



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON  
REGULATIONS**

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**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION/  
DEPARTMENT OF JUSTICE**

**PROPOSED AMENDMENTS TO THE  
CONFLICT-OF-INTEREST  
CODE OF THE FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Office of the Attorney General (the “Office”), pursuant to Government Code (Gov. Code) sections 82011, 87303, and 87304 of the Political Reform Act (Gov. Code, § 81000 et seq.) will review proposed amendments to the conflict-of-interest code of the Fair Political Practices Commission (the “Commission”). The purpose of the amendments is to implement Government Code sections 87300 through 87302, and 87306.

Government Code sections 87300 and 87302 require each government agency to adopt a conflict-of-interest code designating the agency personnel who must file annual Form 700 Statement of Economic Interests, disclosing certain economic interests. Designated personnel are those who make or participate in making governmental decisions that may foreseeably have a material financial effect on an economic interest. (Gov. Code, § 87302, subdivision (a).)

Pursuant to Government Code section 87306 and California Code of Regulations, title 2, section 18750, the Commission proposes to amend its conflict-of-interest code due to changes to its organizational structure. The Office is the code reviewing body for the Commission. (Gov. Code, §§ 82011, 87303, and 87304.)

Any interested person may submit written statements, arguments, or comments related to the proposed amendments by submitting them no later than 5:00 p.m. on August 22, 2023, or at the conclusion of the public hearing, if one is requested, whichever comes later, to the agency contact set forth below. The Office has not scheduled a public hearing on the proposed amendments. However, it will hold a hearing if it receives a written request for a hearing from any

interested person, or his or her representative, 15 days before the close of the written comment period.

The Office has prepared a written explanation (Statement of Reasons) for the proposed amendments and has available information on which the proposed amendments are based. Copies of the proposed amendments and the information on which the amendments are based may be obtained by contacting the persons set forth below.

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

The Office has determined that no alternative considered by the Office would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons than the proposed amendments.

All inquiries concerning this proposal should be directed to: Marlon Martinez, at 300 South Spring Street, Los Angeles, California 90013, or (213) 269-6437, or [Marlon.Martinez@doj.ca.gov](mailto:Marlon.Martinez@doj.ca.gov). Requests for copies of the proposed conflict-of-interest code amendments may also be obtained from Maria Almaraz, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California 95811, or (916) 322-5660, or <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

**TITLE 2. STATE PERSONNEL BOARD**

**Notice is hereby given** that the State Personnel Board (Board) proposes to repeal Section 262 and amend Sections 170, 249.1.1, 249.1.2, 249.2, 249.4, 321, 438, 438.1, 439.2, and 439.4 in order to clarify, streamline or, correct the deficiencies of, rules related to examinations, appointments, probationary periods, and temporary assignments or loans. (Cal. Code Regs., title 2, §§ 170, 249.1.1, 249.1.2, 249.2, 249.4, 262, 321, 438, 438.1, 439.2, 439.4.)

**PUBLIC HEARING**

A public hearing regarding the proposed regulatory action will be held on August 22, 2023, at 10:00 a.m. via WebEx. In order to participate in the public hearing, please see the following options:

- Via Video (Online)

You may click, or copy and paste into your web browser, the following link: <https://spb-meetings.webex.com/spb-meetings/j.php?MTID=m1624d72e54853119d883b6f69836b3d2>

Then enter the following information to gain access to the hearing:

Meeting Number: 2551 561 2136

Meeting password: B6kmEPiTS83

- Via Telephone

You may also participate by dialing the phone number first and then the participant code listed below:

Phone Number: +1 408-418-9388

Participant Code: 25515612136##

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

#### WRITTEN COMMENT PERIOD

Any interested party, or their duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Michelle La Grandeur, Chief  
Policy Division  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
Email: [michelle.lagrandeur@spb.ca.gov](mailto:michelle.lagrandeur@spb.ca.gov)

The written comment period closes on August 22, 2023. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

#### AUTHORITY AND REFERENCE

The Board proposes to repeal section 262 and amend sections 170, 249.1.1, 249.1.2, 249.2, 249.4, 321, 438, 438.1, 439.2, and 439.4 of Title 2, Chapter 1 of the California Code of Regulations pursuant to the authority vested in it by the California Constitution (Cal. Const.), article 7, section 3, and Government Code sections 18502, 18660, 18701, 19050, and 19050.8. The proposed regulation will implement, interpret, and make specific the provisions of the California Constitution, article 7, section 3, and Government Code (Gov. Code) sections 18500, 18930, 18933, 19050, 19050.8, 19170, 19173, and 19401.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., article VII, §§ 1, subdivision (b), and 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*)

Regulations adopted by the Board are exempt from the Administrative Procedure Act, except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.)

Section 170 is amended to require the posting of examination announcements for a minimum period of ten calendar days.

Section 249.1.1 is amended to require that job advertisements include the following: each classification being considered to fill a vacancy, the types of eligibility being considered to fill a vacancy, duty statements that most accurately reflect the duties to be fulfilled for each position being considered and, if the position is advertised as limited term, the expected duration of the appointment. Additionally, the section is amended to allow appointing authorities to advertise multiple vacant positions within different units on the same job advertisement as long as the positions are of the same classification.

Section 249.1.2 is amended to clarify that appointing powers shall not disqualify or reject applicants from the hiring process for non-job-related reasons, such as failing to complete non-job-related documents (e.g., department surveys, application package checklists).

Section 249.2 is amended to clarify that in addition to posting job vacancies on CalCareers, appointing powers may post job announcements on social media platforms, as well as career recruitment websites, career fairs, or other electronic means.

Section 249.4 is amended to clarify that verifying minimum qualifications shall be required if the classification requires an incumbent to possess valid licensure, certification, or similar credential, regardless of whether they are reemployment candidates or have mandatory reinstatement rights. The section is also amended to allow appointing powers to reverse withholdings from employment lists as long as the reason(s) for the reversal are documented, candidates are notified of the reversal in writing and, if applicable, the candidates' eligibility are restored.

Section 262 is repealed to remove the requirement that an eligible candidate's record shall be removed from the eligibility list when the candidate waives three appointments in any given class.

Section 321 is amended to require appointing powers to notify probationers of the date their extended probationary period will end if it is being extended pursuant to subdivision (a). This section is also amended to clarify that “absences of five or more working days” that fall outside of absences already identified in Rule 321, subdivision (b), shall not be considered working time. Further amendments make clear that probationers shall be notified in writing of the reasons for the extension and shall also be notified of the date the extended probationary period will end if it is being extended pursuant to subdivision (d). Lastly, section 321 is amended to clarify that when the Executive Officer is reviewing a request for extension and the probationary period will end during the review, the probationary period will be automatically extended until the Executive Officer’s decision is issued.

Section 438 is amended to provide to an employee serving in a temporary assignment or loan, except when serving in a compelling management need assignment, the option to request in writing that their temporary loan or assignment be terminated prior to the anticipated end of the temporary assignment or loan and that the request shall be granted within a reasonable time period, not to exceed 10 working days, upon receipt.

Section 438.1 is amended to clarify that employees have no right of appeal to the Board or Executive Officer concerning temporary assignments or loans.

Section 439.2 is amended to ensure consistency in the terms used to determine the appropriate classifications that may be used for training and development assignments. The term “From class” will be updated to the term “current class,” mirroring language in the subdivision (a)(1) of the section and already defined in section 437.

Section 439.4 is amended to require appointing powers to provide a written statement to employees certifying training and development experience within 30 calendar days of the completion and/or termination of their training and development assignment. Section 439.4 is also amended to clarify that employees may file an appeal with the Board from the appointing authority’s denial of a request for use of training and development experience for meeting minimum qualifications in an examination pursuant to Rule 52.4.

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

#### FISCAL IMPACT ON PUBLIC AGENCIES

- Mandate on local agencies and school districts: None.

- Cost to any local agency or school district that 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.

#### SIGNIFICANT EFFECT ON HOUSING COSTS

None.

#### ECONOMIC IMPACT ON BUSINESS

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: None. The proposed regulations only set standards related to state civil service examinations, appointments, probationary periods and temporary assignments. Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

#### COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts the Board’s examinations procedures.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state’s environment.

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service selection process.



### CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant 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.

### CONTACT PERSONS

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Michelle La Grandeur, Chief  
Policy Division  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
Phone: (916) 651-0924  
Email: [michelle.lagrandeur@spb.ca.gov](mailto:michelle.lagrandeur@spb.ca.gov)

The backup contact person for these inquiries is:

Carlos Gomez, Analyst  
Policy Division  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
Phone: (916) 651-8350  
Email: [carlos.gomez@spb.ca.gov](mailto:carlos.gomez@spb.ca.gov)

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Compliance Review Division Chief, Michelle La Grandeur, at the above address.

### AVAILABILITY OF RULEMAKING FILE

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout and underline;
2. A copy of this notice and initial statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for

public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at [www.spb.ca.gov](http://www.spb.ca.gov) under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed on the Board's website at [www.spb.ca.gov](http://www.spb.ca.gov) under "What's New?"

## TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

The Public Employment Relations Board (PERB or Board) proposes to adopt and amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

### PROPOSED REGULATORY ACTION

The Board proposes to adopt proposed new sections 32019, 32019.5, 32019.6, 32095, 32613, 32613.5, 32614, 32614.1, 32614.2, 32614.3, 70050, 71015, 71091, 71690,

71695, 71698, 72000, 72001, 72005, 72010, 72020, 72025, 72030, 72035, 72040, 72045, 72050, 72055, 72060, 72065, 72070, 72075, 72080, 72085, 72090, 72095, 72100, 72105, 72110, 72115, 72120, 72125, 72130, 72135, 72140, 72145, 72150, 72155, 72160, 72165, 72170, 72175, 72180, 72185, 72190, 72195, 72200, 72205, 72210, 72215, 72220, and 72225, and amend sections 31001, 32018, 32020, 32030, 32040, 32050, 32055, 32060, 32075, 32080, 32090, 32091, 32092, 32093, 32094, 32100, 32105, 32110, 32111, 32115, 32120, 32125, 32130, 32132, 32135, 32136, 32140, 32143, 32145, 32147, 32149, 32150, 32155, 32162, 32164, 32165, 32166, 32168, 32169, 32170, 32175, 32176, 32178, 32180, 32185, 32190, 32200, 32205, 32206, 32207, 32209, 32210, 32212, 32215, 32220, 32230, 32295, 32300, 32305, 32310, 32312, 32315, 32320, 32325, 32350, 32360, 32370, 32375, 32380, 32400, 32410, 32450, 32455, 32460, 32465, 32470, 32500, 32602, 32612, 32615, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32645, 32647, 32648, 32649, 32650, 32661, 32680, 32690, 32720, 32980, 71010, 71026, 71027, 71030, 71035, 71040, 71050, 71055, 71060, 71070, 71080, 71090, 71095, 71100, 71110, 71115, 71120, 71130, 71140, 71210, 71230, 71235, 71300, 71310, 71320, 71680, 71685, 93000, 93005, 93010, 93015, 93020, 93025, 93030, 93035, 93040, 93045, 93050, 93055, 93060, 93065, 93070, 93075, and 93080.

#### 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 before the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 327-6377 or by e-mail to [kimberly.procida@perb.ca.gov](mailto:kimberly.procida@perb.ca.gov). The written comment period closes at 5:00 p.m. on **Wednesday August 23, 2023**, which is 47 days after the publication of this notice. The Board will only consider comments received at the Board offices by that time. Submit written comments to:

Kimberly J. Procida, Regional Attorney  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811

#### AUTHORITY AND REFERENCE

##### A. Authority

The Board has the authority to resolve matters of employee representation and adopt rules and regulations to carry out the provisions and effectuate the purposes and policies of the labor relations acts under its jurisdiction pursuant to the following statutory authority: Government Code sections 3509(a), 3513(h), 3524.52(a), 3541.3, 3541.3(g), 3551(a), 3555.5(c), 3563(f), 3603, 71639.1(b), and 71825(b); Public Utilities Code sections 25052, 28849(b), 40122.1(a), 50121, 70122, 90300(f), 95651, 98162.5, 99561(f), 100301, 101344, 102399(b), 102403, 103401, 120505, 125521, Appendix 1 section 4.4, and Appendix 2 section 13.91; and Education Code sections 8431(e), 8432(m), and 8439.5(a).

##### B. Reference

The proposed amended regulations below reference the following:

Government Code sections 3501(f), 3502.5, 3505.4, 3505.8, 3506.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509, 3509.3, 3509.5, 3513, 3513(h), 3514.5, 3514.5(a), 3514.5(c), 3515.7, 3519, 3519.5, 3520, 3520.5(b), 3520.8, 3523, 3524, 3540.1(a), 3541, 3541(f), 3541(g), 3541.3, 3541.3(a), 3541.3(b), 3541.3(c), 3541.3(f), 3541.3(g), 3541.3(h), 3541.3(i), 3541.3(j), 3541.3(k), 3541.3(l), 3541.3(m), 3541.3(n), 3541.5, 3541.5(a), 3541.5(c), 3541.35, 3542, 3543.5, 3543.6, 3544.1(a), 3544.3, 3544.7(a), 3544.7(b), 3546, 3546.5, 3547, 3547.5, 3550 et seq., 3551(a), 3555 et seq., 3555.5(c), 3557, 3562(b), 3563, 3563(a), 3563(b), 3563(c), 3563(e), 3563(f), 3563(g), 3563(h), 3563(i), 3563(j), 3563(k), 3563(l), 3563(m), 3563.2, 3563.3, 3563.5, 3564, 3571, 3571.1, 3571.3, 3574(a), 3577, 3577(b), 3579(e), and 3583.5, 3584, 3587, 3558.8, 3589, 3595, 3600, 3601, 3602, 3603, 3611 et seq., 3611, 11425.60, 71632.5, 71636, 71636.1, 71636.3, 71637, 71637.1, 71639.1, 71639.1(a), 71639.15, 71639.4, 71807, 71814, 71823, 71825, 71825(a), 71825.05, and 71825.1;

Public Utilities Code sections 24501 et seq., 25051, 25052, 28500 et seq., 28848 et seq., 28849(a), 28849(b), 28850, 28851, 28856, 28857, 28858, 28859, 28860(b), 30000 et seq., 30750, 30751, 30754, 30756, 37051, 40000 et seq., 40120, 40122, 40122.1, 40122.1(a), 50000 et seq., 50120, 50121, 70000 et seq., 70120, 70122, 90000 et seq., 90300, 95650, 95651, 98000 et seq., 98162.5, 99560 et seq., 99560.1(b), 99561, 99561(a), 99561(c), 99561(e), 99561(f), 99561(g), 99561(h), 99561(i), 99561(j), 99561(k), 99561(l), 99561(m), 99561.2, 99561.3, 99561.4, 99562, 99563, 99563.2, 99563.4, 99563.7, 99563.8, 99564, 99564.1, 99564.1(c), 99564.2, 99564.3, 99564.4, 99564.4(b), 99564.4(b)(1), 99566.1, 99566.1(f), 99566.3, 99567, 99569, 100000 et seq., 100301, 100305, 101000 et seq., 101341, 101342, 101344, 102000 et seq., 102399, 102399(b),

102400, 102401, 102403, 102404, 102405, 102406, 102407, 102408(b)(2), 102414, 103000 et seq., 103401, 103404, 103405, 103406, 105000 et seq., 120000 et seq., 120502, 120503, 120505, 125000 et seq., 125521, 125524, 125525, 125526, Appendix 1, Sections 1.1 et seq., 4.2 and 4.4, and Appendix 2, Sections 1.1 et seq., 13.90, 13.91, and 13.96;

California Rule of Court 2.257;

Business and Professions Code section 19604;

Food and Agricultural Code section 57031;

Labor Code section 2686;

Code of Civil Procedure sections 12, 12(a) and 1013;

Education Code section 8439.5(b)(1)(B);

*Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608; *Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072; and

Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60–102.72.

## POLICY STATEMENT OVERVIEW

PERB is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB presently administers eleven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them.

The statutes administered by PERB are: the Meyers–Milius–Brown Act (MMBA) of 1968, which established collective bargaining for California’s city, county, and local special district employers and employees; the Educational Employment Relations Act (EERA) of 1976 establishing collective bargaining in California’s public schools (K–12) and community colleges; the State Employer–Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act), establishing collective bargaining for state government employees; the Higher Education Employer–Employee Relations Act (HEERA) of 1979 extending the same coverage to the California State University System, the University of California System and Hastings College of Law; the Los Angeles County Metropolitan Transportation Authority Transit Employer–Employee Relations Act (TEERA) of 2003, which covers supervisory employees of the Los Angeles County Metropolitan Transportation Authority; the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002, which together provide for collective bargaining rights for most trial court employees; the Public Employee Communication Chapter (PECC) of 2017, which conferred PERB jurisdiction over violations of the PECC; the Prohibition on Public Employers Deterring or Discouraging

Union Membership (PEDD) of 2018, which conferred PERB jurisdiction over violations of the PEDD; and the Building a Better Early Care and Education System Act of 2019, which established collective bargaining for family childcare providers.

As a result of the enactment of Assembly Bill 355 (Stats. 2019, Chapter 713), effective January 1, 2020, PERB acquired responsibility for the administration and enforcement of labor relations in the Orange County Transit District Act (OCTDA), which are codified at Division 10, Part 4, Chapter 4 of the Public Utilities Code, sections 40122.1 and 40122.2, covering employees of the Orange County Transit District. As a result of the enactment of Assembly Bill 2850 (Stats. 2020, Chapter 293), effective January 1, 2021, PERB acquired responsibility for the administration and enforcement of labor provisions in the San Francisco Bay Area Rapid Transit (SFBART) Act, which is codified at Division 10, Part 2, Chapter 4 of the Public Utilities Code, section 28848 et seq., covering employees of the San Francisco Bay Area Rapid Transit District. As a result of the enactment of Senate Bill 598 (Stats. 2021, Chapter 492), effective January 1, 2022, PERB acquired responsibility for the administration and enforcement of the labor provisions of the Sacramento Regional Transit District (Sacramento RTD) Act if elected to do so by a bargaining unit’s representative, which is codified at Division 10, Part 14, Chapter 6 of the Public Utilities Code, which is codified at section 102398 et seq. These new statutory enactments require amendments to PERB’s existing regulations and the adoption of new regulations in order to fully implement PERB’s jurisdiction. As explained in more detail in the Informative Digest, the regulatory changes proposed by this notice address PERB’s need to implement a process for resolving disputes arising under the OCTDA, SFBART Act, and Sacramento RTD Act, including the filing and processing of unfair practice charges. These practices and procedures will benefit PERB’s constituents who seek to file unfair practice charges with PERB.

The regulatory changes proposed by this notice also address PERB’s need to implement rules and procedures regarding representation matters, including in the area of representation petitions, elections, decertification, and unit determinations. The regulatory changes proposed provide a long-overdue update to existing regulations regarding representation matters for transit districts. The existing regulations have not been materially revised since 1983 and in many cases do not track PERB administrative practice and procedure. A decade after PERB gained jurisdiction over transit representation matters, and four decades after the majority of the regulations’ initial promulgation, the proposed revisions represent a complete rewrite and reordering of existing regulations for the purpose



of clarifying transit representation practice and procedure and guiding the State Mediation and Conciliation Service (SMCS), PERB itself, and PERB's constituents and practitioners in its application. These updated practices and procedures will benefit PERB's constituents who bring representation matters before PERB and SMCS by providing consistency and clarity.

When an agency consolidates and adds regulations, those changes often affect other regulations that incorporated by reference the consolidated or new regulations. Therefore, PERB must also update the non-affected regulations to delete regulations that no longer apply or add new regulations that replace the deleted regulations.

## INFORMATIVE DIGEST

### A. *Adoption of New Sections*

**Proposed section 32019** adopts a definition of "OCTDA," to mean the Orange County Transit District Act and defines terms applicable for cases filed under the Orange County Transit District Act.

**Proposed section 32019.5** adopts a definition of "SFBART Act," to mean the San Francisco Bay Area Rapid Transit District Act and defines terms applicable for cases filed under the San Francisco Bay Area Rapid Transit District Act.

**Proposed section 32019.6** adopts a definition of "Sacramento RTD Act," to mean the Sacramento Regional Transit District Act and defines terms applicable for cases filed under the Sacramento Regional Transit District Act. The proposed section also explains the process for an exclusive representative to elect to move one of more of its bargaining units to PERB's jurisdiction for unfair practice charges.

**Proposed section 32095** adopts a definition of the term "bargain."

**Proposed section 32613** describes employer unfair practices under the OCTDA.

**Proposed section 32613.5** describes employee organization unfair practices under the OCTDA.

**Proposed section 32614** describes employer unfair practices under the SFBART Act.

**Proposed section 32614.1** describes employee organization unfair practices under the SFBART Act.

**Proposed section 32614.2** describes employer unfair practices under the Sacramento RTD Act.

**Proposed section 32614.3** describes employee organization unfair practices under the Sacramento RTD Act.

**Proposed section 70050** differentiates that Subchapter 2 of Chapter 6 pertains to TEERA, while Subchapter 3 pertains to all other transit labor relations acts under the PUC.

**Proposed section 71015** requires parties, except for unrepresented individual natural persons, to file all documents using e-PERB.

**Proposed section 71091** states that Board investigations will be conducted in accordance with Chapter 6, Article 4 of PERB's regulations, which governs Board investigations in TEERA representation cases.

**Proposed section 71690** states that requests for amendment of certification under TEERA are governed under Chapter 1, Subchapter 6, Article 3 of PERB's regulations, which governs PERB's general procedures for requests for amendment of certification.

**Proposed section 71695** states that petitions for decertification under TEERA are governed by Chapter 1, Subchapter 6, Article 4 of PERB's regulations, which governs PERB's general procedures for decertification petitions.

**Proposed section 71698** states that unit modification petitions under TEERA are governed by Chapter 1, Subchapter 6, Article 6 of PERB's regulations, which governs PERB's general procedures for unit modification petitions.

**Proposed section 72000** introduces the transit labor relations acts under PERB's jurisdiction other than TEERA and defines terms under those acts. This proposed section provides clarity to the parties regarding the meanings of terms as used in Subchapter 3.

**Proposed section 72001** applies Chapter 1, Subchapter 2 of PERB's regulations to representation proceedings involving transit labor relations acts under the PUC and further outlines filing and service requirements.

**Proposed section 72005** provides the procedure for employee organizations to petition to be certified as the exclusive representative of an appropriate unit of employees under PUC transit district acts other than TEERA. This proposed section provides clarity to employee organizations and the PUC transit district employers of the procedure for employee organizations to petition to be certified as the exclusive representative of an appropriate unit of employees.

**Proposed section 72010** describes the process for the Board's determination of proof of support for petitions for certification filed pursuant to PUC transit labor relations acts other than TEERA.

**Proposed section 72020** concerns amendments to a petition for certification filed under PUC transit labor relations acts, which allows a petitioning party to correct mistakes in a petition for certification that are generally non-substantive in nature.

**Proposed section 72025** requires employers to file a response to certification petitions filed pursuant to PUC transit labor relations acts other than TEERA.

**Proposed section 72030** concerns representation petitions filed by PUC transit employers.

**Proposed section 72035** describes the process for an employee, group of employees, or employee organization to file a petition to decertify an existing exclusive representative of employees pursuant to the PUC transit labor relations acts other than TEERA.

**Proposed section 72040** describes the process for the Board's determination of proof of support of a decertification petition filed pursuant to the PUC transit labor relations acts other than TEERA.

**Proposed section 72045** concerns the filing of unit clarification petitions by exclusive representatives or PUC transit employers.

**Proposed section 72050** describes the requirements for filing a response to a petition for unit clarification filed solely by an exclusive representative or an employer.

**Proposed section 72055** provides the process for SMCS's determination of proof of support of a unit clarification petition when required.

**Proposed section 72060** requires SMCS to issue a new unit certification, if appropriate, upon approval of a unit clarification petition.

**Proposed section 72065** allows an exclusive representative or a PUC transit employer to file a petition for amendment of certification of an existing bargaining unit where the exclusive representative has undergone a change, or the employer's name or jurisdiction has changed, pursuant to the PUC transit labor relations acts other than TEERA.

**Proposed section 72070** allows a party or interested party to respond to a petition for amendment of certification.

**Proposed section 72075** requires SMCS to issue a certification reflecting the new identity of the exclusive representative or employer upon approval of the petition for amendment of certification.

**Proposed section 72080** requires SMCS to investigate and, where appropriate, conduct a hearing and/or election regarding petitions for certification, decertification, unit clarification, or certification amendment, and determines when SMCS shall dismiss the petitions or approve withdrawal of the petitions.

**Proposed section 72085** allows SMCS to determine the appropriate procedures for resolving a representation petition.

**Proposed section 72090** allows SMCS to hold a pre-hearing for the purposes of clarifying the issues and exploring settlement.

**Proposed section 72095** regards SMCS's notice of hearing in representation cases.

**Proposed section 72100** requires that hearings be conducted by the Director of SMCS or their designee and be conducted pursuant to the procedures in Chapter 1, Subchapter 3 of PERB's regulations, which governs PERB's general procedures regarding hearings.

**Proposed section 72105** allows an employee organization to intervene and participate fully in a representation hearing.

**Proposed section 72110** allows a petitioner to withdraw any representation petition or the parties to settle some or all of the disputes in a petition.

**Proposed section 72115** states that subpoenas may be issued pursuant to procedures set forth in PERB Regulations 32149 and 32150, which govern PERB's general procedures regarding subpoenas.

**Proposed section 72120** outlines the duties of a hearing officer following a representation hearing.

**Proposed section 72125** allows any party to file exceptions to a proposed decision in a representation matter.

**Proposed section 72130** allows a PUC transit employer to voluntarily recognize an employee organization as the representative of an appropriate unit without an election.

**Proposed section 72135** concerns Consent Election Agreements between the parties regarding the conduct of a representation election.

**Proposed section 72140** requires that representation elections be conducted by secret ballot, and provides the requirements for such ballots.

**Proposed section 72145** mandates that when SMCS determines a representation election is necessary, SMCS will serve on the parties a Directed Election Order or approve a Consent Election Agreement, and the employer must post notice of the election on employee bulletin boards.

**Proposed section 72150** concerns the list of eligible voters in an election.

**Proposed section 72155** describes which employees will be eligible to vote in a representation election.

**Proposed section 72160** allows each party to an on-site representation election to station authorized observers at polling places.

**Proposed section 72165** allows parties to challenge the eligibility of voters in a representation election.

**Proposed section 72170** provides the process for tallying the ballots in a representation election.

**Proposed section 72175** states that if the number of challenged ballots would affect the outcome of a representation election, SMCS shall investigate and take appropriate action to determine the eligibility of challenged voters.

**Proposed section 72180** requires that SMCS direct a runoff election if none of the ballot choices receive a majority of valid votes in a valid representation election.

**Proposed section 72185** describes the process for objecting to the conduct of a representation election.

**Proposed section 72190** gives SMCS the power to take various actions in resolving objections and challenges in a representation election.

**Proposed section 72195** states that when holding hearings to resolve objections and challenges to representation elections, SMCS will follow the hearing procedures in Chapter 1, Subchapter 3 of PERB's regulations, which governs PERB's general hearing procedures.

**Proposed section 72200** allows an aggrieved party to appeal or except to rulings on objections or challenges to a representation hearing.

**Proposed section 72205** requires that, if ballots must be voided or opened and counted, SMCS shall serve a revised tally of ballots on each party, and each party may have an authorized agent to verify the tally.

**Proposed section 72210** concerns objections to the revised tally of ballots in a representation election.

**Proposed section 72215** states that SMCS shall certify an exclusive representative if warranted.

**Proposed section 72220** describes the criteria SMCS shall consider when determining whether a bargaining unit of PUC transit district employees is appropriate.

**Proposed section 72225** states that relevant federal law and administrative practice may be applied in resolving questions of representation.

#### B. *Amendment to the Text of Existing Sections*

**Section 32018** defines terms applicable for cases filed under the Los Angeles County Metropolitan Transportation Authority Transit Employer–Employee Relations Act (TEERA). The amendment removes subdivision (d), which defines “requester,” “intervenor,” “petitioner,” and “election intervenor,” because those definitions are now included in section 71010.

**Section 32100** provides for when regulations contained in Chapter 1 apply to PERB proceedings conducted under statutes within PERB's jurisdiction. The proposed amendment to subdivision (c) adds a reference to Subchapter 2 of Chapter 6. The proposed addition of subdivision (h) adds that the applicable regulations will also apply to filings with SMCS as set forth in proposed section 72001. And the proposed addition of subdivision (i) adds that Chapter 6, Subchapter 3, will govern representation proceedings under the OCTDA, SFBART Act, and Sacramento RTD Act, while all other rules and regulations except for Chapter 1, Subchapter 6, shall apply to proceedings conducted under the OCTDA, SFBART Act, and Sacramento RTD Act (for opt in units). The amendment also removes the reference to Public Utilities Code section 100306 and adds authority and reference citations to the PUC transit district acts.

**Section 32110** sets forth the requirements that govern the way parties electronically file documents with PERB through e–PERB, as that term is defined by section 32090. The proposed change edits the references to “ePERB” in subdivision (a) to “e–PERB.” The pro-

posed changes also update the authority and reference citations to include the PUC transit district acts.

**Section 32111** authorizes the Board to direct parties to use electronic means to post and thereby notify remote workers that a representation petition has been filed. The proposed changes update the reference to Chapter 10 in subdivision (a) to Chapter 8. The proposed changes also update the authority and reference citations to include the PUC transit district acts.

**Section 32115** specifies the locations for filing documents with PERB in representation matters that are not filed electronically. The proposed amendment changes subdivision (f) to state that documents filed with SMCS in PUC transit representation matters should be filed with PERB's Sacramento Regional Office. The proposed amendment takes the language previously in subdivision (f) and moves it to proposed subdivision (g), and removes the language limiting the subdivision to just PUC transit representation documents. The proposed amendment also includes a reference to subdivision (f) in subdivision (a). The proposed changes also update the authority and reference to include the PUC transit district acts.

**Section 32120** provides for the filing of written agreements or memorandums of understanding with the Board. The proposed amendment to Section 32120 extends its application to agreements entered into under the OCTDA, SFBART Act, and Sacramento RTD Act.

**Section 32140** concerns service requirements. The amendment adds proposed subdivision (d)(3)(I), which states that when a document is served, the proper recipient shall be, in the case of a PUC transit district employer as defined in the OCTDA, SFBART Act, and Sacramento RTD Act, any person authorized to act on behalf of the employer. The proposed changes also update the authority and reference to include the PUC transit district acts.

**Section 32500** describes the procedure for requesting and responding to a request that the Board seek judicial review of a decision made in a representation case. The amendment adds that decisions in representation cases under transit district acts other than TEERA are excluded from the right to request that the Board seek judicial review. The proposed changes also update the authority and reference to include the transit district acts other than TEERA.

**Section 32602** provides for the processing of unfair practice charges. Subdivision (a) provides that alleged violations of statutes within PERB's jurisdiction will be processed as unfair practice charges. The proposed amendment to subdivision (a) provides that alleged violations of the OCTDA, SFBART Act, and Sacramento RTD Act, and violations of local rules adopted pursuant to the OCTDA, will also be processed as unfair practice charges. The proposed changes also update

the authority and reference to include the OCTDA, SFBART Act, and Sacramento RTD Act. The proposed amendment also removes subdivision (e), and the reference to subdivision (e) in subdivision (b).

**Section 32615** concerns the information required to be included in an unfair practice charge. The proposed amendment to subdivision (b) adds that a charge filed under the OCTDA alleging a violation of local rules must contain a copy of the applicable rules.

**Section 32620** concerns the processing of unfair practice charges. Subdivision (b)(5), in part, prohibits the issuance of a complaint where the conduct alleged to violate the applicable Act is based upon conduct occurring more than six months prior to the filing of the charge. The proposed amendment to subdivision (b)(5) adds references to Public Utilities Code sections 28860(b), 40122.1, and 102408(b)(2), which provides the Board the authority to make the initial determination as to whether an unfair practice charge is justified under the SFBART Act, OCTDA, and Sacramento RTD Act, respectively.

Subdivision (b)(6) allows a Board agent to place an unfair practice charge in abeyance if the dispute arises under the MMBA, HEERA, TEERA, Trial Court Act, or Court Interpreter Act and is subject to deferral to final and binding arbitration, and allows the Board agent to dismiss the charge at the conclusion of the arbitration process unless the resolution is repugnant to the purposes of those Acts. The proposed amendment to subdivision (b)(6) adds references to the OCTDA, SFBART Act and Sacramento RTD Act.

**Section 32661** concerns the filing of repugnancy claims for unfair practice charge cases that were deferred to arbitration because the dispute was covered by the parties' written agreement. Subdivision (a) provides that an unfair practice charge may be filed based on a claim that a settlement or arbitration award resulting from a deferred unfair practice charge is repugnant to the applicable Act. The proposed amendment to subdivision (a) adds references to Government Code section 3505.8 of the MMBA and Education Code section 8439.5(b)(1)(B) of the Building a Better Early Care and Education System Act, all of which specifically allow repugnancy claims before PERB. The amendment also adds references to the OCTDA, SFBART Act, and Sacramento RTD Act. With the addition of Government Code section 3505.8, the amendment also removes a now redundant reference to cases concerning conduct subject to final and binding arbitration pursuant to a collective bargaining agreement for parties governed by the MMBA.

**Section 32720** concerns when an election will be conducted in representation matters under EERA, the Dills Act, HEERA, and TEERA. The proposed amendment adds reference to Chapter 6, Subchapter 2, of the Board's regulations. The amendment also

changes references to Chapter 9 of the Board's regulations to Chapter 6, Subchapter 3, to incorporate the changes made in this regulation package.

**Section 71010** defines terms under TEERA. The amendment removes the previous definition for "parties," which was the sole definition in this section, and adds definitions for "TEERA," "employer" or "transit district employer," "employee" or "transit district employee," "employee organization," "supervisory employee," "parties," "requester," "intervenor," "petitioner," "election intervenor," and "window period."

**Section 71026** defines "window period." The proposed changes would delete the entire section because "window period" is now defined in section 71010.

**Section 71027** requires a transit district employer to release a mailing of employee addresses to an employee organization. The proposed changes would delete the entire section because Government Code section 3558, enacted in 2018, requires transit districts to provide employee contact information to the employee organizations, making section 71027 redundant.

**Section 71030** describes the filing requirements for a request for recognition filed with the employer by an employee organization seeking to become an exclusive representative under TEERA. Subdivision (a) requires an employee organization seeking to become the exclusive representative of an appropriate unit of employees to file a request for recognition with the employer. The proposed amendment removes the requirement that the request be concurrently filed with the regional PERB office, as well as the requirement that the request be signed and contain various contact and descriptive information. Subdivision (b) requires proof of majority support of employees in the unit to be filed with the regional PERB office or with a mutually agreed upon third party. The proposed amendment strikes this language and instead allows the parties to agree that PERB or a third party shall determine the outcome of a request for recognition based upon proof of support as defined in section 32700 of the Board's regulations, which generally governs proof of support. Subdivision (c) requires the employee organization to concurrently serve a copy of the request, excluding proof of support, on the parties. The proposed amendment strikes this language and instead requires that, if majority support is to be determined, the employee organization file proof of support be filed with the regional PERB office or with a mutually agreed upon third party. The amendment adds that determination of proof of majority support, if determined by PERB, shall be in accordance with Board regulations 71110 and 71120, which govern the determination of proof of support and the amendment of petitions for certification, respectively. Subdivision (d) provides specific requirements for petitions to represent employees who are already members of an established unit by refer-

encing other regulations. The proposed amendment removes this subdivision in its entirety because this information is redundant when the referenced information contains the relevant information.

**Section 71035** provides the requirements for an employer's posting of notice an employee organization's request for recognition. Subdivision (a) requires the employer to post a notice of the request for recognition as soon as possible. The proposed amendment adds that the employer shall prepare as well as post the notice. Subdivision (d) describes the information that shall be contained in the notice, including the PERB case number. The proposed amendment removes the requirement that the PERB case number be included because section 71030 no longer requires that the request be filed with PERB, and thus the request may not have a PERB case number. Subdivision (e) requires that the employer serve a copy of the notice on the PERB regional office and the parties. The proposed amendment changes this requirement so that service on the PERB regional office is no longer necessary, as the original request no longer needs to be filed with PERB.

**Section 71040** allows an employee organization to file an intervention challenging another employee organization's request for recognition. Subdivision (a) describes the requirements for filing an intervention, including that the intervention must be filed with the regional PERB office and contain contact and descriptive information. The proposed amendment removes this language in its entirety and replaces it with a new subdivision (a), which states that an employee organization may file with the employer an intervention within 15 days of the notice of request for recognition, and such filing may trigger a competing employee organization of employer to file a Petition for Board Investigation. Subdivision (c) requires that a copy of the filing employee organization serve a copy of the intervention on the parties. The proposed amendment removes this language entirely, and replaces it with a new subdivision (c), which states that determination of proof of support shall be in accordance with sections 71110 and 71120, which govern the determination of proof of support and the amendment of petitions for certification, respectively.

**Section 71050** provides the process for the Board's determination of proof of support of a request for recognition or intervention. The proposed change would delete the entire section because the proof of support determination process is being consolidated into section 71110.

**Section 71055** provides the process for the parties agreeing to a third-party determining proof of support. The proposed change would delete the entire section because this right is now located in section 71030.

**Section 71060** allows an employee organization to withdraw its request for recognition or intervention. The proposed change would delete the entire section because the withdrawal requirements are consolidated in section 71230.

**Section 71070** describes the process for amending a request for recognition or intervention. The proposed change would delete the entire section because, pursuant to the proposed changes to section 71030, requests for recognition and interventions are no longer required to be filed, and therefore amended, with PERB.

**Section 71080** requires an employer's response to the Board's determination of adequate proof of support for a request for recognition and any interventions. The proposed change would delete the entire section because these requirements are consolidated in section 71090.

**Section 71090** allows a party to file a petition for investigation after notice of a request for recognition has been posted, and describes the process for filing such a petition.

Subdivision (a) allows a party to file a petition for Board investigation and describes the requirements for the petition. The proposed amendment changes the deadline for filing a petition from 30 days following an employer's response to 30 days following the posting of notice of request for recognition. The proposed amendment to subdivision (a) also adds references to Public Utilities Code sections 99564.1 and 99564.2, and section 71140 of the Board's regulations.

Subdivision (a)(2) allows an employee organization alleging that it has filed an intervention to petition for Board investigation. The amendment adds an "or" and the end of the clause.

Proposed subdivision (a)(3) allows an employer to file a petition for Board investigation if it reasonably doubts the employee organization has majority support or reasonably doubts the appropriateness of the requested unit.

Proposed subdivision (a)(4) allows an employer to file a petition for Board investigation if an employee organization has filed with it a challenge to the appropriateness of the unit or a competing claim of representation.

Subdivision (c) requires a petition for Board investigation be served pursuant to Board regulation 32140, and that the petition be filed with the regional PERB office. The proposed amendment removes the requirement that the petition be filed with the PERB regional office because all documents are to be filed through e-PERB pursuant to section 71015.

Subdivision (d) describes the requirements for filing a petition for Board investigation. The proposed change specifies that this subdivision covers the requirements for employee organizations, because the requirements for employers are described in proposed



subdivisions (e) and (f). The proposed amendment also requires that the petition contain relevant e-mail addresses.

Proposed subdivision (e) describes the requirements for an employer's response to an employee organization's petition for Board investigation or for an employer's own petition for Board investigation if the employer has granted voluntary recognition. Subdivision (e)(1) requires a statement that the employer has voluntarily recognized the organization as the exclusive representative. Subdivision (e)(2) requires the employer's name, address, e-mail address, and telephone number. Subdivision (e)(3) requires the requesting employee organization's name, address, e-mail address, and telephone number. Subdivision (e)(4) requires a description of the grouping of employment classes to be included in the unit. Subdivision (e)(5) requires the number of employees in the unit. And subdivision (e)(6) requires the date of recognition.

Proposed subdivision (f) describes the requirements if the employer has not granted voluntary recognition. Subdivision (f)(1) requires the employer to provide the name, address, and telephone number of the employer and the name, address, e-mail address, and telephone number of the employer agent to be contacted. Subdivision (f)(2) provides a series of prompts for the employer to answer regarding the reasons for its denial of recognition. These are the same as those found in section 71080, which is proposed to be removed in its entirety.

**Section 71095** states that if no petition for Board investigation is timely filed, the request for recognition and any interventions will be invalid. The proposed changes adds that the request and interventions will be invalid if no petition was timely filed *and* the employer has not granted voluntary recognition. The amendment also removes the citation to section 71080, because that section is proposed to be repealed, and adds "of these regulations."

**Section 71100** describes the requirements for an employee organization's petition for certification under TEERA. Subdivision (a) provides the filing process of the petition and lists the information that must be included in the petition. The proposed change removes the requirement that petition be filed with a PERB regional office, as the Board's regulations now allow parties to file documents through e-PERB. Relatedly, the amendment also allows the petition to be electronically signed. Subdivision (a)(1) requires the employee organization's contact information. Subdivision (a)(2) requires the employer's contact information. And subdivision (a)(5) requires the contact information of any other employee organization interested in representing the unit. The amendment requires the e-mail addresses be provided for all of these contacts.

**Section 71110** provides the Board's process for determining proof of support of a petition for certification. Subdivision (a) describes the filing process. The proposed change removes the requirement that the employer file a list of employees with a PERB regional office because PERB's regulations now require parties to file through e-PERB.

**Section 71115** allows an employee organization to withdraw its petition for certification. The proposed change would delete the entire section because the withdrawal requirements for all representation proceedings are consolidated in section 71230.

**Section 71120** describes the process for amending a petition for certification. Subdivision (a) describes the filing requirements. The proposed change removes the requirement that the amendment be filed with a regional office, because proposed section 71015 now requires electronic filing through e-PERB.

**Section 71130** provides the requirements for an employer's response to a petition for certification. The proposed change to subdivision (a) removes the requirement that the response be filed with the regional PERB office, as proposed section 71015 now requires electronic filing through e-PERB. Subdivision (c)(1) requires the employer to include in its response the contact information for the agent to be contacted. The amendment requires the employer to provide an e-mail address.

**Section 71140** states that the Board shall investigate whenever a petition regarding a representation matter is filed. Subdivision (b)(2) states that a petition shall be dismissed if the employer and another representative of any employees in the unit are currently party to a memorandum of understanding unless the petition is filed during the appropriate window period. The proposed changes broaden the language of the section to refer to a "petition regarding a representation matter" generally instead of just a "request for recognition." The proposed changes also replace a reference to section 71025, which is not a current regulation, to the updated section 71010(h), which provides the definition for "window period."

**Section 71210** requires the Board to serve notice of a representation hearing on all interested parties. The proposed change removes a reference to section 71020, which is not a current PERB regulation.

**Section 71230** allows a petitioner to withdraw their representation petition at any time prior to a final Board decision. The proposed change removes the original text. The new text allows a petitioner to withdraw the petition or states that the parties may reach a voluntary agreement regarding some or all disputed issues. The proposed change also clarifies the filing requirements.

**Section 71235** requires the Board to serve notice of a decision in a representation matter on all interest-

ed parties. The proposed change removes a reference to section 71020, which is no longer a current PERB regulation.

**Section 71300** requires the Board to issue notice of an intent to conduct a representation election on all interested parties. The proposed change removes a reference to section 71020, which is not a current PERB regulation.

**Section 71310** allows an employee organization to file an intervention to appear on an election ballot. Subdivision (a) provides the process for filing. The proposed change removes the requirement that the employee organization file its intervention with a PERB regional office, because PERB regulation 71015 now requires parties to file documents through e-PERB. Subdivision (a)(1) requires the filer to include its agent's contact information as well as the employer's agent's contact information. The proposed change requires the filer to provide these agents' e-mail addresses.

**Section 71320** describes the process for the Board's determination of proof of support to conduct an election. Subdivision (a) requires the employer to file a list of employees with the regional PERB office. The proposed change removes this requirement because proposed section 71015 now requires all documents to be filed through e-PERB.

**Section 71680** describes the process for an employee organization to file a severance petition to become the exclusive representative of a group of already-represented employees. Subdivision (a) provides the process for filing the petition. The amendment specifies that a petition can be filed to become the exclusive representative of a group of employees "(but less than all the employees)" who are already represented in a unit. The amendment also removes the option to file a severance petition by filing a request for recognition. Subdivision (b) requires that a severance petition be filed during the "window period." The amendment changes the reference to section 71026, which is proposed to be repealed, to section 71010(h), which will define the term "window period."

**Section 71685** describes the process for an employer and exclusive representative to respond to an employee organization's severance petition. Subdivision (b) requires that the response be signed. The proposed amendment allows the response to be electronically signed. Subdivision (b)(1) requires the response to include the respondent's agent's contact information. The amendment requires the respondent to also provide an e-mail address.

**Section 93000** defines terms under TEERA. The proposed change would remove this section in its entirety and replace it with proposed section 72000.

**Section 93005** defines and allows for the filing of petitions for certification, decertification, clarifica-

tion of an existing bargaining unit, and amendment of certification. The proposed change would remove this section in its entirety and replace it with proposed sections 72005, 72035, 72045, and 72065.

**Section 93010** describes the requirements for petitions filed in representation matters. The proposed change would remove this section in its entirety and replace it with proposed sections 72005, 72030, 72035, 72045, and 72065.

**Section 93015** requires that in order to demonstrate a question of representation exists, a petitioning labor organization must demonstrate support from at least 30 percent of the employees in the proposed bargaining unit. The proposed change would remove this section in its entirety and replace it with proposed sections 72005, 72035, and 72045.

**Section 93020** allows a transit district and any individuals or labor organizations to enter into a consent election agreement regarding the conduct of an election. The proposed change would remove this section in its entirety and replace it with proposed section 72135.

**Section 93025** describes the process for SMCS's investigation of a representation petition. The proposed change would remove this section in its entirety and replace it with proposed sections 72080, 72085, 72090, and 72095.

**Section 93030** describes how SMCS hearing officers shall conduct representation hearings. The proposed change would remove this section in its entirety and replace it with proposed section 72100.

**Section 93035** provides the process for a labor organization or person to intervene in a representation hearing. The proposed change would remove this section in its entirety and replace it with proposed section 72105.

**Section 93040** describes the rights and duties of parties in a representation hearing. The proposed change would remove this section in its entirety and replace it with proposed section 72100.

**Section 93045** describes the procedures regarding subpoenas. The proposed change would remove this section in its entirety and replace it with proposed section 72115.

**Section 93050** allows parties to request to file post-hearing briefs. The proposed change would remove this section in its entirety and replace it with proposed section 72100.

**Section 93055** describes the hearing officer's duties following a representation hearing. The proposed change would remove this section in its entirety and replace it with proposed section 72120.

**Section 93060** allows any party to file exceptions to a hearing officer's proposed decision to the Board itself. The proposed change would remove this sec-

tion in its entirety and replace it with proposed section 72125.

**Section 93065** regards the Board’s ordering of elections. The proposed change would remove this section in its entirety and replace it with proposed section 72125.

**Section 93070** describes the election procedures. The proposed change would remove this section in its entirety and replace it with proposed sections 72140, 72145, 72150, 72155, 72160, 72165, 72170, 72175, 72185, 72190, 72195, 72200, 72205, 72210, and 72215.

**Section 93075** requires SMCS to conduct a runoff election when no choice in an election receives a majority of the valid ballots cast. The proposed change would remove this section in its entirety and replace it with proposed section 72180.

**Section 93080** requires the Board to apply relevant federal law when resolving questions of representation. The proposed change would remove this section in its entirety and replace it with proposed section 72225.

*C. Amendments Only to the Authority and Reference Citations of Existing Regulations*

The following proposed changes do not make any changes to the text of the section, but only update the authority and reference citations.

**Section 31001** provides for meetings of the Public Employment Relations Board.

**Section 32020** provides a definition for the term “Board.”

**Section 32030** provides a definition for the term “Board itself.”

**Section 32040** provides a definition for the term “Executive Director.”

**Section 32050** provides a definition for the term “General Counsel.”

**Section 32055** provides a definition for the term “Chief Administrative Law Judge.”

**Section 32060** provides a definition for the term “headquarters office.”

**Section 32075** provides a definition for the term “regional office.”

**Section 32080** provides a definition for the term “day.”

**Section 32090** provides a definition for the term “e-PERB.”

**Section 32091** provides a definition for the term “electronic filing.”

**Section 32092** provides a definition for the term “electronic signatures” and when documents are determined to be electronically signed.

**Section 32093** provides a definition for the term “electronic service” where authorized or required by statute or within PERB’s regulations.

**Section 32094** provides a definition for the term “filed” as the term is used for the formal submission of documents with PERB.

**Section 32105** provides for the severability of PERB’s regulations.

**Section 32125** describes the filing requirements for documents with confidential information.

**Section 32130** addresses the computation of time for filings with PERB.

**Section 32132** concerns the requirements for an extension of time in which to file documents with the Board.

**Section 32135** concerns filing requirements for non-electronic filings.

**Section 32136** concerns late filing requirements.

**Section 32143** concerns the placement of PERB cases in abeyance.

**Section 32145** concerns the waiver of time period requirements to expedite a matter.

**Section 32147** provides for expediting matters before the Board.

**Section 32149** concerns the issuance of investigative subpoenas.

**Section 32150** concerns the issuance of subpoenas.

**Section 32155** concerns the circumstances under which a Board agent or Board member will be recused a case.

**Section 32162** concerns the confidentiality of Board investigations.

**Section 32164** concerns an application for joinder of parties.

**Section 32165** concerns an application to join a representation hearing as a limited party.

**Section 32166** concerns an application to join a representation hearing as a full party.

**Section 32168** concerns the conduct of hearings.

**Section 32169** concerns the taking of depositions.

**Section 32170** concerns the powers and authority of a Board agent conducting a hearing.

**Section 32175** regards the rules of evidence in representation cases.

**Section 32176** concerns the rules of evidence in unfair practice cases.

**Section 32178** concerns the burden of proof in unfair practice cases.

**Section 32180** concerns the rights of parties in PERB hearings.

**Section 32185** concerns ex parte communications with Board agents.

**Section 32190** concerns filing and rulings on motions.

**Section 32200** concerns the appeal of rulings on motions and other interlocutory matters.

**Section 32205** concerns requests to continue a formal hearing.

**Section 32206** concerns the production of statements of witnesses after testimony.

**Section 32207** concerns stipulation of facts for purposes of hearing.

**Section 32209** addresses the procedure for correction of hearing transcripts.

**Section 32210** concerns the filing of informational briefs and oral argument.

**Section 32212** concerns briefs and oral argument.

**Section 32215** concerns issuance of proposed decisions.

**Section 32220** concerns contemptuous conduct by a party or a party's agent.

**Section 32230** concerns the refusal of a witness to testify.

**Section 32295** concerns ex parte communications with members of the Board itself or legal advisers to Board members.

**Section 32300** concerns the filing of exceptions to Board agent decisions.

**Section 32305** provides that proposed decisions become final if no timely exceptions are filed.

**Section 32310** provides for the filing of responses to exceptions.

**Section 32312** provides the requirements for reply briefs to exceptions.

**Section 32315** provides for oral argument on exceptions.

**Section 32320** concerns issuance of decisions by the Board itself.

**Section 32325** concerns the remedial powers of the Board.

**Section 32350** provides a definition of administrative decisions.

**Section 32360** concerns requirements for appeals of administrative decisions.

**Section 32370** concerns requests for a stay following an appeal.

**Section 32375** provides for responses to administrative appeals.

**Section 32380** provides for administrative decisions that are not appealable.

**Section 32400** provides that a motion for reconsideration is not required in order to exhaust administrative remedies.

**Section 32410** provides for the filing of requests for reconsideration.

**Section 32450** concerns the filing of requests for injunctive relief.

**Section 32455** concerns the investigation of requests for injunctive relief.

**Section 32460** provides for recommendations by the General Counsel concerning requests for injunctive relief.

**Section 32465** provides for decisions by the Board itself concerning requests for injunctive relief.

**Section 32470** concerns the authority of the General Counsel regarding requests for injunctive relief where a quorum of the Board itself is unavailable.

**Section 32612** specifies in which regional office unfair practice charge filings should be made.

**Section 32621** concerns the amending of unfair practice charges.

**Section 32625** concerns the withdrawal of unfair practice charges.

**Section 32630** concerns the dismissal of unfair practice charges.

**Section 32635** provides for the appeal of dismissals of unfair practice charges.

**Section 32640** concerns the issuance of complaints in unfair practice charge cases.

**Section 32644** provides for the filing of an answer in unfair practice charges where a complaint issues.

**Section 32645** concerns non-prejudicial errors in unfair practice charges and related documents.

**Section 32647** concerns amendments to complaints in unfair practice charge cases before hearing.

**Section 32648** concerns amendments to complaints in unfair practice charge cases during a hearing.

**Section 32649** concerns the filing of answers to amendments to complaints in unfair practice charge cases.

**Section 32650** concerns the conduct of settlement conferences in unfair practice charge cases.

**Section 32680** concerns the conduct of hearings on unfair practice charges.

**Section 32690** concerns notice of hearing in unfair practice charge cases.

**Section 32980** concerns enforcement of compliance with final decisions of the Board.

#### CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Board has determined that the proposed regulatory adoptions and amendments are not inconsistent or incompatible with existing regulations. After conducting a review of all regulations that would relate to or affect this area of California law, the Board has determined that due to PERB's exclusive jurisdiction to implement and enforce the labor relations acts within its jurisdiction, the proposed regulations are the only regulations concerning the implementation and enforcement of these laws. Therefore, the Board has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

#### NO EXISTING AND COMPARABLE FEDERAL REGULATION OR STATUTE

During the process of developing these proposed regulatory adoptions and amendments, the Board

has conducted a search for any similar federal regulations and statutes on this topic and has determined that there are no existing, comparable federal regulations or statutes or Board precedent, as these proposed regulatory changes apply solely to public employers and employee organizations under the jurisdiction of the California public sector labor relations statutes set forth above. Therefore, the Board has concluded that these regulations are neither inconsistent nor incompatible with existing Federal regulations or statutes.

### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Board has made the following initial determinations:*

**Mandate on local agencies and school districts:** The proposed action would not impose any new mandate.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 et seq.:** The proposed action would not impose any new costs which must be reimbursed.

**Other non-discretionary cost or savings imposed upon local agencies:** The proposed action would not result in any non-discretionary cost or savings imposed upon local agencies.

**Cost or savings to state agencies:** The proposed action would not result in any new costs or savings.

**Cost or savings in federal funding to the state:** The proposed action would not result in any new costs or savings.

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

**Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** The proposed action will have no impact.

**Significant effect on housing costs:** There will be no effect on housing costs.

**Business Reporting Requirement:** The proposed action will not require a report to be made.

The proposed regulations will not affect small business because the proposed regulations will only affect a public employer and public employees.

### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board concludes that the adoption of the proposed regulations and 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.

### BENEFIT ANALYSIS

The proposed regulatory changes will implement the Board's jurisdiction over matters arising under OCTDA, SFBART Act, and Sacramento RTD Act and will extend the application of PERB's existing unfair practice procedures to alleged violations of OCTDA, SFBART Act, and Sacramento RTD Act. Because PERB's unfair practice charge process is well-established, the application of these existing procedures will aid in the expedient resolution of disputes arising under OCTDA, SFBART Act, and Sacramento RTD Act, in furtherance of the policies underlying the act. The proposed regulations will also extend existing regulations and add new procedures for the filing and processing of representation petitions and unit determinations arising under TEERA and other transit district labor relations acts within PERB's jurisdiction. The proposed regulations will ensure that the procedural and substantive rights of California's transit district labor relations acts will be protected. In so doing, California residents' welfare will receive the benefit of stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that the transit districts and its employees provide to California communities.

The proposed regulations are not expected to affect worker safety or the state's environment.

### CONSIDERATION OF ALTERNATIVES

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

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

### CONTACT PERSONS

Any questions or suggestions regarding the proposed action should be directed to:



Kimberly Procida, Regional Attorney  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811  
(916) 591-3167  
E-mail: [kimberly.procida@perb.ca.gov](mailto:kimberly.procida@perb.ca.gov)

The backup person for these inquiries is:

J. Felix De La Torre  
General Counsel  
Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95811  
E-mail: [felix.delatorre@perb.ca.gov](mailto:felix.delatorre@perb.ca.gov)

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

#### PRELIMINARY ACTIVITIES

PERB held a public meeting on December 10, 2020, wherein the public was given the opportunity to provide comments regarding implementation of these transit district regulations. On December 10, 2020, the Board itself approved the publication of the proposed regulatory text and the commencement of the formal rulemaking process. PERB has also relied upon the Economic Impact Assessment identified in this notice in proposing regulatory action.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations and the initial statement of reasons. Copies of these documents may be obtained by contacting Kimberly J. Procida at the above address and are also available on the Board’s web site at [www.perb.ca.gov](http://www.perb.ca.gov).

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if one is requested, and considering all timely and relevant comments, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally

proposed text, the modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations as revised. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Kimberly J. Procida at the above address. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Kimberly J. Procida at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice of proposed action, the initial statement of reasons, and the text of the proposed regulations in underline and strikeout, can be accessed through PERB’s web site located at [www.perb.ca.gov](http://www.perb.ca.gov) throughout the rulemaking process. Written comments received during the written comment period will also be posted on PERB’s web site. The final statement of reasons or, if applicable, notice of a decision not to proceed will be posted on PERB’s web site following the Board’s action.

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

#### AMEND COMMISSION REGULATION 1003 EMPLOYMENT STATUS NOTIFICATIONS

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 August 21, 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](mailto: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 peace officer selection and certification and 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 that individuals shall not be appointed to a peace officer classification until they meet the minimum training requirements specified in Commission Regulation 1005 while providing an exception to the above for individuals identified in Commission Regulation 1005(a)(3) who are serving in a position which permits appointment to a peace officer classification prior to completion of the minimum training requirements.

POST is now required to license peace officers in the state of California. Therefore, it must ensure that individuals meet the appropriate minimum training requirements for their specified peace officer classification. Appropriately classifying individuals as trainees prior to completion of the minimum training requirements will ensure POST is not incorrectly issuing a license (certificate) to an individual who is not actively working in a law enforcement capacity and has not met the minimum training standards for said license. Individuals who are incorrectly appointed as peace officers could potentially be issued a Proof of Eligibility prior to completing the minimum training

requirements to serve as a peace officer. This may prematurely make them eligible for a Basic Certificate several months earlier than their counterparts who are appropriately appointed as peace officers after completion of minimum training requirements.

POST is proposing to amend Commission Regulation 1003 to address the need to establish that individuals shall not be appointed to a peace officer classification until they meet the minimum training requirements specified in Commission Regulation 1005. This is necessary to ensure POST is not incorrectly issuing a license (certificate) to an individual who is not actively working in a law enforcement capacity and has not met the minimum training standards for said license.

#### *Anticipated Benefits of the Proposed Amendments:*

The benefits anticipated by the proposed amendments to the regulation will ensure POST is not incorrectly issuing a license (certificate) to an individual who is not actively working in a law enforcement capacity and has not met the minimum training standards for said license. This 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 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 of 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 officer appointments in the Electronic Data Interchange (EDI).

#### FORMS INCORPORATED BY REFERENCE

There are no forms to be incorporated by reference.

#### 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 §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 regulations only affect state agencies that are adopting, amending, or repealing regulations. 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 clarity regarding peace officer appointments in EDI. Thus, 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 *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 14. FISH AND GAME COMMISSION

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections **7071 and 7078** of the Fish and Game Code and to implement, interpret or make specific Sections **7056, 7071, 7078, 7087, 7857, 7858 and 7881** of said Code, proposes to amend Sections **163 and 163.1**, Title 14, California Code of Regulations, relating to the use of lampara nets for Pacific herring.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At its October 14, 2021 meeting, the California Fish and Game Commission (Commission) received and adopted a recommendation from the California Department of Fish and Wildlife (Department) to grant petition 2020–015 AM1 in concept, with details of a proposed rulemaking to be developed by the Department with the petitioner to allow use of lampara nets by commercial herring permittees. The Department has worked with the petitioner to develop the proposed changes detailed in this document, which would amend Section 163 and Section 163.1, Title 14 of the California Code of Regulations (CCR), to allow limited commercial take of herring via small-scale lampara gear by Humboldt Bay herring permit holders.

The following is a summary of the changes proposed for Sections 163 and 164, Title 14 CCR:

1. Amend 163(b)(3) Classes of Permits, Humboldt Bay Herring Permit to include a single small-scale lampara net as allowable gear.
2. Amend 163.1(c) Gear Requirements to include small-scale lampara nets, and amend ensuing subsections 163.1(c)(1) and 163.1(c)(2) to specify that these apply to gill nets.
3. Add subsection 163.1(c)(5) and 163.1(c)(5)(A) to introduce lampara gear requirements specific to Humboldt Bay herring permit holders, including net dimensions, construction, a single net limit, and to prevent possession of lampara nets alongside gill nets on a vessel participating in the fishery.
4. Add subsections 163.1(h)(2) and 163.1(h)(3) to impose additional Retentions and Discards requirements specific to lampara net use, and refer to new landing requirements in 163.1(j)(7)
5. Amend subsection 163.1(j)(5) to specify that it pertains to the ‘herring’ sector of the commercial fishery, which may include both lampara and gill-net participants.
6. Add subsections 163.1(j)(7) and 163.1(j)(7)(A) to define maximum daily landing and possession requirements for lampara-caught herring that would count toward any Humboldt Bay herring quota set by the Department, and to set a date past which lampara-caught herring may not be landed during the fishing season.
7. Repeal form FG MR 674 from subsection 163(c)(2)(C), as it has been superseded by form DFW 1108, which is incorporated by reference in subsection 705.1(c).
8. Make non-substantive changes throughout Sections 163 and 163.1 to correct typographical errors, increase consistency with other sections of Title 14, and to use inclusive pronouns.

### BENEFIT OF THE REGULATIONS

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California’s marine living resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, recognizing the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with marine living resource conservation policies; managing marine living resources on the basis of the best available scientific and other relevant information that the Commission or Department possesses or receives; and to involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, indigenous tribes, local governments, marine scientists, and the public in marine living resource management decisions. In consideration of this policy, the proposed regulatory action will benefit fishermen, processors, consumers, and the State’s economy in the form of a healthy sustainable fishery.

### CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

The Commission has reviewed its own regulations and finds that the proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

### PUBLIC PARTICIPATION

#### Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **August 9, 2023** at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov).



[ca.gov](http://ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on **August 22, 2023**. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244–2090.

### MEETINGS

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at **River Lodge Conference Center, 1800 Riverwalk Drive, in Fortuna, California**, which will commence at **8:00 a.m.** on **August 22, 2023** and may continue at **8:00 a.m.**, on **August 23, 2023**. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916–653–4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

### AVAILABILITY OF DOCUMENTS

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

### AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and

comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

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

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

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

The proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulatory action will not impose cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulation.

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

The Commission anticipates impacts on the creation of jobs (1–8 part–time jobs) within the state, the creation of new business, and/or the expansion of businesses (1–4 herring permit holders) in California. The Commission does not anticipate impacts on the elimination of jobs within the state, or the elimination of existing businesses in California because this regulatory action allows for a new gear type to be used to fish herring in Humboldt Bay that is anticipated to spur economic activity.



The Commission does not anticipate direct benefits to the general health and welfare of California residents, the environment, or to worker safety on a broad scale. However, where applied, benefits to fishermen, processors, consumers, and the state's economy in the form of a healthy and sustainable fishery are expected with the implementation of these regulations.

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

**EFFECT ON SMALL BUSINESS**

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

**CONSIDERATION OF ALTERNATIVES**

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

**TITLE 17. AIR RESOURCES BOARD**

**PROPOSED AMENDMENTS TO THE REGULATION FOR SMALL CONTAINERS OF AUTOMOTIVE REFRIGERANT**

The California Air Resources Board (CARB or Board) will conduct a public hearing at the date and time noted below to consider approving for adoption the proposed amendments to the Regulation for Small Containers of Automotive Refrigerant.

**Date:** October 26, 2023  
**Time:** 9:00 A.M.  
**In-Person Location:**  
 California Air Resources Board  
 Byron Sher Auditorium  
 1001 I Street  
 Sacramento, California 95814  
**Remote Option:**  
 Zoom

This public meeting may continue at 9:00 a.m., on October 27, 2023. Please consult the public agenda, which will be posted ten days before the October 26, 2023, Board Meeting, for important details, including the day on which this item will be considered and how the public can participate via Zoom if they choose to be remote.

**WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing during the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on July 7, 2023. Written comments not submitted during the hearing must be submitted on or after July 7, 2023, and received **no later than August 21, 2023**. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

- Postal mail:  
 Clerks' Office, California Air Resources Board  
 1001 I Street, Sacramento, California 95814
- Electronic submittal:*

<https://ww2.arb.ca.gov/applications/public-comments>

Please note that under the California Public Records Act (Gov. Code, § 7920.000 et seq.), your 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.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

#### AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601. This action is proposed to implement, interpret, and make specific sections 38501, 38505, 38510, 38550, 38551, 38562.2, 38566, 38560, 38560.5, 39003, 39500, 39600, and 39601.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW (Gov. Code, § 11346.5, subdivision (a)(3))

#### Sections Affected:

Proposed amendments to California Code of Regulations, title 17, sections 95360, 95361, 95362, 95364, 95364.1, 95365, 95366, 95367, 95368, 95369, and 95370. Proposed repeal of California Code of Regulations, title 17, section 95363. Proposed adoption of California Code of Regulations, title 17, sections 95364.2, 95366.1, 95366.2, 9567.1, and 95367.2.

#### Documents Incorporated by Reference (Cal. Code Regs., title 1, § 20, subdivision (c)(3)):

- 40 Code of Federal Regulations (CFR) Part 82, Subpart F, Appendix A: Specifications for Refrigerants (July 1, 2022). Incorporated in section 95361
- 40 CFR, Part 82, §82.164, adopted on July 30, 1992, as last amended on November 18, 2016. Incorporated in section 95361.
- Air-Conditioning, Heating, & Refrigeration Institute (AHRI) Standard 700: 2019 Standard for Specifications for Refrigerants (2019). Incorporated in section 95361.
- Certification Procedures for Small Containers of Automotive Refrigerant, adopted on July 20, 2009, as last amended on [Insert Date of Amendment]. Incorporated in section 95362(d).

The above listed certification procedure is being amended by this regulation and thus the amendment date would be the date that the regulation is adopted by CARB.

#### Background and Effect of the Proposed Regulatory Action:

In January 2009, CARB approved for adoption the Regulation for Small Containers of Automotive Refrigerant (hereinafter “Small Container Regulation” or “Regulation”) as an early action measure for Assembly Bill (AB) 32.<sup>1</sup> The Regulation reduces greenhouse gas (GHG) emissions associated with do-it-yourself (DIY) recharging of motor vehicle air conditioning (MVAC) systems. The Regulation established requirements applicable to containers that hold between 2 ounces and 2 pounds of any automotive refrigerant with a global warming potential (GWP) greater than 150. The Regulation became effective on March 10, 2010.

The initial regulation is comprised of three main provisions. First, it requires that small containers of automotive refrigerant be equipped with a self-sealing valve and labels containing information to promote consumer education of proper MVAC charging practices and to prevent misuse of refrigerant. Second, it establishes a manufacturer administered deposit, return, and recycling program. Third, it mandates that any deposits unclaimed by consumers (unclaimed deposits) be used to increase the container return rate through an education and outreach program. Manufacturers of small containers of automotive refrigerant (manufacturers) must apply to CARB to certify their products for sale in California with information and data demonstrating compliance with the Regulation.

In 2016, CARB amended the Regulation with three additional provisions. First, clarifying language was added that requires retailers of small containers of automotive refrigerant (retailers) to transfer any unclaimed deposits to the container manufacturer or a designee of its choosing. Second, it allowed unclaimed deposits to be spent on projects, programs, or measures that reduce GHG emissions. Third, it fixed the consumer deposit at \$10.

Based on data obtained from annual reporting from manufacturers, retailers, and distributors of small containers of automotive refrigerant, staff determined that the quantity of refrigerant remaining in small containers upon return (the container heel) is approximately 4 percent, lower than the initial projection of 22 percent. As a result, the deposit and return program’s contribution to emission reductions is lower than initially estimated.

<sup>1</sup> AB 32 (Núñez, Stats. 2006, chapter 488). Health & Safety Code sections 38500 et seq.

In addition, container manufacturers launched an enhanced education program, starting midway through 2018 and lasting through 2020, with the aim of increasing the container return rate. The program included a paid media campaign with social media and digital outreach as well as established container return centers located in several major cities in California. However, return rates showed little change due to the education and outreach program. Due to the low GHG emission reductions from container heel recovery, unchanged return rates, and financial impacts to do-it-yourselfers (DIYers), staff is proposing to remove the deposit and return requirements. In addition, staff is proposing the requirement that reclaimed refrigerant be used in the manufacturing of small containers sold in California to offset the emission reductions currently achieved by the deposit and return program. Finally, revisions to the expenditure of unclaimed deposits will be aimed at decreasing MVAC leaks and increase recovery and reclaim in California.

**Summary of the Proposed Amendments:**

Staff is proposing amendments (collectively, Proposed Amendments) to the Regulation covering four main areas: (1) removal of the deposit and return program, (2) phase-in of requirements for reclaimed refrigerant in new small containers, (3) modification and clarification of associated provisions related to sell-through and reporting requirements, and (4) refinement of procedures and parameters for spending unclaimed deposits. The Proposed Amendments also include minor changes to the Certification Procedures. The Proposed Amendments are expected to achieve slightly greater GHG emission reductions while reducing costs to DIYers, the primary consumers of small containers. Approximately 40 percent of small containers sales occur in Disadvantaged Communities (DACs). In addition, the Proposed Amendments focus the expenditure of any remaining unclaimed deposits towards projects that will reduce GHG emissions and increase the supply of reclaimed refrigerant that can be used in the small containers. Overall, the Proposed Amendments decrease costs to consumers, particularly those in DACs, achieve slightly greater emission reductions to the existing regulation, and incentivize the reclamation of refrigerant.

CARB may also consider other changes to the sections affected, as listed on page two of this notice, or other sections within the scope of this notice, during the course of this rulemaking process.

**Objectives and Benefits of the Proposed Regulatory Action:**

The objectives of the Proposed Amendments are threefold. First, they would decrease costs for all consumers, with DACs receiving the greatest cost savings benefits. Staff projects a benefit to California consumers of \$59.5 million cumulatively from 2025 to 2045

as deposits are no longer required to be collected from consumers. Second, they are expected to reduce emissions of Hydrofluorocarbon (HFC)–134a, helping to meet the 2030 or 2045 GHG reduction targets mandated by Senate Bill (SB) 1383<sup>2</sup>, SB 32<sup>3</sup>, and AB 1279.<sup>4</sup> Third, staff expects the Proposed Amendments to incentivize the reclamation of refrigerant. Staff anticipates that the reclaimed refrigerant used in future containers would lead to potential emission reductions of 1.6 and 3.3 MMTCO<sub>2</sub>e cumulatively by 2030 and 2045, respectively.

**Comparable Federal Regulations:**

Currently, there are no federal regulations that require reclaimed refrigerant in small containers of automotive refrigerant. However, it is important to note that the Proposed Amendments would align with the Federal American Innovation and Manufacturing (AIM) Act<sup>5</sup> in incentivizing HFC recovery and increasing the supply of reclaimed refrigerant. The amount of reclaimed HFC–134a necessary to meet the requirements of the Proposed Amendments is small relative to the amount used in all applications. The Proposed Amendments would align with the AIM Act production phase-down and can help serve as a market incentive for reclamation operations alongside the AIM Act’s requirements.

**An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subdivision (a)(3)(D)):**

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

**DISCLOSURES REGARDING THE PROPOSED REGULATION**

**Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subdivisions (a)(5)&(6)):**

The determinations of the Board’s Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

<sup>2</sup> Senate Bill 1383 (Lara, Stat. 2016, Chapter 395); Health & Safety Code §§ 39730.5 through 39730.8, and Public Resources Code §§ 42652 through 42654.

<sup>3</sup> SB 32 (Pavley, Stat. 2016, Chapter 249); Health & Safety Code § 38566.

<sup>4</sup> AB 1279 (Muratsuchi, Stat. 2022 Chapter 337); Health & Safety Code § 38562.2.

<sup>5</sup> Pub. L. 116–120, div. S, §103, 134 Stat. 2255 (2021–2022); codified at 42 USC § 7675.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

*Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et seq.:*

None. These costs are not reimbursable pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of the Government Code. These costs are not reimbursable because this action neither compels local agencies to provide new governmental functions (i.e., it does not require such agencies to provide additional services to the public), nor imposes requirements that apply only on local agencies or school districts.<sup>6</sup> Instead, this regulatory action establishes requirements that apply to all individuals and entities that purchase and use regulated small containers. This action also does not compel local agencies to increase the actual level or quality of services that they already provide the public.<sup>7</sup> For the foregoing reasons, any costs incurred by local agencies to comply with this regulatory action are not reimbursable.<sup>8</sup>

*Cost or Savings for State Agencies:*

State government would expect an estimated total of approximately \$1.7 million from 2025 to 2045 due to potential increased sales taxes.

*Other Non-Discretionary Costs or Savings on Local Agencies:*

Local governments would expect an estimated total of approximately \$2.2 million from 2025 to 2045 due to potential increased sales taxes.

*Cost or Savings in Federal Funding to the State:*

There are no costs or savings in federal funding to the state.

**Housing Costs (Gov. Code, § 11346.5, subdivision (a)(12)):**

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

<sup>6</sup> County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.

<sup>7</sup> San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 877.

<sup>8</sup> County of Los Angeles v. State of California, 43 Cal.3d. 46, 58.

**Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subdivision (a), 11346.5, subdivision (a)(7), 11346.5, subdivision (a)(8)):**

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

**Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subdivision (a)(10)):**

**Non-Major Regulation: Statement of the Results of the Economic Impact Assessment (EIA):**

(A) *The creation or elimination of jobs within the State of California.*

Due to the projected increase in demand for reclaimed HFC-134a related to the Proposed Amendments, more jobs may be created in the reclamation industry to meet the demand. There are several in-state reclaimers, one of which is considered a small business, so position growth may increase but would be negligible in comparison to the California job market overall.

(B) *The creation of new business or the elimination of existing businesses within the State of California.*

The Proposed Amendments would increase the over-the-counter sale of reclaimed refrigerant and decrease the sale of virgin refrigerant. Virgin refrigerant manufacturers that sell to manufacturers of small containers of automotive refrigerant may see a decline in overall sales, but these businesses are not located in California.

(C) *The expansion of businesses currently doing business within the State of California.*

Refrigerant recovery businesses located in California are expected to see an increase in reclaimed refrigerant demand and revenue. With the removal of the deposit and return program, retailers may see an increase in sales.

(D) *The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.*

The Proposed Amendments are expected to reduce GHG emissions by 1.6 and 3.3 MMTCO<sub>2</sub>e cumulatively by 2030 and 2045, respectively. The Social Cost of Carbon benefits range between \$77 million and \$341 million cumulatively depending on the discount rates (i.e., 5 percent, 3 percent, or 2.5 percent) used from 2025 through 2045. These emission reductions are expected to result in benefits to the health and welfare of California

residents and the State's environment through GHG emission reductions.

There would be a benefit of \$59.5 million as deposits are no longer required to be collected from consumers. These represent the projected unclaimed deposits avoided from 2025 to 2045.

CARB does not anticipate any cost or benefit to worker safety.

*Effect on Jobs/Businesses:*

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the Initial Statement of Reasons (ISOR).

*Benefits of the Proposed Regulation:*

The objectives of the proposed regulatory action are to decrease costs to California consumers especially those in disadvantage communities, achieve slightly greater GHG emission reductions, and incentivize the reclamation of refrigerant.

A summary of these benefits is provided, please refer to "Objectives and Benefits", under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code section 11346.5, subdivision (a)(3) discussion on page four.

**Business Report (Gov. Code, §§ 11346.5, subdivision (a)(11); 11346.3, subdivision (d)):**

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

**Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subdivision (a)(9)):**

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. Individual consumers could see increased costs for small containers if costs to small container manufacturers for reclaimed refrigerant and reporting are passed directly to consumers. The increased cost is estimated to be \$2.90 per container or a total of \$45.5 million for estimated sales of 15.7 million containers from 2025 to 2045. Some of these costs are expected to be offset by savings in the long term due to the removal of the deposit and return program.

**Effect on Small Business (Cal. Code Regs., title 1, § 4, subdivisions (a) and (b)):**

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the Proposed Amendments do not have any additional direct costs or reporting requirements for small business.

**Consideration of Alternatives (Gov. Code, § 11346.5, subdivision (a)(13)):**

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

Staff analyzed two alternatives: a no action alternative with business as usual, and a container ban alternative, compared to the Proposed Amendments. Staff finds that neither are less burdensome or equally effective in achieving the purposes of the Regulation.

**Alternative 1. No Change**

Staff finds the Proposed Amendments are more appropriate than the no action alternative. The Proposed Amendments would require the use of reclaimed refrigerant in future small containers and reduce costs to Californians by removing the deposit and return program. The current deposit and return program achieves small emission reductions of 0.02 MMTCO<sub>2</sub>e annually while disproportionately burdening Disadvantaged Communities. The emission loss due to the removal of the deposit and return program would be offset by the emission benefits of the proposed reclaimed refrigerant requirements. In addition, this alternative would continue to accrue approximately \$5.5 million in unclaimed deposits annually, of which approximately \$1.8 million are from Disadvantaged Communities.

Staff rejects this alternative. This alternative would continue to achieve emission reductions through the self-sealing valve and deposit and return program. However, the Proposed Amendments achieve 2.9 MMT CO<sub>2</sub>e, more reductions of GHGs between 2025 and 2045 than Alternative 1, and Alternative 1 imposes greater costs than the Proposed Amendments, so it is not as effective in achieving the purposes of the regulation or less burdensome than the Proposed Amendments. Also, these expected emission benefits come at a higher cost to California residents. There would be a total cost of \$59.5 million as unclaimed de-

posits relative to the \$45.5 million cost of the Proposed Amendments for 2025 to 2045.

**Alternative 2. Container Ban**

Alternative 2 is a ban on the sale of small containers of automotive refrigerant in California. This alternative would require all MVAC servicing to be done by professional technicians. This alternative was considered in the initial development of the Regulation in 2009 but was rejected due to economic impact on DIYers living in DACs. Staff revisited this alternative and estimated the emission and economic benefits.

Under the assumption that all vehicles with leaky MVAC systems are repaired by professional technicians, there will be estimated emission reductions of 7.6 MMTCO<sub>2</sub>e cumulatively by 2045, which should be considered the upper bound of emission reductions as some DIYers may choose to forgo MVAC repair.

Under the container ban alternative, consumer costs would be affected mainly by the difference between the cost of professional repairs and the cost of DIY repairs. DIY recharges were estimated to occur at a rate of once per year at a cost of approximately \$39 or 1.3 containers, the average number of containers used by a consumer to fully charge their system. Staff estimated that professional diagnosis, repairs, and recharges cost \$650 in 2008, which, adjusting for inflation, would be \$926 in 2023. The number of vehicles affected (12 million) are calculated by taking the number of container sales estimated from 2025 to 2045 (15.7 million) and dividing by 1.3 containers per vehicle. Multiplying the cost difference (\$887) between DIY and professional repair by the number of affected vehicles (12 million) results in a total cost increase of \$10.6 billion. Consumers may choose to forego vehicle air conditioning due to the high repair cost, which could lead to health impacts from increased exposure to heat.

Staff rejects this alternative. While it would achieve emission reductions by ensuring proper MVAC repair and refrigerant recovery by technicians with higher costs to consumers.

ENVIRONMENTAL ANALYSIS

CARB, as the lead agency for the Proposed Amendments, has concluded that this action is exempt from CEQA, as described in CEQA Guidelines §15061, because the action is both an Action Taken by Regulatory Agencies for Protection of the Environment (as described in CEQA Guidelines §15308 for “class 8” exemptions); and it is also exempt as described in CEQA Guidelines §15061 (b)(3) (“common sense” exemption) because it can be seen with certainty that there is no possibility that the proposed action may result in a significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter VI of the ISOR.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks’ Office at [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) or (916) 322-5594 as soon as possible, but no later than ten business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al [cotb@arb.ca.gov](mailto:cotb@arb.ca.gov) o (916) 322-5594 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Dongmin Luo, Manager, at (916) 277-0834 or Van Tsan, Air Resources Engineer, at (279) 842-9951, both in the Air Quality and Climate Science Section.

AVAILABILITY OF DOCUMENTS

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Public Hearing to Consider the Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on CARB’s website listed below,



on July 3, 2023. Please contact Chris Hopkins, Regulations Coordinator, at [Chris.Hopkins@arb.ca.gov](mailto:Chris.Hopkins@arb.ca.gov) or (279) 208-7347 if you need physical copies of the documents. Pursuant to Government Code section 11346.5, subdivision (b), upon request to the aforementioned Regulations Coordinator, physical copies would be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed Chris Hopkins, Regulations Coordinator, (279) 208-7347. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

#### FINAL STATEMENT OF REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on CARB's website listed below.

#### INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed,

are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2023/smallcontainer2023>

## GENERAL PUBLIC INTEREST

### DEPARTMENT OF FISH AND WILDLIFE

#### CESA CONSISTENCY DETERMINATION REQUEST FOR MATTOLE ROAD PM 5.25 STORM DAMAGE REPAIR PROJECT 2080-2023-007-01 HUMBOLDT COUNTY

The California Department of Fish and Wildlife (CDFW) received a notice on June 20, 2023 that Humboldt County Public Works proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves restoring the roadway damaged by repeated movement/failure from landslides, stabilizing the landslide to the extent possible, improving roadway drainage, reducing erosion potential adjacent to the bank of the Mattole River, and increasing roadway safety and access. Proposed activities will include, but are not limited to, longitudinal and transverse slope sub-drainage, a reinforced road embankment, replacement of a culvert, and rock slope protection armoring planted with willows at the slope along the Mattole River. The proposed project will occur in a remote region of Humboldt County on Mattole Road at PM 5.25, approximately 5.25 miles northwest of Honeydew. The Project is located within Buckeye Mountain in decimal degrees, 40.2550174, -124.1905428.

The National Marine Fisheries Service (NMFS) issued a federal biological opinion (BO)(Service Ref. No. WCRO-2022-02848) in a memorandum to the California Department of Transportation on March 14, 2023, which considered the effects of the proposed project on state and federally threatened Northern California steelhead (*Oncorhynchus mykiss irideus*), a subset of which, the summer-run ecotype, is state endangered.

Pursuant to California Fish and Game Code section 2080.1, Humboldt County Public Works is requesting a determination that the Incidental Take Statement (ITS) and its associated BO are consistent with CESA for purposes of the proposed project. If CDFW determines the ITS and associated BO are consistent with

CESA for the proposed project, California Department of Transportation will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

**DEPARTMENT OF FISH AND WILDLIFE**

**FISH AND GAME CODE SECTION 1653  
CONSISTENCY DETERMINATION  
REQUEST FOR  
DRY DOCK GULCH FISH PASSAGE AND  
HABITAT ENHANCEMENT PROJECT  
(TRACKING NUMBER:  
1653-2023-115-001-R1)  
MENDOCINO COUNTY**

California Department of Fish and Wildlife (CDFW) received a Request to Approve on 6/21/2023, that Trout Unlimited proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves removing and replacing two metal culvert fish passage barriers to restore access to 0.76 miles of spawning and rearing habitat for salmonids. The proposed project will be carried out on Dry Dock Gulch, located within Mendocino Headlands State Park, Mendocino County, California.

On 5/10/2023, the North Coast 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 Dry Dock Gulch Fish Passage and Habitat Enhancement 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 No. 1B23090WNME; ECM PIN No. CW-888883) for coverage under the General 401 Order on 6/20/2023.

Trout Unlimited 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, Trout Unlimited 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 Trout Unlimited will have the opportunity to submit under Fish and Game Code section 1652.

**DEPARTMENT OF FISH AND WILDLIFE**

**FISH AND GAME CODE SECTION 1653  
CONSISTENCY DETERMINATION  
REQUEST FOR  
MILL CREEK CAMPGROUND  
ACCESSIBILITY AND AQUATIC HABITAT  
IMPROVEMENT PROJECT  
(TRACKING NUMBER:  
1653-2023-116-001-R1)  
DEL NORTE COUNTY**

California Department of Fish and Wildlife (CDFW) received a Request to Approve on 6/21/2023, that the California State Parks proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves removing a failing culvert that is causing fish passage issues and replacing it with a footbridge. The proposed project will be carried out on an unnamed tributary of West Branch Mill Creek, located at the Mill Creek Campground, Del Norte Coast Redwoods State Park, Del Norte County, California.

On 4/11/2023, the North Coast 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 Mill Creek Campground Accessibility and Aquatic Habitat Improvement 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 No. 1A23038WNDN; ECM PIN No. CW-887702) for coverage under the General 401 Order on 6/21/2023.

California State Parks 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 California State Parks 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, California State Parks will have the opportunity to submit under Fish and Game Code section 1652.

**DEPARTMENT OF FISH AND  
WILDLIFE**

**CESA CONSISTENCY DETERMINATION  
REQUEST FOR  
BORONDA ROAD CONGESTION  
RELIEF PROJECT  
2080–2023–012–04  
MONTEREY COUNTY**

The California Department of Fish and Wildlife (CDFW) received a notice on June 23, 2023 that City of Salinas Public Work Department proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves the widening of the East Boronda Road from Dartmouth Way to approximately 1300 feet east of Natividad Road, from two to four lanes, and the creation of roundabouts at major intersections. Proposed activities will include, but are not limited to, relocation of an agricultural drainage ditch 100 ft to the north, widening of Boronda road, construction of roundabouts and creation of a staging area along McKinnon street. The proposed project will occur on East Boronda Road, near the intersection at McKinnon Street, in the City of Salinas, Monterey County.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (BO)(Service Ref. No. 2022–0079978–S7–001) in a memorandum to the U.S. Army Corps of Engineers on April 24, 2023, which considered the effects of the proposed project on state and federally threatened California tiger salamander (*Ambystoma californiense*).

Pursuant to California Fish and Game Code section 2080.1, City of Salinas Public Work Department is requesting a determination that the Incidental Take Statement (ITS) and its associated BO are consistent with CESA for purposes of the proposed project. If CDFW determines the ITS and associated BO are consistent with CESA for the proposed project, City of Salinas Public Work Department will not be required to obtain an incidental take permit under Fish

and Game Code section 2081 subdivision (b) for the proposed project.

**OFFICE OF THE STATE FIRE  
MARSHAL**

**NOTICE OF ADDITIONAL WRITTEN  
COMMENT PERIOD**

On November 4, 2022, the Office of the State Fire Marshal published a Notice of Proposed Action concerning the Regulations Relating to Fireworks and Flamethrowing Devices. (California Regulatory Notice Register 2022, No. 44–Z, November 4, 2022, page 1299.)

The original written comment period deadline for this action was: *November 4, 2022, through December 20, 2022.*

The Department held a public hearing and *extended* the written comment deadline to *January 4, 2023.*

**The Department is now providing an additional written comment period.**

**The additional written comment availability is: *July 7, 2023, through July 22, 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 concerning 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: (FWX) Fireworks and Flamethrowing Devices — Fee Increase

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](mailto:Title19Regulations@fire.ca.gov)  
Phone: (916) 531–7650

## PROPOSITION 65

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

#### REQUEST FOR RELEVANT INFORMATION ON THE CARCINOGENICITY OF VINYL ACETATE

#### Request for Information

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) has selected vinyl acetate for the Carcinogen Identification Committee (CIC)'s review for possible listing under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code (HSC) section 25249.5 et seq. (Proposition 65). This notice announces a data call-in to solicit information from the public relevant to the assessment of its carcinogenicity of the chemical. Vinyl acetate was selected from chemicals prioritized by the CIC in 2016. See [the 2016 CIC Meeting Synopsis](#) for more information.

Relevant information on vinyl acetate includes but is not limited to:

- Cancer bioassays
- Cancer epidemiological studies
- Studies related to cancer mechanisms and the key characteristics of carcinogens
- Other pertinent studies on:
  - Pharmacokinetics
  - Effects on biochemical and physiological processes, including findings in humans

Interested parties wishing to provide such information should submit it in accordance with the instructions given below.

The publication of this notice marks the start of a 45-day data call-in period, ending on **Monday, August 21, 2023**. The information received during this period will be reviewed and considered by OEHHA as it prepares the cancer hazard identification materials on vinyl acetate.

#### Background

OEHHA is the lead agency for the implementation of Proposition 65. The CIC of OEHHA's Science Advisory Board serves as the state's qualified experts and renders an opinion about whether a chemical has been clearly shown, through scientifically valid testing according to generally accepted principles, to cause cancer. (HSC section 25249.8(b); Title 27, California Code of Regulations, sections 25302, et seq.,

25305(a)(1).) Chemicals identified as carcinogens by the CIC are added to the Proposition 65 list.

Hazard identification materials will be made available to the public for comment prior to the CIC's consideration of the chemical for possible listing. The availability of hazard identification materials will be announced in the *California Regulatory Notice Register* and on OEHHA's website.

#### Submission of Relevant Information

All written submissions must be provided to OEHHA by electronic submission, mail, or hand-delivery, by **Monday, August 21, 2023**. OEHHA strongly recommends that submissions be made electronically through our website at <https://oehha.ca.gov/comments>, rather than in paper form. Alternatively, the submission can be in paper form, either by mail or delivered in person.

Electronic Submission (preferred):

Through OEHHA 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

OEHHA encourages all submissions to be in a format compliant with Section 508 of the federal Rehabilitation Act, Web Content Accessibility Guidelines (WCAG) 2.1 (see [the World Wide Web Consortium \[W3C\] WCAG 2 Overview](#)), and

California Government Code sections 7405 and 11135, so that they can be read using screen reader technology.

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide a submission, 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](mailto:Kiana.Vaghefi@oehha.ca.gov) or at (279) 216-0002.

**SUSPENSION OF ACTION  
REGARDING UNDERGROUND  
REGULATION**

**OFFICE OF ADMINISTRATIVE LAW**

**MEMORANDUM**

**Date:** June 19, 2023  
**To:** Kenneth J. Pogue, Director  
Office of Administrative Law  
**From:** Nicolas Maduros  
Director  
California Department of Tax and Fee  
Administration  
**Subject:** Section 280 Certification for Dean  
Andal's Petition to challenge the  
California Department of Tax and Fee  
Administration's (CDTFA) recently  
published Audit Manual, Sections 4  
and 13 as an underground regulation.  
[CTU2023-0418-1]

This memorandum shall serve as certification that the California Department of Tax and Fee Administration will not issue, use, enforce, or attempt to enforce the amendments alleged to be underground regulations, unless or until the amendments are adopted pursuant to the Administrative Procedure Act (APA) or an appropriate APA exemption has been identified. The challenged rules are contained in the following document:

California Department of Tax and Fee Administration, Business Tax and Fee Division Audit Manual, Chapters 4 and 13, as amended effective April 1, 2023.

I make this certification pursuant to California Code of Regulations, title 1, section 280. Pursuant to subdivision (a)(2) thereof, a copy of this certification will be sent concurrently to the petitioner via email at [deanandal@sbcglobal.net](mailto:deanandal@sbcglobal.net).

If you have any further concerns regarding this matter, please contact Chris Schutz, CDTFA Chief Counsel at (916) 662-2629.

Respectfully submitted,

/s/

Nicolas Maduros  
CDTFA Director

cc:

Dean Andal, Petitioner  
Trista Gonzalez, CDTFA Deputy Director  
Chris Schutz, CDTFA Chief Counsel  
Mark Storm, Senior Attorney, Office of  
Administrative Law  
Dale Mentink, Assistant Chief Counsel, Office of  
Administrative Law  
Elizabeth Heidig, Deputy Director, Office of  
Administrative Law

**AVAILABILITY OF INDEX OF  
PRECEDENTIAL DECISIONS**

**DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL**

**NOTICE OF AVAILABILITY OF  
PRECEDENTIAL DECISIONS AND  
DECISION INDEX**

NOTICE IS HEREBY GIVEN that the Department of Alcoholic Beverage Control, pursuant to section 11425.60 of the Government Code, maintains and indexes of precedential decisions. The index and text of precedential decisions is available to the public on the Department's website at <https://www.abc.ca.gov/law-and-policy/precedential-decisions/>.

For additional information, contact:

Robert de Ruyter,  
Assistant General Counsel  
Department of Alcoholic Beverage Control  
3627 Lennane Drive, Suite 100  
Sacramento, CA 95834  
Telephone: (916) 419-8958  
Fax: (916) 419-2516  
E-Mail: [Robert.deRuyter@abc.ca.gov](mailto:Robert.deRuyter@abc.ca.gov)

**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.



Board of Vocational Nursing and Psychiatric Technicians  
 File # 2023-0612-03  
 Program Approval Process

This emergency readopts the regulations on the approval process for vocational nursing programs and psychiatric technician programs (16 CCR §§ 2525, 2526, 2580, and 2581.). It also readopts regulations regarding the fees associated with the approval process for these programs (16 CCR §§ 2537.2 and 2590.2.).

Title 13  
 Adopt: 2537.2, 2590.2  
 Amend: 2525, 2526, 2580, 2581  
 Filed 06/22/2023  
 Effective 06/22/2023  
 Agency Contact: Mark Ito (916) 263-7851

Department of Cannabis Control  
 File # 2023-0616-02  
 Track and Trace Requirements for Delivery of Cannabis Goods

This is a readoption of emergency rulemaking action 2022-1214-01E, which established new track and trace requirements for licensed retailers conducting delivery of cannabis goods. This action is a deemed emergency pursuant to Business and Professions Code section 26068(d)(3).

Title 04  
 Adopt: 15049.3  
 Amend: 15418  
 Filed 06/26/2023  
 Effective 06/26/2023  
 Agency Contact: Charisse Diaz (916) 465-9025

California Tax Credit Allocation Committee  
 File # 2023-0519-01  
 CTCAC Regulations Implementing Federal and State LIHTC Laws

The California Tax Credit Allocation Committee (CTCAC) requests that the Office of Administrative Law (OAL) file with the Secretary of State and print in the California Code of Regulations amendments to the Low-Income Housing Tax Credit Program (LIHTC). Pursuant to Health and Safety Code section 50199.17(a), these amendments are exempt from the rulemaking requirements of the Administrative Procedure Act so long as the CTCAC has complied with Health and Safety Code section 50199.17(b). CTCAC has certified to OAL that it complied with

Health and Safety Code section 50199.17(b) in adopting these amendments.

Title 04  
 Amend: 10305, 10317, 10326, 10327, 10328, 10335  
 Filed 06/21/2023  
 Effective 05/10/2023  
 Agency Contact: Anthony Zeto (916) 214-6581

Department of Housing and Community Development  
 File # 2023-0606-03  
 Income Limits (Title 25, Section 6932)

This file and print action by the Department of Housing and Community Development (“HCD” or “Department”) is the annual update of the income limits for households of varying sizes used to determine eligibility for Department programs. This filing is exempt from the rulemaking requirements of Articles 5 and 6 of Chapter 3.5 of the Administrative Procedure Act pursuant to Health and Safety Code section 50093, and, therefore, is not subject to Office of Administrative Law’s (“OAL”) review. These regulations are effective June 6, 2023, the date the regulations were filed with OAL, pursuant to Health and Safety Code section 50093.

Title 25  
 Adopt: 6932  
 Repeal: 6932  
 Filed 06/27/2023  
 Effective 06/06/2023  
 Agency Contact: Tom Brinkhuis (916) 776-7707

Office of Tax Appeals  
 File # 2023-0526-02  
 Office of Tax Appeals’ Rules For Tax Appeals

The Office of Administrative Law hereby grants the request of the Office of Tax Appeals to file its adoptions, amendments, and repeals of its regulations concerning tax appeal requirements, forms, procedures, discovery, confidentiality, and opinions, among other topics, with the Secretary of State and to print the resulting regulations in the California Code of Regulations.



Title 18  
Adopt: 30101.5, 30209.05, 30430.5, 30436, 30608,  
30705.5  
Amend: 30000, 30101, 30102, 30103, 30104, 30105,  
30106, 30107, 30201, 30202, 30203, 30204, 30205,  
30207, 30208, 30209, 30209.1, 30210, 30211,  
30211.5, 30212, 30212.1, 30213, 30213.5, 30214,  
30214.5, 30215, 30216, 30217, 30219, 30220, 30221,  
30222, 30223, 30224, 30301, 30302, 30303, 30304,  
30310, 30311, 30312, 30313, 30314, 30315, 30316,  
30401, 30402, 30403, 30404, 30405, 30410, 30412,  
30413, 30420, 30421, 30430, 30431, 30432, 30433,  
30501, 30502, 30503, 30504, 30505, 30506, 30601,  
30602, 30602.1, 30603, 30604, 30605, 30606,  
30607, 30701, 30702, 30705, 30706, 30707  
Repeal: 30218, 30411  
Filed 06/26/2023  
Effective 06/30/2023  
Agency Contact: Myriam Bouaziz (916) 926-3918

California Gambling Control Commission  
File # 2023-0510-02  
Spousal Form Update

This rulemaking action by the California Gambling Control Commission amends requirements regarding spousal information and supplemental information forms.

Title 04  
Amend: 12080, 12112, 12114, 12272, 12274  
Filed 06/22/2023  
Effective 10/01/2023  
Agency Contact: Josh Rosenstein (916) 274-5823

Fish and Game Commission  
File # 2023-0519-03  
Nelson Bighorn Sheep

This rulemaking action reduces the number of Nelson Bighorn Sheep that may be taken in the Marble/Clipper Mountains hunt zone in San Bernardino County.

Title 14  
Amend: 362  
Filed 06/22/2023  
Effective 07/01/2023  
Agency Contact: Maurene Trotter (916) 902-9281

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

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