code of Regulation (CCR), section 64415, with limited exceptions, requires that analyses be performed by laboratories accredited to perform such analyses by ELAP, and unless

directed otherwise by the State Water Board, that analyses be made in accordance with methods prescribed at 40 Code of Federal Regulations sections 141.23 through 141.41, 141.66, 141.89, and 141.852.

- 22 CCR section 64432 requires certain surface water sources for transient–noncommunity water systems (TNCWS) and all active sources for community water systems (CWS) and nontransient–noncommunity water systems (NTNCWS) to be sampled and to have the samples analyzed for inorganic chemicals to determine compliance with drinking water standards, including MCLs.
- 22 CCR section 64432.8 requires each water supplier utilizing treatment to comply with one or more inorganic chemical MCL(s) to collect monthly samples of the treated water at a site prior to the distribution system and analyze for the chemical(s) for which treatment is being provided and, if an MCL is exceeded, to report the result within 48 hours of result receipt, resample to confirm the initial result within 48 hours of results receipt, and report the result of the confirmation sample result to the State Water Board within 24 hours of confirmation result receipt.
- 22 CCR section 64469 requires PWS to report the results of required analyses by the tenth day of the following month.
- 22 CCR section 64431 requires PWS to comply with a primary total chromium MCL of 50 µg/L.
- 40 CFR 141.62(b) requires CWS and NTNCWS to comply with a primary total chromium MCL of 100 µg/L.
- 22 CCR section 64432 establishes detection limits for purposes of reporting (DLRs) for each regulated chemical and requires PWS to monitor for those chemicals.
- 22 CCR section 64465 requires PWS to notify the State Water Board and the public when drinking water supplied to the public is noncompliant with a primary MCL and take appropriate action.
- 22 CCR section 64481 requires PWS to prepare annual Consumer Confidence Reports, which include language to inform the public for each chemical that has been detected in the water.

Effect of Proposed Rulemaking

The net effects of the proposed regulations would be as follows:

- PWS would be required to comply with a hexavalent chromium MCL of 10 µg/L according to a size–based compliance schedule;
- PWS exceeding the MCL before the applicable compliance date would be required to submit a compliance plan;

- CWS, NTNCWS, and wholesalers would be required to monitor for hexavalent chromium, and report sampling results consistent with existing requirements for monitoring and reporting of inorganic chemicals;
- TNCWS that use surface water and serve an average daily population greater than 1,000 or are determined subject to potential hexavalent chromium contamination based on a sanitary survey would be required to monitor for hexavalent chromium and report sampling results;
- PWS would be required to comply with a hexavalent chromium DLR of 0.1 µg/L;
- PWS would be required to use one of two specified hexavalent chromium analytical methods for required monitoring;
- PWS that violate the hexavalent chromium MCL would be required to use specific public notification health effects language;
- CWS and NTNCWS that detect hexavalent chromium would be required to use specific language in their Consumer Confidence reports that identifies the major origins of hexavalent chromium in drinking water; and
- BAT would be identified for hexavalent chromium removal.

Comparable Federal Statute and Regulations

[Gov. Code, § 11346.5(a)(3)(B), § 11346.9(c)]

There are no federal regulations or statutes that address the specific subject addressed by the proposed regulations. Under the federal Safe Drinking Water Act and its implementing regulations, there is no drinking water standard specifically for hexavalent chromium. Hexavalent chromium is, however, currently indirectly regulated under California’s 50 µg/L and U.S. EPA’s 100 µg/L MCL for total chromium, of which hexavalent chromium is a component (40 CFR 141.62). Adoption of this regulation is not mandated by federal law or regulations.

Policy Statement Overview

[Gov. Code, § 11346.5(a)(3)(C)]

Problem Statement

The State Water Board establishes drinking water standards to ensure that drinking water provided by PWS is at all times safe, pure, wholesome, and potable. All suppliers of domestic water to the public are subject to regulations adopted by the U.S. EPA under the Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f et seq.). California PWS are also subject to regulations adopted by the State Water Board under the California Safe Drinking Water Act (Health & Saf. Code, div. 104, part 12, chapter 4, § 116270 et seq.). HSC section 116270(f) declares California’s intent to improve upon the minimum requirements of the feder-

al Safe Drinking Water Act Amendments of 1996 and to establish a program that is more protective of public health than the minimum federal requirements.

HSC 116365 requires the State Water Board to adopt primary drinking water standards for contaminants, specifying that each standard must be set at a level as close as technologically and economically feasible to the corresponding PHG, placing primary emphasis on the protection of public health. HSC 116365.5 specifically requires the establishment of a hexavalent chromium MCL. In 2011, OEHHA published the hexavalent chromium PHG at 0.02 micrograms per liter ($\mu\text{g/L}$) (OEHHA, 2011). In May 2017, the Superior Court of Sacramento County issued a judgment invalidating a previously-established hexavalent chromium MCL and ordered the State Water Board to adopt a new MCL consistent with HSC 116365 (*California Manufacturers and Technology Association, et al. v. State Water Resources Control Board*, Super. Ct., Sacramento County, Case Number 34–2015–80001850.).

The State Water Board proposes to establish a primary drinking water standard for hexavalent chromium in the form of a MCL of 10 $\mu\text{g/L}$ or 0.010 milligrams per liter (mg/L), an associated initial DLR of 0.1 $\mu\text{g/L}$. The State Water Board has determined that the proposed regulations are necessary to carry out the purposes of California’s Safe Drinking Water Act. The proposed rulemaking is intended to satisfy the statutory mandates set forth in HSC sections 116365 and 116365.5, as well as the court order.

Broad Objectives

The broad objectives of this proposed regulatory action are to:

- Adopt a hexavalent chromium MCL to protect public health consistent with statutory requirements; and
- Adopt a DLR, BAT, public notification language, compliance schedule, analytical methods, and Consumer Confidence Report language to support the hexavalent chromium MCL.

Specific Benefits

The anticipated benefits to public health and safety of California residents from the proposed regulatory action are:

- Reduction of risk of adverse health effects associated with hexavalent chromium in drinking water by establishing a hexavalent chromium MCL, which translates to a reduction in associated cancer and noncancer cases;
- Provide PWS and State Water Board staff with hexavalent chromium treatment guidance through the identification of BATs;
- Provide consistency in analytical performance by establishing minimum levels of hexavalent chromium that must be reported; and

- Establish consistent quality of information between PWS and customers through specification of health effects language for public notification and major origins and compliance status language for Consumer Confidence Reports.

Additional anticipated benefits include:

- Enhanced public awareness of water quality served by requiring hexavalent chromium monitoring and public notification when a hexavalent chromium MCL violation occurs;
- Enhanced public awareness of water quality by requiring hexavalent chromium monitoring and reporting of detected hexavalent chromium levels in drinking water in annual Consumer Confidence Reports;
- Ability to evaluate performance of hexavalent chromium removal treatment technologies to concentrations at least as low as 0.1 $\mu\text{g/L}$ to support feasibility analyses for future hexavalent chromium MCL review(s) and potential revision;
- Ability to determine hexavalent chromium occurrence in drinking water sources to concentrations at least as low as 0.1 $\mu\text{g/L}$ to support evaluation of source occurrence, health effects, and cost impact analyses for future hexavalent chromium MCL review(s) and potential revision; and
- Ability for small PWS to benefit from improvements in treatment realized by larger PWS through the compliance schedule.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

[Gov. Code, § 11346.5(a)(3)(D)]

The State Water Board reviewed its existing general regulations and regulations specific to hexavalent chromium for drinking water to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. The State Water Board determined that no other state regulation addressed the same subject matter and that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.

OTHER STATUTORY REQUIREMENTS

[Gov. Code, § 11346.5(a)(4)]

California Environmental Quality Act

[Public Resources Code, Div. 13]

The California Environmental Quality Act (CEQA) requires public agencies to consider and mitigate potentially significant environmental impacts from discretionary project approvals. Section 21159 of the Public Resources Code requires certain agencies, including the State Water Board, to perform at the time of adoption of a rule or regulation requiring a performance standard or treatment requirement, an environ-

mental analysis of the reasonably foreseeable methods of compliance with the rule or regulation. To comply with CEQA, the State Water Board prepared a draft programmatic environmental impact report (EIR) analyzing the environmental impacts of the proposed regulation of hexavalent chromium in drinking water. More information about the draft EIR, including the Notice of Availability specifying the public review and comment period, is available on the State Water Board's website.

External Scientific Peer Review

[Health and Safety Code, § 57004(b)]

HSC section 57004(b) requires that the scientific portions of any regulation proposed by the California Environmental Protection Agency (Cal/EPA), or any board, department, or office within Cal/EPA, be submitted to an external scientific peer review entity for evaluation. "Scientific basis" or "scientific portion" is defined as "those foundations of a rule that are premised upon, or derived from empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment."

The State Water Board identified its preliminary determinations of BAT and limits of technological feasibility of treatment of hexavalent chromium in drinking water as having underlying scientific bases and requested external scientific peer review of those determinations. The peer reviewer comments and the State Water Board's response to those comments can be found on the State Water Board's website at: https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/SWRCBDDW-21-003_hexavalent_chromium.html.

Cal/EPA Major Regulations

[Health and Safety Code, § 57005]

HSC section 57005 requires each Cal/EPA board, department, and office, before adopting any major regulation, to evaluate alternatives to the proposed regulation that would lessen adverse economic impact on California businesses and to consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulations. For the purposes of HSC 57005, a "major regulation" means any regulation that would have an economic impact on California business enterprises in an amount exceeding ten million dollars. To satisfy this requirement, 20 alternative MCLs were evaluated; none was found to be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with the statutory man-

dates. The alternatives analysis can be found in the Initial Statement of Reasons, Attachment 2.

Health and Safety Code Requirements for Primary Drinking Water Standards

[Health and Safety Code, § 116365, § 116365.5, § 116370]

HSC section 116365 requires that primary drinking water standards be set at a level that is as close as feasible to the corresponding public health goal, placing primary emphasis on the protection of public health. The standard must also be technologically and economically feasible. HSC section 116365.5 mandates that a primary drinking water standard be established for hexavalent chromium. HSC section 116370 requires that, when a primary drinking water standard is being adopted, a finding of BAT be adopted at the same time.

Safe, Clean, Affordable Water

[California Water Code, § 106.3]

California Water Code section 106.3 states that it is the policy of the state that every human has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, and requires the State Water Board to consider this policy when revising, adopting, or establishing regulations. In preparing the proposed regulations, the State Water Board determined the proposed regulations are consistent with this statewide policy.

Pre-Notice Meeting with Affected Parties

[Gov. Code, § 11346.45]

Government Code section 11346.45(a) requires that prior to publication of the notice of proposed action, the agency proposing the regulation must involve parties who would be subject to the proposed regulations in public discussions, when the proposed regulations involve complex proposals or a large number of proposals that cannot be easily reviewed during the comment period. The regulations proposed here are neither complex nor involve large numbers of proposals that could not be easily reviewed during the comment period. Nonetheless, the State Water Board did provide PWS and water consumers opportunities to be involved in public discussions about the proposed regulations. Specifically, there have been five pre-regulation workshops held for the hexavalent chromium MCL, including a 27 April 2020 economic feasibility workshop, 8 and 9 December 2020 preliminary cost estimates workshops, and 5 and 7 April 2022 administrative draft workshops, as well as a 29 November 2021 CEQA scoping meeting. Comments, suggestions, and alternatives were solicited at each workshop and meeting, and during associated written comment periods. In addition, staff of the State Water Board's Division of Drinking Water frequently provide regulatory updates to PWS and industry groups, including

the status of the proposed hexavalent chromium MCL regulation development.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS [Gov. Code, § 11346.5(a)(5)]

None.

The proposed regulations would not impose a mandate on local agencies or school districts that requires state reimbursement. The proposed regulations will not be a requirement unique to local government and will apply equally to public and private water systems.

FISCAL IMPACT (COSTS AND SAVINGS) (see Initial Statement of Reasons, Attachment 2, for methodology and calculations) [Gov. Code, § 11346.5(a)(6)]

Estimated Cost and Savings to State Agencies

The initial impact of the proposed regulation on the State Water Board would be an impact on staffing resources of \$739,577, which could potentially be accommodated through redistribution of existing staff at the district office level. However, additional personnel may be needed for effective implementation and enforcement of the adopted MCL, including for tasks such as evaluating submitted compliance plans.

Compliance costs for the one state-owned PWS expected to exceed the proposed MCL have been estimated at \$95,419 per year (capital costs have been annualized). In addition, this system will also incur a one-time cost of \$7,619 to prepare compliance and operations plans.

The proposed regulation is expected to have an impact on the state’s sales tax revenue, which are estimated to be \$24.1 million in 2025, \$13.2 million in 2026, \$4.5 million in 2027, and \$1.4 million in each subsequent year.

The State Water Board estimates that there will be no change to Safe Drinking Water Account fees and caps. The fees, caps, and annual adjustments are specified in statute under HSC sections 116565, 116577, 116585, and 116590.

Reimbursable Costs to Local Agencies or School Districts

(in accordance with Gov. Code sections 17500 through 17630)

[Gov. Code, 11346.5(a)(5)]

None.

Any costs incurred by local agencies or school districts as a result of this regulation are not reimbursable by the State pursuant to Article XIII B, section 6 of the California Constitution. Local agencies and school districts currently incur costs in their operation of PWS. The costs imposed by the proposed regulations

are not the result of a “new program or higher level of service” within the meaning of Article XIII B, section 6 of the California Constitution because the proposed regulations apply generally to all individuals and entities that operate PWS in California and do not impose unique requirements on local governments (County of Los Angeles v. State of California et al, 43 Cal App 3d 46 (1987)). In addition, PWS can pass on the cost of regulation implementation through increasing service charges, fees, and assessments. Therefore, no state reimbursement of these costs is required. Local regulatory agencies also may currently incur additional costs for their responsibility to enforce state regulations related to small PWS (fewer than 200 service connections) that they regulate. However, local agencies are authorized to assess fees to pay reasonable expenses incurred in enforcing statutes and regulations related to small PWS (HSC § 101325). Therefore, no reimbursement of any incidental costs to local agencies in enforcing this regulation would be required (Gov. Code, § 17556(d)).

Other Non-discretionary Cost or Savings Imposed on Local Agencies

None.

Estimated Cost or Savings in Federal Funding of State Programs

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE [Gov. Code, § 11346.5(a)(7)]

The State Water Board has determined that there may be a significant, statewide adverse economic impact directly affecting businesses.

Types of Businesses Affected

[Gov. Code, § 11346.5(a)(7)(A)]

These businesses may be privately owned PWS or other businesses served by affected PWS, but no data is available about the number or types of businesses served by PWS or how they are charged for water.

However, water service is provided locally and consumers generally don’t have a choice of their water service supplier. PWS are generally not in competition with other systems; they are utilities that can pass costs onto their consumers. Most NTNCWS and TNCWS are wineries, packing plants, farms, restaurants, etc., with a primary business other than supplying potable water. These businesses and others facing higher water charges from their PWS may be able to pass any increased costs on to their customers, depending on their market environment.

Non-California water providers are unlikely to increase sales in California because water originating from outside of California is also subject to the requirements in the proposed regulation. For example, water imported from the Colorado River may need to be treated to comply with all MCLs before it can be served as drinking water. However, bottled water is not regulated as drinking water and only needs to comply with federal MCLs, including the 100 µg/L MCL for total chromium.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

[Gov. Code, § 11346.5(a)(7)(B)]

The projected reporting, recordkeeping, and other compliance requirements resulting from the proposed regulation consist of the following:

Monitoring and Reporting

- Consistent with existing regulations, PWS would be required to use specific health effects language when providing public notification of MCL violation(s);
- Monitoring by CWS, NTNC, and wholesalers of their drinking water sources for hexavalent chromium;
- Consistent with existing regulations, CWS and NTNCWS would be required to use specific language in the Consumer Confidence Report to describe the major origins of hexavalent chromium when hexavalent chromium is detected in drinking water; and
- Submitting a compliance plan if a system exceeds the MCL before the applicable compliance date.

Recordkeeping

- Consistent with existing regulations, PWS would be required to retain records of hexavalent chromium chemical analyses for at least the most recent ten years.
- Consistent with existing regulations, PWS would be required to retain copies of any public notices required in response to hexavalent chromium MCL exceedance for at least the most recent five years.

Other Compliance Requirements

- PWS would need to comply with the hexavalent chromium MCL of 10 µg/L for drinking water. Actions to comply with the MCL may include blending, the installation of treatment, drilling a new well, consolidation with another PWS, or not using a specific well at all.
- PWS would need to operate or contract with an ELAP accredited laboratory for analysis of hexavalent chromium capable of reliably quantifying to the proposed DLR using one of the methods specified.

Invitation to Submit Alternative Proposals

[Gov. Code, § 11346.5(a)(7)(C)]

The State Water Board has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The State Water Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

DETERMINATION OF EFFECT ON
SMALL BUSINESSES
[1 CCR 4]

The proposed regulation directly impacts PWS. CWS and wholesalers are water companies (utilities) providing drinking water to the public and, pursuant to Government Code section 11342.610, are exempt from the definition of a small business in the APA. However, some NTNCWS and TNCWS (such as wineries, restaurants, and agricultural/industrial businesses) may also be considered small businesses if they are independently owned and operated, not dominant in their field of operation, and are not in an exempted category (Gov. Code section 11342.610). While some NTNCWS and TNCWS may be small businesses, the State Water Board does not currently have the data to evaluate which systems meet the criteria. Therefore, the impacts for a typical small business were estimated as the average impacts on privately owned NTNCWS and TNCWS systems.

The State Water Board also recognizes that some small businesses will be served by PWS affected by this regulation and may experience increased water costs as a result. These increased costs are indirect impacts, and are expected to be similar to those experienced by households. Depending on their market environment, these businesses may be able to pass on the increased costs to their customers.

RESULTS OF ECONOMIC
IMPACT ASSESSMENT:
MAJOR REGULATION —
STATEMENT OF RESULTS OF THE
STANDARDIZED REGULATORY IMPACT
ANALYSIS (SRIA)
[Gov. Code, § 11346.5(a)(10);
§ 11346.3(b)(1); § 11346.3(c)]

The standardized regulatory impact analysis (SRIA) is also referred to as a standardized regulatory impact assessment in Department of Finance regulations at 1 CCR sections 2000 through 2004.

SRIA Results

[Gov. Code, § 11346.3(c)(1)]

The State Water Board determined that the economic impact of the proposed regulations would likely exceed \$50 million in a 12-month period and is therefore a major regulation as defined by California Code of Regulations, Title 1, Division 3, Chapter 1, § 2000(g). The State Water Board prepared a SRIA as required by Government Code 11346.3(c).

The proposed hexavalent chromium MCL of 10 µg/L would have the following impacts on California based on the macroeconomic analysis in the SRIA: an increase in gross output of \$81 million, an increase in aggregate earnings of \$2 million, and \$53 million in value added, but a decrease of approximately 401 jobs (all compared to the baseline of not implementing a hexavalent chromium MCL). Potential MCLs at 1, 8, and 12 µg/L were evaluated as alternatives to the current proposal. While some alternatives were slightly more cost-effective than the proposed MCL of 10 µg/L, they did not provide as many health benefits. Because HSC 116365 requires that the MCL be set as close to the PHG as is technologically and economically feasible, placing primary emphasis on the protection of public health, alternatives with similar cost-effectiveness but fewer health benefits must be rejected. An additional cost-effectiveness analysis that compared the proposed MCL to 20 alternatives also showed that 10 µg/L is the lowest the MCL can be set while avoiding large decreases in cost-effectiveness.

While many benefits of this regulation are difficult to quantify, improved public health is the primary benefit, which may be experienced as a reduction in the number of cancer cases (up to 12.8 per year) and noncancer cases (not quantifiable). Although the number of noncancer cases (liver toxicity, which can occur at hexavalent chromium concentrations above 2 µg/L) cannot be quantified, the 5.5 million people who will see hexavalent chromium concentrations reduced by an average of 32.4% are likely to see related health benefits. Additional benefits are the increased public confidence in the safety of the state's drinking water

(which may also have monetary benefits for families that choose to no longer purchase bottled water or home treatment systems) and public assurance that exposure to hexavalent chromium in drinking water is at the lowest level technologically and economically feasible.

The conclusions of the SRIA were:

- (A) *Creation or Elimination of Jobs* [Gov. Code § 11346.3(c)(1)(A)]
Decrease of 401 jobs per year.
- (B) *Creation or Elimination of Business* [Gov. Code § 11346.3(c)(1)(B)]
Insignificant, estimated as 0.
- (C) *Competitive Advantages or Disadvantages* [Gov. Code § 11346.3(c)(1)(C)]
None.
- (D) *Increase or Decrease of Investment* [Gov. Code § 11346.3(c)(1)(D)]
Increased investment of \$94 million per year.
- (E) *Incentives for Innovation* [Gov. Code § 11346.3(c)(1)(E)]
The proposed MCL will lead to systems installing treatment technologies capable of removing hexavalent chromium from their water. Systems' search for effective technologies will drive innovation.
- (F) *Benefits of the Proposed Regulations* [Gov. Code § 11346.3(c)(1)(F)]
Primary benefits are improved public health.

Department of Finance SRIA Comments and State Water Board Responses

[Gov. Code, 11346.3(f)]

The SRIA was submitted to the Department of Finance (DOF) on 13 December 2022. DOF provided comments to the State Water Board on 12 January 2023. DOF generally concurred with the State Water Board's methodology in the SRIA, except for four comments. The four comments, and the State Water Board's response to those comments, are as follows:

Comment 1: First, the SRIA must disclose estimates of all fiscal impacts to state and local governments, including any potential revenue impacts such as any increased sales tax from the purchase and installation of testing and treatment equipment and materials they purchase in California — for example, the capital costs of \$95 million in 2028 could increase sales tax revenue by around \$7.8 million (assuming an average tax rate of 8.2 percent).

Response: Calculations for local and state sales tax revenue have been added to the updated SRIA (ISOR Attachment 2) in sections D.1.b and D.2.c, respectively. These items have also been added

to the Form STD-399 Fiscal Impact Statement section.

Comment 2: Second, the SRIA must discuss the disparate impacts of the regulations on identifiable groups of individuals and businesses. While the SRIA separates into quartiles the numbers of individuals whose monthly water bills would increase by different amounts, the SRIA does not provide information on the population in each quartile, nor does it discuss the potential of the projected increases to be particularly burdensome for individuals for whom water expenses are a higher proportion of total household expenses.

Response: To the extent that data allowed, section C.5 of the SRIA was updated to include information on identifiable groups of individuals in each of the quartiles, including the estimated populations of each quartile affected. However, the State Water Board does not collect or have information about the businesses served by water systems or how those businesses are charged for water, so only general statements could be made regarding businesses. The updated SRIA now explicitly acknowledges that any increase in household costs will necessarily be more burdensome for individuals for whom such expenses are already a higher proportion of total household expenses. Section 11 of the ISOR also contains information about the costs to individuals served by water systems of different sizes and funding options that are available to alleviate burdensome costs.

Comment 3: Third, the SRIA must provide the rationale underlying any assumptions that are material to the analysis. The SRIA is missing rationale for some assumptions including but not limited to the following:

Comment 3a: Future costs are discounted at a 7 percent rate rather than a lower rate such as 3 percent. Since higher discount rates lead to lower cost estimates, the SRIA must disclose why 7 percent is the most appropriate discount rate for this regulation or provide a sensitivity analysis showing how different discount rates affect the impact estimates.

Response: Section I.3.c.2 of the SRIA was updated to include rationale and sources for the rate of 7%. However, this was an interest rate, not a discount rate (the text has also clarified this point). Lower interest rates lead to lower cost estimates, making 7% more conservative than 3%.

Comment 3b: The SRIA implicitly assumes that water systems that did not previously test for hexavalent chromium will not incur any compliance costs. The SRIA notes that the number of affected systems could increase as testing is adopted yet bases future cost estimates on only the number of systems currently known to be out of compliance. The SRIA must either

explain why it assumes that the untested systems will not incur costs to comply with the regulation or provide a sensitivity analysis showing how different assumptions about hexavalent chromium concentrations among untested water systems will affect the regulation's impact estimates.

Response: Section A.2 of the SRIA has been updated to explain that the majority of sources that have not tested are TNCWS sources and will not be required to test, and therefore, will not incur costs to comply with this regulation. Of all sources that would be required to test for hexavalent chromium by this regulation, only 4.6% of groundwater sources and 6.3% of surface water sources have not already tested. The extensive variability between sources, including but not limited to such factors as local geology, historic regional use of products or processes that contribute to the formation or deposition of hexavalent chromium, and the necessity of a source to a PWS, creates significant challenges to accurately extrapolate the extent of further contamination, any additional need for treatment, and the costs of such treatment. In addition, the cost estimates developed for this regulation rely on the contamination level of each source, which is not available for any untested sources. For these reasons, the State water Board did not attempt to predict how many additional sources may require treatment for hexavalent chromium and is instead relying on the known hexavalent chromium concentrations in drinking water sources to calculate costs.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Gov. Code, § 11346.5(a)(9)]

The proposed regulation does not impose any direct costs on individuals served by the affected PWS or on any other individual in California (this regulation only applies to PWS, not private wells). However, the affected PWS are likely to pass on some or all of their increased costs to the households or businesses that they serve, likely in the form of higher monthly water bills. Thus, based on current monitoring data, it is expected that 5.3 million individuals — approximately 14% of California's population — would experience water cost increases. For the majority of people (84%), the increases will likely be less than \$20 per month. Increases will likely be higher for those served by small PWS. As is the case with most increases in household costs, increases will be more burdensome for individuals for whom such expenses are already a higher proportion of total household expenses.

Detailed breakdowns of cost impacts to individuals are provided in section 11 of the ISOR and in section C.5 of the SRIA (ISOR Attachment 2).

BUSINESS REPORTS

[Gov. Code, § 11346.5(a)(11); § 11346.3(d)]

Government Code subsection 11346.36(d) requires that any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for health, safety, or welfare of the people of the state that the regulation apply to businesses. To the extent that this regulation requires reporting of businesses, that reporting is necessary for the health, safety, or welfare of the people of the state. The only businesses that would be subject to the proposed regulations are those which are also PWS as defined in HSC section 116275.

HOUSING COSTS

[Gov. Code, § 11346.5(a)(12)]

The State Water Board has determined that the regulations will have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

[Gov Code, § 11346.5(a)(13)]

Based upon the analysis of the proposed regulations in the SRIA as well as the benefits identified, the State Water Resources Control Board 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 policies or other provisions of law.

As described in detail in the SRIA, the State Water Board estimated costs and benefits associated with 20 alternative potential MCLs: from 1 to 15, 20, 25, 30, 35, 40, and 45 µg/L. The State Water Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

FORMS OR DOCUMENTS INCORPORATED BY REFERENCE

[CCR Title 1, Div. 1, Ch. 1, § 20(c)(3)]

The following documents are incorporated by reference in the proposed regulations as it would be too cumbersome, unduly expensive, or impractical to publish these documents into regulation because of their length. Specifically,

- 1) U.S. EPA. (1994). Method 218.6: Determination of Dissolved Hexavalent Chromium in Drinking Water, Groundwater, and Industrial Wastewater Effluents by Ion Chromatography, Rev. 3.3 is approximately 16 pages in length; and
- 2) U.S. EPA (2011). Method 218.7: Determination of Hexavalent Chromium in Drinking Water by Ion chromatography with Post-Column Derivatization and UV-Visible Spectroscopic Detection is approximately 31 pages in length.

STATE WATER BOARD

CONTACT PERSONS

[Gov. Code, § 11346.5(a)(14)]

Requests for copies of the proposed regulatory text, the Initial Statement of Reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed action may be directed to:

Melissa Hall, P.E.
Senior Water Resource Control Engineer
State Water Resources Control Board, Division of
Drinking Water
(916) 323-0373
Email address: melissa.hall@waterboards.ca.gov

In the event Miss Hall is not available to respond, please contact:

Bethany Robinson, PhD
Water Resource Control Engineer
State Water Resources Control Board, Division of
Drinking Water
(510) 620-6285
Email address: bethany.robinson@waterboards.ca.gov

Please identify the action by using the State Water Board regulation package identifier, “SWRCB-DDW-21-003: Hexavalent Chromium MCL” in any inquiries.

WRITTEN COMMENT PERIOD AND
SUBMITTAL OF COMMENTS
[Gov. Code, § 11346.5(a)(15)]

Any interested person, or their representative, may submit written comments relevant to the proposed regulatory action to the Clerk to the State Water Board. Any written comments pertaining to these proposed regulations, regardless of the method of transmittal, must be received by the Clerk by 12:00 p.m. (noon) on **August 4, 2023**, which is hereby designated as the close of the written comment period. Comments received after this time will not be considered timely. Written comments may be submitted via any of following methods:

1. By electronic mail to:
commentletters@waterboards.ca.gov;
2. By facsimile (“fax”) transmission to:
(916) 341-5620;
3. By mail to:
Courtney Tyler, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000; or
4. By hand-delivery to:
Courtney Tyler, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814.

To facilitate timely identification and review, please identify the action by using the State Water Board regulation package identifier, “**SWRCB-DDW-21-003: Hexavalent Chromium MCL**” in any written comments.

The State Water Board requests but does not require that written comments sent by mail or hand-delivered be submitted in triplicate.

The State Water Board requests but does not require that, if reports or articles in excess of 25 pages are submitted in conjunction with the comments, the commenter provide a summary of the report or article and describe the reason for which the report or article is being submitted or its relevance to the proposed regulation.

All comments, including e-mail or fax transmissions, should include the author’s name and U.S. Postal Service mailing address in order for the State Water Board to provide copies of any notices for proposed changes to the regulation text or rulemaking file on which additional comments may be solicited. Please note that under the California Public Records

Act (Gov. Code, § 7920.000 *et seq.*), written and oral comments, attachments, and associated contact information (*e.g.*, your address, phone, email, *etc.*) become part of the public record and can be released to the public upon request.

Due to the limitations of the e-mail system, emails larger than 15 megabytes (MB) may be rejected and will not be delivered and received by the State Water Board. Therefore, emails larger than 15 MB should be submitted under separate emails or via another form of delivery.

AVAILABILITY OF INITIAL STATEMENT
OF REASONS, TEXT OF PROPOSED
REGULATIONS, AND THE
RULEMAKING FILE
[Gov. Code, § 11346.5(a)(16)]

The State Water Board has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, the text of the proposed regulations, EIR, and all other required forms, statements, and reports. The Regulatory Development Unit, Division of Drinking Water, State Water Resources Control Board, 1001 I Street, 17th Floor, Sacramento, CA 95814, will be the location for inspection and copying of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file) throughout the rulemaking process.

Upon specific request, these documents will be made available in Braille, large print, or CD (compact disk). In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons be mailed or emailed to you in an alternative format, please call (916) 341-5611 (or the California Relay Service at 711) or send an email to board.clerk@waterboards.ca.gov.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT
[Gov. Code, § 11346.5(a)(18)]

After holding the hearing and considering relevant comments received in a timely manner, the State Water Board may adopt the proposed regulations as described in this notice. If the State Water Board makes modifications that are substantially related to the originally proposed text, the State Board will make the modified text — with changes clearly indicated — available to the public for at least 15 days before the State Water Board adopts the modified regulations. Any such modifications will also be posted on the State Water Board Web site. Please send requests for copies of any modified regulations to the atten-

tion of the contact persons provided above (“Contact Persons”). The State Water Board will accept written comments on the modified regulation for 15 days after the date on which they were made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS
[Gov. Code, § 11346.5(a)(19)]

The State Water Board will prepare a final statement of reasons pursuant to Government Code section 11346.9 after final adoption of the regulations. Please direct requests for copies of the final statement of reasons to the attention of the contact persons listed above (“Contact Persons”).

AVAILABILITY OF DOCUMENTS ON THE INTERNET
[Gov. Code, § 11346.4(a)(6); § 11346.5(a)(20)]

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations may be found on the State Water Board’s Web site at the Division of Drinking Water’s Hexavalent Chromium MCL Internet Web Page at: https://www.waterboards.ca.gov/drinking_water/certlic/drinking_water/SWRCBDDW-21-003_hexavalent_chromium.html.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

**FISH AND GAME CODE SECTION 1653
CONSISTENCY DETERMINATION
REQUEST FOR
SNOW CREST RESTORATION PROJECT
(TRACKING NUMBER:
1653-2023-114-001-R2)
PLACER COUNTY**

California Department of Fish and Wildlife (CDFW) received a Request to Approve on June 5, 2023, that the Truckee River Watershed Council (Council) proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves improving habitat in Bear Creek Lower Meadow by uncovering and stabilizing historical meadow soils, dispersing surface flow, and revegetating the meadow with native flora. The proposed project will be carried out on Bear Creek Lower Meadow, located at the intersection of

Alpine Meadows Road and Snow Crest Road, Placer County, California.

On March 28, 2023, the Lahontan Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the Snow Crest Restoration Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID Number 6A312305001) for coverage under the General 401 Order on 4/18/2023.

The Council is requesting a determination that the project and associated documents are complete pursuant to Fish and Game Code section 1653 subdivision (d). If CDFW determines the project is complete, the Council will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) or a Lake or Streambed Alteration Agreement under Fish and Game Code section 1605 for the proposed project.

In accordance with Fish and Game Code section 1653 subdivision (e), if CDFW determines during the review, based on substantial evidence, that the request is not complete, the Council will have the opportunity to submit under Fish and Game Code section 1652.

DEPARTMENT OF FISH AND WILDLIFE

**CESA CONSISTENCY DETERMINATION
REQUEST FOR
SHASTA SPRINGS RANCH SAFE
HARBOR AGREEMENT
2089-2023-002-01
SISKIYOU COUNTY**

The California Department of Fish and Wildlife (CDFW) received a notice on June 1, 2023, that Emmerston Investments, Inc. (Landowner) proposes to rely on a federal safe harbor agreement to carry out a project that may provide a net conservation benefit for the Southern Oregon Northern California Coast (SONCC) coho salmon evolutionarily significant unit (ESU) (*Oncorhynchus kisutch*), a species protected by the California Endangered Species Act. The proposed property involves routine agricultural activities implemented according to avoidance and minimization measures, as well as beneficial management actions

such as increased water delivery and habitat improvements intended to provide conservation benefits to the SONCC coho salmon ESU in the Shasta River. The proposed project will occur on 16 parcels totaling 5872.1 acres on Shasta Spring Ranch in central Siskiyou County, California.

The notice requested a CDFW determination pursuant to California Fish and Game Code Section 2089.22, that the template safe harbor agreement dated February 24, 2021, the Site Plan Agreement dated February 25, 2021, and the enhancement of survival permit number 23291 issued by the National Marine Fisheries Service to the Landowner on February 25, 2021, are consistent with the California State Safe Harbor Agreement Program Act (CSSHAPA) for purposes of the proposed Project. If CDFW determines the federal safe harbor agreement is consistent with CSSHAPA for the proposed Project, the Landowner will not be required to obtain a California state safe harbor agreement under Fish and Game Code section 2089 for the Project.

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA STATE SAFE HARBOR AGREEMENT PROGRAM ACT CONSISTENCY DETERMINATION NUMBER 2089-2023-001-01

Location: Shasta River, Siskiyou County

Applicant: Emmerson Investments

Notifier: Jon Gartman

Background

On February 24, 2021, the National Marine Fisheries Service (NMFS) approved a Template Safe Harbor Agreement for Conservation of Coho Salmon in the Shasta River (TSHA). The TSHA establishes the general requirements for NMFS, under authority of Endangered Species Act section 10(a)(1)(A) and implementing rule and policy, to issue Enhancement of Survival Permits (ESP) to non-federal landowners in the Shasta River Basin for the purpose of promoting the conservation, enhancement of survival, and recovery of Southern Oregon/Northern California Coast (SONCC) evolutionarily significant unit of coho salmon (*Oncorhynchus kisutch*; Covered Species). The TSHA also discusses Covered Species biological requirements, habitat conditions, covered activities and associated avoidance and minimization measures, and the adaptive management program.

NMFS has issued a Site Plan Agreement (SPA), which is an agreement between NMFS and a landowner, and ESP, which authorizes take of a Covered

Species, to each individual landowner enrolled under the TSHA (Project). Each SPA and ESP provides specificity to the terms or conditions in the TSHA, or additional terms or conditions beyond what appears in the TSHA, that are applicable to a particular enrolled property. The TSHA, and related SPA and ESP, taken together provide the applicable terms and conditions for an individual landowner (collectively, the ‘federal SHA’).

On February 24, 2021, NMFS issued a SPA and ESP under the terms of the TSHA, to Emmerson Investments, Inc. (Permittee) with a term of 20 years¹. Hole-in-the-Ground Ranch (Enrolled Property), owned and operated by the Permittee, is located north of Lake Shastina and west of Big Springs Road. The Enrolled Property shares a western and southwestern boundary with the Shasta Springs and Seldom Seen ranches, also owned by the Permittee. To the north lie the Cardoza Ranch and the Big Springs Ranch Wildlife Area.

The property includes the following APNs: 020-030-030, 020-030-040, 020-030-080, 020-030-100, 020-030-110, 020-040-430, and 020-060-020².

The Enrolled Property consists of approximately 3,100 acres. The Enrolled Property is managed as a cow-calf operation running about 500 pairs. Together with replacement heifers and bulls, the Enrolled Property carries about 650 to 700 head. Cattle are fed primarily by grazing irrigated pastures (720 acres) and dry land range (2,360 acres) supplemented by hay. Supplemental feeding begins about the end of November and lasts through the end of March, by which time pasture and range conditions are sufficient to sustain the herd.

The Enrolled Property uses approximately 3,678 acre feet of water per year from three primary sources (Lake Shastina, Shasta River, and on-site springs — Clear Spring and Seldom Seen Spring). The Enrolled Property has four points of diversion, with open ditches being the primary means of water conveyance throughout the property. The ditches are a combination of concrete-lined and unlined. The Enrolled Property has three rocked vehicle crossings, also utilized as stock crossings. Four additional rocked fords are used for stock and ATV crossing only.

Enrolled Property SPA

The Enrolled Property SPA defines Baseline Conditions as the habitat conditions at the time NMFS approved the Enrolled Property SPA, the conditions described in Appendix 1 of the TSHA. The activities required to maintain Baseline Conditions are detailed in Table 3 of the Enrolled Property SPA.

¹ ESP, page 2

² SPA, page 4

Avoidance and minimization measures are described in detail in Appendix 2 of the TSHA, and those applicable to the Enrolled Property are listed in section G.1 of the Enrolled Property SPA.

Covered Activities include both Routine Agricultural Activities, Beneficial Management Actions and Avoidance and Minimizations Measures, as detailed in Appendix 2 of the TSHA and in sections C, E, and G of the Enrolled Property SPA, as follows:

- Routine Agricultural Covered Activities³ (Section C1 of the SPA)
 - Irrigation management
 - Irrigation maintenance
 - Pasture grazing management
 - Fence maintenance
 - Road use and maintenance
 - Livestock and vehicle wet crossings, and watering Lanes
 - Herbicide, fertilizer and pesticide use
- Avoidance and Minimization Measures for Routine Agricultural Covered Activities (Section G of the SPA)
 - A1: Install and maintain flow regulator/measuring device
 - A2: Provide fish passage for all life stages
 - B1: Maintain diversions and fish screens, minimize sediment discharge during maintenance.
 - B2: Inspection of fish screens, bypass pipes, and associated structures
 - B3: Maintain bypass pipes and associated structures to allow safe and easy passage for all life stages of fish
 - B4: Work during dry season and disposal of spoils
 - B5: Monitor and repair tailwater berms
 - B6: Instream work operation period
 - B7: Down-ditch screen requirements
 - C1: Develop and adhere to the riparian grazing management plan
 - C2: Grazing of fenced riparian areas
 - C3: No direct impacts to spawning, incubation, and emergence from grazing activities
 - D1: Regular inspection and repair of riparian fencing
 - D2: Notification to NMFS and CDFW of damaged fencing and fence repair

- E1: Ensure fish passage at road crossings of streams that are accessible to the Covered Species
- E2: Minimization of erosion and sedimentation from roads and road work
- E3: Instream work window
- E4: Road use during wet periods, road maintenance and monitoring
- F1: Livestock and vehicle crossings
- F2: Operation of vehicles in streams
- G1: Application of pesticides
- G2: Minimization of fertilizer/nutrient escape into waterways
- G3: Avoid use of materials deleterious to Covered Species
- G4: Petroleum product use and storage near waterways
- G5: Refiling of machinery and handling of harmful substances near a waterway
- H1: Flood events and emergency situation notification of CDFW and NMFS
- H2: Fish and Game Code 1610 notification
- Beneficial Management Actions/Activities (BMAs) (Section E of SPA)
 - E.1.a: Hydrology/Water Quality — Increased delivery and irrigation efficiencies, tailwater reduction, reach-wide diversion management plan, and participation in water exchanges
 - E.1.b: Passage/Migration/Diversion Screening — Research and remediation of on-site barriers
 - E.1.d: Riparian Fencing — Fencing installation and maintenance, stream crossing maintenance, and stock watering
 - E.1.e: Substrate Quality — Riparian function measure
 - E.1.f: Pasture Management — Pasture grazing management
 - E.2.a: Increased delivery and irrigation efficiencies, tailwater reductions, and upgrade/repair/maintain diversion facilities
 - E.2.b: Passage/Migration/Diversion Screening — Remediation of identified on-site barriers
 - E.2.d: Riparian Function/Channel Structure — Riparian fencing, prescribed riparian grazing plans, cap the number of crossings and continue crossing improvements, riparian habitat evaluation and revegetation, and channel structure improvements via installation of large wood structures

³ See TSHA Appendix 2 for full text of covered activities and avoidance and minimization

- E.2.e: Substrate Quality — Participate in gravel augmentation in Parks Creek
- E.3.a: Hydrology/Water Quality — Increased delivery and irrigation efficiencies, soil moisture monitoring program participation, participation in reach-wide diversion management plan, upgrade/repair/maintain diversion facilities, water exchanges, forbearance agreement
- E.3.c: Instream Habitat Complexity — Participation in habitat improvements (primarily large wood installation) in the Shasta River and Parks Creek
- E.3.d: Riparian Function — Riparian fencing, beaver management, installation of riparian habitat, riparian management plan
- E.3.e: Substrate Quality — Participate in gravel augmentation in the Shasta River

Additional Commitments include:

- Avoidance and minimization monitoring (Sections G and G1)
- Implementation and Effectiveness Monitoring Commitments (Section G2)
- Description of potential and existing funding sources and obligation, and timeline for the Permittee to carry out BMAs, avoidance and minimization measures, and monitoring and reporting requirements (Section E, F, & G)
- Other information consistent with the terms and conditions of the Agreement and ESP including reporting (Sections F, H, & I)

Access

- General. Permittee shall allow NMFS, CDFW, and Shasta Watershed Conservation Group (SWCG) to have access to an Enrolled Property to (a) inspect for implementation of Beneficial Management Activities, (b) monitor, stock or remove the Covered Species, or to carry out related management activities, and (c) monitor the effectiveness of each SPA. Such access will be subject to conditions identified in each SPA. Unless specified otherwise in the applicable SPA, such access will be subject to reasonable notice, not less than seven days in advance, and conditioned to avoid interference with commercial and other private uses of the Enrolled Property by the Permittee.⁴
- Special Circumstances. In the circumstances described in TSHA Sections 6.2 and 6.8, the Permittee shall allow access to NMFS and CDFW for emergency salvage or relocation of affected Covered Species.

- Monitoring. The Permittee shall allow CDFW and NMFS to conduct implementation and effectiveness monitoring of various AMMs and BMAs related to riparian grazing, fish passage, LWD utilization by salmonids, beaver management, and riparian enhancement.⁵

Net Conservation Benefit

The federal SHA is expected to result in a net conservation benefit to the Covered Species over the 20-year term by:

- With acquisition of sufficient matching funds, Permittee agrees to complete, operate, and maintain a Diversion Combining Project, which includes replacing up to 4000 feet of open, mostly earth-lined Gravity Ditch with pipe. Upon completion, seepage loss savings (estimated at 0.7 cfs) will be exchanged for an equal volume of Clear Spring water retained in-stream and not diverted.
- Restrict damage to waterways through cattle exclusion fencing and grazing management plans.
- Permittee agrees to provide access for addition of large wood enhancement, up to 15 sites, in the Shasta River, and to participate in gravel augmentation at up to 4 sites in the Shasta River.
- Installing riparian fencing on Parks Creek and Hole in the Ground Creek.
- With additional funding, Permittee agrees to take part in riparian planting projects where existing riparian habitat is less than site-potential along the Shasta River.
- Permittee agrees to continue cooperating in project to move Cardoza Diversion, eliminate associated fish passage issues, and maintain fish passage at the new crossing. Post-alteration of Cardoza Diversion, Permittee agrees to cooperate in evaluation and placement of instream large woody debris (LWD) placement, as appropriate, in Parks Creek, as well as participate in gravel augmentation in Lower Parks Creek.

Consistency Determination Request

- On May 1, 2023, the Director of CDFW received a request from Jon Gartman of the Hole-in-the-Ground Ranch, requesting a determination, pursuant to California Fish and Game Code section 2089.22, that the federal TSHA and its related SPA and ESP are consistent with California State Safe Harbor Agreement Program Act for the Covered Species on the Enrolled Lands (Cal. Reg. Notice Register 2023, Number 20-Z, p. 684.).

⁴ TSHA 6.3.1 and 6.3.2

⁵ SPA, various sections

Determination

CDFW has determined that the federal SHA, including Permit Number 23286, with proposed incidental take of the Covered Species, is consistent with the California State Safe Harbor Agreement Program Act because the conservation, avoidance, and minimization measures contained in the federal SHA and its related federal 10(a)(1)(A) enhancement of survival permit meet the conditions set forth in California Fish and Game Code sections 2089.22 and 2089.6 for authorizing incidental take of Covered Species. Specifically, CDFW finds that: (1) take of the Covered Species will be incidental to an otherwise lawful activity; (2) implementation of the federal SHA is reasonably expected to provide a net conservation benefit to the Covered Species; (3) the Project will not jeopardize the continued existence of the Covered Species; (4) the Permittee has agreed, to the maximum extent practicable, to avoid or minimize any incidental take authorized by the federal SHA, including returning to baseline conditions; (5) the federal SHA has established an approved monitoring program; (6) CDFW has determined that sufficient funding is ensured to complete surveys on the property and there is sufficient funding to carry out management actions and monitoring for the duration of the federal SHA; and (7) implementation of the federal SHA is not in conflict with a CDFW-approved conservation or recovery program for the Covered Species.

Monitoring and Reporting Measures

The Permittee will be responsible for the following monitoring and reporting measures related to implementation of the federal SHA and fulfillment of its provisions:

- SPA Sections G, G1, and G2
- SPA Section H and Appendix B
- TSHA Section 6.6
- TSHA Appendix 2 (Pages 66–101)
- TSHA Appendix 3 — Implementation Monitoring (Pages 108–118)
- TSHA Appendix 3 — Effectiveness Monitoring and Reporting (Pages 119–140)
- TSHA Appendix 3 — Validation Monitoring (Pages 141–142)
- TSHA Appendix 3 — Evaluation (Pages 142–144)
- TSHA Appendix 3 — Monitoring and Reporting Responsibilities (Pages 144–145)
- ESP Condition #7

Funding

Funding will be provided by the Permittee through a \$1,500 annual contribution to effectiveness monitoring. Permittee shall provide such funding to SWCG by February 1 of each year of its ESP. SWCG will then provide such funding directly to parties designated by NMFS to undertake effectiveness monitoring.⁶

Permittee obtained funding to install and maintain riparian fencing along Hole-in-the-Ground Creek, complete designs for the Diversion Combining Project, and implement the Shasta River instream habitat complexity projects.

Permittee applied for funding to implement the Diversion Combining Project.

Permittee has implemented the Soil Moisture monitoring project, and allowed access for the Cardoza project, and is maintaining fish passage at the new crossing.

Incidental Take Authorization

Pursuant to Fish and Game Code section 2089.22(a), if a federal SHA is approved pursuant to applicable provisions of federal law and the federal SHA includes species that are both federally and state listed, no further approval under the California State Safe Harbor Agreement Program Act (Fish & G. Code, § 2089.2 et seq.) is required for incidental take of those species provided the Permittee implements the Project and future land and water use and management practices as described in the approved federal SHA and CDFW determines the federal SHA is consistent with applicable criteria. Additionally, the Permittee must adhere to all measures contained in the approved federal SHA and comply with other conditions described in the federal 10(a)(1)(A) enhancement of survival permit.

If there are any substantive changes to the federal TSHA or if NMFS amends or replaces the SPA or ESP, the Permittee shall be required to obtain a new consistency determination from CDFW (see generally Fish & G. Code, §§ 2081.1, 2081, subdivisions (b) and (c)). Any CDFW authorization pursuant to Fish and Game Code section 2089.22(a) to take species identified in the federal SHA shall terminate immediately upon the expiration or termination of the federal SHA.

⁶ TSHA Section 6.5.3

**DEPARTMENT OF FISH AND
WILDLIFE**

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080–2023–006–02

Project: Howsley Road Bridge Replacement Project

Location: Sutter County

Applicant: Sutter County Development Services Department

Background

The Sutter County Development Services Department (Applicant) proposes to remove and replace the existing Howsley Road Bridge crossing the Pleasant Grove Creek Canal in Sutter County. The Howsley Road Bridge Replacement Project (Project) will take place west of Pleasant Grove, approximately midway between Sacramento and Marysville. The Project will be conducted in two phases with Phase 1 consisting of geotechnical borings and Phase 2 consisting of the actual demolition and removal of the old bridge and construction of the new bridge.

Phase 1 — Geotechnical borings will be conducted in two individual locations within the channel of the canal. The borings will be four to eight inches in diameter and drilled to a depth of 100 feet below the channel bottom. They will be backfilled with neat cement grout up to five feet below the channel bottom, with the top five feet being filled with native soil or allowed to collapse.

Phase 2 — The new bridge will be built approximately 25 feet south of and immediately adjacent to the old bridge, using a cast-in place post-tensioned box girder using three spans. The new bridge will be approximately 36 feet wide and 250 feet long, with pile-supported concrete abutments. Rock slope protection will be placed on exposed slopes below and adjacent to the bridge. The existing bridge will be demolished and removed, and the east embankment of the existing bridge will be shaved down to prevent a contraction of flows downstream of the new bridge. A new low-flow channel within the canal will be constructed to direct flows around the work area during the construction and will be left in place following construction.

The Project activities described above are expected to incidentally take¹ giant garter snake (*Thamnophis*

gigas) where those activities take place within the Project location. In particular, giant garter snake could be incidentally taken as a result of construction, excavation, demolition and removal of the existing bridge, rock placement, grading, mortality resulting from stress or injury associated with capture and relocation efforts, crushing/entombing of individuals on the surface and in burrows by vehicles/equipment, and placement of materials. Giant garter snake is designated as a threatened species pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(4)(E).)

Giant garter snake individuals are documented as present at the Project site and there is suitable giant garter snake habitat within and adjacent to the Project site. Because of the proximity of the nearest documented giant garter snake, dispersal patterns of giant garter snake, and the presence of suitable giant garter snake habitat within the Project site, the United States Fish & Wildlife Service (Service) determined that giant garter snake is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of giant garter snake.

According to the Service, the Project will result in the temporary loss of 0.03 acres of upland and aquatic-upland (suitable habitat that changes between aquatic and upland) giant garter snake habitat during Phase 1 construction activities, which will be within the permanent impact area during Phase 2, and the temporary loss of 6.06 acres of aquatic, aquatic-upland, and upland giant garter snake habitat during Phase 2 construction activities. Construction of the Project will also result in the permanent loss of 2.52 acres of aquatic, aquatic-upland, and upland giant garter snake habitat during Phase 2 construction activities. Since the Phase 1 temporary impacts will occur within the 2.52 acres of permanent impact area in Phase 2, compensatory mitigation purchased for the Phase 1 temporary impacts will count towards the total mitigation required for the permanent loss of giant garter snake habitat.

For purposes of the California Environmental Quality Act (CEQA), the Applicant is the lead agency and coordinates with the California Department of Transportation (Caltrans), who acts as the National Environmental Policy Act (NEPA)/Federal agency for the Project. Because the Project is expected to result in take of a species designated as threatened under the ESA, Caltrans consulted with the Service as required by the ESA. On October 1, 2021, the Service issued a biological opinion (Service file Number 08ESMF00–2020–F–2743–1) (BO) to Caltrans. On December 8, 2022, Caltrans requested reinitiation of formal consultation with the Service and submitted an amended

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

biological assessment. On February 3, 2023, the Service issued an amended BO to reduce the temporary impacts of the project from 6.86 acres to 6.06 acres, change template language in the incidental take statement, and fix minor typographical errors. The amended BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

The ITS also requires the Applicant to implement and adhere to all conservation measures contained within the Project's Biological Assessment (BA).

On September 27, 2022, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS, along with its accompanying BO, is consistent with CESA for purposes of the Project and giant garter snake. (Cal. Reg. Notice Register 2022, Number 41-Z, p. 1204.) On October 26, 2022, the Applicant withdrew its request. On April 27, 2023, the Director of CDFW received a subsequent notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and related amended BO are consistent with CESA for the purposes of the Project and giant garter snake. (Cal. Reg. Notice Register 2023, Number 19-Z, p. 675.)

Determination

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

Avoidance, Minimization, and Mitigation Measures

1) The Applicant shall submit to the Service and CDFW in writing the name, qualifications, business address, and contact information of the biological monitors, including a designated biologist (Designated Biologist) and other qualified biologists at least 30 days before starting project activities under the applicable regulatory permits. The Applicant shall ensure that the biological

monitors are knowledgeable and experienced in the biology and natural history of the snake. The Designated Biologist shall be responsible for overseeing qualified biologists to help minimize or avoid the incidental take of the snake and to minimize disturbance of the snake's habitat. The Applicant shall obtain the Service's and CDFW's approval of the Designated Biologist and qualified biologists in writing before starting project activities. The Applicant shall obtain the Service's and CDFW's approval in writing if the Designated Biologist must be changed. The minimum requirements for the Designated Biologist include experience with the biology and ecology of the snake and experience handling the snake.

- 2) To the maximum extent possible, construction activities (including the installation of exclusion fencing) in snake aquatic and upland habitat (within 200 feet of aquatic habitat) will be initiated during the snake's active period (May 1 through October 1). During this timeframe, the potential for injury and mortality are lessened because snakes are actively moving and avoiding danger.
- 3) Before any ground-disturbing work (including vegetation removal and grading), a qualified biologist will conduct a mandatory Worker Awareness Training for all construction personnel about special-status species that could potentially occur on-site. Proof of personnel attendance will be provided to the Service and the CDFW within one week of the training. The worker awareness training will be conducted for new personnel as they are brought on the job during the construction period. General restrictions and guidelines that will be followed by construction personnel include:
 - a. The construction crew leader will be responsible for ensuring that crew members adhere to the guidelines and restrictions.
 - b. The training will discuss the legal status of each species, habitat requirements, representative photographs, and avoidance and minimization measures to be implemented. Information regarding the life history of the snake; importance of irrigation canals, marshes and wetlands, and seasonally flooded areas; and a description of activities that qualify as take of the species including harassment, destruction of habitat, and death of an individual.
 - c. Distribution of a fact sheet conveying this information to the personnel who may enter the action area.

- 4) Project-related vehicles will observe the posted speed limit on hard-surfaced roads and a 15 mile-per-hour speed limit on unpaved roads during travel in the project area.
- 5) The Designated Biologist will be on-site for the duration of any ground-disturbing activities (e.g., vegetation clearing, grubbing, grading, boring, and other earthmoving activities) required for work or site access.
- 6) Prior to the initiation of construction, Project work limits will be clearly delineated by the Applicant with high visibility fencing, stakes, cones, or flags to avoid ground disturbance to areas adjacent to and outside of work limits.
- 7) Two weeks prior to initiation of boring work, the Designated Biologist will conduct pre-construction surveys. Exclusion fencing will be installed in areas scheduled for boring at this time. Exclusion fencing will contain one-way exits to allow trapped wildlife to exit the excluded area. If boring is to occur after October 1, exclusion fencing will be placed no later than September 15, to prevent brumation in boring areas.
- 8) Twenty-four hours prior to the commencement of construction activities within the channel prism, the project area shall be surveyed by a Designated Biologist to document the presence or absence of the snake. The Designated Biologist will provide the Service and CDFW a written report that adequately documents the monitoring efforts within 24 hours of commencement of in-channel construction activities. The project will be re-inspected by the Designated Biologist whenever a lapse in construction in the area of two weeks or greater has occurred. If any snake habitat is identified within the project area during the pre-construction survey, exclusionary fencing shall be placed around the proposed habitat to identify areas to be avoided during construction.
- 9) Prior to ground-disturbing activities within suitable aquatic or upland habitat, a Designated Biologist will conduct a pre-construction survey for the snake and will inspect exclusion and orange barrier fencing to ensure they are both in good working order. Preferably, the pre-construction survey will be conducted immediately prior to ground-disturbing activities but no more than 24 hours before the start of this work. The construction area will be re-inspected and surveyed whenever a lapse in construction activity of two weeks or more has occurred. Results of pre-construction surveys will be provided to the Service and CDFW within 24 hours of commencement of construction activities. Surveys will confirm that no rodent holes occupied by the snake are present within the action area.
- 10) Applicant will limit vegetation clearing to the minimum necessary within 200 feet of the banks of suitable snake aquatic habitat. Avoided snake habitat within or adjacent to the action area will be flagged and designated as an environmentally sensitive area by the Applicant and will be avoided by all construction personnel.
- 11) Protection of graded areas from erosion will be implemented by the Applicant using a combination of silt fences, biodegradable fiber rolls along toes of slopes or along edges of designated staging areas, and biodegradable erosion control mat (such as jute or coir) as appropriate on sloped areas. The contractor bid solicitation package will specify that tightly woven fiber netting (less than 0.25 inch), coconut coir matting, or similar material will be used for erosion control. Plastic monofilament or wire mesh in straw wattles or other erosion control devices will not be used. Only erosion control materials with natural fibers or other netting approved by the Service and CDFW will be used. The edge of the material will be buried in the ground to prevent snakes from crawling under the material.
- 12) The use of sheet piling (or other approved diversion device or methods) may be used to divert flow around work areas so that no work in standing water occurs (with the exception of installation or removal of diversion and dewatering devices). Diversion devices and methods shall be built from clean materials such as sandbags, gravel bags, water dams, or clean or washed gravel, which will cause little or no siltation.
- 13) If dewatering becomes necessary between May 1 and October 1, the Applicant shall ensure that dewatered habitat remains dry for at least fifteen consecutive days prior to the initiation of excavation and filling of dewatered habitat within the canal. The dewatered habitat shall remain dry until work in the dewatered habitat is complete.
- 14) If a snake is encountered, the Applicant or its consultant shall halt construction until the uninjured snake has left the area under its own volition. Capture of trapped or injured individuals shall be attempted only by the Designated Biologist and proper species identification must be made prior to any capture or handling. For each snake encountered, the Designated Biologist shall submit a completed field survey form (or equivalent) to the Service and CDFW no more than 90 days after completing the last field visit to the project area.

15) Captured snakes shall be released as soon as practicable. Snakes captured within the work area will not be released at the point of capture but will be released at a designated release site. The following conditions for release have been adapted from the U.S. Geological Survey’s National Wildlife Health Center guidance on the use and care of wildlife during field research. Field-captured animals shall be released only:

- a. at sites that are approved by the Service and CDFW and in habitat suitable for the species survival,
- b. when the released animal can be reasonably expected to function normally within the population,
- c. when local and seasonal conditions are conducive to survival,
- d. when the ability to survive in nature has not been irreversibly impaired, and
- e. when release is not likely to spread pathogens or contribute to disease processes in other ways.

16) Any worker who inadvertently injures or kills a federally listed species or finds one dead, injured, or entrapped will immediately report the incident to an on-site biological monitor or Designated Biologist. The Designated Biologist will immediately notify the Applicant, who will immediately provide verbal notification to the Service’s Sacramento Fish and Wildlife Office (SFWO) and the local CDFW warden or biologist. The Applicant will follow up with a written report to the Service and CDFW within two calendar days. The report will include the date and time of the finding or incident, location of the animal or carcass, photographs, and explanation as to the cause of take, and any other pertinent information.

Monitoring and Reporting Measures

- 1) A report summarizing the activities that have occurred and the snake’s protective measures that were implemented will be prepared and submitted to the Service and CDFW each month during construction. The report will contain a Mitigation Monitoring and Reporting Program table of conservation measures, when the measure will be implemented (i.e., before, during, or after construction), the status of the measure (i.e., complete, ongoing, incomplete), the name of the individual completing the table, and the date completed.
- 2) No later than 45 days after completion of all conservation measures, the Applicant will submit a final mitigation report to the Service and CDFW. The final mitigation report will include:

- a. a summary of information provided in monthly status reports,
- b. the Mitigation Monitoring and Reporting Program table with notes showing when each of the conservation measures was implemented,
- c. all available information about incidental take of the snake during construction of the proposed action,
- d. information about other effects on the snake from the proposed action,
- e. beginning and ending dates of the proposed action,
- f. an assessment of the effectiveness of conservation measures in minimizing and compensating for effects on the snake,
- g. recommendations on how conservation measures might be changed to more effectively minimize take and compensate for effects of future projects on the snake, and
- h. any other pertinent information.

Security

- 1) The Applicant has completed mitigation requirements for Phase 1 of the Project by purchasing 0.03 acres of giant garter snake credits from Sutter Basin Conservation Bank as documented by an August 15, 2022, Bill of Sale provided to CDFW. Since the Applicant purchased credits prior to impacts, security is not required for Phase 1.
- 2) Before the initiation of Phase 2 (i.e., bridge construction), the Applicant will compensate for the permanent loss of 2.52 acres of suitable habitat for giant garter snake by purchasing giant garter snake credits at a 3:1 ratio (7.56 credits minus the 0.03 credits already purchased for Phase 1) and will compensate for the temporary effects to 6.06 acres of suitable habitat for giant garter snake by purchasing giant garter snake credits at a 1:1 ratio (6.06 credits) for a total of 13.59 giant garter snake credits from a Service- and CDFW-approved giant garter snake conservation bank. The transaction will take place through a purchase and sale agreement, and funds must be transferred within 30 days and prior to the initiation of any Phase 2 construction activities. The Applicant will provide the Service and CDFW with copies of the credit sale agreement and fund transfer. Since the Applicant is required to purchase credits prior to impacts, security is not required for Phase 2.
- 3) Prior to proceeding with the proposed project, the Applicant will provide the Service and CDFW with written documentation that the Applicant has ensured funding to complete all measures to

minimize and fully mitigate the incidental take of the snake resulting from construction. The documentation provided by the Applicant will identify specific minimization and mitigation components and the costs associated with each component.

Conclusion

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

CDFW’s determination that the Service BO and ITS are consistent with CESA is limited to giant garter snake.

OFFICE OF THE STATE FIRE MARSHAL

NOTICE OF SECOND ADDITIONAL WRITTEN COMMENT PERIOD

On November 4, 2022, the Office of the State Fire Marshal published a Notice of Proposed Rulemaking concerning the Regulations Relating to Automatic Extinguishing Systems and Certifications. (California Regulatory Notice Register 2022, Number 44–Z, November 4, 2022, p. 1295.)

The original written comment period for this action was:

November 4, 2022, through December 20, 2022.

The first additional written comment period for this action was:

December 23, 2023, through January 9, 2023.

The Department is now providing a second additional written comment period to review modifications to the Express Terms (TEXT). The additional written comment availability is:

June 16, 2023, through July 1, 2023

The Notice of Additional Written Comment Period, Notice of Proposed Action, Addendum to the Initial Statement of Reasons, Modifications to Express Terms (TEXT) of Regulations, and any other materials con-

cerning this rulemaking can be accessed on the Office of the State Fire Marshal website:

<https://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/> under the tab titled: (AES) Automatic Extinguishing Systems and Certifications — Fee Increases

Please submit all written comments or questions to:

Eireann Flannery
 CAL FIRE / Office of the State Fire Marshal
 715 ‘P’ Street, Suite 900
 Sacramento, CA 95814
Title19Regulations@fire.ca.gov
 Phone: (916) 531–7650

PETITION DECISIONS

DEPARTMENT OF HEALTH CARE SERVICES

June 1, 2023

Daniel O. Jamison

Dear Mr. Jamison,

On May 3, 2023, the Department of Health Care Services (DHCS) denied your petition requesting a repeal and amendment to California Code of Regulations (Cal. Code Regs.), Title 9, section 3400(b)(2), as it applies to Allowable Costs and Expenditures under the Mental Health Services Act (MHSA). On May 19, 2023, the Department acknowledged receipt of your request for reconsideration. Pursuant to Welfare and Institutions Code section 5898, the Department has authority to develop regulations to implement the MHSA, including section 3400.

The Department has reviewed your request for reconsideration in accordance with Government Code section 11340.7, and after thorough consideration, the Department denies your request for the following reasons, as explained more fully below:

- (1) The changes to Cal. Code Regs., Title 9, section 3400(b)(2) that you propose in your request for reconsideration are unnecessary; and,
- (2) Your assertion that the current language in section 3400(b)(2) is misleading is incorrect.

Proposed Changes to Section 3400(b)(2) are Unnecessary

It is unnecessary to amend Cal. Code Regs., Title 9, section 3400(b)(2) because existing law authorizes counties to use MHSA funds for the purposes suggested by your proposed amendments. As explained in the Department’s response to your petition, Cal.

Code Regs., Title 9, section 3400(b)(2) is consistent with the MHSA and does not prohibit counties from using MHSA funds for involuntary services. Nor does section 3400(b)(2) prevent construction of locked facilities, or the training and retaining of qualified staff to work in locked psychiatric facilities.

More specifically, and as stated in the Department’s response to your petition, existing law explicitly authorizes counties to use MHSA funds for services provided to individuals involuntarily detained, including services provided to individuals placed on temporary involuntary holds (pursuant to Welfare and Institutions Code sections 5150 and 5250) and temporary conservatorships (pursuant to Welfare and Institutions Code section 5350). (See Welf. & Inst. Code, § 5014, subdivision (a)(1).) In addition, counties may already use MHSA funds to train and retain qualified staff to work in a locked psychiatric facility, as well as to construct restrictive/locked facilities. The Workforce, Education and Training (WET) program established under the MHSA is intended to “remedy the shortage of qualified individuals to provide services to address severe mental illnesses.” (Welf. & Inst. Code, § 5820, subdivision (a).) Counties are required to identify personnel shortages to provide the specified services, and Welfare and Institutions Code section 5892, subdivision (b)(1) provides counties with a mechanism to fund identified WET programs. (Welf. & Inst. Code, § 5847, subdivision (b)(6); see Cal. Code Regs., title 9, div. 2, chapter 14, article 8.) These programs include a residency and internship program, and a financial incentive program designed to train, and retain, qualified psychiatric staff. (Cal. Code Regs., title 9, §§ 3843, 3844.) Counties are also permitted, in certain circumstances, to use MHSA funds for facilities with restrictive settings, including locked psychiatric facilities, provided the county demonstrate “that the needs of the people to be served cannot be met in a less restrictive or more integrated setting, such as permanent supportive housing.” (Welf. & Inst. Code, § 5847, subdivision (b)(5).) Welfare and Institutions Code section 5892, subdivision (b)(1) provides counties with a mechanism to fund these facilities.

Section 3400(b)(2) is Consistent with the MHSA

Title 9 of the Cal. Code of Regs., section 3400(b)(2) states that:

Programs and/or services provided with MHSA funds shall [b]e designed for voluntary participation. No person shall be denied access based solely on his/her voluntary or involuntary legal status.

In your request for reconsideration, you acknowledge that MHSA funds may be used for the construction and staffing of locked facilities, though you further argue that section 3400(b)(2) is misleading and has “caused administrators to believe MHSA funds

cannot be used for these purposes.” The language in section 3400(b)(2), however, is consistent with the MHSA. The language reflects MHSA intent that services and programs be designed with voluntary participation in mind. For example, per the Legislative Findings and Intent for the systems of care for adults and older adults with severe mental illness, the MHSA is intended to focus on services that are voluntary, provided in the community, and designed to prevent institutionalization. (See Welf. & Inst. Code, § 5801, subdivisions (b)(5), (b)(9); see also § 5813.5 [incorporating § 5801].)

In addition, the use of MHSA funds are not determined solely by county administration. Counties are required to develop their three–year program and expenditure plans, and annual updates through an extensive stakeholder planning process that is intended to identify the mental health needs and priorities of the community. Each county is required to develop the plans with local stakeholders that includes “adults and seniors with severe mental illness, families of children, adults and seniors with severe mental illness, providers of services, law enforcement agencies, education, social services agencies, veterans, representatives from veterans organizations, providers of alcohol and drug services, health care organizations, and other important interests.” Counties must also demonstrate a partnership with constituents and stakeholders “that includes meaningful stakeholder involvement on mental health policy, program planning, and implementation, monitoring, quality improvement, evaluation, and budget allocations.” (Welf. & Inst. Code, §§ 5847, subdivision (b), 5848; see also Cal. Code Regs., title 9, §§ 3300, 3310, 3315.) The use, or lack thereof, of MHSA funds for any specific program or service may be more reflective of the needs of the community, as identified through the stakeholder process, than a county’s perceived misrepresentation of the law.

If you would like to discuss the decision specified above, please contact DHCS at MHSA@dhcs.ca.gov Attention: Julia Rojas, or call Julia Rojas at (916) 713–8638. The Department will provide a copy of the request for reconsideration to any interested person.

Sincerely,

/s/

Marlies Perez
Community Services Division

**STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT
COMMISSION**

IN THE MATTER OF:

WESTERN STATES PETROLEUM
ASSOCIATION PETITION FOR
RULEMAKING

ORDER DENYING PETITION FOR
RULEMAKING

**I. INTRODUCTION AND
PROCEDURAL HISTORY**

Effective January 1, 2023, Senate Bill (SB) 1322 (Stats. 2022, chapter 374) amended sections 25362 and 25364 of, and added Section 25355 to, Chapter 4.5, Division 15 of the Public Resources Code (PRC). On March 28, 2023, the Governor signed SB X1–2 (Stats. 2023, 1st Ex. Sess. 2023, chapter 1), an act to amend Sections 25354, 25355, 25362, and 25364 of, to add Sections 25354.2, 25355.5, 25355.7, and 25367 to, and to add Chapter 4.6 to Division 15 of the PRC. SB X1–2 will take effect on June 26, 2023. Together, SB X1–2 and SB 1322 add new reporting requirements and enforcement mechanisms to the existing reporting framework of the Petroleum Industry Information Reporting Act (PIIRA) of 1980.

On May 11, 2023, Western States Petroleum Association (WSPA) filed a petition requesting the California Energy Commission (CEC) institute a formal rulemaking regarding implementation of SB X1–2 and SB 1322 (Petition). The Petition asserts that such a rulemaking is needed to clarify terms and processes in SB X1–2 and SB 1322 and to ensure consistent interpretation and implementation of the laws.

On May 18, 2023, the Executive Director certified that the petition met the filing requirements of CCR, title 20, Section 1221. On May 19, 2023, CEC staff filed a recommendation that the CEC deny the Petition as premature and unnecessary because SB X1–2 has yet to take effect and the laws are clear as written. The CEC considered the Petition at its May 31, 2023 Business Meeting.

II. CEC FINDINGS

Based on the entirety of the record, the CEC finds that:

- 1) The Petition meets the requirements of CCR, title 20, section 1221.

- 2) Implementation of SB X1–2 and SB 1322 will benefit from an open and transparent public process with robust engagement from regulated entities after SB X1–2 takes effect on June 26, 2023.
- 3) PRC sections 25213 and 25218(e) authorize the CEC to adopt rules and regulations, as necessary, to carry out its statutory duty. The CEC has further authority to implement the provisions of Chapter 4.5 of Division 15 of the PRC through Administrative Procedure Act–exempt regulations and actions pursuant to PRC sections 25354(n)(2) and 25355(o) and to adopt emergency regulations and orders pursuant to PRC section 25367.
- 4) The terms of SB X1–2 and SB 1322, including the data reporting requirements, are clear as written and, accordingly, may be implemented without delay.
- 5) CCR, title 20, section 1221(c), requires that the CEC, within 30 days of the filing of the petition, deny the petition, stating the reason for the denial in writing, or grant the petition, directing staff to prepare an order instituting a rulemaking.

III. CONCLUSION AND ORDER

- 1) For the reasons stated above, the CEC hereby DENIES WSPA’s Petition for Rulemaking.
- 2) CEC staff is directed to file this Order and supporting documentation with the Office of Administrative Law in accordance with Government Code section 11340.7(d)

IT IS SO ORDERED.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the CEC held on May 31, 2023.

AYE: Gallardo, Gunda, McAllister, Monahan
 NAY: NONE
 ABSENT: Hochschild
 ABSTAIN: NONE

Dated: June 1, 2023

SIGNED BY
 Liza Lopez
 Secretariat

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)

CANDIDATE FOR LISTING VIA THE
LABOR CODE MECHANISM FOUND
NOT TO MEET THE LISTING CRITERIA:
ANTIMONY (TRIVALENT COMPOUNDS)

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) identified antimony (trivalent compounds) as a potential candidate for listing under Proposition 65 (Health and Safety Code [HSC] sections 25249.5 et seq.) as known to cause cancer via the “Labor Code” mechanism (HSC section 25249.8(a); Title 27 Cal. Code of Regs. section 25904). This potential action was based on a conclusion by the International Agency for Research on Cancer [IARC] (IARC 2022; Karagas et al. 2022), and was noticed in the California Regulatory Notice Register (Register 2022, Number 39–Z, September 30, 2022). The publication of the notice initiated a public comment period (September 30, 2023 — October 31, 2023). OEHHA received six sets of comments during the comment period. The comments are posted with the Notice of Intent to List on OEHHA’s website, which is available at <https://oehha.ca.gov/proposition-65/crn/notice-intent-list-chemical-labor-code-mechanism-antimony-trivalent-compounds>.

On May 5, 2023, volume 131 of the IARC Monographs on the Identification of Carcinogenic Hazards to Humans, entitled “Cobalt, Antimony Compounds, and Weapons–Grade Tungsten Alloy” was published (IARC, 2023). After review of the 2023 monograph, OEHHA has determined antimony (trivalent compounds) does not meet the criteria for listing as causing cancer via the Labor Code mechanism. While as indicated in Karagas et al. and IARC (2022), IARC placed “antimony (trivalent compounds)” in IARC Group 2B (possibly carcinogenic to humans), IARC (2023) explained this broader listing was based on strong mechanistic evidence in human primary cells and experimental systems for trivalent antimony and sufficient evidence in experimental animals for one compound (antimony trioxide) and not for antimony (trivalent compounds), as required by Title 27 California Code of Regulations, section 25904(b)(3). For

this reason, OEHHA will not proceed at this time with the Proposition 65 listing of antimony (trivalent compounds). This determination does not affect the existing listing of antimony oxide (antimony trioxide), which was listed under Proposition 65 in 1990.

References

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

International Agency for Research on Cancer (IARC, 2023). IARC Monographs on the Identification of Carcinogenic Hazards to Humans, Volume 131. Cobalt, Antimony Compounds, and Weapons–Grade Tungsten Alloy. IARC, World Health Organization, Lyon, France. Available from <https://publications.iarc.fr/618> [Accessed May 16, 2023].

Karagas MR, Wang A, Dorman DC, Hall AL, Pi J, Sergi CM, Symanski E, Ward EM, Arrandale VH, Azuma K, Brambila E, Calaf GM, Fritz, JM, Fukushima S, Gaitens JM, Grimsrud TK, Guo L, Lynge E, Marinho–Reis AP... Carcinogenicity of cobalt, antimony compounds, and weapons–grade tungsten alloy. *The Lancet Oncology* 23(5), 577–578. Published online April 7, 2022, doi: 10.1016/S1470–2045(22)00219–4. Available at URL: [https://www.thelancet.com/journals/lanonc/article/PIIS1470–2045\(22\)00219–4/fulltext](https://www.thelancet.com/journals/lanonc/article/PIIS1470–2045(22)00219–4/fulltext) [Accessed April 18, 2022]

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)

NOTICE OF INTENT TO LIST CHEMICALS
BY THE LABOR CODE MECHANISM:
ANTHRACENE, 2–BROMOPROPANE, AND
DIMETHYL HYDROGEN PHOSPHITE

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to list anthracene (CAS RN 120–12–7), 2–bromopropane (CAS RN 45–26–3), and dimethyl hydrogen phosphite (CAS RN 868–85–9) as known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986,

sections 25249.5 et seq. of the Health and Safety Code (HSC), otherwise known as Proposition 65.

This action is being proposed pursuant to the “Labor Code” listing mechanism described below. OE-HHA has determined that these substances meet the criteria for listing by this mechanism.

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

OE-HHA’s determination: *Anthracene*, *2-bromopropane*, and *dimethyl hydrogen phosphite* meet the requirements for listing as known to the state to cause cancer for purposes of Proposition 65 (Title 27, CCR, section 25904(b)(3)).

IARC published on its website a list entitled “Agents Classified by the IARC Monographs, Volumes 1–133” (IARC, 2023). IARC concluded that *2-bromopropane* is classified in Group 2A (“probably carcinogenic to humans”) and that *anthracene* and *dimethyl hydrogen phosphite* are classified in Group 2B (“possibly carcinogenic to humans”). IARC concluded that there is sufficient evidence of carcinogenicity in animals for *anthracene*, *2-bromopropane*, and *dimethyl hydrogen phosphite* (Cattley et al., 2023).

Opportunity for comment: OE-HHA is providing this opportunity to comment as to whether the chemicals identified above meet the requirements for listing as causing cancer (HSC section 25249.8(a); Title 27, CCR, section 25904(b)). Because this is a ministerial listing, comments should be limited to whether IARC has sufficiently identified the specific chemicals or substances as a human or animal carcinogen. Under this listing mechanism, OE-HHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by IARC when it identified these chemicals and will not respond to such comments if they are submitted.

Submission of Comments

All written comments must be submitted to OE-HHA by electronic submission, mail, or hand-delivery, by **Monday, July 17, 2023**. OE-HHA strongly recommends that comments be submitted electronically through our website at <https://oehha.ca.gov/comments>, rather than in paper form. Alternatively, comments

can be submitted in paper form, either by mail or delivered in person.

Electronic Submission (preferred):

Through OE-HHA website at:
<https://oehha.ca.gov/comments>

Mailed Submission:

Attention: Kiana Vaghefi
Office of Environmental Health Hazard
Assessment
P.O. Box 4010
Sacramento, California 95812–4010

In-person delivery submission:

Attention: Kiana Vaghefi
Office of Environmental Health Hazard
Assessment
1001 I Street, 23rd Floor
Sacramento, California 95814

OE-HHA encourages all commenters to submit their comments in a format compliant with Section 508 of the federal Rehabilitation Act, Web Content Accessibility Guidelines 2.1 (<https://www.w3.org/WAI/standards-guidelines/wcag>) and California Government Code sections 7405 and 11135, so that they can be read using screen reader technology.

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

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

If you have any questions, please contact Kiana Vaghefi at Kiana.Vaghefi@oehha.ca.gov or at (916) 445–6900.

References

Cattley RC, Kromhout H, Sun M, Tokar EJ, Abdallah M A–E, Bauer AK, Broadwater KR, Campo L, Corsini E, Houck KA, Ichihara G, Matsumodo M, Morais S, Mráz J, Nomiyama T, Ryan K, Shen H, Toyoda T, Vähäkangas KH, Yakubovskaya MG, Yu IJ, DeBono NL, de Conti A, El Ghissassi F, Madia F, Mattock H, Pasqual E, Suonio E, Wedekind R, Benbrahim-Tallaa L, Schubauer-Berigan MK (2023). Carcinogenicity of anthracene, 2-bromopropane, butyl methacrylate, and dimethyl hydrogen phosphite. *The Lancet Oncology*. Published online March 23, 2023, doi: [https://doi.org/10.1016/S1470-2045\(23\)00141-9](https://doi.org/10.1016/S1470-2045(23)00141-9) [Available at URL: [https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(23\)00141-9/fulltext](https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(23)00141-9/fulltext)]

IARC (2023). International Agency for Research on Cancer. World Health Organization. Agents Classified by the IARC Monographs, Volumes 1–133. Most recent list available at URL: <https://monographs.iarc.fr/list-of-classifications-volumes/>

**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.

California Debt Limit Allocation Committee
File # 2023–0418–01
Permanent Adoption of 2022 QRRP Regulations

This certificate of compliance amends definitions and requirements pertaining to the Qualified Residential Rental Project (QRRP) Program by making permanent the regulatory changes adopted in emergency rulemaking actions 2022–0721–01E and 2023–0130–01EE.

Title 04
Amend: 5000, 5020, 5022, 5035, 5036, 5052, 5054, 5100, 5105, 5133, 5144, 5146, 5170, 5190, 5193, 5200, 5230, 5231, 5240, 5241
Filed 05/31/2023
Effective 05/31/2023
Agency Contact: Emily Burgos (916) 952–7161

Fish and Game Commission
File # 2023–0524–02
California Halibut

This emergency action by the Fish and Game Commission reduces the daily bag and possession limits of California halibut taken in waters north of a line extending due west magnetic from Point Sur, Monterey County, from three to two fish.

Title 14
Amend: 28.15
Filed 06/02/2023
Effective 06/02/2023
Agency Contact: David Haug (916) 902–9286

State Water Resources Control Board
File # 2023–0526–01
Drought Conservation Emergency Regulation

This emergency rulemaking action by the State Water Resources Control Board readopts, with modifications, emergency regulations originally adopted in OAL Matter Number 2022–0606–03E to restrict the use of potable water for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

Title 23
Adopt: 996
Filed 06/05/2023
Effective 06/05/2023
Agency Contact: Garrett Lenahan (916) 341–5179

California Library Services Board
File # 2023–0525–01
Conflict-of-Interest Code

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

Title 02
Amend: 34000
Filed 06/07/2023
Effective 07/07/2023
Agency Contact: Scott Taylor (916) 603–7205

Department of Justice
File # 2023–0418–02
Chapter 41 Unserialized Firearms Regulations

This action by the Department of Justice makes changes to regulations relating to applications for unique serial numbers for unserialized firearms and firearm precursor parts.

Title 11
Amend: 5505, 5506, 5507, 5508, 5509, 5511, 5513, 5514, 5515, 5516, 5517, 5518, 5519, 5520, 5521, 5522
Repeal: 5510
Filed 05/31/2023
Effective 05/31/2023
Agency Contact: Marlon Martinez (213) 269–6437

Department of Resources Recycling and Recovery
 File # 2023-0518-02
 Covered Electronic Waste Recovery and Recycling
 Payment Rates

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

Title 14
 Amend: 18660.24, 18660.25, 18660.33, 18660.34
 Filed 06/07/2023
 Effective 07/01/2023
 Agency Contact: Kris Chisholm (916) 322-2404

Office of Environmental Health Hazard Assessment
 File # 2023-0425-01
 Chemicals Known to the State to Cause Cancer or
 Reproductive Toxicity

This file and print action updates the list of chemicals known to the state to cause cancer or reproductive toxicity (1) to include 1-Bromo-3-chloropropane, 1-Butyl glycidyl ether, Glycidyl methacrylate, Leucomalachite green, and 1,1,1-Trichloroethane as chemicals known to the state to cause cancer. This action is exempt from the Administrative Procedure Act pursuant to Health and Safety Code section 25249.8.

Title 27
 Amend: 27001
 Filed 06/07/2023
 Effective 04/21/2023
 Agency Contact: Kiana Vaghefi (279) 216-0002

ScholarShare Investment Board
 File # 2023-0510-01
 CalKIDS Form Update

As changes without regulatory effect, the ScholarShare Investment Board is re-lettering a subdivision in Section 31014 and updating their mailing address in the "CalKIDS Permanent Opt-Out Request" form.

Title 05
 Amend: 31014
 Filed 06/05/2023
 Agency Contact: Noah Lightman (916) 201-6382

Department of Social Services
 File # 2023-0419-03
 CalWORKs Exemptions of Awards/Scholarships

This rulemaking action by the Department of Social Services proposes to amend the Manual of Policies and Procedures to include CalWORKs exemption language for awards and scholarships provided by a public or private entity to, or on behalf of, a dependent child, and for census-related income or stipends.

Title MPP
 Amend: 44-101, 44-103, 44-111, 44-113, 44-115, 44-133, 82-610
 Filed 06/01/2023
 Effective 10/01/2023
 Agency Contact: Tyler Penn (916) 657-2363

Bureau of Automotive Repair
 File # 2023-0511-01
 Citation and Remedial Training for Automotive
 Repair Dealers

In this resubmitted rulemaking action, the Bureau adopts regulations related to administration citations and fines for Automotive Repair Act violations. The adoptions further set forth an informal citation review conference and hearing process for automotive repair dealers to contest the citation. In addition, the adoptions establish a remedial training program to allow the nondisclosure of the automotive repair dealer's citation. The Bureau also amends its regulations to make minor grammatical changes.

Title 16
 Adopt: 3394.50, 3394.51, 3394.52, 3394.53, 3394.54, 3394.55, 3395.7, 3395.8, 3395.9, 3395.10
 Amend: 3394.25, 3394.26, 3394.27, 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, 3394.46
 Filed 05/31/2023
 Effective 07/01/2023
 Agency Contact: Kayla Shelton (916) 403-0307

Department of Corrections and Rehabilitation
 File # 2023-0427-02
 Reading Glasses

This action defines canteen open line and reading glasses and describes the process for accessing reading glasses.

Title 15
 Amend: 3000, 3095, 3999.98, 3999.205, 3999.396
 Filed 05/31/2023
 Effective 07/01/2023
 Agency Contact: Robin Hart (916) 896-6780

**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.