



California Regulatory Notice Register

REGISTER 2023, NUMBER 30-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

JULY 28, 2023

PROPOSED ACTION ON REGULATIONS

TITLE 4. HORSE RACING BOARD

Fire Safety — Notice File Number Z2023-0712-01 947

TITLE 5. CALIFORNIA STATE UNIVERSITY

Conflict-of-Interest Code Amendment — Notice File Number Z2023-0718-10 950

TITLE 14. FISH AND GAME COMMISSION

Marine Protected Areas, Marine Managed Area — Notice File Number Z2023-0718-07 951

TITLE 16. LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE

Examination Transition Plan — Notice File Number Z2023-0717-02 955

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

Automotive Repair Dealer Registration Renewal Requirements — Notice File Number Z2023-0714-01 957

TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

Continuing Education Requirements for Hearing Aid Dispensers — Notice File Number Z2023-0714-05 960

TITLE 16. DENTAL BOARD

Temporary Licenses for Military Spouses or Partners — Notice File Number Z2023-0718-03 963

TITLE 16. PHYSICIAN ASSISTANT BOARD

Senate Bill 697 Implementation — Notice File Number Z2023-0718-04 967

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

Lead-Acid Battery Fees Regulations — Notice File Number Z2023-0717-01 970

(Continued on next page)

Time-Dated Material

GENERAL PUBLIC INTEREST

DEPARTMENT OF DEVELOPMENTAL SERVICES

<i>Proposed Waiver Amendment for Medi-Cal 1915(c) Home and Community Based Services Self Determination Program Waiver for Developmentally Disabled, Changing Financial Management Services</i>	980
--	-----

DEPARTMENT OF DEVELOPMENTAL SERVICES

<i>Proposed Amendments to Medi-Cal Home and Community Based Services 1915(c) Waiver for the Developmentally Disabled, Adding Coordinated Family Supports (CFS)</i>	981
--	-----

DEPARTMENT OF FISH AND WILDLIFE

<i>Consistency Determination Request for John Smith Creek Large Wood Enhancement Project, Tracking Number: 1653-2023-118-001-R1, Mendocino County</i>	981
---	-----

DEPARTMENT OF FISH AND WILDLIFE

<i>Consistency Determination Request for Bear Haven Creek Large Wood Enhancement Project, Tracking Number: 1653-2023-119-001-R1, Mendocino County</i>	982
---	-----

DEPARTMENT OF FISH AND WILDLIFE

<i>Consistency Determination Request for Hollow Tree Creek Large Wood Enhancement Project, Tracking Number: 1653-2023-120-001-R1, Mendocino County</i>	982
--	-----

DEPARTMENT OF FISH AND WILDLIFE

<i>Consistency Determination Request for Las Encinas Crossing Replacement and Restoration Project, Tracking Number: 1653-2023-121-001-R5, Ventura County</i>	983
--	-----

DEPARTMENT OF FISH AND WILDLIFE

<i>Consistency Determination Request for Iron Horse Vineyards Fish Screen Implementation Project, Tracking Number: 1653-2023-122-001-R3, Sonoma County</i>	983
--	-----

DEPARTMENT OF FISH AND WILDLIFE

<i>Consistency Determination Number 1653-2023-115-001-R1, Dry Dock Gulch Alcove Habitat Enhancement and Fish Passage Project, Mendocino County</i>	984
--	-----

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

<i>Public Comment Period – Proposed Settlement</i>	986
--	-----

DECISION NOT TO PROCEED

RESPIRATORY CARE BOARD

<i>Respiratory Tasks and Services</i>	987
---	-----

(Continued on next page)

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State 987

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

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

PROPOSED ACTION ON REGULATIONS

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

TITLE 4. HORSE RACING BOARD

ARTICLE 17. FIRE PREVENTION AND SECURITY

RULE 1927. FIRE PREVENTION

RULE 1928. FIRE REGULATIONS

ARTICLE 28. BACKSTRETCH WORKER HOUSING

RULE 2101. DEFINITIONS

RULE 2103. HABITABLE ROOMS

The California Horse Racing Board (Board) proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Board Rule 1927, Fire Prevention, to require that protocols be in place for instances of fire within the inclosure, that fire and life safety inspections be performed in accordance with the local authority and appropriate National Fire Protection Association standards, and that licensees (i.e., racing associations and fairs) provide documentation of adherence to the applicable local fire protection authority. The amendment will also require that the written clearance from the fire authority be filed with the Board on an as-needed basis such that the written clearance is continuously in effect during the period that horses and licensees are present at the inclosure. Finally, the amendment will require licensees to provide the protocols in place for instances of fire within the inclosure.

The Board proposes to amend Board Rule 1928, Fire Regulations, to replace the provision that every association post in its stable and backstretch worker housing areas the fire regulations applicable on its grounds with language clarifying that every association, fair, or approved training facility must post the emergency evacuation plan, which must state the fire safety information that is currently required to be posted.

The Board proposes to amend Board Rule 2101, Definitions, and Board Rule 2103, Habitable Rooms,

for consistency with the proposed changes to Board Rule 1927 and Board Rule 1928.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes on **September 11, 2023**. The Board must receive all comments by that time. Submit comments to:

Rick Pimentel, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Email: rpimentel@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19460, 19481.5, and 19661, Business and Professions Code (BPC). Reference: Sections 19440, 19481, and 19481.5, BPC. Section 17920.3, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the Board. BPC section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of Horse Racing Law, whereby responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and control of horse racing and parimutuel wagering. BPC section 19460 provides, in part, that licenses granted by the Board are subject to all rules, regulations, and conditions prescribed by the Board and shall contain such conditions as are deemed necessary or desirable by the Board. BPC section 19481.5 provides, in part, that the Board shall adopt regulations to establish standards governing the employee housing provided

to backstretch personnel at licensed racetracks. BPC section 19661 provides, in part, that any person who violates any of the provisions of Horse Racing Law, for which a penalty is not expressly provided, is guilty of a misdemeanor.

The recent implementation of the Horseracing Integrity and Safety Authority's (HISA) federal regulations requires that the Board's rules regarding fire safety be amended. Additionally, these rules were originally conceived without consultation with a fire authority and, consequently, do not form a logical set of fire safety provisions. Furthermore, said rules are inconsistent with the realities of performing fire inspections, as local fire authorities have limited resources and must deal with the impact of unpredictable events on workload and availability. Therefore, the Board seeks to revise its fire safety regulations to conform to federal regulations and to provide for consistency with day-to-day fire authority activities, with the effect of improving overall fire safety.

The proposed regulatory action will implement HISA Rule 2163, Fire Safety, by requiring that protocols be in place for instances of fire within the inclosure, that fire and life safety inspections be performed in accordance with the local authority and appropriate National Fire Protection Association standards, and that licensees provide documentation of adherence to the applicable local fire protection authority, thereby ensuring conformity with federal regulations. The proposed regulatory action will also require that the written clearance from the fire authority be filed with the Board on an as-needed basis such that the written clearance is continuously in effect during the period that horses and licensees are present at the inclosure. Furthermore, licensees will be required to provide the protocols in place for instances of fire within the inclosure. Finally, the proposed regulatory action will eliminate those provisions that have proven to be arbitrary and inconsistent with actual fire authority practice.

ANTICIPATED BENEFIT OF THE PROPOSED REGULATION

The proposed regulatory action will provide for conformity with federal regulations, consistency with day-to-day fire authority activities, and improved overall fire safety, thereby promoting the health and welfare of horses and their caretakers. The proposed amendment to Board Rule 1927 will align the rule with HISA Rule 2163 by requiring that protocols be in place for instances of fire within the inclosure and stipulating that the written fire clearance state that the inspection was performed in accordance with the local authority and appropriate National Fire Protection Association standards. The amendment will also eliminate those provisions that have proven to be arbitrary

and inconsistent with actual fire authority practice. Additionally, the amendment will require licensees to file with the Board a written clearance from the fire authority having jurisdiction on an as-needed basis such that the clearance is continuously in effect during the period when horses or licensees are present at the inclosure. Finally, the amendment will require licensees to file with the Board the protocols in place for instances of fire within the inclosure. These changes will improve fire safety and help promote the health and welfare of horses and backstretch workers.

CONSISTENCY EVALUATION

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed regulatory action, the Board conducted a search of any similar regulations on the topic and concluded that Board Rule 1927 is the only regulation that sets forth the Board's fire safety provisions for racing associations and fairs; Board Rule 1928 is the only regulation that requires racing associations and fairs to post, in the stable and backstretch housing areas, emergency information needed in the case of a fire; Board Rule 2101 is the only regulation that defines certain terms pertaining to backstretch worker housing; and Board Rule 2101 is the only regulation that sets forth requirements for habitable rooms with respect to backstretch worker housing. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to local agencies and school districts that must be reimbursed in accordance with Government Code (GC) sections 17500 through 17630: none.

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

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

The Board has made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulatory action will require that protocols be in place for instances of fire within the inclosure and stipulate that the written fire clearance state that the inspection was performed in accordance with the local authority and appropriate National Fire Protection Association standards; eliminate those provisions that have proven to be arbitrary and inconsistent

with actual fire authority practice; require licensees to file with the Board a written clearance from the fire authority having jurisdiction on an as-needed basis such that the clearance is continuously in effect during the period when horses or licensees are present at the inclosure; replace the provision that every association post in its stable and backstretch worker housing areas the fire regulations applicable on its grounds with language clarifying that every association, fair, or approved training facility must post the emergency evacuation plan, which must state the fire safety information that is currently required to be posted; and make non-substantive technical edits for consistency and clarity.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: none. The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The adoption of the proposed regulatory action **will not** create or eliminate jobs within the state, **will not** create new businesses or eliminate existing businesses within the state, **will not** result in the expansion of businesses currently doing business with the state, and **will not** benefit the state's environment. It **will**, however, benefit the health and welfare of California residents and worker safety by improving fire safety within the racing inclosure, particularly in the backstretch worker housing area, where the horses' caretakers reside. By ensuring that a fire clearance is continuously in effect, the proposed regulatory action will minimize the risk for fire and, consequently, danger to the backstretch workers.

Effect on small business: none. The proposed regulatory action does not affect small business because small businesses are not legally required to comply with or enforce the regulation and neither derive a benefit nor incur a detriment from the enforcement of the regulation. The proposed regulatory action will require that protocols be in place for instances of fire within the inclosure and stipulate that the written fire clearance state that the inspection was performed in accordance with the local authority and appropriate National Fire Protection Association standards; eliminate those provisions that have proven to be arbitrary and inconsistent with actual fire authority practice; require licensees to file with the Board a written clearance from the fire authority having jurisdiction on an as-needed basis such that the clearance is continuous-

ly in effect during the period when horses or licensees are present at the inclosure; replace the provision that every association post in its stable and backstretch worker housing areas the fire regulations applicable on its grounds with language clarifying that every association, fair, or approved training facility must post the emergency evacuation plan, which must state the fire safety information that is currently required to be posted; and make non-substantive technical edits for consistency and clarity.

CONSIDERATION OF ALTERNATIVES

In accordance with GC section 11346.5, subdivision (a)(13), 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 provision of law.

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Rick Pimentel, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043

Email: repimentel@chr.ca.gov

If the person named above is not available, interested parties may contact:

Amanda Drummond, Manager
Regulations, Industry Applications, and
Administrative Hearings
Telephone: (916) 869-3255
Email: amdummond@chr.ca.gov

AVAILABILITY OF INITIAL
STATEMENT OF REASONS AND
TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based, may be obtained by contacting Rick Pimentel or the alternative contact person at the address, phone number, or email address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Rick Pimentel at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL
STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Rick Pimentel at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The Board's website address is www.chrb.ca.gov.

**TITLE 5. CALIFORNIA STATE
UNIVERSITY**

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

NOTICE IS HEREBY GIVEN that the Board of Trustees of the California State University, pursuant to the authority vested in it by section 87306 of the Government Code, proposes to amend its Conflict-of-Interest code. A public hearing concerning these proposed changes will be held in the Glenn S. Dumke Conference Center at 401 Golden Shore, Long Beach, California 90802-4210 commencing at 9:00 a.m. on September 12, 2023, or as soon thereafter as the business of the Board will permit. Any person interested may present statements orally or in writing relevant to the proposed action at that hearing. Written comments must be received by 5:00 p.m. PST on September 11, 2023, addressed to Leora D. Freedman, Vice Chancellor, Human Resources, Office of the Chancellor, 401 Golden Shore, Long Beach, California 90802-4210.

INFORMATIVE DIGEST

The Board of Trustees of the California State University proposes to amend its Conflict-of-Interest Code to reflect changes in the disclosure categories and designated positions to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons. The amendment will be made in the designated positions and the disclosure categories assigned to the designated positions on all campuses and in the headquarters of the California State University.

The Fair Political Practices Commission last approved the California State University Conflict-of-Interest Code in 2017. Since that time, the California State University has been working closely with the Fair Political Practices Commission to revise the Conflict-of-Interest Code to ensure greater consistency in how disclosure categories are assigned to designated positions with similar areas of responsibility across all campuses and the headquarters of the California State University and to make the disclosure categories easier to understand.

Information on the code amendment is available on the CSU's Conflict-of-Interest Code website, which can be accessed at <https://www.calstate.edu/csu->

[system/faculty-staff/systemwide-human-resources/conflict-of-interest](https://www.calstate.edu/csu-system/faculty-staff/systemwide-human-resources/conflict-of-interest).

COST TO STATE AND LOCAL AGENCIES
AND SCHOOL DISTRICTS

The adoption of the proposed amendment will not impose a cost or savings on any state agency; will not impose a cost or savings on any local agency or school district that is required to be reimbursed under Section 17561 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; and will not impose a mandate on local agencies or school districts.

AUTHORITY

The regulations are being amended pursuant to Section 89030, Education Code, and Section 87306, Government Code.

REFERENCE

Education Code Section 89030; Government Code Section 87300 *et seq.*

CONTACT

Inquiries concerning the proposed change may be directed to Andy Alvarez, Human Resources, Office of the Chancellor, California State University, 401 Golden Shore, Long Beach, California 90802-4210 (telephone: 562/951-4411). Copies of this notice and information supporting the proposed amendments, and all information upon which the proposal is based are available for viewing on our internet site <https://www.calstate.edu/csu-system/faculty-staff/systemwide-human-resources/conflict-of-interest>, or upon request of Leora D. Freedman, Vice Chancellor, Human Resources, Office of the Chancellor, 401 Golden Shore, Long Beach, California 90802-4210.

**TITLE 14. FISH AND GAME
COMMISSION**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205(c), 265, 399, 1590, 1591, 2860, 2861 and 6750 of the Fish and Game Code and sections 36725(a) and 36725(e) of the Public Resources Code and to implement, interpret or make specific sections 200, 205(c), 265, 399, 2861, 5521, 6653, 8420(e) and 8500 of said Code and sections 36700(e), 36710(e), 36725(a) and 36725(e) of the Public Resources Code, proposes to amend Section

632, Title 14, California Code of Regulations, relating to incidental take authorization for work on pre-existing artificial structures in Marine Protected Areas and Marine Managed Areas.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Implemented in 1999, the Marine Life Protection Act (MLPA) (Fish and Game Code sections 2850-2863) required California to reevaluate all existing marine protected areas (MPAs), which were at that time largely ineffective and disconnected, and design new MPAs that together function as a comprehensive statewide network. While MPAs are a subset of marine managed areas (MMAs) throughout this informative digest the more common term “MPA” is used as an umbrella to refer to all types of protected areas, and include three MPA classifications (state marine reserve [SMR], state marine conservation area [SMCA], state marine park [SMP]) and one MMA classification (state marine recreational management area [SMRMA]). Planning for California’s Statewide MPA Network occurred through a sequential series of four regional public planning processes from 2004 to 2012.

During the designation process in the north and south coast regions it was recognized that some MPAs being considered for designation had pre-existing artificial structures within them. The continued operation and maintenance of these pre-existing artificial structures would result in incidental take of marine resources, so regulations were specifically written to allow for their continued operation and maintenance as an allowed take activity within these specific MPAs.

However, following implementation the MPA Network, it was learned that not all structures were identified at the time of regional MPA planning. As such, there remain pre-existing artificial structures throughout the statewide MPA Network requiring operation and maintenance activities that conflict with their current individual MPA regulations.

To allow for continued operation, maintenance, repair, removal, and replacement of pre-existing artificial structures that existed prior to establishment of MPAs, the Department is proposing to add three new subsections to section 632: 1) define what qualifies as a pre-existing artificial structure, 2) define what is an incidental take buffer zone around pre-existing artificial structures for maintenance and repair, and 3) identification and permit or lease requirements for pre-existing artificial structure activities. In addition, the Department is proposing to designate areas within SMRs where pre-existing artificial structures occur and accompanying buffer zone will exist as SMCAs to allow for incidental take during maintenance activities. The Department is also proposing to add a sin-

gle subsection to reference when citing any MPA take violation.

The following is a summary of the proposed language change for Section 632:

- Current subsections 632(a)(1)(A) through 632(a)(1)(D) provide definitions and allowable uses for each designation type, which will be amended as follows:
 - Proposed language for SMRs will now include: “Notwithstanding the designation specified in this section, the boundaries of all state marine reserves exclude any pre-existing artificial structure when that structure is being actively maintained, repaired, or operated by the leaseholder(s), permittee(s), or their agent(s).”
 - Proposed language for SMPs, SMCAs, and SMRMAs will now include: “Take of marine resources incidental to the operation, maintenance, repair, removal, and replacement within the existing footprint of pre-existing artificial structures is allowed in [*corresponding designation*] pursuant to any required federal, state, and local permits and leases or if otherwise authorized through any applicable federal, state, and local law. This subsection does not authorize retention or possession of any marine resource taken pursuant to this subsection.”
 - Proposed language for SMCAs will also include: “Any area within a state marine reserve that is excluded from the boundaries of the state marine reserve pursuant to subsection 632(a)(1)(A)(1) is a state marine conservation area.”
- New subsection 632(a)(1)(E) will provide a single code section for wildlife officers to cite violations:
 - Proposed language is as follows: “It is unlawful to injure, damage, take, retain, or possess any living, geological, or cultural marine resource in any marine managed area except as otherwise specified in subsections 632(a)(1)(A)–(D).”
- New subsection 632(a)(13) will define what qualifies as a pre-existing artificial structure:
 - Proposed language is as follows: “For the purpose of this section, “pre-existing artificial structure” refers to any structure manufactured, created, installed, or constructed in state waters pursuant to any required federal, state, and local permits, leases, or other authorizations, including an incidental take buffer zone as defined in subsection 632(a)(14). Any structure constructed and

installed pursuant to public safety concerns as defined in subsection 632(a)(10) will be considered a pre-existing artificial structure.”

- New subsection 632(a)(14) will define what is considered an incidental take buffer zone:
 - Proposed language is as follows: “Incidental Take Buffer Zone for Pre-Existing Artificial Structures (Incidental Take Buffer Zones). For the purpose of this section, an “incidental take buffer zone” is established in the peripheral area surrounding a pre-existing artificial structure as defined in subsection 632(a)(13). The incidental take buffer zone shall include the entirety of the surrounding water column within 250 linear feet in any direction from the pre-existing artificial structure, not including areas above the mean high tide line.”
- New subsection 632(a)(15) will define identification and permit or lease requirement for pre-existing artificial structure activities:
 - Proposed language is as follows: “At all times, when conducting any operation, maintenance, repair, removal or replacement activity of a pre-existing artificial structure authorized by a federal, state, or local permit or lease, the leaseholder(s), permittee(s), and their agent(s) shall carry in their possession a valid government-issued form of identification, and a digital or printed copy of the permit or lease. The only acceptable forms of identification are driver’s licenses or other photo identification cards issued by a U.S. state, a valid photo identification card issued by a federally recognized tribe as specified in subsection 632(a)(11), or an international passport. Valid identification and a copy of the lease or permit shall be exhibited immediately upon demand by any person authorized by the department to enforce this regulation.”

Benefits of the Proposed Regulation

The proposed amendments and subsection additions to Section 632 will allow for incidental take of marine resources in discrete areas related to the operation, maintenance, repair, removal, and replacement of a pre-existing artificial structure located within an MPA, without having to amend MPA designations and take regulations within specific MPAs statewide. These proposed changes would align MPA regulations with original design intention to consider existing leases, permits, and any other legal entitlements that current regulations may impair. These proposed changes would also simplify citing process for wild-

life officers enforcing MPA regulations. This proposed regulatory amendment would not affect fishing regulations in MPAs.

Consistency and Compatibility with Existing State Regulations

The proposed regulations are consistent with regulations concerning sport and commercial fishing found in Title 14, CCR. The State Water Resources Control Board may designate State Water Quality Protection Areas and the State Park and Recreation Commission may designate SMRs, SMCAs, SMRMAs, SMPs and State Marine Cultural Preservation Areas; however, only the Commission has authority to regulate commercial and recreational fishing and any other taking of marine species in MMAs. Department staff has searched the CCR and has found no other regulations pertaining to authorized activities in marine protected areas and therefore has determined that the proposed amendments are neither inconsistent, nor incompatible, with existing state regulations.

PUBLIC PARTICIPATION

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before **November 30, 2023** at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 8, 2023.** If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in River Lodge Conference Center, 1800 River Walk Drive, Fortuna, California, which will commence at **8:30 a.m. on Tuesday August 22, 2023**, and may continue at **8:30 a.m. on Wednesday 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 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.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in San Diego, California, which will commence at **8:30 a.m. on Wednesday December 13, 2023**, and may continue at **8:30 a.m. on Thursday December 14, 2023**. The

exact location of this meeting has not yet been determined. As soon as this information is available but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and will be published on the Commission's website. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to 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. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Maurene Trotter at FGC@fgc.ca.gov or at the preceding address or phone number. **Amanda Van Diggelen, Environmental Scientist, Department of Fish and Wildlife, R7RegionalMgr@wildlife.ca.gov and/or (562) 522-390, has been designated to respond to questions on the substance of the proposed regulations.**

AVAILABILITY OF MODIFIED TEXT

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

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

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

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed amendments provide existing lease holders permission for incidental take of marine resources in accordance with operation, maintenance, and repair of their pre-existing structure within an MPA, pursuant to other required federal, state, and local permits. Absent the proposed amendments, pre-existing artificial structures may not have been able to fully sustain their original uses, and more quickly depreciate. This regulatory action minimizes an impediment to the operation, maintenance, and repair of pre-existing structures. It does not impose nondiscretionary compliance costs on affected leaseholders (or parties) and has no effect on any costs incurred by businesses nor other agency’s permitting processes. The ability of California businesses to compete with businesses in other states is not affected as the affected businesses are specific to their California location.

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

The Commission does not anticipate any direct impacts on the elimination of jobs or the elimination of existing businesses. While the proposed amendment will not increase or decrease recreational or commercial opportunities, it has the potential to spur the creation of new businesses and jobs or the expansion of existing businesses related to the maintenance and repair of pre-existing artificial structures within MPAs.

The Commission anticipates potential indirect benefits to the health and welfare of California residents, worker safety, and the State’s environment

as this action removes an impediment to the provision of necessary maintenance and repairs that could lessen potential harm to the public, workers, and to the environment.

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

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations are anticipated to minimize the potential for less cost-effective means to handle potential limitations on operations that lease holders may have encountered in the future.

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

None.

(e) **Nondiscretionary Costs/Savings to Local Agencies:**

None.

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

None.

(g) **Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:**

None.

(h) **Effect on Housing Costs:**

None.

EFFECT ON SMALL BUSINESS

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

CONSIDERATION OF ALTERNATIVES

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

TITLE 16. LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE

INFORMATIVE DIGEST

EXAMINATION TRANSITION PLAN, § 2614

NOTICE IS HEREBY GIVEN that the California Architects Board (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

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

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under *Contact Person* in this Notice, must be received by the Board at its office not later than **5:00 p.m. on Tuesday, September 12, 2023**, or must be received by the Board at the hearing, should one be scheduled.

AVAILABILITY OF MODIFICATIONS

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

Authority and Reference: Pursuant to the authority vested by section 5630 of the Business and Professions Code (BPC), the Board is considering amending article 1 of division 26 of title 16 of the California Code of Regulations (CCR).¹ This regulatory proposal will interpret and make specific the language in BPC sections 5650 and 5651, concerning the Examination Transition Plan.

¹ All CCR references are to title 16 unless otherwise noted.

As a result of a legislative reorganization, the Landscape Architects Technical Committee (LATC), established on January 1, 1998, replaced the former Board of Landscape Architects and was placed under the purview of the California Architects Board (Board). BPC section 5630 authorizes the Board to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry out the provisions under the Landscape Architects Practice Act (Chapter 3.5 of Division 3 of the BPC). BPC section 5650 describes the qualifications for eligibility for the licensing examination. BPC section 5651 requires that the Board administer a written examination that ascertains the professional qualifications of all applicants for licenses to practice landscape architecture. BPC section 5652 authorizes the LATC to issue a landscape architecture license upon successful completion of the licensing examination.

The Council of Landscape Architectural Registration Boards (CLARB) is the national test vendor that supplies the Landscape Architect Registration Examination (LARE), the licensing examination, to the LATC. In December 2023, CLARB will implement modest structural changes to the LARE to better align the content of the LARE with current practice. In January 2023, CLARB announced it would hold an additional LARE administration in October 2023 to allow candidates a final attempt to pass the current LARE prior to implementation of the new LARE format in December 2023.

CCR section 2614 was amended on April 1, 2023 to update the examination transition plan to grant examination credit to candidates who passed sections of the previously administered LARE after the new LARE is administered starting in December of 2023. This proposal would amend CCR section 2614(g)(2) to move the examination transition date forward from August 2023 to November 2023. This change will ensure that California candidates receive appropriate examination credit for the recently announced additional LARE administration scheduled for October 2023.

The Board is proposing the following changes:

Amend CCR Section 2614—Examination Transition Plan

CCR section 2614 is being amended to move the examination transition date forward from August 2023 to November 2023 to ensure candidates who passed sections of previously administered landscape architect licensing examinations receive examination credit for the LARE that will be administered starting in December of 2023. The amendments are made to subsection (g)(2) and in the heading of the table under subsection (g)(2).

POLICY STATEMENT OVERVIEW/
ANTICIPATED BENEFITS OF PROPOSAL

The Board seeks to correct the examination transition plan to ensure that California candidates receive appropriate examination credit for the recently announced additional LARE administration scheduled for October 2023.

CONSISTENCY AND COMPATIBILITY
WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because it only affects candidates for examination and licensure.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not have a significant adverse impact on small businesses because it only affects candidates for examination and licensure.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs

or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it only affects candidates for examination and licensure.

Benefits of Regulation:

The Board has determined that this regulatory proposal may benefit the public health, safety, and welfare by facilitating the process by which candidates for licensure determine they have taken and successfully passed the required sections of the updated examinations for licensure. This regulatory proposal will not impact worker safety or the state's environment, as it does not involve worker safety or the state's environment.

This regulatory proposal updates the plan for the transfer of previously earned LARE credit to the new LARE that will be administered starting in December of 2023. The new LARE will add uniformity to test practices, increase the reliability of test results, increase relevance to modern practice, and increase accessibility for candidates to take the exam.

The proposed language extends the examination transition date to give examination credit effective with the first administration of the new LARE format in December 2023.

CONSIDERATION OF ALTERNATIVES

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

To date, the following options were considered by the Board and rejected:

The Board considered keeping the status quo; however, this alternative was rejected because this would not address how and if candidates who take the LARE in the recently announced October 2023 administration would be able to receive credit for sections passed under the previously administered LARE after the new LARE format is administered.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF
REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, the initial statement of reasons, and the information upon which the proposal is based, may be obtained upon request from the California Architects Board, Landscape Architects Technical Committee at 2420 Del Paso Road, Suite 105, Sacramento, California 95834 or by telephoning the Contact Person listed below.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

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

Name: Kourtney Fontes
Address: 2420 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone Number: (916) 575-7233
Fax Number: (916) 575-7283
Email Address: kourtney.fontes@dca.ca.gov

The backup contact person is:

Name: Stacy Townsend
Address: 2420 Del Paso Road, Suite 105
Sacramento, CA 95834
Telephone Number: (916) 575-7235
Fax Number: (916) 575-7283
Email Address: latc@dca.ca.gov

Website Access: Materials regarding this proposal can be found on LATC's website under *Proposed Regulation* (latc.ca.gov/news/laws/proposed_regulation).

TITLE 16. BUREAU OF AUTOMOTIVE
REPAIR

AUTOMOTIVE REPAIR DEALER
REGISTRATION RENEWAL
REQUIREMENTS

NOTICE IS HEREBY GIVEN that the Bureau of Automotive Repair (Bureau) is proposing to take the rulemaking action described below under the heading Informative Digest, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be received by the Bureau at its office no later than **5:00 p.m., Tuesday, September 12, 2023**, or must be received by the Bureau at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) sections 9882 and 9884, and to implement, interpret and make specific BPC sections 152.5, 152.6, 9884.3, and 9884.4, the Bureau is proposing to adopt the following changes to California Code of Regulations Title 16, Division 33, Chapter 1, Article 1.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The Department of Consumer Affairs (DCA), Bureau of Automotive Repair (Bureau), is the state agency charged with licensing automotive repair dealers (ARDs), Smog Check stations, STAR stations, brake and lamp stations, and their respective inspectors, repair technicians, and adjusters.

Before January 1, 2022, Business and Professions Code section 9884 (BPC) required ARDs to register with the Director (of DCA) on forms prescribed by the Director that contained sufficient information to identify the automotive repair dealer, including, among other things, the address of each location and the dealer's retail seller's permit number if a permit is required by law. Assembly Bill (AB) 471 (Low, Chapter 372, Statutes of 2021) amended BPC section 9884 to additionally require the forms to include, among other things, the automotive repair dealer's telephone number, email address, and motor vehicle license plate number if engaged in mobile automotive repairs.

In this rulemaking proposal, the Bureau proposes to: (1) amend existing section 3351.2 of Article 1 of Chapter 1 of Division 33 of Title 16 of the CCR as follows:

- Section 3351.2 will outline that when a registrant is renewing their automotive repair dealer registration, the registrant shall inform the Bureau of any changes to information required in section 3351, Registration of Automotive Repair Dealers, as well as any additionally required information to the extent that it has not already been provided.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

By requiring registrants to renew their license pursuant to the requirements of this section the Bureau ensures complete collection of required information, including the additional information resulting from the amendment of BPC 9884. Requiring registrants to update any changes to information upon renewal ensures the Bureau keeps updated records, thus ensuring more efficient and effective communication with ARD applications and enhancing Bureau efficiency in processing applications.

Additionally, the language will give the Bureau the ability to collect the additional information required under BPC section 9884 and allow the Bureau to process renewals more efficiently with current and complete information.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The Bureau has made the following determinations: ***Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:***

There is no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency. This proposal of requiring additional information from registrant prior to renewal of a license does cause any considerable additional workload or costs resulting from the proposed regulations and the minor time added to a review of the renewal package or the provided information is merely costs of implementation that are a result of current law.

Nondiscretionary Costs/Savings to Local Agencies: None.

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

Mandate Imposed on Local Agencies or School Districts: None.

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

Business Impact:

The Bureau has made an initial determination the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including small businesses and the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

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

Business Reporting Requirements:

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

Effect on Housing Costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/ Businesses

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation

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

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Bureau. The proposed regulatory action merely requests additional information be provided to the Bureau consistent with AB 471.

EFFECT ON SMALL BUSINESS

This regulatory proposal does not affect small businesses because it is not relevant to small businesses; it only informs applicants of what will be requested on the application. Although small businesses owned by licensees of the Bureau may be impacted, the Bureau does not maintain specific data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted precisely. Additionally, any effect is minimal given that the registrant is simply provided some additional information as required under AB 471 and should not be significantly time consuming given such information is readily available to the registrant.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements orally or in writing relevant to the above determinations at the above-mentioned hearing.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau of Automotive Repair, 10949 North Mather Boulevard, Rancho Cordova, California 95670.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

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

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

CONTACT PERSON

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

Kayla Shelton
 10949 North Mather Blvd.
 Bureau of Automotive Repair
 Rancho Cordova, CA 95670
 Telephone: (916) 403-0307
 Email: kayla.shelton@dca.ca.gov

The backup contact person is:

Mathew Gibson
Bureau of Automotive Repair
10949 North Mather Blvd.
Rancho Cordova, CA 95670
Telephone: (916) 403-8060
Email: Mathew.Gibson@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at https://www.bar.ca.gov/About/BAR/Regulatory_Actions.aspx.

TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

CONTINUING EDUCATION REQUIREMENTS FOR HEARING AID DISPENSERS

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (hereafter Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be **received by the Board at its office no later than 5:00 p.m., Tuesday, September 12, 2023**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2531.06 and 2531.95 of the Business and Professions Code (BPC), and to implement, interpret, or make specific

BPC section 2538.18, the Board is considering amending sections 1399.140, 1399.140.1, and 1399.144 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is a state agency vested with the authority to license, regulate, and discipline within the practices of speech-language pathology, audiology, and hearing aid dispensing in accordance with the BPC sections 2530.1 and 2531.02. The Board's mandate and its mission is to protect the public by regulating approximately 35,000 speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispensers who are licensed and registered with the Board and by disciplining licensees or registrants who violate the law. In order to protect the public, the Board establishes requirements for continuing education (CE) to assure the public of professional competence for licensees who sell or fit hearing aids (BPC section 2538.18.)

Existing law, under BPC sections 2531.06 and 2531.95, authorizes the Board to adopt, amend, or repeal regulations that may be necessary to execute any provisions of the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act. The Board intends to use its authority to amend regulations regarding CE requirements for hearing aid dispensers in 16 CCR sections 1399.140, 1399.140.1, and 1399.144.

There is no existing federal regulation or statute comparable to this proposed regulation.

The CE requirements for hearing aid dispensers are intended to protect consumers by ensuring licensees continue to improve their professional learning to maintain ethical and competent practice. The Board establishes requirements regarding the courses of study licensees can pursue to inform themselves of current practices related to the fitting of hearing aids after receiving their license pursuant to BPC section 2538.18. Because experienced dispensers may be sufficiently informed on the current practices related to direct patient/client care due to having to renew annually, the Board found it reasonable to allow licensees greater flexibility in completing their CE hours. The proposed changes will increase the number of hours that can be obtained in indirect client care or related courses, permit other opportunities to fulfil CE requirements, and clarify current regulations by making CE requirements consistent with the Board's CE audit process and existing professional learning requirements this Board has for licensees in the practices of

speech–language pathology and audiology under Article 11 of Division 13.4.

The following is a summary of the proposed changes the Board seeks to make:

Amend Section 1399.140 of Article 7 of Division 13.3 of Title 16 of the CCR

This section is amended to increase access to different CE opportunities by increasing the number of hours that can be obtained in related or indirect client care courses; permitting courses with content related to hearing aid equipment, devices, or other products; teaching a course, or service to the Board. The changes also clarify current regulations by making CE requirements consistent with the Board’s CE audit process and existing professional learning requirements consistent across all types of licenses and registrations the Board regulates. These changes give licensees the opportunity to complete their required CE hours via different ways and promotes transparency in the Board’s CE renewal process.

Amend Section 1399.140.1 of Article 7 of Division 13.3 of Title 16 of the CCR

This section is amended to permit licensees to fulfill some of the required CE by taking CE courses related to hearing aid equipment, devices, or other products. These changes give licensees a greater ability to complete some of their required CE in different ways.

Amend Section 1399.144 of Article 7 of Division 13.3 of Title 16 of the CCR

This section is amended to clarify the exemptions from CE requirements for reasons of health, military service, or undue hardship. These changes promote transparency in the Board’s CE renewal process and make professional learning requirements consistent across all types of licenses and registrations the Board regulates.

Anticipated Benefits of Proposal

The Board is aware of benefits that may occur for businesses or individuals that comply with this regulation over its lifetime. Because the Board’s authority is over licensees and not over all businesses within the industries the Board regulates, the Board cannot provide any estimates for the total number or type of businesses (e.g., private, nonprofit, public, or small business) that may be impacted by this proposed regulation. The Board anticipates over 1,300 licensees in the practice of hearing aid dispensing will be impacted by this proposed regulation.

The Board anticipates licensees will benefit from greater access to different ways to earn CE hours with courses presenting different course content and by earning CE hours for service to the Board or teaching a course. The public will benefit from enhanced services because their licensed dispensers will have increased knowledge on the equipment, devices, or oth-

er products their patients/clients use to optimize their hearing while in different listening environments. These types of benefits are unquantifiable and cannot be easily measured or estimated. Therefore, the Board cannot provide information on possible statewide benefits that may occur from this regulation over its lifetime.

Evaluation of Consistency and Compatibility with Existing State Regulations

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

INCORPORATION BY REFERENCE

None.

DISCLOSURES REGARDING THIS PROPOSED ACTION

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate Imposed on Local Agencies or School Districts: None.

FISCAL IMPACT ESTIMATES

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

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

The regulations do not result in a fiscal impact to the state. The Board does not anticipate additional workload or costs resulting from the proposed regulations.

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

Significant Effect on Housing Costs: None.

BUSINESS IMPACT ESTIMATES

The Board has made the initial determination that this proposed regulatory action will not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the Board is clarifying and broadening current regulatory requirements by making CE requirements for hearing aid dispensers consistent with the Board’s audit process and the professional learning requirements across all types of licenses and registrations the Board regulates and increase licensee access to different ways to earn CE hours.

The Board is not aware of costs that businesses or individuals may incur to comply with this regulation over its lifetime nor of any other economic costs. The Board is also not aware of any effect this proposed regulatory action will have on housing costs or impact to local agencies or federal funding to the State.

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

Impact on Jobs/Businesses

This Board has determined that this regulatory proposal will have the following effects:

It will not create new businesses or jobs within the State of California because the proposed regulatory action is related to CE requirements for license renewal, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will not eliminate existing businesses or jobs because the proposed regulatory action is related to CE requirements for license renewal, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will not affect the expansion of businesses within the State of California because the proposed regulatory action is related to CE requirements for license renewal, and does not enhance or inhibit industry growth within the industries the Board regulates.

Benefits of Regulation:

This Board has determined that this regulatory proposal will have the following effects:

It will positively affect the health and welfare of California residents. The public will benefit from enhanced dispensing services because their licensed hearing aid dispensers will have increased knowledge on the equipment, devices, or other products their patients/clients use to optimize their hearing while in different listening environments. Licensees will benefit from access to different ways to earn CE hours such as by taking courses with different content and earning CE hours for service to the Board or by teaching a course.

It will not affect worker safety because the proposed regulatory action is related to CE requirements for license renewal, and does not concern or impact worker safety.

It will not affect the state's environment because the proposed regulatory action is related to CE requirements for license renewal, and does not concern or impact the state's environment.

Cost Impact on Representative Private Person or Business

The Board is not aware of any cost impacts that a representative private person or business would nec-

essarily incur in reasonable compliance with the proposed action.

Business Reporting Requirements

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

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. This initial determination is based on the fact that the Board is clarifying and broadening current regulatory requirements by making CE requirements for hearing aid dispensers consistent with the Board's audit process and the professional learning requirements consistent across all types of licenses and registrations the Board regulates, and increase access to different ways to earn CE hours.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Board in writing relevant to the above determinations 1601 Response Road, Suite 260 Sacramento, CA 95815 during the written comment period, or at the hearing if one is scheduled or requested.

**AVAILABILITY OF STATEMENT OF
REASONS AND RULEMAKING FILE**

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1601 Response Road, Suite 260 Sacramento, CA 95815.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

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

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

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

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

CONTACT PERSONS

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

Name: Maria Liranzo; Legislation, Regulations,
and Budget Analyst
Address: Speech–Language Pathology and
Audiology and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone Number: (916) 287–7915
Email Address:
SpeechandHearingRegulations@dca.ca.gov

The backup contact person is:

Name: Cherise Burns, Assistant Executive Officer
Address: Speech–Language Pathology and
Audiology and Hearing Aid Dispensers Board
1601 Response Road, Suite 260
Sacramento, CA 95815
Telephone Number: (916) 287–7915
Email Address:
SpeechandHearingRegulations@dca.ca.gov

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board’s website at https://www.speechandhearing.ca.gov/board_activity/lawsregs/proposed_regulations.shtml.

TITLE 16. DENTAL BOARD

**AB 107: TEMPORARY
LICENSES FOR MILITARY
SPOUSES OR PARTNERS**

NOTICE IS HEREBY GIVEN that the Dental Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview listed below, after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present statements or arguments relevant to the action proposed in writing.

WRITTEN COMMENTS

Written comments, including those sent by mail, facsimile, or e–mail to the addresses listed under Contact Person in this Notice, must be *received* by the Board at its office no later than by **5:00 p.m., September 12, 2023** or must be received by the Board at the hearing, should one be scheduled.

PUBLIC HEARING

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

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full

text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Business and Professions Code (BPC) sections 1614, and to implement, interpret or make specific BPC sections 480, 115.6, 1611, 1632, 1638, 1638.1, 1646, 1646.1, 1646.2, 1646.9, 1647.1, 1647.2, 1647.3, 1647.18, 1647.19, 1647.30, 1647.31, 1749.1, 1750.2, 1750.4, 1752.1 and 1753, the Board is considering making changes to Article 2 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is responsible for licensing and regulating dental professionals in California. The Board licenses an estimated 89,000 dental professionals, including approximately 43,500 licensed dentists; 44,500 registered dental assistants (RDAs); and 1,700 registered dental assistants in extended functions (RDAEFs). The Board is also responsible for setting the duties and functions of an estimated 50,000 unlicensed dental assistants.

Existing law at Business and Professions Code (BPC) section 115.6 requires seven other boards within the Department of Consumer Affairs to, after appropriate investigation, issue temporary licenses to an applicant, if the applicant meets specified requirements, including, among other things, that 1) the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders; 2) the applicant holds a current, active, and unrestricted license in good standing that confers upon the applicant the authority to practice, in another state, district, or territory of the United States, the profession or vocation for which the applicant seeks a temporary license; and 3) the applicant submits a signed affidavit attesting to meeting the requirements of the temporary license.

Effective July 1, 2023, under the provisions of Assembly Bill 107 (“AB-107” — Stats. 2021, Chapter 693) Section 115.6 is amended to require all boards in the Department, including this Board, to issue temporary licenses upon meeting the requirements specified in Section 115.6 (and as noted above), unless the board already has a process in place to issue expedited,

temporary authorizations to practice to out-of-state licensed applicants under similar criteria. Since this Board does not currently have such a process, this proposal would implement section 115.6 of the Business and Professions Code (BPC) as enacted by AB 107 and make specific the requirements for temporary licensure by the Board for qualified spouses or domestic partners of military service members stationed in California. The regulations proposed at Title 16, California Code of Regulations (CCR) Section 1006 address the requirements necessary for the Board’s issuance of a temporary licensure to practice as a dentist or dental auxiliary or to practice with an affiliated permit, including the following:

- (1) definitions for terms used in BPC section 115.6 and this proposed regulation,
- (2) that the applicant shall meet all requirements of this proposed section and BPC section 115.6 to be eligible for a temporary license,
- (3) that submission of a completed application is required and specifies the required content of a completed application, as more fully described below,
- (4) that each applicant for a temporary license as a dentist shall successfully complete a law and ethics examination as specified and prescribes the procedure for applying for and taking the examination,
- (5) fingerprinting requirements that must be met prior to issuance of a temporary license,
- (6) the criteria the Board must use when determining when to issue a temporary license,
- (7) the criteria an applicant must meet when seeking a temporary license from the Board to practice under an affiliated permit, as defined; and,
- (8) that this regulation section shall become effective July 1, 2023 (in accordance with the operative date of the amendments to BPC section 115.6), or at the next available quarterly effective date following the adoption of these regulations with the Secretary of State if adopted after July 1, 2023.

ANTICIPATED BENEFITS OF PROPOSED REGULATIONS

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

The proposed regulations would provide a simplified application process to help reduce the time required for qualified spouses or domestic partners of military service members newly stationed in California to begin to practice the professions for which they were licensed in their original licensing jurisdiction. By granting a temporary license through these sim-

plified processes, these license holders could practice while they are completing their application requirements for permanent licensure more quickly, if they so choose. While the temporary licenses have fewer requirements than permanent licenses, the Board retains the ability to deny the application or terminate the temporary license should there be grounds to do so.

Applicants for temporary licensure as dentists must successfully complete an examination on California law and ethics prior to receiving temporary licensure. These safeguards will support the consumer protection mission of the Board while facilitating a smoother transition for professionals licensed in other states to assume comparable duties and responsibilities as professionals with California licenses. As a result, this proposal would expedite and temporarily increase the number of qualified dentists, dental auxiliaries, and specified physicians and surgeons available to provide dental services to California residents.

This regulatory proposal does not affect worker safety or the State's environment.

DETERMINATION OF INCONSISTENCY/
INCOMPATIBILITY WITH EXISTING
STATE REGULATION(S)

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

DISCLOSURES REGARDING THIS
PROPOSED ACTION

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulations are anticipated to result in a fiscal impact to the Board, which will be absorbed within existing resources. Based on historical licensing data the Board anticipates receiving six applications for temporary licensure per year.

The Board requires approximately 2.25 hours to process an application with estimated workload costs of \$150 per application.

The Board will also incur \$15 per application in materials and postage costs, which will result to total costs of \$165 per applicant and \$990 to issue six licenses in year—one of implementation and up to \$11,217 over a ten-year period (this assumes a 3 percent annual increase in workload costs).

The Board will ensure compliance with the proposed regulations through its existing licensing and enforcement activities and does not anticipate increased workload costs resulting from this proposal.

In the event the Board determines a licensee to be out of compliance with the regulations and subject to formal discipline, the Board estimates enforcement-related costs of \$5,000 per case.

Current law does not authorize the Board to charge license fees related to this proposal. As a result, no license fee revenues will be collected.

Applicants will be required to complete a fingerprint background check with estimated costs of \$75, of which \$32 is passed on the Department of Justice (DOJ). As a result, the DOJ is projected to receive \$192 in fingerprint revenues per year and up to \$1,920 over a ten-year period.

Cost or Savings in Federal Funding to the State: None. The regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Significant Effect on Housing Costs: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, specifically dentistry, including the ability of California businesses to compete with businesses in other states. This initial determination is based upon the following facts.

The proposed regulations provide for the issuance of a temporary license status to military spouses/partners and will provide additional, qualified licensees for businesses to employ. The Board estimates up to six additional individuals will be granted licensure per year.

These individuals will be required to take and pass a fingerprint criminal history background check. As a result, businesses providing these services are projected to have a small increase in revenues.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are as follows:

An applicant would need to pay for the fingerprints the Board would request to conduct a criminal records check. This would be approximately \$75 per applicant, with \$49 going to the DOJ and the Federal Bureau of Investigation. The remaining \$26 goes to the business-

es that take the fingerprints and send them to the agencies for the criminal records check. Applicants for temporary dental licensure would also need to pay the testing vendor to take the California Law and Ethics Examination. That fee is currently \$25 and addresses the vendor's costs.

Based on the Board estimate of six applications per year, the maximum total costs to applicants for one year would be \$600, and over 10 years the costs would be \$6,000. As not all applicants would have to take the Law and Ethics Examination, this cost estimate is a maximum estimate.

Effect on Small Business:

While the Board does not have, nor does it maintain, data to determine if any of its licensees (dentists) are a "small business," as defined in Government Code section 11342.610, the Board has made an initial determination that the proposed regulatory action will not affect small businesses. Although the proposed regulation will directly affect businesses statewide, which may include small businesses, the Board does not anticipate any adverse economic impact as described in the Business Impact Estimate section listed above.

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS**

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Based on historical licensing data, the Board anticipates receiving on average six applications for temporary licensure (including affiliated permits) per year.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will facilitate the practice of qualified dentists, dental auxiliaries and others seeking to practice under an affiliated permit who are licensed in other jurisdictions as they wait for the processing of their applications for California licensure. Providing temporary licensure would minimize the time that otherwise qualified professionals would be barred from practicing due to having to move to California due to the military posting of their spouse or domestic partner.

This regulatory proposal will have no impact on worker safety because it does not involve worker safety. This regulatory proposal will have no impact on the state's environment because it is not relevant to the

State's environment. This proposal relates to standards for qualified dentists, physicians and dental auxiliaries seeking temporary licensure in California.

Business Reporting Requirements

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

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally if a hearing is requested, or in writing relevant to the above determinations as described in the "Written Comments" section of this notice.

**INITIAL STATEMENT OF REASONS AND
RULEMAKING FILE INFORMATION**

The Board has compiled a record for this regulatory action, which includes an initial statement of the reasons (ISOR) for the proposed action, proposed regulatory text, and has available all the information upon which the proposal is based, which may be obtained from the contact persons identified in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written

request to the contact persons named below or by accessing the website listed below.

CONTACT PERSON

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

Name: David Bruggeman, Staff Services
Manager I
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone Number: (916) 263-2027
Fax Number: (916) 263-2140
Email Address:
Lawrence.Bruggeman@dca.ca.gov

The backup contact person is:

Name: Christy Bell, Assistant Executive Officer
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone Number: (916) 263-2187
Fax Number: (916) 263-2140
Email Address: Christy.Bell@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at the Board's Website at https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml.

TITLE 16. PHYSICIAN ASSISTANT BOARD

SB 697 IMPLEMENTATION

The Physician Assistant Board (Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request, addressed to the individuals listed under "Contact Person" in this notice, for a public hearing from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by mail, facsimile (FAX), or e-mail to the addresses listed under "Contact Persons" in this Notice. The written comment period closes at **5:00 p.m. on Tuesday, September 12, 2023**. The Board will consider only comments received at the Board's office by that time, or comments received at the hearing if the Board holds a hearing.

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) section 3510 authorizes the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific the provisions of Senate Bill 697 (Caballero, Chapter 707, Statutes of 2019), and the Board is seeking to amend section 1399.502 of Article 1 and sections 1399.540, 1399.541, and 1399.545 of Article 4 of Division 13.8 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board licenses, regulates, and investigates complaints against licensed physician assistants (PAs) in California, totaling approximately 16,378 licensees. It is the Board's duty to enforce and administer the Physician Assistant Practice Act (Chapter 7.7 (commencing with section 3500) of Division 2 of the BPC) (Practice Act). The Board is authorized to establish necessary rules and regulations for the enforcement of the Practice Act and the laws subject to its jurisdiction (BPC section 3510).

Senate Bill (SB) 697 (Caballero, Chapter 707, Statutes of 2019) became effective on January 1, 2020 and made numerous changes to the Practice Act, which provides for licensure and regulation of PAs by the Board. Generally, the changes remove requirements that the medical record identify the responsible supervising physician and surgeon (physician), remove requirements that the physician be physically available to the PA for consultation, remove requirements for review and countersignature of patient medical records, and remove requirements that written guidelines for adequate supervision be established. The law now authorizes a PA to perform medical services authorized by the Practice Act if certain requirements are met, including that the medical services are rendered pursuant to a practice agreement, as defined, and the PA is competent to perform the medical services.

Certain Board regulations that were based on the Practice Act before the changes made by SB 697 now conflict with the law. The Practice Act now requires that a practice agreement between a PA and a physician meet specified requirements, such as that a practice agreement must contain policies and procedures to ensure adequate supervision of the PA, which should cover appropriate communication, availability, consultations, and referrals between a physician and the PA in the provision of services. In addition, a practice agreement must establish policies and procedures to identify the physician who is supervising a PA rendering services in a general acute care hospital.

The prior law authorized a PA to administer or provide medication to a patient and transmit orally or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device, under the supervision of a physician, subject to specified requirements. The law now authorizes a PA to furnish or order a drug or device without the supervision of a physician, subject to specified requirements, such as the PA's educational preparation, that clinical competency has been established and maintained, and that the physician shall be available by telephone or other electronic communication method at the time the PA examines the patient. The changes made to the Practice Act now authorize a PA to furnish or order Schedule II or III controlled substances in accordance with the practice agreement or a patient-specific order approved by the treating or supervising physician. The revisions to the Practice Act require completion of a controlled substances course by or before the PA's next license renewal, if the PA is authorized by a practice agreement to furnish Schedule II controlled substances and if the PA has a United States Drug Enforcement Administration registration.

In addition, the new law provides that any reference to a "delegation of services agreement" in any other law now means "practice agreement" as defined. The Practice Act now provides that supervision does not require the supervising physician to be physically present but requires adequate supervision as agreed to in the practice agreement and requires that the physician be available by telephone or other electronic communication method at the time a PA examines a patient. However, the Practice Act prohibits that requirement from being construed as prohibiting the Board from requiring the physical presence of a physician as a term or condition of a PA's reinstatement, probation, or the imposition of discipline.

Anticipated Benefits of the Proposed Regulation:

The four regulation sections that are the subject of this proposed regulatory action now conflict with the law since the passage of SB 697. The proposed amendments bring these four regulation sections up-

to-date and into compliance with SB 697. This is accomplished by amending 16 CCR section 1399.502 to clarify that any reference to a "delegation of services agreement" in any other section of the PA regulations means "practice agreement," as defined in BPC section 3501(k). The amendments also clarify the reference to "supervision" as defined in BPC section 3501(f), to include that supervision does not require the supervising physician to be physically present but does require adequate supervision as agreed to in the practice agreement and does require that the physician be available by telephone or other electronic communication method at the time the PA examines the patient.

The proposed amendments to 16 CCR section 1399.540 make the section comply with SB 697 by updating any reference to the supervision agreement from "delegation of services agreement" to "practice agreement." The amendments also bring the section into compliance with SB 697 by recognizing that a PA is authorized to practice and no longer delegated. The amendments further reflect the existing standard of care for physicians and further the legislative intent of SB 697 by recognizing that a PA may consult with or refer to a provider other than a physician when appropriate under the circumstances.

The proposed amendments to 16 CCR section 1399.541 make the section comply with SB 697 by deleting a reference to the word "agent," as BPC section 3502.3 states that a practice agreement "may" designate a PA as an agent of the physician, but it is not required. The amendments further clarify that a supervising physician must be immediately available to the PA if needed, because the physical presence of the supervising physician during the time a PA is delivering medical services is not required.

The proposed amendments to 16 CCR section 1399.545 remove existing regulatory requirements that conflict with SB 697 and amend the remaining requirements to conform with the changes. The amendments reflect the removal of the required written guidelines including countersignature and dating of all medical records written by the PA, pursuant to BPC section 3502(c). The amendments also replace the term "autonomously" with the phrase "without supervision" to better capture the scope of PA practice.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE
PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The proposed regulations do not result in a fiscal impact to the state because the amendments align the Board’s regulations with current law and/or with existing practice.

The proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency.

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None. The regulations do not result in a fiscal impact to the state. The amendments align the Board’s regulations with current law and existing practice.

Cost to any local agency or school district for which Government Code sections 17500 through 17630 requires reimbursement: None.

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

Cost or savings in federal funding to the state: None. There are no costs or savings in federal funding to the state.

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

Significant effect on housing costs: None.

Business Impact:

The Board has determined that the proposed regulation will not have any significant statewide adverse economic impact directly affecting businesses, including the ability to compete.

Effect on Small Business:

The Board has determined that the proposed regulation would not affect small businesses because the proposal only replaces any reference to “delegation of services agreement” with “practice agreement,” removes repeated terms already defined in statute, clarifies the standard of care and legislative intent of SB 697 by recognizing that a PA may consult with or refer to a provider other than a physician where appropriate under the circumstances and removes other existing regulatory requirements that conflict with SB 697.

RESULTS OF ECONOMIC IMPACT
ASSESSMENT/ANALYSIS

This regulatory proposal will have the following effects:

It will not create or eliminate jobs within the state of California because the proposal only replaces any reference to “delegation of services agreement” with “practice agreement,” removes repeated terms already defined in statute, clarifies the standard of care and legislative intent of SB 697 by recognizing that a PA may consult with or refer to a provider other than a physician where appropriate under the circumstances and removes other existing regulatory requirements that conflict with SB 697.

It will not create new businesses or eliminate existing businesses within the state of California because the proposal only replaces any reference to “delegation of services agreement” with “practice agreement,” removes repeated terms already defined in statute, clarifies the standard of care and legislative intent of SB 697 by recognizing that a PA may consult with or refer to a provider other than a physician where appropriate under the circumstances and removes other existing regulatory requirements that conflict with SB 697.

It will not affect the expansion of businesses currently doing business within the state of California because the proposal only replaces any reference to “delegation of services agreement” with “practice agreement,” removes repeated terms already defined in statute without justification for the duplication, clarifies the standard of care and legislative intent of SB 697 by recognizing that a PA may consult with or refer to a provider other than a physician where appropriate under the circumstances and removes other existing regulatory requirements that conflict with SB 697.

It will benefit the health and welfare of California residents to align the Board’s regulations with the changes to statute resulting from the passage of SB 697. By adopting this regulation, the Board seeks to support PAs who serve an increasingly diverse public, and to uphold the Board’s highest priority, which is to protect consumers.

This regulatory proposal will not affect worker safety or the state’s environment because aligning the Board’s regulations with the statutory changes caused by the passage of SB 697 does not impact worker safety or involve the state’s environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative to the regulatory proposal that was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective or less burdensome to affected private persons than the proposed regulation, or would be more cost-effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full

compliance with the law being implemented or made specific. All recommendations provided during the rulemaking process will be considered by the Board.

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Name: Jasmine Dhillon
Address: 2005 Evergreen Street, Suite 2250
Sacramento, CA 95815–3893
Telephone Number: (279) 666–2838
Fax Number: (916) 263–2671
Email Address: jasmine.dhillon@dca.ca.gov

The backup contact person is:

Name: Kristy Voong
Address: 2005 Evergreen Street, Suite 2250
Sacramento, CA 95815–3893
Telephone Number: (916) 561–8787
Fax Number: (916) 263–2671
Email Address: kristy.voong@dca.ca.gov

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 Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and other information on which the rulemaking is based.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board, upon its own motion or at the request of any interested party, may adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the originally proposed text. With the exception of technical or grammatical changes, the full modified text (with the changes clearly indicated) will be available to the public for review and written comment on the modifications for at least 15 days prior to its adoption. Please send requests for copies of any modifications to the proposed regula-

tions to the attention of the Contact Person designated at the address indicated above. Modifications will also be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation with additions in underline and deletions in strikeout can be accessed through our website at: <https://pab.ca.gov/lawsregs/regulations.shtml>.

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

PROPOSED ADOPTION OF LEAD-ACID BATTERY FEES, SECTION 3210, DEFINITIONS, SECTION 3220, MANUFACTURER BATTERY FEE, SECTION 3230, CALIFORNIA BATTERY FEE, AND SECTION 3240, WRITTEN CERTIFICATION

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority in Health and Safety Code (HSC) section 25215.74, proposes to adopt chapter 8.2, Lead-Acid Battery Fees, and sections (Regulations or Regs.) 3210, Definitions, 3220, Manufacturer Battery Fee, 3230, California Battery Fee, and 3240, Written Certification, in chapter 8.2 of division 2 of title 18 of the California Code of Regulations. The proposed chapter and regulations implement, interpret, and make specific the Lead-Acid Battery Recycling Act of 2016 (Battery Recycling Act) (HSC, § 25215 et seq.) enacted by Assembly Bill Number (AB) 2153 (Stats. 2016, chapter 666) and amended by AB 142 (Stats. 2019, chapter 860).

AUTHORITY

HSC section 25215.74

REFERENCE

Regulation 3210: HSC sections 25215.1, 25215.25, and 25215.35, and Revenue and Taxation Code (RTC) section 6043.1.

Regulation 3220: HSC sections 25215.1, 25215.3, 25215.35, 25215.45, and 25215.48, and RTC section 55302.

Regulation 3230: HSC sections 25215.1, 25215.25, and 25215.45, and RTC section 55302.

Regulation 3240: HSC sections 25215.25 and 25215.35

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

AB 2153 added the Battery Recycling Act to chapter 6.5 of division 20 of the HSC. As relevant here, AB 2153 added HSC section 25215.25 to impose a California battery fee (CBF) on persons purchasing replacement lead–acid batteries from a dealer, on and after April 1, 2017. AB 2153 also added HSC section 25215.35 to impose a manufacturer battery fee (MBF) on manufacturers of lead–acid batteries, on and after April 1, 2017. Also, AB 142 amended the Battery Recycling Act and made several changes to the CBF and MBF.

California Department of Tax and Fee Administration

The Governor approved AB 102 (Stats. 2017, chapter 16) on June 27, 2017. AB 102 established the Department and transferred the State Board of Equalization’s (Board’s) duties, powers, and responsibilities to administer and enforce the sales and use taxes and the taxes and fees collected pursuant to the Fee Collection Procedures Law (FCPL) (RTC, § 55001 et seq.), including the MBF and CBF, to the Department, effective July 1, 2017. (Government Code (GC), §§ 15570, 15570.22). Accordingly, any references to the Board in the Battery Recycling Act, the RTC sections, including the FCPL sections, and the regulations cited herein currently refer to and mean the Department pursuant to GC section 15570.24 and RTC section 20.5. Also, references to the Department’s activities before July 1, 2017, herein refer to and mean the Board’s activities.

Manufacturer Battery Fee

Until April 1, 2022, a MBF of one dollar (\$1.00) is “imposed on a manufacturer of lead–acid batteries for each lead–acid battery it sells at retail to a person in California or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California.” (HSC, § 25215.35, subdivision (a).) On and after April 1, 2022, the amount of the MBF is two dollars (\$2.00). (HSC, § 25215.35, subdivision (b).)

A lead–acid battery “manufacturer” is defined in the Battery Recycling Act to mean either of the following:

(1) The person who manufactures the lead–acid battery and who sells, offers for sale, or distributes the lead–acid battery in the state.

(2)(A) If there is no person described in paragraph (1) that is subject to the jurisdiction of the state, the manufacturer is the person who imports the lead–acid battery into the state for sale or distribution. (HSC, § 25215.1, subdivision (h).)

Also, the Battery Recycling Act provides that “a person is subject to the jurisdiction of this state with respect to a lead–acid battery if the person is engaged in business in this state” and “a person shall be considered to be engaged in business in this state if the person is a ‘retailer engaged in business in this state,’ as defined in subdivision (c) of [RTC section 6203], with respect to that lead–acid battery, or if the person has a substantial nexus with this state for purposes of the commerce clause of the United States Constitution.” (HSC, § 25215.1, subdivision (h)(2)(B).)

A lead–acid battery “importer” is defined in the Battery Recycling Act to mean “the person who imports the lead–acid battery into the state for sale or distribution.” (HSC, § 25215.1, subdivisions (e) and (h)(2).) A person who manufactures a lead–acid battery but is not subject to California’s jurisdiction “may agree in writing with the importer of that lead–acid battery to pay the MBF on behalf of the importer.” (HSC, § 25215.3, subdivision (a).) A person who pays the manufacturer battery fee on behalf of an importer pursuant to such an agreement shall be credited for that payment, pursuant to HSC section 25215.56, if the person:

1. Submits to California’s jurisdiction and registers with the Department to pay and remit the MBF;
2. Provides to the importer a statement that includes the person’s manufacturer account number with the Department, an identification of the lead–acid battery or batteries sold that will be subject to the MBF, and a “statement that the person will pay the [MBF] to the state on behalf of the importer”; and
3. Retains records sufficient to document that the lead–acid battery or batteries for which the person has agreed to pay the MBF were delivered for retail sale in California, the identity of the importer, and that the required statement was provided to the importer of the battery or batteries in a timely manner. (HSC, § 25215.3, subdivision (b))

An importer that receives a timely statement from such a manufacturer will be relieved from any obligation for the MBF on the lead–acid battery or batteries, provided that the manufacturer remits the MBF on the sale of the battery or batteries to the Department. An importer that has paid the MBF for a lead–acid battery

or batteries that subsequently receives an untimely statement from such a manufacturer may file a claim for a refund. A statement shall be considered timely if it is issued before the person paying the MBF on behalf of the importer bills the importer for the lead-acid battery or batteries, within the person's normal billing and payment cycle, before delivery of the battery or batteries to the importer, or before the date on which a return would be due pursuant to HSC section 25215.47. (HSC, § 25215.3, subdivision (c).) Also, the Department is authorized to disclose to an importer the amount of the MBF paid or not paid on its behalf, and the Department is generally authorized to disclose specified information about persons registered with the Department to pay the MBF to the public. (HSC, § 25215.48.)

A "lead-acid battery" is defined in the Battery Recycling Act to mean "a battery weighing over five kilograms [(approximately 11 pounds)] that is primarily composed of both lead and sulfuric acid, whether [the] sulfuric acid is in a liquid, solid, or gel state, with a capacity of six volts or more that is used for any of the following purposes:

- (1) As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.
- (2) As a motive power battery that is designed to provide the source of power for propulsion or operation of a vehicle, including a watercraft.
- (3) As a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.
- (4) As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Section 670 of the Vehicle Code, including an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or an aircraft." (HSC, § 25215.1, subdivision (f).)

Also, the Battery Recycling Act provides that the terms "retail sale" and "sale at retail" have the same meaning as defined in RTC section 6007 in the Sales and Use Tax Law (RTC, § 6001 et seq.). (HSC, § 25215.1, subdivision (p)(1).) RTC section 6007, subdivision (a), provides that:

- (1) A "retail sale" or "sale at retail" means a sale for a purpose other than resale in the regular course of business in the form of tangible personal property.
- (2) When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner, or factor to

a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

In addition, the Battery Recycling Act provides that the term retail sale does not include any of the following:

- (A) The sale of a battery for which a CBF has previously been paid.
- (B) The sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state and that is subsequently transported outside the state and thereafter used solely outside of the state.
- (C) The sale of a battery for incorporation into new equipment for subsequent resale.
- (D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle service contract described under Insurance Code section 12800.
- (E) The sale of any battery intended for use with or contained within a medical device, as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) as that definition may be amended. (HSC, § 25215.1, subdivision (p)(2).)

If a lead-acid battery is sold or will be used in a manner or for a purpose excluding it from the MBF, "the manufacturer shall obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the manufacturer battery fee." (HSC, § 25215.35, subdivision (d)(1).) If a purchaser provides such a written certification to a manufacturer and subsequently sells or uses the battery in a manner so that no exception to the MBF applies, the purchaser is liable for payment of the MBF on that battery to the Department. (HSC, § 25215.35, subdivision (d)(2).)

California Battery Fee

Except as provided below, the CBF is imposed on a person for each replacement lead-acid battery purchased from a dealer on or after April 1, 2017. (HSC, § 25215.25, subdivision (a)(1).) The CBF is one dollar (\$1.00) until March 31, 2022, and two dollars (\$2.00) on or after April 1, 2022. (*Ibid.*)

A "replacement lead-acid battery" is defined in the Battery Recycling Act to mean "a new lead-acid battery that is sold at retail subsequent to the original sale or lease of the equipment or vehicle in which the lead-acid battery is intended to be used" and "does not include a spent, discarded, refurbished, reconditioned,

rebuilt, or reused lead–acid battery.” (HSC, § 25215.1, subdivision (n).) A “used lead–acid battery” is defined to mean “a lead–acid battery no longer fully capable of providing the power for which it was designed or that a person no longer wants for any other reason.” (HSC, § 25215.1, subdivision (q).)

The CBF does not apply to a replacement lead–acid battery described in HSC section 25215.1, subdivision (f)(3), which is a lead–acid battery used as a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source. (HSC, § 25215.25, subdivision (a)(1).) Also, on and after January 1, 2020, “if a new motor vehicle dealer sells or leases to a person a used vehicle into which the new motor vehicle dealer has incorporated a replacement lead–acid battery, the [CBF]...shall not apply to the person with regard to that replacement lead–acid battery.” (HSC, § 25215.25, subdivision (c).)

Dealers are required to collect the CBF from purchasers at the time of sale, dealers may retain 1.5 percent (0.015) of the fee collected as reimbursement for any costs associated with collecting the fee, and dealers are required to pay the remainder of the fee collected to the Department. (HSC, § 25215.25, subdivision (a)(3).) “A person who purchases a replacement lead–acid battery in this state is liable for the [CBF] until that fee has been paid to the [Department], except that payment to a dealer registered under [the Battery Recycling Act] is sufficient to relieve the person from further liability” for the fee. (HSC, § 25215.25, subdivision (a)(5).) The term “dealer” is defined in the Battery Recycling Act to mean “a person who engages in the retail sale of replacement lead–acid batteries directly to persons in California” and the term “includes a manufacturer of a new lead–acid battery that sells at retail that lead–acid battery directly to a person through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or internet website or any other similar electronic means.” (HSC, § 25215.1, subdivision (d).)

“If a lead–acid battery is sold or will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF], the dealer shall obtain written documentation from the purchaser certifying that the lead–acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF].” (HSC § 25215.25, subdivision (d)(1).) If a purchaser provides such a written certification to a dealer and subsequently sells or uses the battery in a manner so that no exception to the CBF applies, the purchaser is lia-

ble for payment of the CBF to the Department. (HSC, § 25215.25, subdivision (d)(2).)

Administration

The Battery Recycling Act provides that the MBF and CBF are to be collected by the Department in accordance with the FCPL. (HSC, § 25215.45, subdivision (a)(1).) The Battery Recycling Act expressly authorizes the Department to adopt and enforce regulations relating to the administration and enforcement of the MBF and CBF. (HSC, § 25215.74, subdivision (a).) Also, Regulation 4901, Records, currently prescribes the records that a feepayer must maintain and make available to determine its correct liability for fees collected in accordance with the FCPL.

Sales and Use Tax Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail in the state. (RTC, § 6051.) The sales tax applies to a retailer’s gross receipts from the retail sale of tangible personal property in California, unless an exemption or exclusion applies. (RTC, §§ 6012, 6051.)

When sales tax does not apply, use tax is imposed on the storage, use, or other consumption in California of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. (RTC, §§ 6201, 6401.) As relevant here, “storage” includes any keeping or retention of tangible personal property in this state for any purpose except sale in the regular course of business. (RTC, § 6008.) “Use” includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except the sale of that property in the regular course of business. (RTC, § 6009.) Also, the person storing, using, or otherwise consuming the property is liable for the use tax, unless an exemption or exclusion applies. (RTC, §§ 6201, 6202.) However, every “retailer engaged in business in this state” as defined in RTC section 6203 and making sales of tangible personal property for storage, use, or other consumption in this state must collect the use tax from their customers, give the customers a receipt as prescribed, and then report and pay the amount required to be collected to the Department. (RTC, § 6203; Reg. 1684, Collection of Use Tax by Retailers.) And subdivision (c) of RTC section 6203 generally provides that “retailer engaged in business in this state” means “any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty.”

The Sales and Use Tax Law presumes that a retailer’s sales of tangible personal property are subject to sales or use tax until the contrary is established and places the burden of proving that a sale of tangible personal property is not a sale at retail upon the person who makes the sale, unless the seller takes from the

purchaser a certificate to the effect that the property is purchased for resale. (RTC, §§ 6091, 6241.) The Sales and Use Tax Law provides that the certificate relieves the seller from liability for sales tax or the duty to collect use tax only if taken in good faith from a person engaged in the business of selling tangible personal property (RTC, §§ 6092, 6242) and requires a properly completed certificate to be signed by and bear the name and address of the purchaser, and indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. (RTC, §§ 6093, 6243.) Regulation 1668, Sales for Resale, prescribes all the requirements for a document to be regarded as a properly completed resale certificate, including the requirement that the certificate include the purchaser's seller's permit number or a sufficient explanation as to the reason the purchaser is not required to hold a seller's permit in lieu of a seller's permit number. Regulation 1668 requires a retailer to timely accept a properly completed resale certificate in good faith to satisfy its burden of proof. Regulation 1668 also permits purchasers to issue a "blanket" resale certificate containing a general description of the items to be purchased and covering those items, unless otherwise specified on the purchase order, or a "qualified" resale certificate that only covers items that are designated as purchased for resale on a purchase order.

The Sales and Use Tax Law also expressly provides for purchasers to issue certificates to retailers certifying that the property purchased will be used in a manner or for a purpose that is exempt from sales tax and that such an exemption certificate relieves the seller from liability for sales tax only if taken in good faith. (RTC, § 6421.) Also, Regulation 1667, Exemption Certificates, presumes, for purposes of the proper administration of the Sales and Use Tax Law, that a retailer's gross receipts are subject to tax until the contrary is established, and provides that a retailer may rebut the presumption and be relieved of liability for the tax by timely taking a properly completed exemption certificate from the purchaser in good faith, in accordance with the regulation.

In addition, subdivision (c)(4) of Regulation 1655, Returns, Defects and Replacements, provides that "[a] deductible paid by a customer under the terms of a mandatory or optional warranty contract is subject to [sales and use] tax measured by the amount of the deductible allocable to the sale of tangible personal property to the customer." Also, Regulation 1706, Drop Shipments, implements, interprets, and makes specific the provisions defining "retail sale" and "sale at retail" in RTC section 6007, subdivision (a)(2), for sales and use tax purposes. Subdivision (b) of Regulation 1706 explains that:

A drop shipment generally involves two separate sales. The true retailer [who is not a retailer engaged in business in this state] contracts to sell tangible personal property to a consumer. The true retailer then contracts to purchase that property from a supplier and instructs that supplier to ship the property directly to the consumer. The supplier is a drop shipper. A drop shipper that is a retailer engaged in business in this state is reclassified as the retailer and is liable for tax [unless the sale is exempt]. When more than two separate sales are involved, the person liable for the applicable tax as the drop shipper is the first person who is a retailer engaged in business in this state in the series of transactions beginning with the purchase by the true retailer.

So, a retail sale, as defined by RTC section 6007, subdivision (a)(2), is commonly referred to as a "drop shipment" in accordance with Regulation 1706.

Marketplace Facilitators

Furthermore, AB 147 (Stats. 2019, chapter 5) added the Marketplace Facilitator Act (MFA) (RTC, § 6040 et seq.) to the Sales and Use Tax Law, operative October 1, 2019, to generally make a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of tangible personal property by a marketplace seller the retailer selling or making the sale of the property for sales and use tax purposes. (RTC, § 6043.) Also, AB 1402 (Stats. 2021, chapter 421) added RTC section 6043.1 to the MFA, operative January 1, 2022, to generally make a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead-acid battery by a marketplace seller the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale.

**EFFECTS, OBJECTIVES, AND
BENEFITS OF THE PROPOSED
CHAPTER AND REGULATIONS**

The Department is proposing to adopt new chapter 8.2 and Regulations 3210, 3220, 3230, and 3240 through the regular rulemaking process to have the effects and accomplish the objectives of avoiding confusion and ensuring that the MBF is paid and the CBF is collected in accordance with the Legislature's intent. The Department is also proposing to adopt Regulations 3220, 3230, and 3240 through the regular rulemaking process to have the effect and accomplish the objective of providing procedures for purchasers to issue and businesses to obtain written certifications that lead-acid batteries will be used in a manner or for a purpose entitling the seller to regard their purchase as not subject to the fees imposed by the Battery Recycling Act. To have these effects and accomplish

these objectives, the Department determined that it is reasonably necessary for proposed Regulation 3210 to:

- Define the term “dealer” in accordance with subdivision (d) of HSC section 25215.1 and clarify that the term includes a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead–acid battery by a marketplace seller and is the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale pursuant to RTC section 6043.1.
- Define “Department” to mean the California Department of Tax and Fee Administration.
- Define “equipment” to mean and include “any tangible personal property that is powered in whole or part by a lead–acid battery” and clarify that equipment is considered “new equipment” if it has never been sold to a person in a sale at retail.
- Define “importer” and the phrase “person who imports the lead–acid battery into this state” to mean the person who imports the lead–acid battery into this state for sale or distribution and is subject to the jurisdiction of this state, clarify that a person imports a lead–acid battery into this state “if they ship, deliver, transport, or otherwise bring the lead–acid battery into this state for sale or distribution,” and clarify that an “importer does not include a common carrier, a contract carrier, or a California consumer who purchases the replacement lead–acid battery for their own use.”
- Define “lead–acid battery” in accordance with subdivision (f) of HSC section 25215.1 and clarify that a lead–acid battery is used for any of the purposes included in the definition of lead–acid battery if the battery “is designed to be used” for such purpose.
- Define “manufacturer” in accordance with subdivision (h) of HSC section 25215.1, clarify that only one person shall be considered a “manufacturer” of a lead–acid battery for purposes of the MBF, and clarify that a drop shipper of a lead–acid battery is the manufacturer of that battery if they are subject to the jurisdiction of this state and no other person is the manufacturer.
- Define “replacement lead–acid battery” in accordance with subdivision (n) of HSC section 25215.1 and clarify that a lead–acid battery is new if it has not previously been purchased in a retail sale for which the CBF was imposed and paid.
- Define “retail sale” and “sale at retail” in accordance with subdivision (a)(1) of RTC section 6007, clarify that a “retail sale” includes a drop shipment of a lead–acid battery by a drop shipper in accordance with subdivision (a)(2) of RTC section 6007, and clarify that a “retail sale” does not include the five types of transactions expressly excluded from the definition of retail sale by subdivision (p)(2) of HSC section 25215.1.
- Establish a rebuttable presumption that a battery is not temporarily stored or used in California for the sole purpose of preparing the replacement lead–acid battery for use thereafter solely outside of the state if the battery remains in this state for more than 90 days after purchase, and clarify that a battery is not temporarily stored or used in California for the sole purpose of preparing the replacement lead–acid battery for use thereafter solely outside of the state if there is any functional use of the battery in California following its purchase.
- Clarify that the sale of a lead–acid battery will only qualify for the exclusion from the definition of retail sale provided by subdivision (p)(2)(C) of HSC section 25215.1 if the purchaser will incorporate it into new equipment for purposes of reselling the new equipment with the battery “such that the battery and the new equipment will be sold together as a single item to the consumer” and further clarify that “this includes multiple inter–changeable lead–acid batteries sold with a single piece of new equipment to allow continuous operation by exchanging depleted lead–acid batteries so long as the use of multiple lead–acid batteries is required or customary for the usual operation of that new equipment.”
- Clarify that there is no retail sale under subdivision (p)(2)(D) of HSC section 25215.1 when a lead–acid battery is replaced without charge to the consumer under a warranty or vehicle service contract, but there is a retail sale if a consumer is required to pay a separate charge for the lead–acid battery, including a pro–rated price.
- Explain when a person is “subject to the jurisdiction of this state” in accordance with subdivision (h)(2)(B) of HSC section 25215.1 and clarify that a person who manufactures a lead–acid battery is not engaged in business in this state solely because the person submitted to the jurisdiction of the state to pay and remit the MBF on behalf of an importer under Regulation 3220.
- Define “vehicle” to mean “any device or machine which can be used to move persons or property, including but not limited to, a watercraft, aircraft, vehicle as defined in Vehicle Code section 670, or an implement of husbandry as defined in Vehicle Code section 36000,” and clarify that “vehicle” does not include a device moved exclusively by human power (e.g., a bicycle) or a device used

exclusively upon stationary rails or tracks, as provided in Vehicle Code section 670.

The Department determined that it is reasonably necessary for proposed Regulation 3220 to:

- Prescribe the application of the MBF.
- Clarify that only one person is the manufacturer of a lead–acid battery for purposes of liability for the MBF, that liability for the MBF is imposed at the time of the manufacturer’s retail sale of a lead–acid battery to a consumer in California or at the time of the manufacturer’s sale of a lead–acid battery to a dealer, wholesaler, distributor or other person for retail sale in California, and that importing a lead–acid battery into California, by itself, does not trigger imposition of the MBF.
- Establish rebuttable presumptions, for purposes of the proper administration of the MBF, that a manufacturer’s sale of a lead–acid battery to a person in California is a retail sale and that a lead–acid battery sold to a person in California for purposes of resale in the regular course of business will be resold in California in a retail sale, and clarify that a “manufacturer has the burden of proving that a sale of a lead–acid battery is for resale and that a lead–acid battery purchased for resale will not be resold in California in a retail sale.”
- Clarify that the MBF does not apply to a sale of a lead–acid battery for which the manufacturer battery fee has previously been paid by a person subject to the jurisdiction of this state or a person that registered with the Department to report and pay the fee, and does not apply to the four types of transactions expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Clarify that when the MBF does not apply to a lead–acid battery because it is sold or used in a manner or for a purpose excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1, the manufacturer must obtain written certification from the purchaser, in accordance with Regulation 3240, stating that the lead–acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF, in accordance with subdivision (d)(1) of HSC section 25215.35.
- Incorporate the provisions of subdivision (a) of HSC section 25215.3 permitting a person who manufactures a lead–acid battery and is not subject to the jurisdiction of this state to enter into a written agreement with an importer of that lead–acid battery to pay the MBF imposed on the im-

porter due to the sale of that battery on behalf of the importer.

- Incorporate the requirements from subdivision (b) of HSC section 25215.3 for a person who pays the MBF on behalf of an importer to receive a credit for that payment pursuant to HSC section 25215.56, and clarify that such a person shall make the records required to be maintained to claim the credit reasonably available to the Department upon request in the manner set forth in Regulation 4901.
- Incorporate the provisions of subdivision (c) of HSC section 25215.3 relieving an importer of liability for the MBF paid on its behalf and permitting an importer to claim a refund if they paid the MBF before they received notice that it was paid on their behalf.
- Incorporate the provisions of HSC section 25215.48 permitting the Department to disclose to an importer the amount of the MBF paid or not paid on its behalf, and generally permitting the Department to disclose specified information about persons registered with the Department to pay the MBF to the public.
- Provide notice to manufacturers required to pay the MBF that they are required to maintain and make available all records necessary to determine their liabilities for the MBF and all records necessary for the proper completion of their returns in the manner set forth in Regulation 4901.
- Clarify that the records necessary include, but are not limited to, purchase orders, bills of lading, receipts, invoices, shipping documents, job orders, contracts, customers’ exclusion and exemption certificates (see Regulation 3240) or alternate written certifications, and other relevant documents.

The Department determined that it is reasonably necessary for proposed Regulation 3230 to:

- Prescribe the general application of the CBF.
- Clarify that a dealer subject to the jurisdiction of this state is required to collect the CBF.
- Clarify that the CBF only applies to replacement lead–acid batteries purchased in a retail sale and does not apply to sales of replacement lead–acid batteries for resale in the regular course of business.
- Clarify that the CBF does not apply to the five types of transactions expressly excluded from the definition of retail sale by subdivision (p)(2) of HSC section 25215.1 or a sale of a replacement lead–acid battery described in subdivision (f)(3) of HSC section 25215.1.

- Incorporate the new motor vehicle dealer exemption in subdivision (c) of HSC section 25215.25 and clarify that a new motor vehicle dealer must maintain and make available documentation to support the new motor vehicle dealer exemption.
- Establish a rebuttable presumption, for purposes of the proper administration of the CBF, that a dealer's sale of a lead-acid battery to a person in California is a retail sale;
- Clarify that when the CBF does not apply to a lead-acid battery because it is sold or used in a manner or for a purpose excluded from the definition of retail sale by subdivision (a)(1) of RTC section 6007 or subdivisions (p)(2)(B) through (E) of HSC section 25215.1 or not subject to the CBF pursuant to subdivision (a) of HSC section 25215.25 because it is described in subdivision (f)(3) of HSC section 25215.1, the dealer must obtain written certification from the purchaser, in accordance with Regulation 3240, stating that the lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF.
- Clarify that a dealer is not required to obtain a written certification from the purchaser for a sale of a replacement lead-acid battery for which the CBF has previously been paid or a sale that qualifies for the new motor vehicle dealer exemption.
- Provide notice to dealers required to collect the CBF that they are required to maintain and make available all records necessary to determine their liabilities for the CBF and all records necessary for the proper completion of their returns in the manner set forth in Regulation 4901.
- Clarify that the records necessary include, but are not limited to, purchase orders, bills of lading, receipts, invoices, shipping documents, job orders, contracts, customers' exclusion and exemption certificates (see Regulation 3240) or alternate written certifications, and other relevant documents.

The Department determined that it is reasonably necessary for proposed Regulation 3240 to:

- Require a manufacturer to obtain written certification from the purchaser that a lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF if a lead-acid battery is sold or will be used in a manner or for a purpose that is expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Clarify that if a written certification is timely taken from the purchaser in proper form as set forth in the regulation and in good faith, the manufac-

turer is not required to pay a MBF on the sale of that battery.

- Require a dealer to obtain written certification from the purchaser that a lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF if a replacement lead-acid battery is sold or will be used in a manner or for a purpose excluded from the definition of retail sale by subdivision (a)(1) of RTC section 6007 or subdivisions (p)(2)(B) through (E) of HSC section 25215.1, or not subject to the CBF pursuant to subdivision (a) of HSC section 25215.25 because it is described in subdivision (f)(3) of HSC section 25215.1.
- Clarify that if a written certification is timely taken from the purchaser in the proper form as set forth in the regulation and in good faith, the dealer is not required to collect the CBF from the purchaser on the sale of that battery.
- Prescribe the minimum requirements for a purchaser's written certification that a lead-acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead-acid battery fees, allow a purchaser to use any written document to make such a certification, but recommend that a seller obtain a General Exclusion and Exemption Certificate substantially in the form provided in Appendix A to preclude potential controversy, and provide that such a certification remains in effect until revoked in writing.
- Clarify when a written certification is considered timely taken in accordance with subdivision (b)(1) of Regulation 1667, and that, in absence of evidence to the contrary, a seller will be presumed to have taken a written certification in good faith if the certification contains the essential elements required by the regulation and otherwise appears to be valid on its face in accordance with subdivision (c) of Regulation 1668.
- Allow a purchaser to issue a blanket General Exclusion and Exemption Certificate that applies to all its purchases, unless otherwise indicated on its purchase orders, or a qualified General Exclusion and Exemption Certificate that only applies to purchases that are properly designated on purchase orders and provide procedures for issuing both types of certificates.
- Clarify that, if a dealer timely takes a resale certificate from a purchaser for the purchase of a replacement lead-acid battery in good faith that contains all the essential elements required by Regulation 1668, the certificate shall satisfy the written certification requirements with respect to the sale of that battery.

The Department anticipates that the adoption of proposed Regulations 3210, 3220, 3230, and 3240 will promote fairness and benefit businesses that manufacture, import, buy, or sell lead–acid batteries, individual consumers that purchase lead–acid batteries, and the Department by defining and further clarifying terms and phrases used in the Battery Recycling Act, clarifying the application of the MBF and CBF, providing notice about the records manufacturers and dealers are required to maintain and make available to determine their liabilities for the MBF and CBF, establishing rebuttable presumptions for the proper administration of the fees, prescribing the minimum requirements for a purchaser’s written certification that a lead–acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead–acid battery fees, and providing a General Exclusion and Exemption Certificate form that purchasers can use to make their written certifications.

The Department has performed an evaluation of whether Regulations 3210, 3220, 3230, and 3240 are inconsistent or incompatible with existing state regulations and determined that the proposed regulations are not inconsistent or incompatible with existing state regulations because they are the only regulations that implement, interpret, or make specific the fees imposed by the Battery Recycling Act and many of their provisions are consistent with similar provisions in sales and use tax regulations. Also, the Department has determined that there is no existing federal regulation or statute that is comparable to Regulation 3210, 3220, 3230, or 3240.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE–TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will result in an absorbable \$484 one–time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the adoption of

new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not result in any other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non–discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (B)

The Department assessed the economic impact of adopting proposed Regulations 3210, 3220, 3230, and 3240 on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Department prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the adoption of proposed Regulations 3210, 3220, 3230, and 3240 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the adoption of proposed Regulations 3210, 3220, 3230,

and 3240 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed regulations should be directed to Michael Patno, by telephone at (916) 309-5303, by e-mail at Michael.Patno@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attention: Michael Patno, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attention: Kim DeArte, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0050. Kim DeArte is the designated backup contact person to Michael Patno.

WRITTEN COMMENT PERIOD

The written comment period ends at 11:59 p.m. (PDT) on September 11, 2023. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides

whether to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared copies of the text of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 illustrating the express terms of the proposed action. The Department has also prepared an initial statement of reasons for the proposed adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240, which includes the economic impact assessment required by GC section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 and the initial statement of reasons are also available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed adoption of new chapter 8.2 and Regulations 3210, 3220, 3230, and 3240. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GC SECTION 11346.8

The Department may adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the orig-

inally proposed regulatory action. If a sufficiently related change is made, the Department will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider timely written comments it receives regarding a sufficiently related change.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

If the Department adopts new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240, the Department will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF
DEVELOPMENTAL SERVICES**

**PROPOSED WAIVER AMENDMENT
FOR MEDI-CAL 1915(C) HOME AND
COMMUNITY BASED SERVICES SELF
DETERMINATION PROGRAM WAIVER
FOR DEVELOPMENTALLY DISABLED**

This notice provides information of public interest that the Department of Health Care Services (DHCS) intends to submit a Medi-Cal Home and Community Based Services Waiver (HCBS) amendment for federal approval. This is an amendment to the California Medi-Cal 1915(c) Self-Determination Program Waiver for individuals with Developmental Disabilities (HCBS-DD SDP) Waiver to change the payment source for financial management services.

Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions (W&I) Code section 4500 et seq., people with developmental disabilities, as defined in W&I Code section 4512(a), are eligible to receive services and supports that meet their individual needs and choices. The Department of Developmental Services (DDS) administers the Lanterman Act.

DHCS administers the HCBS-DD SDP Waiver. DDS ensures, under the oversight of DHCS (the State Medicaid agency), that the HCBS-DD SDP Waiver is implemented by regional centers in accordance with Medicaid law and the State's approved Waiver application. Regional centers coordinate, provide, arrange or purchase the services and supports available under the HCBS-DD SDP Waiver. Information about the HCBS-DD SPD Waiver can be found at www.dds.ca.gov/initiatives/hcbs/

This amendment proposes to change:

- Financial Management Services (FMS) — Medi-Cal is removing the requirement that the cost of FMS be paid by Waiver participants from their individual budgets.
- Medi-Cal is adjusting the methodology by which FMS providers are reimbursed for their services. The adjustment will allow the state to pay FMS providers a tiered rate based on the total number of employees/providers used by the participant; instead of paying FMS providers based on the number of services an individual receives. A copy of the proposed Monthly rates for FMS can be found at: <https://www.dds.ca.gov/wp-content/uploads/2023/06/SDP-FMS-Monthly-Rates-2.pdf>.

DHCS estimates that the fiscal impact of this amendment is estimated to be \$15,050,625 in Waiver Year 3, \$27,647,812.50 in Waiver Year 4, and \$31,597,500 in Waiver Year 5.

All proposed HCBS Waiver amendments must be approved by the Centers for Medicare and Medicaid Services (CMS) in order to be effective. The proposed effective date of the amendment is December 1, 2023.

Upon submission to CMS, a copy of the proposed waiver amendment will be posted at the following web addresses: <http://www.dds.ca.gov/initiatives/hcbs/>.

You may also request a copy of the proposed amendment by writing to the mailing or email addresses listed below, or by visiting your local regional center.

Comments will be accepted for 30 days from the release date. Any written comments concerning this notice, or the proposed waiver amendment may be sent to:

Department of Developmental Services
Federal Programs Division
Attention: Jonathan Hill
1215 O Street, MS 7-40
Sacramento, CA 95814

Comments may also be e-mailed to federal.programs@dds.ca.gov. Please indicate 'HCBS SPD Waiver CA.1166.R01.00' in the subject line or message. A copy of submitted public comments may be requested in writing at the mailing or email addresses above.

**DEPARTMENT OF
DEVELOPMENTAL SERVICES**

**PROPOSED AMENDMENTS TO
MEDI-CAL HOME AND COMMUNITY
BASED SERVICES (HCBS) 1915(C) WAIVER
FOR THE DEVELOPMENTALLY DISABLED**

The Department of Health Care Services (DHCS) requests input from beneficiaries, providers, and other interested stakeholders concerning a proposed amendment to the Medi-Cal 1915(c) Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS-DD Waiver), which is attached.

Under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare & Institutions (W&I) Code section 4500 et seq., people with developmental disabilities, as defined in W&I Code section 4512(a), are eligible to receive services and supports that meet their individual needs and choices. The Department of Developmental Services (DDS) administers the Lanterman Act.

DHCS administers the HCBS-DD Waiver. DDS ensures, under the oversight of DHCS (the State Medicaid agency), that the HCBS-DD Waiver is implemented by regional centers in accordance with Medicaid law and the State’s approved Waiver application. Regional centers coordinate, provide, arrange or purchase the services and supports available under the HCBS-DD Waiver. Information about the HCBS-DD Waiver can be found at www.dds.ca.gov/initiatives/hcbs/.

This amendment proposes to add Coordinated Family Supports (CFS) to the HCBS-DD Waiver. CFS is a service that supports adults to continue living in the family home to maximize their independence by helping them navigate existing services and supports. CFS engages with individuals and providers to facilitate access to services and supports by:

- Coordinating/developing training to ensure consistency across providers specific to the unique needs of the individual.
- Assisting the individual in understanding, scheduling, and utilizing services and supports.
- Developing options to meet the identified immediate and long-term needs and access community services and supports specified in the Individual Program Plan.

The aggregate fiscal impact of this amendment is estimated to be \$101,629,200 in waiver years one through five. All proposed HCBS-DD Waiver amendments must be approved by the Centers for Medicare and Medicaid Services (CMS) in order to be effective.

Public Review and Comments

DHCS plans to submit the proposed waiver amendment to CMS by September 1, 2023 for a proposed effective date of December 1, 2023.

A copy of the proposed waiver amendment will be posted on July 28, 2023, at <https://www.dds.ca.gov/initiatives/hcbs/>. You may also request a copy of the proposed amendment by writing to the mailing or email addresses listed below, or by visiting your local regional center.

Written comments may be sent to the following address:

Department of Developmental Services
Attention: Jonathan Hill
1215 O Street MS 7-40
Sacramento, CA 95814
Email Federal.Programs@dds.ca.gov

Please indicate ‘HCBS Waiver’ in the subject line or message.

To be assured consideration prior to submission of the waiver amendment to CMS, comments must be received no later than August 31, 2023. Please note that comments will continue to be accepted after August 31, 2023, but DHCS may not be able to consider those comments prior to the initial submission of the HCBS-DD waiver amendment to CMS.

**DEPARTMENT OF FISH AND
WILDLIFE**

**FISH AND GAME CODE SECTION 1653
CONSISTENCY DETERMINATION
REQUEST FOR
JOHN SMITH CREEK LARGE WOOD
ENHANCEMENT PROJECT
(TRACKING NUMBER:
1653-2023-118-001-R1)
MENDOCINO COUNTY**

California Department of Fish and Wildlife (CDFW) received a Request to Approve on July 14, 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 installing 72 large wood structures in John Smith Creek to improve spawning and rearing habitat. The proposed project will be carried out on John Smith Creek, at the confluence with the North Fork Branch North Fork Navarro River, southeast of Comptche, Mendocino County, California.

On June 27, 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 John Smith Creek Large Wood 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 Number 1B23099WNME) for coverage under the General 401 Order on 7/14/2023.

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, 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
BEAR HAVEN CREEK LARGE WOOD
ENHANCEMENT PROJECT
(TRACKING NUMBER:
1653-2023-119-001-R1)
MENDOCINO COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on July 14, 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 installing 50 large wood features in Bear Haven Creek. The proposed project will be carried out on Bear Haven Creek, located 10 miles northeast of the City of Fort Bragg, Mendocino County, California.

On June 23, 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 Bear Haven Creek Large Wood 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 Number 1B23095WNME) for coverage under the General 401 Order on 7/14/2023.

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, 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
HOLLOW TREE CREEK LARGE WOOD
ENHANCEMENT PROJECT
(TRACKING NUMBER:
1653-2023-120-001-R1)
MENDOCINO COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on July 14, 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 installing 50 large wood structures in Hollow Tree Creek to improve salmonid habitat. The proposed project will be carried out on Hollow Tree Creek, Mendocino County, California.

On June 23, 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 Habi-

tat Restoration Projects (General 401 Order) for the Hollow Tree Creek Large Wood 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 Number 1B23098WNME) for coverage under the General 401 Order on 7/14/2023.

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, 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
LAS ENCINAS CROSSING REPLACEMENT
AND RESTORATION PROJECT
(TRACKING NUMBER:
1653-2023-121-001-R5)
VENTURA COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on July 17, 2023, that Aera Energy, LLC, proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves removing the crossing and restoring the channel as a vegetated boulder cascade with rock and native riparian vegetation. The proposed project will be carried out on the Canada de las Encinas drainage, located approximately 0.6 miles east of State Route 33, Ventura, Ventura County, California.

On March 30, 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 Las Encinas Crossing Replacement and Restoration Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID Number 4WQC40123070) for coverage under the General 401 Order on 7/16/2023.

Aera Energy, LLC, 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, Aera Energy, LLC, 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, Aera Energy, LLC, 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
IRON HORSE VINEYARDS FISH SCREEN
IMPLEMENTATION PROJECT
(TRACKING NUMBER:
1653-2023-122-001-R3)
SONOMA COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on July 17, 2023, that the Gold Ridge Resource Conservation District (District) proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves installing a fish screen to protect native aquatic species from seasonal intakes. The proposed project will be carried out on Green Valley Creek, located at 9786 Ross Station Road, Sonoma County, California.

On December 2, 2022, 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 Iron Horse Vineyards Fish Screen Implementation Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID Number 1B22152WNSo; ECM PIN Number CW-884644) for coverage under the General 401 Order on 1/12/2023.

The District 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 District 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 District will have the opportunity to submit under Fish and Game Code section 1652.

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT

CONSISTENCY DETERMINATION NUMBER 1653-2023-115-001-R1

Project: Dry Dock Gulch Alcove Habitat Enhancement and Fish Passage Project

Location: Mendocino County

Applicant: Elise Ferrarese, Trout Unlimited

Background

Project Location: The Dry Dock Gulch Alcove Habitat Enhancement and Fish Passage Project (Project) is located within Mendocino Headlands State Park at the confluence of Dry Dock Gulch and the Big River, Assessor Parcel Number 119-50-002, Latitude/Longitude 39.30043 N, 123.72803 W. The Big River watershed supports populations of coho salmon (*Oncorhynchus kisutch*), Chinook salmon (*O. tshawytscha*), and steelhead trout (*O. mykiss*).

Project Description: Elise Ferrarese (Applicant) representing Trout Unlimited, proposes to restore hab-

itat function and natural processes within Dry Dock Gulch to provide a net conservation benefit for salmonids, and other fish species. The Project includes restoring access to 0.76 miles of salmonid spawning and rearing habitat. The current stream crossing configuration on Dry Dock Gulch is a fish passage barrier and consists of two undersized culverts with a perched outlet. Additionally, the existing culverts and road also currently create an artificial pond and obstruct tidal influence upstream of the stream crossing. The existing culverts will be removed and replaced with an appropriately sized 10-foot diameter aluminum structural plate pipe with an invert set at elevation 2.0 feet (NAVD88). The proposed culvert size and grade are designed to avoid creating hydraulic and geomorphic controls for Dry Dock Gulch, and will thereby restore tidal processes upstream of the stream crossing. The restored natural hydrology at the site is expected to incise a new tidal channel in the footprint of the existing artificial pond, and is expected to create both freshwater and brackish marsh habitat.

The Project also includes additional restoration actions that include constructing an off-channel alcove and installing large wood enhancement features. The proposed alcove will be constructed immediately upstream of the crossing, and will provide low velocity rearing habitat that is important for juvenile coho salmon and other aquatic species. Large wood enhancement features will be installed in the alcove and the existing pond to add complexity and improve habitat for native species.

Project Size: The total area of ground disturbance associated with the Project is approximately 0.363 acres and 470 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) 32 large wood logs, (2) 16 root wads, (3) 94 feet of rebar, (4) 254 cubic yards of ¼ ton rock, (5) one 10' diameter x 68' aluminum culvert, (6) one cubic yard of concrete slurry, (7) 30 cubic yards of native vegetation, and (8) 925 cubic yards of fine material as a result of natural channel incision.

Project Timeframes: Start date: July 10, 2023

Completion date: October 31, 2024

Work window: July 10 to October 31, with an option for variance or extension with written approval from the North Coast Regional Water Quality Control

Board (Regional Water Board) and the California Department of Fish and Wildlife (CDFW)

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish passage to 0.76 miles of spawning and rearing habitat, the Regional Water Board issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) Number 1B23090WNME, Electronic Content Management Identification (ECM PIN) Number CW-888883 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to coho salmon, steelhead trout, other fish species, amphibians, birds, and rare plants.

Receiving Water: Dry Dock Gulch, tributary to the Big River

Filled or Excavated Area: Permanent area impacted: 0.302 acres

Temporary area impacted: 0.061 acres

Length permanently impacted: 280 linear feet

Length temporarily impacted: 190 linear feet

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

Noticing: On June 21, 2023, the Director of CDFW received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on June 21, 2023, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2023-062102) on July 7, 2023. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

Specifically, CDFW finds that: (1) The Project purpose is voluntary habitat restoration and the Project is

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

Avoidance and Minimization Measures

The avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Construction-period Water Quality Protection and Erosion and Sedimentation Control Measures; (2) Post-construction and Sediment Control and Water Quality Protection Requirements; (3) General Program Conditions for Vegetation Management; and (4) General Measures to Avoid Impacts on Biological Resources. The specific avoidance and minimization requirements are found in an attachment to the NOI, *Dry Dock Gulch Alcove Habitat Enhancement and Fish Passage Project: Small Habitat Restoration Projects General 401 Water Quality Certification Notice of Intent-Additional Pages*.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI, *Dry Dock Gulch Alcove Habitat Enhancement and Fish Passage Project Monitoring and Reporting Plan*, prepared by Trout Unlimited.

Notice of Completion

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

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

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant's NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and

document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: Nicholas.VanVleet@wildlife.ca.gov.

Project Authorization

Pursuant to Fish and Game Code section 1654, CDFW's approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

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

DEPARTMENT OF TOXIC SUBSTANCE CONTROL

**NOTICE OF PUBLIC COMMENT PERIOD:
JULY 28, 2023 TO AUGUST 30, 2023**

WHAT IS BEING PROPOSED

The Department of Toxic Substances Control (DTSC) invites the public to review and comment on a proposed Consent Decree (CD) entered with the Myung Family Partnership Number 1, L.P., and Jung S. Myung (collectively, "Defendants"). This CD recovers a portion of DTSC's costs in responding to the release of hazardous substances at or from the 0.162 acres of property located at 4600 Firestone Boulevard, South Gate, Los Angeles County, CA 90280 (Site). The release or threatened release of hazardous substances at or from the Site caused the State of California to incur environmental response and oversight costs since 2015.

The proposed CD commits the Defendants to pay a total of \$517,000 to DTSC. Provided the payment is made as required, the proposed CD will constitute a settlement between the Defendants and DTSC within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 113(f)(2), 42 U.S.C. § 9613(f)(2). After the 30-day public comment period ends, DTSC

intends to file a motion for judicial approval of the proposed CD.

HOW CAN I GET INVOLVED

DTSC will consider written public comments on the proposed CD that are **postmarked or emailed by August 30, 2023**. DTSC may withdraw its consent to the CD if it receives comments that disclose facts or considerations that indicate the CD is inappropriate, improper, or inadequate. Comments should be addressed to: Scarlett Zhai, Project Manager, 5796 Corporate Avenue, Cypress, CA 90630, or email your comments to Scarlett.Zhai@dtsc.ca.gov.

WHERE DO I GET INFORMATION

The proposed CD and other documents related to the Site are available at the following location: **DTSC Cypress Office**, 5796 Corporate Avenue, Cypress, CA 90630; phone: (714) 484-5337 (By appointment only; Monday-Friday, 8 a.m. to 5 p.m.) –OR– **Leland R. Weaver Public Library**, 4035 Tweedy Boulevard, South Gate, CA 90280, (323) 567-8853.

Copies of these documents, key technical reports, fact sheets and other site-related information are also available online at DTSC's website: https://envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=60002279

FOR ADDITIONAL INFORMATION

If you have any questions or wish to discuss the Consent Decree please contact:

Scarlett Zhai, Project Manager
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
Scarlett.Zhai@dtsc.ca.gov

John Wills
Public Participation Specialist
(818) 717-6573
John.Wills@dtsc.ca.gov

DECISION NOT TO PROCEED

RESPIRATORY CARE BOARD

PURSUANT TO GOVERNMENT CODE
SECTION 11347

RE: BASIC RESPIRATORY
TASKS AND SERVICES

Pursuant to Government Code Section 11347, the Respiratory Care Board of California (Board) hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register on November 11, 2022, Register 2022, Number 45-Z. The proposed rulemaking concerned Client Notification (OAL Notice Z-2022-1101-04).

Any interested person with questions concerning this rulemaking should contact Stephanie Nunez at either 916-999-2190 or by e-mail at: rcbinfo@dca.ca.gov.

The Bureau will also post this Notice of Decision Not to Proceed on its website at <https://rcb.ca.gov/enforcement/lawsregs.shtml>.

**SUMMARY OF
REGULATORY ACTIONS**

**REGULATIONS FILED WITH THE
SECRETARY OF STATE**

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

California Pollution Control Financing Authority
File # 2023-0608-03
California Capital Access Program for Small
Businesses

This action makes permanent, without amendment, an emergency regulation that was adopted to specify State Small Business Credit Initiative Program requirements for loans enrolled in the Capital Access Loan Program so as to conform state program require-

ments to U.S. Treasury Department requirements for utilization of federal funds.

Title 04
Adopt: 8078.1
Filed 07/17/2023
Effective 07/17/2023
Agency Contact: Kamika McGill (916) 653-0289

Department of Alcoholic Beverage Control
File # 2023-0606-02
Administration of Music Venue Licenses

This certificate of compliance makes permanent emergency regulations to implement and clarify SB 793 (2021-22) regarding a new class of license: a Music Venue License. The regulations define statutory terms, establish standards for licensees, and require that only a bona fide "Music Entertainment Facility" is issued a Music Venue License.

Title 04
Adopt: 71
Filed 07/19/2023
Effective 07/19/2023
Agency Contact: Robert de Ruyter (916) 419-8958

Department of Developmental Services
File # 2023-0530-01
Children's Community Crisis Homes and
Enhanced Behavioral Support Homes —
Restraint and Containment

This certificate of compliance by the Department of Developmental Services makes permanent the changes approved in OAL File Number 2021-0615-08ER, 2022-0415-01EE, and 2022-0715-01EE. Those actions updated facility program plan requirements, staff training requirements, continuing education requirements, and individual behavior supports plan requirements for Community Crisis Homes licensed as adult residential facilities and group homes. Those actions also updated Form DS 6023 and Form DS 6024, which pertain to rate development for Community Crisis Homes. This action also seeks to update facility program plan requirements, staff training requirements, continuing education requirements, and individual behavior supports plan requirements for Enhanced Behavioral Support Homes.

Title 17

Adopt: 59009.5, 59010.1, 59010.2, 59010.3, 59010.4, 59010.5, 59059.5, 59060.1, 59060.2, 59060.3, 59060.4, 59060.5

Amend: 59000, 59001, 59002, 59004, 59005, 59006, 59007, 59008, 59009, 59010, 59011, 59012, 59013, 59022, 59050, 59051, 59052, 59054 (renumbered to 59060), 59055 (renumbered to 59063), 59056 (renumbered to 59059), 59057 (renumbered to 59064), 59058 (renumbered to 59065), 59059 (renumbered to 59066), 59060 (renumbered to 59054), 59061 (renumbered to 59055), 59062 (renumbered to 59056), 59063 (renumbered to 59057), 59064 (renumbered to 59058), 59065 (renumbered to 59067), 59066 (renumbered to 59068), 59067 (renumbered to 59069), 59068 (renumbered to 59070), 59069 (renumbered to 59071), 59070 (renumbered to 59061), 59071 (renumbered to 59062), and 59072

Filed 07/12/2023

Effective 07/12/2023

Agency Contact: Amy Whiting (916) 654-4418

Fair Political Practices Commission

File # 2023-0616-04

Advertising Disclosure

This action by the Fair Political Practices Commission amends regulations related to advertising disclosures. More specifically the amendments address the terms that cannot be included in the names of top contributors, the transmissions of advertisements by means of videos and televisions, and the manner in which committee names may appear in advertisements primarily in a language other than English.

Title 02

Amend: 18402, 18450.3, 18450.4, 18450.6, 18450.8, 18450.9

Filed 07/17/2023

Effective 08/16/2023

Agency Contact: Amanda Apostol (916) 322-5660

Fair Political Practices Commission

File # 2023-0620-04

Administrative Subpoenas

This action defines when staff can serve an administrative subpoena after attempting to seek the information requested on a voluntary basis.

Title 02

Amend: 18361.1

Filed 07/17/2023

Effective 08/16/2023

Agency Contact: Amanda Apostol (916) 322-5660

Fair Political Practices Commission

File # 2023-0620-08

Levine Act

This action implements Senate Bill 1439 (Chapter 848 of 2022), which expanded the Levine Act (conflict-of-interest rules for governing boards composed of appointed officials) to cover elected governing board officials.

Title 02

Adopt: 18438, 18438.7

Amend: 18438.1, 18438.2, 18438.3, 18438.4, 18438.5, 18438.6, 18438.8, 18705

Repeal: 18438.7

Filed 07/13/2023

Effective 08/12/2023

Agency Contact: Amanda Apostol (916) 322-5660

Fish and Game Commission

File # 2023-0601-02

Central Valley Sport Fishing Regulations 2023

This action prescribes the 2023 daily bag and possession limits for Sacramento River fall-run Chinook Salmon sport fishing in the American, Feather, Mokelumne, and Sacramento rivers; moves a geographic fishing boundary from Red Bluff Diversion Dam to Woodson Bridge; and splits the current fishing season of August 1 through December 31 into two separate seasons from August 1 through October 31 and November 1 through December 31 on the Sacramento River between Dechutes Road Bridge and Woodson Bridge.

Title 14

Amend: 7.40

Filed 07/14/2023

Effective 07/16/2023

Agency Contact: Maurene Trotter (916) 902-9281

Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

File # 2023-0607-02

SLPA Program and Academic Requirements

This action adds requirements for program directors when Speech-Language Pathology Assistant (SLPA) programs apply to be a Board-approved program and increases the minimum number of field hours required in speech-language pathology assistant programs.

Title 16

Amend: 1399.170.4, 1399.170.10, 1399.170.11

Filed 07/18/2023

Effective 10/01/2023

Agency Contact: Maria Liranzo (916) 905-5441

**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.