



California Regulatory Notice Register

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. PUBLIC EMPLOYEES’ RETIREMENT SYSTEM

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

NOTICE IS HEREBY GIVEN that the **California Public Employees’ Retirement System**, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on September 25, 2023 and closing on November 9, 2023. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include:

The addition to the list of designated positions created since the prior amendment:

- Chief Health Director
- Chief Operating Officer
- Deputy Chief Investment Officer
- Financial Accountant (All)
- Medical Program Consultant
- Special Consultant
- Senior Telecommunications Engineer

The addition of existing positions that were re-evaluated and determined to be making governmental decisions:

- Actuarial Analyst
- Actuarial Analyst Supervisor
- Actuarial Senior Analyst
- Information Technology Specialist (II, III)
- Senior Accounting Officer (All)

Alignment with the California Department of Human Resources renaming of existing classifications:

- Previous Classification Names:
 - Data Processing Manager
 - Research Manager (All)
 - Associate Pension Actuary
 - Senior Pension Actuary
 - Senior Life Actuary
 - Supervising Pension Actuary
- Current Classification Names:
 - Information Technology Manager (All)
 - Information Technology Supervisor (All)
 - Research Data Specialist (All)
 - Research Data Supervisor (All)
 - Research Data Manager
 - Actuary
 - Actuarial Senior
 - Actuarial Analyst Supervisor

And, also, makes other technical changes.

Information on the code amendment is available on the agency’s internet site.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than November 9, 2023, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than October 25, 2023.

The **California Public Employees’ Retirement System** has determined that the proposed amendments:

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Andrea Peters
 CalPERS Regulations Coordinator
 (916) 795-3038
Regulation_Coordinator@CalPERS.ca.gov

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODE

ADOPTION

STATE AGENCY: Office of Energy Infrastructure Safety

A written comment period has been established commencing on September 22, 2023 and closing on November 6, 2023. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, CA 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code will be submitted to the Commission for review.

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code. Any written comments must be received no later than November 6, 2023. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with this code because these are not

new programs mandated on local agencies by the code since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the code has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest code shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODE

Copies of the proposed conflict-of-interest code may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811, telephone (916) 323-9103.

**TITLE 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

SECTION 3423 ORIENTAL FRUIT FLY
INTERIOR QUARANTINE
SECTION 3591.2 ORIENTAL FRUIT FLY
ERADICATION AREA

The Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) Section 3423 Oriental Fruit Fly Interior Quarantine and Section 3591.2 Oriental Fruit Fly Eradication Area.

PUBLIC HEARING

A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulations to the Department. Comments may be submitted by United States Postal Service (USPS), fax or email. The written comment period closes on November 7, 2023. The Department will consider only comments received at the Department offices by that date or postmarked no later than November 7, 2023. Submit comments to:

Erin Lovig, Senior Environmental Scientist
Supervisor
California Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
(916) 403–6650
Permits@cdfa.ca.gov

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Rachel Avila at (916) 698–2947 or rachel.avila@cdfa.ca.gov.

Unless there are substantial changes to the proposed regulations prior to amendment, the Department of Food and Agriculture may adopt the proposal as set forth in this notice without further notice to the public. Following the public hearing, if one is requested, or following the written comment period if none is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY

The Department proposes to amend Sections 3423 and 3591.2 pursuant to the authority vested by Sections 407, 5301, 5302, and 5322 of the Food and Agricultural Code (FAC).

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302, 5322, 5761, 5762, 5763, and 5764 of the FAC.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The specific purpose of the proposed amendment of the regulation Section 3423 is to remove the host list and add a reference to Section 3591.2(b). Currently, the Section 3423 (c)(1) host list is missing multiple species, all of which are included in the host list in Section 3591.2 (b). An incomplete host list in Section 3423 provides a source of potential confusion to the public, and could result in host material unknowingly being moved, which could lead to furthering an infestation. By referencing the list in Section 3591.2 (b) the confusion is removed and the regulations can be harmonized.

The specific purpose of the proposed amendment of the regulation 3591.2 is to update the host list so it is in accord with the United State Department of Agriculture (USDA) list, add a footnote so pumpkins are correctly regulated, and remove a section of the host list that was mistakenly duplicated. Only species listed twice are being removed, which will fix an existing error.

EXISTING LAWS AND REGULATIONS

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 5301, provides that the Secretary may establish, maintain, and enforce such quarantine regulations as they deem necessary to protect the agricultural industry of this state from pests. The regulations may establish a quarantine at the boundaries of this state or elsewhere within the state.

Existing law, FAC Section 5302, provides that the Secretary may make and enforce such regulations as they deem necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division.

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

Existing law, FAC Section 5761, provides that the Secretary may proclaim any portion of the state to be an eradication area with respect to the pest, prescribe the boundaries of such area, and name the pest and the hosts of the pest which are known to exist within the area, together with the means or methods which are to be used in the eradication or control of such pest.

Existing law, FAC Section 5762, provides that the Secretary may proclaim any pest with respect to which an eradication area has been proclaimed, and any stages of the pest, its hosts and carriers, and any premises, plants, and things infested or infected or exposed to infestation or infection with such pest or its hosts or carriers, within such area, are public nuisances, which are subject to all laws and remedies which relate to the prevention and abatement of public nuisances.

Existing law, FAC Section 5763, provides that the Secretary, or the commissioner acting under the supervision and direction of the director, in a summary manner, may disinfect or take such other action, including removal or destruction, with reference to any such public nuisance, which he thinks is necessary.

Existing law, FAC Section 5764, provides that if an eradication area has been proclaimed with respect to a species of fruit flies and the removal of host plants of such species is involved, the director may enter into an agreement with the owner of such host plants to remove and replace them with suitable nursery stock in lieu of treatment.

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

The implementation of this amendment will help prevent potential future issues when the Oriental fruit fly (OFF) host list need to be amended in the future. Have functional accurate hosts list will help prevent the spread of pests within California, which will prevent:

- direct damage to the agricultural industry growing host fruits
- indirect damage to the agricultural industry growing host fruits due to the implementation of quarantines by other countries and loss of export markets
- increased production costs to the affected agricultural industries

- increased pesticide use by the affected agricultural industries
- increased costs to the consumers of host fruits
- increased pesticide use by homeowners and others
- the need to implement a State interior quarantine
- the need to implement a federal domestic quarantine

There is no existing, comparable federal regulations or statute.

There are no known specific benefits to worker safety or the health of California residents.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Section 3423 and 3591.2 has determined that they are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

There is no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of 3423 and 3591.2.

Cost or savings to any state agency: None.

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

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

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

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The cost impacts are expected to be none and minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None.

Small business determination: The proposed action will not affect small business because compliance activities are currently being performed by existing staff throughout quarantine areas within the state without any impact on small business.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department has concluded that the Section 3423 and 3591.2 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the state of California, (3) will have no impact on the expansion of businesses within the State of California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state’s environment, and (6) is not expected to harm or benefit workers’ safety.

The health and welfare of California residents: The proposed action will benefit the health and welfare of California residents by preventing programmatic delays, such as having host lists out of date, that can potentially lead to pest quarantines, as well as increased production costs and potential job loss. The agricultural industry is one of the economic engines in the State. Negative impacts to agriculture impact the State’s economic recovery and the general welfare of the State.

The state’s environment: The amendment of this regulation benefits the environment as correctly regulating hosts of OFF lowers the risk that the pests could spread into the local environment via the surrounding non-agricultural ecosystems. OFF spreading could adversely impact private and commercial landscape plantings, local, regional, state and national parks, other recreational sites, open habitats, and wild lands. Affected plants could become less vigorous and may produce fewer seeds. Plants/trees with low propagule output can result in major changes to plant community structure.

CONSIDERATION OF ALTERNATIVES

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

vate persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present alternatives during the written comment period.

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

The Department has prepared an initial statement of reasons for the proposed action, and has made available all the information upon which its proposal is based and the express terms of the proposed action. The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdffa.ca.gov/plant/Regulations.html). A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the comment period and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the agency officer named herein.

**TITLE 10. DEPARTMENT OF
INSURANCE**

REG-2023-00016
REVISIONS TO CALIFORNIA
AUTOMOBILE ASSIGNED RISK PLAN
PLAN OF OPERATIONS

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara (“Commissioner”) will hold a public hearing to address the proposed amendments to the California Automobile Assigned Risk Plan (“CAARP” or “Plan”) of Operations. California Code of Regulations, Title 10, Chapter 5, Section 2498.4.9 references this plan.

**AUTHORITY TO ADOPT
RATES AND REFERENCES**

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner’s decision on the proposed changes will implement, interpret and makes specific the requirements of Insurance Code Section 11624(e). Insurance Code section 11620(c) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time:

**November 9, 2023
1:00 p.m.**

Location:

**Department of Insurance Hearing Room
1901 Harrison Street 3rd Floor
Oakland, CA 94612**

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney
California Department of Insurance
Enforcement Bureau
1901 Harrison Street Rate
Oakland, CA 94612
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (510) 238-7830

The *backup* agency contact person for this proceeding will be:

Elsa Carre, Legal Analyst
California Department of Insurance
Enforcement Bureau
1901 Harrison Street
Oakland, CA 94612
Elsa.Carre@insurance.ca.gov
Telephone: (415) 538-4461

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on November 9, 2023**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by email or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Spring Street 12th Floor
Los Angeles, CA 90013
Telephone: (213) 346–6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CA 23–06 Plan of Operations

SB 1107 increases the financial liability limits required for owners of a private passenger vehicles and vehicles used for commercial purposes when the vehicle is not subject to the Public Utilities Commission. CAARP is proposes to make changes to the Plan of Operations to reflect the changes.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACTS ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not affect private person or entities.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the application will not affect housing costs.

IMPACT ON SMALL BUSINESS

The proposed rate changes could affect small businesses.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The application would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL
STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or email request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 1901 Harrison Street, Oakland, CA 94612, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED
TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated,

available to the public for at least 15 days before the date the Department adopts the amended rates.

**TITLE 10. DEPARTMENT OF
INSURANCE**

REG-2023-00018
REVISIONS TO CALIFORNIA
AUTOMOBILE ASSIGNED RISK PLAN
SIMPLIFIED RULES AND RATES MANUAL

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara ("Commissioner") will hold a public hearing to consider the application of the California Automobile Assigned Risk Plan ("CAARP" or "Plan") to change the Commercial Automobile Insurance Procedure ("CAIP") rates referenced in the California Code of Regulations, Title 10, Chapter 5, Section 2498.5.

AUTHORITY TO ADOPT
RATES AND REFERENCES

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner's decision on the proposed changes will implement, interpret and make specific the requirements of Insurance Code Section 11624(e). Government Code section 11340.9(g) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time:

**November 9, 2023
1:00 p.m.**

Location:

**Department of Insurance Hearing Room
1901 Harrison Street 3rd Floor
Oakland, CA 94612**

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are request-

ed to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:
Contact Person:

Michael Riordan, Attorney
California Department of Insurance
Enforcement Bureau
1901 Harrison Street Rate
Oakland, CA 94612
riordanm@insurance.ca.gov
Telephone: (415) 538–4226
Facsimile: (510) 238–7830

The *backup* agency contact person for this proceeding will be:

Elsa Carre, Legal Analyst
California Department of Insurance
Enforcement Bureau
1901 Harrison Street
Oakland, CA 94612
Elsa.Carre@insurance.ca.gov
Telephone: (415) 538–4461

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on November 9, 2023**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by email or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted

to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Spring Street 12th Floor
Los Angeles, CA 90013
Telephone: (213) 346–6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

CA 23–05 Simplified Rules and Rates Manual

Pursuant to California Insurance Code Section 11624, The commissioner establishes rates to be charged to those obtaining commercial automobile coverage through CAIP. Section 11624 provides “Premium charges for the plan shall not be excessive, inadequate, nor fairly discriminatory, and shall be actuarially sound so as to result in no subsidy of the plan.” Title 10, California Code of Regulations section 2498.5 references the commercial automobile rate manual, which is approved by the Commissioner but not printed in full in the California Code of Regulations.

The Commissioner is holding the hearing referenced above to accept comments on CAARP’s recent rate application. CAARP has proposed rate changes for five CAIP sub–lines, amounting to an overall average 20.2% percent rate increase.

Further details appear in the rate application on file with the Commissioner and available for review as set forth below.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL AGENCIES OR
SCHOOL DISTRICTS OR COSTS
WHICH MUST BE REIMBURSED
PURSUANT TO GOVERNMENT CODE
SECTIONS 17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the application will not result in any cost

or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE
AGENCY; FEDERAL FUNDING**

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACTS ON PRIVATE
PERSONS OR ENTITIES**

The Insurance Commissioner has initially determined that the proposal will not affect private person or entities.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the application will not affect housing costs.

IMPACT ON SMALL BUSINESS

The proposed rate changes could affect small businesses.

**SPECIFIC TECHNOLOGIES
OR EQUIPMENT**

The application would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in

carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

**TEXT AND INITIAL
STATEMENT OF REASONS**

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or email request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 1901 Harrison Street, Oakland, CA 94612, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published on-

line and may be accessed through the Department’s website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED
TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

**TITLE 10. DEPARTMENT OF
INSURANCE**

REG-2023-00019
REVISIONS TO CALIFORNIA
AUTOMOBILE ASSIGNED RISK PLAN
SIMPLIFIED RULES AND RATES MANUAL

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara (“Commissioner”) will hold a public hearing to consider the application of the California Automobile Assigned Risk Plan (“CAARP” or “Plan”) to change the private passenger automobile rates referenced in the California Code of Regulations, Title 10, Chapter 5, Section 2498.5.

AUTHORITY TO ADOPT
RATES AND REFERENCES

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner’s decision on the proposed changes will implement, interpret and makes specific the requirements of Insurance Code Section 11624(e). Government Code section 11340.9(g) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time:

**November 9, 2023
1:00 p.m.**

Location:

**Department of Insurance Hearing Room
1901 Harrison Street 3rd Floor
Oakland, CA 94612**

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney
California Department of Insurance
Enforcement Bureau
1901 Harrison Street
Oakland, CA 94612
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (510) 238-7830

The *backup* agency contact person for this proceeding will be:

Elsa Carre, Legal Analyst
California Department of Insurance
Rate Enforcement Bureau
1901 Harrison Street
Oakland, CA 94612
Elsa.Carre@insurance.ca.gov
Telephone: (415) 538-4461

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on November 9, 2023**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by email or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Spring Street 12th Floor
Los Angeles, CA 90013
Telephone: (213) 346–6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

CA 23–05 Simplified Rules and Rates Manual

Pursuant to California Insurance Code Section 11624, The commissioner establishes rates to be charged to those obtaining private passenger automobile coverage through policies assigned through CAARP. Section 11624 provides premium charges for the plan shall not be excessive, inadequate, nor fairly discriminatory, and shall be actuarially sound so as to result in no subsidy of the plan.” Title 1, California Code of Regulations section 2498.5 references the private passenger automobile rate manual, which is approved by the Commissioner but not printed in full in the California Code of Regulations.

The Commissioner is holding the hearing referenced above to accept comments on CAARP’s recent rate application. CAARP has proposed an 13.1% percent rate increase.

Further details appear in the rate application on file with the Commissioner and available for review as set forth below.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

**MANDATES ON LOCAL AGENCIES OR
SCHOOL DISTRICTS OR COSTS
WHICH MUST BE REIMBURSED
PURSUANT TO GOVERNMENT CODE
SECTIONS 17500 THROUGH 17630**

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

**COST OR SAVINGS TO ANY STATE
AGENCY; FEDERAL FUNDING**

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE**

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

**COST IMPACTS ON PRIVATE
PERSONS OR ENTITIES**

The Insurance Commissioner has initially determined that the proposal will not affect private person or entities.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the application will not affect housing costs.

IMPACT ON SMALL BUSINESS

The proposed rate changes could affect small businesses.

SPECIFIC TECHNOLOGIES
OR EQUIPMENT

The application would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL
STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or email request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the con-

tact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 1901 Harrison Street, Oakland, CA 94612, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED
TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

**TITLE 10. DEPARTMENT OF
INSURANCE**

REG–2023–00020
REVISIONS TO CALIFORNIA
LOW COST AUTOMOBILE PLAN
PLAN OF OPERATIONS

SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara will hold a public hearing to consider an adjustment to rates for the California Low Cost Automobile Insurance program.

Insurance Code Section 11629.72(c) provides that, annually, the California Automobile Assigned Risk Plan ("CAARP") shall submit to the Commissioner a proposed Low Cost Automobile rate and surcharge schedule for approval. Accordingly, CAARP submitted its 2020 rate recommendation, proposing an overall average rate decrease of 6.1%. The Commissioner will consider the current rates and CAARP's rate proposal and hereby invites public input regarding CAARP's proposal. Premium rates are specified in the program's Plan of Operations, approved by the Commissioner.

California Code of Regulations, Title 10, Chapter 5, Section 2498.6 references this plan.

**AUTHORITY TO ADOPT
RATES AND REFERENCES**

Authority for the promulgation of rates is vested in the Insurance Commissioner pursuant to California Insurance Code Sections 11620, 11624, 11629.7, 11629.72, and 11629.79. Premium rates are referenced in Section 27 and Exhibit E of the Programs Plan of Operations. The proposed regulation implements, interprets and makes specific Insurance Code Sections 11629.72 and 11629.79. Government Code Section 11340.9(g) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time:

**November 9, 2023
1:00 p.m.**

Location:

**Department of Insurance Hearing Room
1901 Harrison Street 3rd Floor
Oakland, CA 94612**

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney
California Department of Insurance
Enforcement Bureau
1901 Harrison Street
Oakland, CA 94612
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (510) 238-7830

The *backup* agency contact person for this proceeding will be:

Elsa Carre, Legal Analyst
California Department of Insurance
Rate Enforcement Bureau
1901 Harrison Street
Oakland, CA 94612
Elsa.Carre@insurance.ca.gov
Telephone: (415) 538-4461

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on November 9, 2023**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by email or facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Spring Street 12th Floor
Los Angeles, CA 90013
Telephone: (213) 346-6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed

above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

LC 23-03

California Insurance Code Sections 11629.7 through 11629.85 establish, within the California Automobile Assigned Risk Plan, established under Section 11620 of the Insurance Code, a statewide Low Cost Automobile Insurance Program.

Because the program is established and administered through the CAARP, CAARP procedures are applied where appropriate and consistent with the low cost automobile insurance statutes. Insurance Code Sections 11620 and 11624 require the Commissioner to hold a public hearing before amending assigned risk plan rates.

Section 11629.7 of the Insurance Code requires that, after a public hearing, the Commissioner shall approve or issue a reasonable plan for the equitable apportionment, among insurers, of eligible consumers. The plan also contains rules and rates. This plan, approved by the Commissioner, is referenced in Title 10, Section 2498.6 of the California Code of Regulations.

Under the program, the low-cost auto policy satisfies financial responsibility laws and provides coverage of \$10,000 for liability for bodily injury or death to one person, subject to a cumulative limit of \$20,000 for all persons in one accident, and \$3,000 for liability for damage to property. In addition to eligibility and other requirements, the statute sets forth the annual premium rates. In certain cases, surcharges are added to the base rate. The statute also provides procedures for adjusting the rates.

Insurance Code Section 11629.72(c) provides that, annually, CAARP shall submit to the Commissioner a proposed rate and surcharge for approval. Accordingly, CAARP has submitted a proposal to decrease the current rate 6.1% for the liability policy. Further details appear in the application on file with the Commissioner, which is available for review as set forth below.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR
SCHOOL DISTRICTS OR COSTS
WHICH MUST BE REIMBURSED
PURSUANT TO GOVERNMENT CODE
SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE
AGENCY; FEDERAL FUNDING

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACTS ON PRIVATE
PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not affect private person or entities.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the application will not affect housing costs.

IMPACT ON SMALL BUSINESS

The proposed rate changes could affect small businesses.

SPECIFIC TECHNOLOGIES
OR EQUIPMENT

The application would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL
STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or email request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 1901 Harrison Street, Oakland, CA 94612, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED
TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

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

AMEND COMMISSION REGULATIONS
1052 AND 1059
POST GUIDELINES FOR STUDENT
SAFETY IN CERTIFIED COURSES

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

Public Comments Due by November 6, 2023.

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

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

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code (PC) section 13503 (authority of POST), PC § 13506 (POST authority to adopt regulations), and PC § 13510 (POST authority to set minimum standards). This proposal is intended to interpret, implement, and make specific PC § 13510(a)(2), which authorizes to adopt, and may from time to time amend, rules establishing minimum standards for training.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PC § 13510 requires that POST develop minimum standards and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers. POST is responsible for the certification of these courses, and implementing requirements for student safety within courses, which include components that pose a higher risk of injury to students (e.g., firearms, arrest and control, physical training, etc.)

The implementation of these changes will remove subjective language and provide clear direction to course presenters on the expectations for instructors, safety signage, safety equipment, safety ratios, etc. Clear expectations provide POST staff the ability to hold presenters accountable when violations are identified during the review of courses and training locations.

Anticipated Benefits of the Proposed Amendments:

The benefits anticipated by the proposed amendments to the regulation will provide clarification to presenters on the safety requirements of the courses they present, provide POST staff the ability to hold presenters accountable when safety violations are identified, and address new vehicles for training such as virtual reality and E-bikes, which will increase the efficiency of the state of California in delivering services to stakeholders. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare of California. The proposed amendments will have no impact on worker safety or the state's environment.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

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

DOCUMENT INCORPORATED BY REFERENCE

POST Guidelines for Student Safety in Certified Courses.

DISCLOSURES REGARDING THE PROPOSED ACTION

POST has made the following initial determinations:

Mandate on local agencies or school districts: None.
 Cost or savings to any state agency: None.

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

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

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

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

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

Significant effect on housing costs: None.

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

RESULTS OF ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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

Benefits of the Proposed Action: As stated above under the Informative Digest/Policy Statement Overview, the benefits of the regulation will increase the efficiency of the state of California in delivering services to stakeholders by providing clarity to the requirements for background inquiries when evaluat-

ing a candidate for peace officer selection. Thus, the law enforcement standards are maintained and effective in preserving peace, protection of public health, safety, and welfare in California. There would be no impact that would affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Questions regarding this proposed regulatory action may be directed to *Brian South*, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605–1630, at (916) 227–0244. General questions regarding the regulatory process may be directed to *Katelynn Poulos* at (916) 227–4894.

TEXT OF PROPOSAL

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

ADOPTION OF PROPOSED REGULATIONS/ AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

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

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

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

TITLE 20. CALIFORNIA ENERGY COMMISSION

ARTICLE 1: COMMISSION BUSINESS MEETINGS AND ARTICLE 4. RULEMAKING AND INFORMATIONAL HEARINGS SECTIONS 1102, 1105, AND 1221

DOCKET NUMBER 23–OIR–02

INTRODUCTION

Notice is hereby given that the California Energy Commission (CEC) proposes to adopt amendments to its procedures related to business meetings and requests for rulemakings contained in the California Code of Regulations (CCR), title 20, sections 1102, 1105, and 1221 (“the Proposed Action”).

PUBLIC HEARING

The CEC will hold a public hearing on the proposed regulations at the date and time listed below. Interested persons, or their authorized representative, may present statements, arguments, or contentions relevant to the proposed regulations at the public hearing. Comments at the public hearing may be limited to three minutes or less.

Public Hearing
November 7, 2023
10 a.m. (Pacific Time)

BUSINESS MEETING

PLEASE TAKE NOTICE that the CEC will consider and possibly adopt the proposed regulations at a CEC Business Meeting at the date and time listed below. Interested persons, or their authorized representative, may present oral statements, arguments, or contentions relevant to the proposed regulations at the Business Meeting. If the date, time, place, or nature of the proposed adoption changes, the CEC will provide updated information in the rulemaking docket.

Business Meeting

Remote Access or In–Person at 1516 9th Street
Sacramento, CA 95814

Date: November 8, 2023

10 a.m. (Pacific Time)

REMOTE ATTENDANCE

The public hearing may be accessed by clicking the Zoom link below or visiting Zoom at <https://join.zoom.us> and entering the ID and password for the public hearing listed below. If you experience difficulties joining, you may contact Zoom at (888) 799–9666 extension 2, or the Public Advisor’s Office at publicadvisor@energy.ca.gov or (800) 822–6228.

Zoom Link: <https://energy.zoom.us/j/93869230237?pwd=Zm96c09ULzdXTjd4eldtUXdnUGErzd09>

Webinar ID: 938 6923 0237

Password: mtg@10am

To participate by telephone dial (669) 900–6833 or (888) 475–4499 (toll free). When prompted, enter the Webinar ID and password listed above. To comment or ask a question over the telephone, dial *9 to “raise your hand” and *6 to mute/unmute your phone line.

PUBLIC ADVISOR

The CEC’s Office of the Public Advisor, Energy Equity and Tribal Affairs provides the public assistance in participating in CEC proceedings. For information on participation or to request interpreting services or reasonable accommodations, reach out via email at publicadvisor@energy.ca.gov, by phone at (916) 957–7910. Requests for interpreting services and reasonable accommodations should be made at least five days in advance. The CEC will work diligently to accommodate all requests.

Zoom: If you experience difficulties with the Zoom platform, please contact the Office of the Public Advisor, Energy Equity and Tribal Affairs via email or phone.

MEDIA INQUIRIES

Direct media inquiries to the Media and Public Communications Office at (916) 654–4989 or mediaoffice@energy.ca.gov.

PUBLIC COMMENT PERIOD

The written public comment period for the proposed regulations will be held from September 22, 2023 to November 6, 2023. Any interested person, or an authorized representative, may submit written comments to the CEC for consideration on or prior to November 6, 2023. The CEC appreciates receiving written comments at the earliest possible date. Comments submitted outside this comment period are considered untimely. CEC may, but is not required to, respond to untimely comments, including those raising significant issues.

Written and oral comments, attachments, and associated contact information (including address, phone number, and email address) will become part of the public record of this proceeding with access available via any internet search engine.

The CEC encourages use of its electronic commenting system. Visit <https://efiling.energy.ca.gov/EComment/ECommentSelectProceeding.aspx>, type in docket number, 23–OIR–02. Enter your contact information and a comment title describing the subject of your comment(s). Comments may be included in the “Comment Text” box or attached as a downloadable, searchable document consistent with Title 20, California Code of Regulations, Section 1208.1. The maximum files size allowed is 10 MB.

Written comments may also be submitted by email. Include Docket Number 23–OIR–02 in the subject line and email to docket@energy.ca.gov.

A paper copy may be sent to:

California Energy Commission
Docket Unit
Docket Number 23–OIR–02
715 P Street, MS–4
Sacramento, CA 95814

Pursuant to California Code of Regulations Title 20 section 1104(e), any person may make oral comment on any agenda item at the November 8, 2023, Business Meeting. Please consult the public agenda, which will be posted ten days before the Business Meeting, for important details on how to participate.

To ensure you receive notice of any changes to the proposed regulations in this proceeding, please follow the instructions provided at the end of this notice to join the proceeding list serve or provide a valid email or mailing address with your comments.

STATUTORY AUTHORITY
AND REFERENCE

Public Resources Code Sections 25210, 25213, and 25218(e), authorize the CEC to adopt rules or regulations, as necessary, to implement, interpret, and make specific Public Resources Code Sections 25210 and 25214.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The California Energy Commission (CEC) proposes to adopt amendments to the CEC's procedures related to business meetings and requests for rulemakings contained in the California Code of Regulations (CCR), title 20, sections 1102, 1105, and 1221.

The purpose of this rulemaking is to: (1) allow the CEC to conduct business meetings as necessary, (2) remove the requirement for the CEC to take minutes and clarify that the transcript and decisions, orders, and resolutions approved in meetings shall be the original evidence of actions taken at any meeting, and (3) ensure that the CEC has sufficient information to evaluate petitions for rulemakings and increase the time for the executive director to respond to a petition for rulemaking from seven to 14 days.

These proposed procedural changes related to business meetings and requests for rulemakings will allow the CEC to conduct its business and respond to the public more efficiently.

Difference from existing comparable federal regulations or statute

These proposed regulations do not duplicate or conflict with any federal regulations or statute contained in the Code of Federal Regulations. There are no federal laws that address the procedural matters that are the subject of this rulemaking.

Broad objectives of the regulations and the specific benefits anticipated by the proposed amendments

As the state's primary energy policy and planning agency, the CEC's responsibilities have increased relative to helping the state reach its climate and energy goals. With the increase in responsibilities, the CEC's workload has also increased. As such, the CEC must have the latitude to hold business meetings as needed. There have been months where the CEC has needed to hold multiple business meetings in order to conduct the CEC's business. Alternatively, there are months where a business meeting is not needed or cannot easily be convened due lack of a quorum of commissioners. Commissioners have demanding work obligations which include the need to travel outside of the region and country. Consequently, there is an urgent need for the CEC to have more flexibility in determining when and how often to conduct business meetings.

Additionally, it is vital that the CEC's regulations be amended to address recurring issues in the implementation of the regulations, to make the process more efficient and effective, and save staff time and resources. Regulations must be updated to eliminate the need for an assigned staff person to take minutes at business meetings. The regulations currently designate minutes as the original evidence of actions taken at CEC meetings. The CEC expends extensive staff resources to produce the minutes for business meetings. This process entails an assigned staff person typing notes of comments made at the business meeting. These notes are based on the perception and awareness of one person and are not the best evidence of the official record. The process is cumbersome, time consuming, inefficient, and subject to error.

Concurrently, the CEC utilizes court reporters to create an accurate record of business meeting proceedings. Such transcripts are the more accurate record of proceedings.

With respect to petitions for rulemakings, the CEC frequently receives requests for rulemakings that are vague and/or difficult to understand. The CEC spends a considerable amount of time interpreting these requests. In addition, the short timeframe within which the CEC must respond to requests for rulemakings does not permit the CEC to thoroughly evaluate the petitions. These proposed changes would save staff time and resources, which will allow the CEC to respond to the public more efficiently.

The specific benefits of this rulemaking are that the CEC's regulations related to business meetings would address recurring issues in the implementation of unnecessary or burdensome regulations, and staff time and resources would be saved. These changes will allow the CEC to effectively conduct the CEC's business while improving public transparency and minimizing delays in responding to requests for rulemakings.

Determination of inconsistency or incompatibility with existing state regulations

The CEC has conducted a search for any other regulations in this area and has determined that the proposed regulations are neither inconsistent nor incompatible with any existing state regulations.

DOCUMENTS INCORPORATED
BY REFERENCE

The CEC does not propose to incorporate by reference any documents.

MANDATED BY FEDERAL
LAW OR REGULATIONS

None.

OTHER STATUTORY REQUIREMENTS

None.

FISCAL IMPACTS

The CEC has made the following initial determinations:

- Mandate on local agencies and school districts: No.
- Cost to any local agency or school district requiring reimbursement pursuant to Government Code Section 17500 et seq.: No.
- Cost or savings to any state agency: No.
- Non–discretionary cost or savings imposed upon local agencies: No.
- Cost or savings in federal funding to the state: No.

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

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

The proposed regulations are procedural in nature. They will impact the CEC’s use of time and resources and will allow the CEC to effectively conduct its business while improving public transparency and minimizing delays in responding to requests for rulemakings. The proposed regulations do not impact private persons and there are no anticipated cost impacts to businesses associated with these proposed changes.

The proposed changes will allow the CEC to conduct business meetings as necessary. The CEC will continue to hold business meetings in a manner that reflects the CEC’s workload. Therefore, any businesses that may be interested in the ongoings of CEC’s business meetings will continue to have the opportunity to listen and be engaged in these meetings. The proposed changes include procedural amendments that would remove the requirement for the CEC to take minutes and clarify that the transcript and decisions, orders, and resolutions approved in meetings shall be

the original evidence of actions taken at any meeting. The proposed changes would also ensure that the CEC has sufficient information to evaluate petitions for rulemakings and increase the time for the executive director to respond to a petition for rulemaking from seven to 14 days. These procedural changes would not have a direct or indirect impact on businesses as their intended purpose would be to reduce the CEC’s time and cost of preparing the original evidence of actions taken at meetings and responding to petitions for rulemakings. Regardless of the changes, the public would still have access to the ordinary course of business that occurs at business meetings and would have the same opportunities to petition for requests for rulemakings. Therefore, no economic or fiscal impacts are expected from this change.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The CEC concludes that the proposal: (1) will not create jobs within California, (2) will not eliminate jobs within California, (3) will not create new businesses in California, (4) will not eliminate existing businesses within California, and (5) will not result in the expansion of businesses currently doing business within the state.

The proposed regulation will not adversely impact the health and welfare of California residents, worker safety, or the state’s environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The CEC 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 REPORT

The regulations do not impose a new reporting requirement.

SMALL BUSINESS

The proposed regulations will not affect small business. The proposed regulations are procedural in nature. They will impact the CEC’s use of time and resources and will allow the CEC to effectively conduct its business while improving public transparency and minimizing delays in responding to requests for rulemakings. The proposed regulations do not impact private persons and there are no anticipated impacts to small businesses associated with these proposed procedural changes.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSON

For questions, contact Mariah Ponce, Staff Attorney, at (916) 559-4166 or at Mariah.Ponce@energy.ca.gov.

COPIES OF THE INITIAL STATEMENT OF REASONS, THE EXPRESS TERMS, AND RULEMAKING FILE

The CEC will have the entire rulemaking file available in electronic format 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 express terms, the Initial Statement of Reasons (ISOR), and any documents relied upon. Copies may be obtained by contacting Mariah Ponce above or accessed through the CEC website at Docket Number 23-OIR-02.

AVAILABILITY OF CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/ REPEAL/AMENDMENT OF RESULTING REGULATIONS

Participants should be aware that any of the proposed regulations could be changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the CEC considers changes to the proposed regulations pursuant to Government Code Section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the CEC adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the Final Statement of Reasons (FSOR), once it has been prepared, by visiting the CEC website at Docket Number 23-OIR-02.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The CEC maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared for this rulemaking have been posted on the CEC's website at Docket Number 23-OIR-02.

INSTRUCTIONS FOR RECEIVING NOTICES AND DOCUMENTS IN THIS PROCEEDING

To stay informed about this project and receive documents and notices of upcoming workshops and hearings as they are filed, please subscribe to the Rulemaking List which can be accessed here: <https://www.energy.ca.gov/subscriptions>.

The list serve sends out email notification and direct links when documents and notices are filed in the proceeding docket. If you are unable or do not wish to sign up for the listserv but still would like to receive documents and notices, please contact the contact person listed in this notice.

TITLE 22. DEPARTMENT OF HEALTH CARE SERVICES

SUBJECT: NOTICE OF ACTION — COUNTY CONTACT INFORMATION, DHCS-19-004

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) proposes to amend California Code of Regulations (CCR), title 22, section 50179 after considering all public comments, objections, and recommendations.

WRITTEN COMMENT PERIOD

Any interested person or their duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to **Notice of Action — County Contact Information, DHCS-19-004** and submit them using any of the following methods:

Mail: Department of Health Care Services
 Office of Regulations, MS 0015
 P.O. Box 997413
 Sacramento, CA 95899–7413
 FAX: (916) 440–5748
 Email: regulations@dhs.ca.gov

The written comment period closes at **5:00 p.m. on November 8, 2023**. Any written comments, regardless of the method of transmittal, must be received by the Office of Regulations by **5:00 p.m.** on this date for consideration.

Written comments should include the author’s contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or their duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

AUTHORITY AND REFERENCE

These regulations are proposed under the following authorities: Section 20, Health and Safety Code; Sections 10725 and 14124.5, Welfare and Institutions Code.

These regulations implement, interpret, or make specific the following: Sections 10950, 10951, 11002, 11004, 11052, 11055, 14000, 14005, 14016, 14016.2, 14023, 14023.7, and 14124.90, Welfare and Institutions Code.

**INFORMATIVE DIGEST/POLICY
 STATEMENT OVERVIEW**

Background

The purpose of the Department of Health Care Services (Department) is to provide equitable access to quality health care leading to a healthy California for all. In support of this purpose, the Department administers many health care programs, including California’s Medicaid program, which is known as the Medi-Cal program.

The Department’s Medi-Cal Eligibility Division is responsible for the coordination and implementation of Medi-Cal program regulations that support the accurate and timely determination of Medi-Cal program eligibility for applicants and beneficiaries.

When a county department completes a Medi-Cal only eligibility determination or redetermination for an applicant or beneficiary, it sends the individual a Notice of Action (NOA). A NOA is a written notice that informs the applicant or beneficiary of the county department’s eligibility decision and effective date of coverage, as well as any changes made in eligibility status or level of benefits. The NOA includes information about the applicant or beneficiary’s right to request a State hearing to appeal an eligibility determination such as a denial or reduction of benefits, or failure to take action on an application or other information. In addition, the NOA currently provides the name and phone number of the eligibility worker who completed the applicant or beneficiary’s eligibility determination.

Related Federal and State Laws

Federal and state law govern the Medi-Cal program. Federal Medicaid law is provided under Title 42 United States Code (U.S.C.) section 1396a et seq. State Medicaid law is provided under Welfare and Institutions (W&I) Code division 9, part 3, chapters 7 and 8.

W&I Code sections 10725 and 14124.5 authorize the Director of the Department to adopt, amend or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal program. These include regulations for the determination of Medi-Cal eligibility and share of cost, which are provided under article 2, subdivision 1, division 3, title 22 of the California Code of Regulations.

California Code of Regulations, title 22, section 50179 specifies the required information to be included in a NOA for Medi-Cal only determinations and redeterminations. Currently, this section requires the NOA to include the name and phone number of the eligibility worker who completed the eligibility determination.

Statement of Purpose/Problem to Be Addressed

This proposed regulatory action amends California Code of Regulations, title 22, section 50179 to enable county departments to include in the NOA the name and telephone number of the county department worker, county department call center, or other appropriate county department contact that is able to assist applicants and beneficiaries with questions about their NOA. By expanding the county department contact options, county departments will have the discretion to include in the NOA the most helpful and relevant county department contact information according to their operational structure.

Anticipated Benefits or Goals of the Regulations

This proposed regulatory action will improve the Medi-Cal program eligibility determination process by enabling applicants and beneficiaries to contact a knowledgeable party that can readily address ques-

tions or provide further information about their NOA. The anticipated benefit of these amendments is enhanced communication and the flow of accurate information between applicants and beneficiaries and county departments. This, in turn, supports applicants and beneficiaries in their efforts to apply for or maintain eligibility in the Medi-Cal program and to access necessary health care services.

This regulatory proposal supports the purpose and intent of the Medi-Cal program, as specified under W&I Code section 14000 et seq. (chapter 7, Basic Health Care), to afford qualifying individuals with health care and related preventive services. Furthermore, this proposal supports individuals in obtaining covered health care services in the same manner as the general public without economic discrimination, and without duplication of benefits available under other federal or state laws.

Within chapter 7, W&I Code section 14124.5 further specifies that the Director may establish regulations as are necessary or proper to carry out the purpose and intent of this chapter, which includes the establishment of Medi-Cal eligibility standards and methodologies as set forth under this chapter (including section 14005.30) and in accordance with 42 U.S.C. section 1396u-1.

This regulatory proposal supports the proper and efficient administration of the Medi-Cal program, in accordance with federal and state laws that govern the Medi-Cal program's rules of eligibility, participation, and funding.

Consistency and Compatibility with Existing State Regulations

The Department conducted an evaluation of the related existing state regulations under the California Code of Regulations, title 22, division 3 and determined that the regulations are consistent and compatible with those regulations. In addition, the Department conducted an automated search of California Code of Regulations, title 22, division 3 using the following keywords "Notice of Action." The search did not yield any conflicting state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

FISCAL IMPACT STATEMENT

A. Costs to any Local Agency or School District that is required to be reimbursed under part 7 (commencing with section 17500), division 4 of the Government Code: None.

Costs to any Local Agency or School District that is not reimbursable by the State: None.

- B. Costs or Savings to any State Agency: None.
- C. Costs or Savings in Federal Funding to the State: None.
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Agencies: None.

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with section 17500) of division 4 of the Government Code.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (ANALYSIS)

In accordance with Government Code section 11346.3(b)(1), the Department has determined that the regulations would not significantly affect the following:

- 1) The creation or elimination of jobs within the State of California;
- 2) The creation of new businesses or the elimination of existing businesses within the State of California; or
- 3) The expansion of businesses currently doing business within the State of California.

IMPACT ON JOBS AND BUSINESSES

The Medi-Cal program is a public health program that provides health care services for low-income individuals who choose to enroll and participate in the program. This regulatory proposal will impact the Medi-Cal eligibility determination process conducted by county departments. Specifically, the amendments proposed through this regulatory action will update and enhance the usefulness of the county department contact information provided on a NOA. This regulatory proposal is not anticipated to have an impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California.

BENEFITS OF THE PROPOSED REGULATION

The Department has determined that the proposed regulations will not specifically affect worker safety or the state's environment. However, the regulations will benefit county departments that conduct Medi-Cal program eligibility determinations, as well as applicants and beneficiaries. Including the most relevant and useful county department contact information will support county department efforts to be available for applicants and beneficiaries to answer questions and provide guidance regarding their NOA. This, in turn, will benefit the health and welfare of California residents. Ensuring access to the county department and information about the NOA will benefit the health and welfare of California residents, specifically supporting applicants and beneficiaries in their efforts to apply for or maintain eligibility in the Medi-Cal program and to access necessary health care services.

This regulatory action also supports the proper and efficient administration of the Medi-Cal program, in accordance with federal and state laws. The Department accomplishes this by issuing regulations that improve eligibility determination processes.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations would not affect small businesses because these regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

HOUSING COSTS DETERMINATION

The Department has determined that the proposed regulations would have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory 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.

Existing Medi-Cal program regulations are located in California Code of Regulations, title 22, division 3. Using this regulatory action to update requirements related to county department contact information that is listed on a NOA is the most effective and convenient way to provide current information directly to those impacted including applicants, beneficiaries, and county departments.

ASSISTIVE SERVICES

For individuals with disabilities, the Department will provide assistive devices, including sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of training or meeting materials into braille, large print, audio or electronic format. To request these services, copies in an alternative format or language services, all free of charge, please call or write:

Department of Health Care Services
Office of Regulations MS 0015
P.O. Box 997413
Sacramento, CA 95899-7413
Program Phone Number: (916) 440-7695
Program Email: www.regulations.ca.gov

Please note that the range of assistive services available may be limited if requests are received less than ten working days prior to the meeting or event.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code section 11346.6.

CONTACT PERSONS

Inquiries regarding the proposed regulations described in this notice may be directed to Kathryn Floto of the Medi-Cal Eligibility Program at (916) 345–8076.

All other inquiries concerning the action described in this notice may be directed to Erika Drayton–Jebali of the Office of Regulations, at (916) 345–8404, or to the designated backup contact person, Jasmin Delacruz, at (916) 345–8418.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at: <http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440–7695 (or California Relay at 711), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.

TITLE 23. DEPARTMENT OF WATER RESOURCES

DIVISION 2

CHAPTER 1. DAMS AND RESERVOIRS

The Department of Water Resources (Department) is proposing to amend the regulations that explain how its Architectural and Engineering (A&E) contracting

program operates pursuant to the Government Code sections 4525–4529.5, Public Contract Code sections 6106 and 10335. The Department will conduct a public hearing at the time and place noted below to receive comments on the proposed regulation.

PUBLIC HEARING

Interested members of the public may present comments on the proposed regulations orally or in writing at the hearing. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

The hearing will be held in accordance with the requirements in Government Code section 11346.8. The hearing details are as follows:

Date: Tuesday, November 7, 2023

Time: 10 a.m.–11 a.m.

Location: Ziggurat Building Auditorium
707 3rd Street
West Sacramento, CA 95605

Americans with Disabilities Act: It is the policy of the state to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. Persons with disabilities requiring reasonable modification to participate in the event must provide their request to Kristen Martin with Division of Division of Engineering Kristen.Martin@water.ca.gov or (916) 712–6623. You may also contact the California Relay Service at (800) 735–2922 or (888) 877–5979; TTY at (900) 735–2929 or (888) 877–5978, or Speech to Speech at (800) 854–7784. It is recommended that the Department receive the request at least six working days prior to the event.

WRITTEN COMMENT PERIOD

Interested members of the public may submit comments by email or postal mail before the hearing. The public comment period for this regulatory action will begin on September 22, 2023. To be considered by the Department, written comments submitted before the hearing must be submitted on or after September 22, 2023 and **received no later than 5:00 p.m. on November 7, 2023** and must be addressed to the following:

Kristen Martin
Division of Engineering
P.O. Box 942836
Sacramento, CA 94236–0001
(916) 712–6623
AERegs@water.ca.gov

Americans with Disabilities Act: It is the policy of the state to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities. Persons with disabilities requiring reasonable modification to participate in the event should provide their request to Kristen Martin with Division of Engineering at Kristen.Martin@water.ca.gov or (916) 712-6623. You may also contact the California Relay Service at (800) 735-2922 or (888) 877-5979; TTY at (900) 735-2929 or (888) 877-5978, or Speech to Speech at (800) 854-7784. It is recommended that the Department receive the request at least six working days prior to the event.

AUTHORITY AND REFERENCE

Water Code sections 1976 through 1982 authorize the Department to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Public Contract Code sections 6106 and 10335 and Government Code sections 4525-4529.5 and 4529.10-4529.20.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The proposed amendments clarify the A&E regulations to streamline the A&E contracting program within DWR to make it easier for those preparing Statements of Qualifications (SOQs) for contracts and eliminate all exclusions, and allow for DWR to post a “Look-Ahead Report” which constitutes publishing estimated ranges of contract values for upcoming A&E contracts.

SUMMARY OF EXISTING LAWS AND REGULATIONS

The Department’s Division of Engineering (DOE) implements Chapter 10 of Division 5 of the Government Code and Part 1 of Division 2 of the Public Contract Code, which is commonly referred to as the Architectural and Engineering (A&E) Contracting Program.

EFFECT OF PROPOSED RULEMAKING

The proposed regulation amendments clarify how the Department’s A&E Contracting Program operates. This clarification will benefit the architectural and engineering consulting industry who submit qualifications for A&E contracts. In addition, the Department wants to clarify its ability to publish a “Look-Ahead report” which should result in more transparency, increased submittal volume, and higher quality submittals from consultants. This will benefit the people

of California by increasing the number and variety of consultants to select.

DIFFERENCES FROM COMPARABLE FEDERAL REGULATIONS

The Brooks Act (40 U.S.C.A. §§ 1101 to 1104) and Federal Acquisition Regulation (FAR) Subpart 36.6, (48 C.F.R. Part 36, Subpart 36.6) governs the procurement of architectural and engineering services by federal agencies. This federal authority is very similar to the statutes and regulations that govern the Department’s procurement of architectural and engineering services. The additions of Article XXII “Architectural and Engineering Services” to the State of California Constitution and Government Code §§ 4529.10-4529.20, Chapter 10.1, “Architectural and Engineering Services” in November 2000 were patterned after the federal Brooks Act. Both the federal regulations and those of DWR require the selection of architectural and engineering firms based on professional qualifications before the negotiation of any fair and reasonable compensation for services.

Although the federal and Department’s statutory and regulatory schemes operate similarly, the Department’s procurement of architectural and engineering services are only affected by federal rules if the Department’s subject procurement is federally funded.

COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department determined that the proposed regulations are consistent and compatible with existing State A&E regulations. The Department is aware that the California Department of Transportation (CalTrans), California Department Corrections and Rehabilitation (CDCR), Department of General Services (DGS), California Parks and Recreation (Parks), the Department of Boating and Waterways (no longer in existence and is now the Division of Boating and Waterways within Parks), California High-Speed Rail Authority, have similar A&E contracting programs. CalTrans publishes a Look Ahead Report on their A&E website online, similar to one of the changes being proposed by DWR in this current rulemaking. Caltrans, CDCR, DGS, Parks, the Department of Boating and Waterways, and California High-Speed Rail Authority do not have a section on Exclusions, which DWR is eliminating in this current rulemaking as it simply restates existing law.

**DOCUMENTS INCORPORATED
BY REFERENCE**

The proposed regulations will not be incorporating any documents by reference.

**MANDATED BY FEDERAL
LAW OR REGULATIONS**

The proposed regulations are not mandated by federal law or regulations.

**OTHER STATUTORY AND
LEGAL REQUIREMENTS**

There are no other statutory or legal requirements.

LOCAL MANDATE

The Department has determined that the proposed regulations changes will not impose a mandate on local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of the Government Code.

FISCAL IMPACT

Based on the findings of little or no direct economic impacts to A&E firms and given that DWR would not change its A&E solicitation, review, and contracting process, it would follow that there would be little or no related fiscal impacts to DWR.

There are no expected costs or savings to local agencies or school districts, nor to any state agency, nor non-discretionary cost or savings imposed upon local agencies, nor cost or savings in federal funding to the state.

HOUSING COSTS

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

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS, INCLUDING
ABILITY TO COMPETE**

The Department has made an initial determination that 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.

**STATEMENT OF THE RESULTS OF THE
ECONOMIC IMPACT ASSESSMENT (EIA)**

The proposed action will neither create nor eliminate jobs within the state. The proposed action will neither create nor eliminate businesses within the state. The proposed action will not expand businesses within the state. As stated above, the proposed regulations will benefit Californians generally through the streamlining of A&E contracting program and increasing the number and variety of consultants to select. The proposed regulations are not expected to affect worker safety or the state's environment.

A&E firms spend upwards of \$194,400 per SOQ prepared. However, given that DWR is not changing its A&E solicitation, review, and contracting process, there are no anticipated changes in the total number of SOQs prepared each year. There also are no anticipated changes to negotiated contract values. Therefore, there are expected to be little or no economic impacts.

**COST IMPACTS ON A REPRESENTATIVE
PERSON OR BUSINESS**

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

BUSINESS REPORTING REQUIREMENTS

There are no new business reporting requirements as a result of the proposed regulations.

EFFECT ON SMALL BUSINESS

The proposed regulations will not affect small business because there are no anticipated changes to negotiated contract values. Therefore, there are expected to be little or no economic impacts.

ALTERNATIVES STATEMENT

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

- would be more effective in carrying out the purpose for which the action is proposed,

- would be as effective and less burdensome to affected private persons than the proposed action, or
- would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

DEPARTMENT CONTACT PERSONS

Questions regarding the proposed regulatory action may be directed to:

Kristen Martin
 Division of Engineering
 715 P Street, 4th Floor
 Sacramento, CA 95814
 (916) 712-6623
AERegs@water.ca.gov

Backup contact person:

Alannah Chapman
 Division of Engineering
 715 P Street, 4th Floor
 Sacramento, CA 95814
 (916) 764-9779
Alannah.Chapman@water.ca.gov

AVAILABILITY OF DOCUMENTS

The Department has prepared an initial statement of reasons (ISOR) for the proposed regulations. This notice, the ISOR, the express terms, and all the information upon which the proposed regulations are based (the Rulemaking Record) are available on the DWR’s A&E Program website at <https://water.ca.gov/Programs/Engineering-And-Construction/AandEContractsProgram>. These documents will also be made available for inspection at DWR’s office at the address listed under “Department Contact Persons.” All subsequent regulatory documents, including the Final Statement of Reasons, when completed, will be made available on the website.

If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available to the public for comment for at least 15 days before the Department adopts the regulation.”

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD

NOTICE OF EFFECTIVE DATES FOR SECTIONS 2196.1(F), 2196.8, 2197, AND 2197.2(B), OF THE HEAVY-DUTY INSPECTION AND MAINTENANCE PROGRAM — CALIFORNIA CODE OF REGULATIONS TITLE 13, CHAPTER 3.7, SECTIONS 2195 THROUGH 2199.1

The California Air Resources Board (CARB) has established an effective date of December 31, 2023, for California Code of Regulations, title 13, sections 2196.1, subdivision (f), 2196.8, 2197, and 2197.2, subdivision (b), within the Heavy-Duty Inspection and Maintenance Regulation.

Background and Discussion

The Heavy-Duty Inspection and Maintenance (HD I/M) regulation¹ subjects nearly all non-gasoline vehicles with a gross vehicle weight rating over 14,000 pounds that operate in California to periodic emissions testing. These testing requirements help ensure that heavy-duty vehicles operating in California remain equipped with properly functioning emissions controls, and when malfunctioning, that these systems get repaired in a timely manner. Through the repair of malfunctioning emissions control systems, the HD I/M regulation will substantially reduce toxic particulate matter and emissions of oxides of nitrogen from the heavy-duty vehicle sector. This will help reduce air pollution and improve public health across the state, especially in communities disproportionately impacted by heavy-duty vehicle activity.

The HD I/M regulation is being implemented through a multi-phased approach with each phase building on the efforts of the previous one. In January 2023, the regulation began the first implementation phase with deployments of roadside emissions monitoring equipment to screen for vehicles operating with potentially high emissions. Vehicles identified as potential high emitters receive a Notice to Submit to Testing and are required to submit a passing compliance test to CARB within 30 days of receipt of the notice.

Before beginning the implementation of future phases, the HD I/M regulation requires CARB to

¹ California Code Regs., title 13, §§ 2195–2199.1

notify entities of the effective dates by publishing them in the California Regulatory Notice Register at least 90 days prior to the effective dates. Through the publication of this notice, CARB is establishing that the effective date for sections 2196.1, subdivision (f), 2196.8, 2197, and 2197.2, subdivision (b), of the HD I/M regulation is December 31, 2023. This means that owners of vehicles subject to the HD I/M regulation must report their vehicles to CARB (§ 2197.2(b)) and pay the annual compliance fee (§ 2196.1(f)) by December 31, 2023. Vehicle owners can complete these processes through CARB’s HD I/M database starting in October of 2023. Further, this publication establishes, through section 2197, that freight contractors, brokers, and applicable freight facilities shall verify that vehicles they contract with for services or that enter their facilities are compliant with the HD I/M regulation as of December 31, 2023. Finally, this publication establishes that the parts unavailability compliance time extension provisions of section 2196.8 are enacted on December 31, 2023, to provide vehicle owners a compliance extension mechanism for situations when a repair component necessary to bring a vehicle back into compliance is unavailable.

For further details on these enacted regulatory requirements, refer to CARB’s HD I/M *regulation webpage*².

DEPARTMENT OF FISH AND WILDLIFE

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080-2023-011-01**

Project: Honeydew Bridge Replacement Project
Location: Humboldt County
Applicant: Humboldt County Department of Public Works

Background

The Humboldt County Department of Public Works (Applicant) proposes to replace the structurally deficient Honeydew Bridge over the Mattole River with a new bridge at the existing alignment. The Honeydew Bridge is located along the intersection of Mattole Road, Wilder Ridge Road, and Burrel Road adjacent to the community of Honeydew, in Humboldt County. The purpose of the Honeydew Bridge Replacement Project (Project) is to provide a safe road crossing

that meets modern highway design standards and accommodates local traffic and regional transportation needs. The Project entails construction of several temporary features that will be used during construction and removed at the end of each season, including a prefabricated bridge, gravel detour approach roads, and gravel work pads. Riparian vegetation cleared from these areas will be replanted during site closure. Primary elements of the Project include construction of pier foundations, abutments, bridge superstructure, and approach roadways, as well as demolition of the existing bridge.

The Project activities described above are expected to incidentally take¹ northern California summer steelhead (*Oncorhynchus mykiss irideus*) (hereafter, NCSS) where those activities take place within the bed, bank, and channel of the Mattole River². In particular, NCSS could be incidentally taken as a result of in-river construction activities or during fish capture and relocation efforts. The northern California steelhead distinct population segment (DPS), which includes both summer- and winter-run populations, is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). NCSS is designated as an endangered species pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.). (See California Code Regs., title 14, § 670.5, subdivision (a)(2)(P)).

NCSS are assumed to be present in the Project site based on survey data, dispersal patterns, and habitat conditions. Summer snorkel surveys conducted by the Mattole Salmon Group suggest juvenile steelhead are present and relatively abundant in every reach of the Mattole River. Minimal habitat complexity and cover, shallow pool depth, and warm summer water temperatures limit the value of the Project area to all life stages, but some adults and half-pounders may still use it as holding habitat. Over the course of two construction seasons, 20 juvenile steelhead are anticipated to be present in the Project area, requiring capture and relocation. However, only four percent of steelhead in the Mattole River are likely to be summer-run at the

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

² Although the Project is also expected to adversely affect California Coastal (CC) chinook salmon (*Oncorhynchus tshawytscha*), it is not a CESA-listed species and is thus not covered or otherwise further discussed in this determination under Fish and Game Code section 2080.1. NMFS also considered impacts to Southern Oregon/North California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) but concluded the Project is not likely to adversely affect the species.

² <https://ww2.arb.ca.gov/our-work/programs/heavy-duty-inspection-and-maintenance-program>.

time of construction. The National Marine Fisheries Service (NMFS) therefore estimates that Project activities could result in the incidental take of one juvenile NCSS.

According to NMFS, the Project will result in temporary alterations to the streambed, minor turbidity, and short-term and permanent loss of riparian vegetation. Abutments for the new bridge will be well above the ordinary high water mark and the mid-channel pier will be replaced in-kind, thereby avoiding any new permanent impacts to salmonid habitat. Although gravel work pads and detour bridge approaches will encroach into the wetted channel, fill will avoid the most functional habitat areas and will be removed at the end of each construction season. Short-term increases in turbidity and suspended sediment will be minimal and unlikely to reduce the fitness of salmonids. Although percussive noise associated with demolition and pile driving could result in temporary behavioral changes, hydroacoustic monitoring will ensure that injurious sound levels are not exceeded. The Project will result in the temporary loss of 0.18 acres of riparian vegetation, which will be replanted during site restoration. Construction of the abutments and revetment will result in the permanent loss of 0.36 acres of riparian vegetation. However, and since none of these trees provide overhanging cover to the channel, their removal is not expected to result in a measurable increase in water temperature. NMFS concluded that temporary and negligible changes to habitat are not likely to jeopardize the continued existence or recovery of NCSS.

Because the Project is expected to result in take of species designated as threatened under the federal ESA, the California Department of Transportation (Caltrans) consulted with NMFS as required by the ESA. The Applicant is the Project Proponent, but Caltrans will administer federal funds through local assistance. Pursuant to Title 23 of the United States Code, section 327, and a series of Memorandums of Understanding executed by Caltrans and the Federal Highway Administration, Caltrans is considered a federal action agency for the purpose of consultation for federally funded transportation projects. On October 16, 2020, NMFS issued a biological opinion (NMFS Number WCRO–2020–02509) (BO) to Caltrans. The BO describes the Project and requires the Applicant to comply with terms of the ITS and its accompanying BO. Following the listing of NCSS as an endangered species pursuant to CESA in 2021, the Applicant requested an amendment to the Biological Assessment (revised BA) for conformance with CESA. NMFS issued a response on July 29, 2022, that incorporated the requested revisions and indicated that reinitiating formal consultation was not necessary.

The take exemption conferred by the ITS is based upon the proposed action occurring as described in the BO and in more detail in Caltrans' revised BA, and therefore requires the Applicant to implement and adhere to measures contained therein.

On August 8, 2023, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and accompanying BO are consistent with CESA for purposes of the Project and NCSS. (California Regulatory Notice Register 2023, Number 34–Z, p. 1110.)

Determination

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

Avoidance, Minimization, and Mitigation Measures

- 1) *Seasonal In-Water Work Period.* Construction activities in the wetted river channel will be restricted to periods of the year when the potential for listed fish occurrence and abundance is minimal, generally defined as June 15 through October 15. All pile-driving and percussive demolition will take place between June 30 and October 15.
- 2) *Fish Relocation.* To protect salmonids from impacts associated with the construction of temporary gravel work pads and bridge approaches, fish may be relocated. The Applicant will avoid the deeper pool area and fills are positioned to avoid areas on the downstream side of the riffle crests, therefore only juvenile salmonids may need to be relocated during construction activities. The Applicant will construct enclosures up to a point where a gap is available for fish to escape through, and any remaining fish will be herded out using a small beach seine. Some fish may be captured or relocated if any remain in the

completed enclosure. The Applicant will work with qualified fisheries biologists to develop an Aquatic Species Relocation Plan for NMFS' review prior to project implementation. Methods may include seining gear, electrofishing gear, and dip nets. Qualified fisheries biologists with expertise in salmonid biology shall conduct fish relocation activities. Salmonids shall be handled with extreme care and kept in water to the maximum extent possible during rescue activities. All captured fish must be kept in cool, shaded, and aerated water protected from excessive noise, jostling, or overcrowding or potential predators any time they are not in the stream, and fish will not be removed from this water except when released. Captured salmonids will be relocated as soon as possible to an instream location in which suitable habitat conditions are present to allow for adequate survival for transported fish and fish already present. If any salmonids are found dead or injured, the biologist will contact NMFS staff as soon as possible, retaining mortalities until NMFS provides further direction.

Although not a condition of the ITS and its accompanying BO, CDFW requests the opportunity to review the Aquatic Species Relocation Plan as well.

- 3) *Worksite Isolation and Turbidity Control.* Prior to vibrating in sheet piles and placing gravel fills in the wetted channel, work areas will be isolated and cleared of fish. Potential methods for containing the work site include silt fencing, water bladders, concrete blocks with plastic sheeting, and/or Super-sacks filled with clean gravel. The Applicant will select a containment method that works best for them and conforms to permit requirements; however, no heavy equipment will enter the wetted channel. After fish have been removed from the enclosure, the isolation barrier will be closed off and additional turbidity control measures will be installed, if necessary. As gravel is pushed into the enclosure, any excess water within will be pumped to infiltration ponds, not discharged to the river. Turbidity will be monitored during all in-water work activities and operations generating turbidity will halt if levels trend to exceed protective Basin Plan turbidity objectives and/or do not subside after 15 minutes.
- 4) *Sediment, Erosion and Pollutants.* To protect soil resources and water quality of the Mattole River, the Applicant will implement best management practices and conservation measures that conform to provisions of the Caltrans' Standard Specifications. Provisions include preparation of a Storm Water Pollution Prevention Plan, Water Pollution Control Program, and site-specific Spill Prevention Plan prior to construction.
 - a. Wetland and upland vegetation removal will be restricted to only areas necessary to accommodate construction and will be scheduled at least 48 hours prior to any forecasted precipitation event.
 - b. Activities that increase erosion potential will be restricted to the relatively dry summer and early fall period to minimize the transport of sediment to surface waters. Channel access routes and areas designated for equipment staging, maintenance, and fueling will be groomed, bermed, and treated with straw mulched and seeded as necessary to minimize the potential for the release of pollutants into the stream.
- 5) *Protection of Riparian Habitat.* Vegetation adjacent to or within the river corridor will be protected to the extent feasible, particularly in areas where vegetation provides important habitat value along the river channel. In areas where riparian vegetation must be removed, natural topographic contours will be restored and replanted with ecologically appropriate native trees and shrubs.
- 6) *Habitat Enhancement and Mitigation.* NMFS recommends that any trees or large wood removed during construction be made available for habitat restoration projects, or that a reasonable number of felled trees be placed on the gravel bar where they could be mobilized by high winter flows. To mitigate for the potential incidental take of up to one NCSS, the Applicant will install a minimum of one living willow/log structure on the gravel bar adjacent to the new bridge. This habitat feature is constructed by planting live willow cuttings along a shallow trench, placing a tree in the trench, and backfilling with river gravel to form a more permanent feature. The tree will be a minimum of 32 inches in diameter and at least 30 feet in length, with a root wad attached. Placement of the tree will be included in final design plans prior to going out for advertisement.
- 7) *Installation of "Living Willow/Log" Structure.* The Applicant will install a minimum of one "living willow/log" habitat structure within the gravel bar located within the action area. Activities will include placing willow cuttings along a shallow trench, laying down a tree and then backfilling the area with river gravel. The tree will be a minimum of 32-inches in diameter and greater than 30 feet in length with a root wad attached.

Monitoring and Reporting Measures

- 1) *Biological Reporting.* Caltrans shall contact NMFS within 24 hours of meeting or exceeding take of listed species prior to project completion. If any salmonids are found dead or injured, the Applicant will contact NMFS’ biologist immediately. All salmonid mortalities will be retained, placed in a sealable plastic bag, labeled with the date and location, fork length, and frozen as soon as possible. The frozen samples would be retained until specific instructions are provided by NMFS. The Applicant shall submit a written report to NMFS providing a summary of construction activities and fish relocation efforts by January 15 of each year following construction.
- 2) *Hydroacoustic Monitoring.* Hydroacoustic monitoring during percussive pile driving and demolition will prevent the exposure of salmonids to injurious sound levels by providing an opportunity to halt or modify underwater noise-generating activities. Hydroacoustic monitoring data shall be accessible to NMFS on a real-time basis (i.e., accessible upon request). NMFS and the Applicant have agreed on acoustic thresholds for peak pressure of 206 decibels (dB) and cumulative sound exposure level (cSEL) of 187 dB for fish two grams and larger.
- 3) *Mitigation.* The Applicant will annually monitor the living willow/log structure for a minimum of five years. The structure will remain in the project region for a minimum of two winter seasons and will be replaced up to one time if it is washed away.
- 4) *Riparian wetland mitigation monitoring.* The Applicant will conduct annual monitoring and reporting of the performance of the riparian wetland mitigation for a minimum period of five years following construction.

Although not a condition of the BO, CDFW requests a copy of the monitoring reports as well.

Security

The Applicant has provided funding security for mitigation requirements in compliance with the September 3, 2021 Master Funding Agreement for Financial Assurance under CESA entered into by CDFW and Caltrans. A Child Expenditure Authorization has been created (Federal Aid Number BRLS–5904(162); EA 01170000062) to contain an estimated \$345,000 for construction mitigation and monitoring requirements. \$100,000 of this \$345,000 will be set aside specifically for CESA mitigation and monitoring (\$50,000 for installation of the living willow/log structure and \$50,000 for five years of monitoring and remediation). The funds allocated to mitigation and monitoring will be kept in the State Treasury until proposed mitigation

work has been completed and accepted by the regulatory agencies and will not be re-allocated to another element of the project or expended for any purpose other than completing the mitigation and monitoring requirements.

Conclusion

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

CDFW’s determination that the ITS and accompanying BO are consistent with CESA is limited to NCSS.

DEPARTMENT OF FISH AND WILDLIFE

**PROPOSED RESEARCH ON FULLY PROTECTED SPECIES
RESEARCH ON CALIFORNIA RIDGWAY’S RAIL**

The Department of Fish and Wildlife (Department) received a proposal from Gwendolin C. Santos, a biological consultant with Resource Environmental Solutions, LLC, requesting authorization to take California Ridgway’s rail (*Rallus obsoletus obsoletus*; rail), formerly known as California clapper rail, a Fully Protected bird, for scientific research purposes consistent with conservation and recovery of the species. The rail is listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Gwendolin Santos is planning to conduct surveys throughout the range of the rail in California, in accordance with a standard protocol approved by the Department and the U.S. Fish and Wildlife Service (Service). The proposed research activities consist of searching for vocalizing individuals of the rail and employing broadcasts of recorded, species-specific vocalizations to determine distribution and status of local populations. Gwendolin Santos and other qualified researchers would collect data by interpreting

calls received from marsh birds that respond to broadcast recordings and by observing individual rails. There would be no attempt to capture individual rails or to approach nests of the rails, unless specifically approved by the Department. If any rails are found dead, they will be salvaged and donated to a scientific institution open to the public, as designated by the Department and the Service. No adverse effects on individual rails or rail populations are expected.

The Department intends to issue a Memorandum of Understanding to Gwendolin Santos that would authorize qualified professional wildlife researchers, under specified conditions, to carry out the proposed activities. The applicants are also required to have a valid federal recovery permit for the rail.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it will issue the authorization on or after October 23, 2023, for an initial and renewable term of up to, but not to exceed five years. Contact: Justin Garcia, Justin.Garcia@wildlife.ca.gov, (916) 207-4957.

DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH ON FULLY PROTECTED SPECIES RESEARCH ON CALIFORNIA RIDGWAY'S RAIL

The Department of Fish and Wildlife (Department) received a proposal from Sarah M. Foster, requesting authorization to take California Ridgway's rail (*Rallus obsoletus obsoletus*; rail), formerly known as California clapper rail, a Fully Protected bird, for scientific research purposes consistent with conservation and recovery of the species. The rail is listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Sarah Foster is planning to conduct surveys throughout the range of the rail in California, in accordance with a standard protocol approved by the Department and the U.S. Fish and Wildlife Service (Service). The proposed research activities consist of searching for vocalizing individuals of the rail and employing broadcasts of recorded, species-specific vocalizations to determine distribution and status of local populations. Sarah Foster and other qualified researchers

would collect data by interpreting calls received from marsh birds that respond to broadcast recordings and by observing individual rails. There would be no attempt to capture individual rails or to approach nests of the rails, unless specifically approved by the Department. If any rails are found dead, they will be salvaged and donated to a scientific institution open to the public, as designated by the Department and the Service. No adverse effects on individual rails or rail populations are expected.

The Department intends to issue a Memorandum of Understanding to Sarah Foster that would authorize qualified professional wildlife researchers, under specified conditions, to carry out the proposed activities. The applicants are also required to have a valid federal recovery permit for the rail.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it will issue the authorization on or after October 23, 2023, for an initial and renewable term of up to, but not to exceed five years. Contact: Justin Garcia, Justin.Garcia@wildlife.ca.gov, (916) 207-4957.

DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH ON FULLY PROTECTED SPECIES RESEARCH ON THE MORRO BAY KANGAROO RAT

The Department of Fish and Wildlife (Department) received a proposal from Steven P. Pruett, a biological consultant with Pruett Biological Resource Consulting, Inc., requesting authorization to take the Morro Bay kangaroo rat (*Dipodomys heermanni morrensis*; kangaroo rat), a Fully Protected mammal, for scientific research purposes consistent with conservation and recovery of the species. The kangaroo rat is listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Steven Pruett is planning to conduct surveys throughout the historic range of the kangaroo rat in California, specifically in San Luis Obispo County, California, in accordance with a standard protocol approved by the Department and the U.S. Fish and Wildlife Service (Service). The proposed research activities include capturing or attempting to capture the kanga-

roo rat using live traps to determine the distribution and status of local populations. If any kangaroo rats are found dead, they will be salvaged (including any parts thereof) and donated to a scientific institution open to the public, as designated by the Department and the Service. No adverse effects on individual kangaroo rats or kangaroo rat populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize qualified professional wildlife researchers, with Steven Pruett as the Principal Investigator, to carry out the proposed activities. The applicant is also required to have a valid federal recovery permit for the kangaroo rat and a Scientific Collecting Permit (SCP) to incidentally take other mammal species in California.

Pursuant to California Fish and Game Code (FGC) Section 4700(a)(1), the Department may authorize take of Fully Protected mammal species after a 30 day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 4700 for take of Fully Protected mammals, it would issue the authorization on or after October 23, 2023, for an initial and renewable term of up to, but not to exceed five years. Contact: Justin Garcia, Justin.Garcia@wildlife.ca.gov, (916) 207–4957.

PETITION DECISION

AIR RESOURCES BOARD

September 5, 2023

Matthew Vafidis
Holland and Knight LLP
560 California Street, Suite 1900
San Francisco, California 94115
Matthew.vafidis@hklaw.com

Re: Petition Seeking Amendment of California’s Regulations Regarding Commercial Harbor Craft and Ocean–Going Vessels At Berth; California Code of Regulations, title 17, Sections 93118.5 and 93130.2.

Dear Mr. Vafidis:

Thank you for the petition for rulemaking¹ submitted to the California Air Resources Board (CARB or Board) on June 30, 2023, on behalf of Crowley Maritime Corporation (Petitioner), entitled “Petition To Amend Regulations Regarding Commercial Harbor

Craft and Ocean–Going Vessels At Berth” (Petition).² CARB acknowledged receipt of this Petition by email on June 30, 2023.³ We appreciate that the Petitioner agreed to extend the deadline for response to the Petition to September 5, 2023.

The Petition requested that CARB amend its regulations so articulated tug barges (ATB) would be regulated under the Ocean–Going Vessels At Berth regulation (At Berth Regulation)⁴ rather than the Commercial Harbor Craft regulation (CHC Regulation).⁵ Since 2009, a category of marine vessels known as ATBs has been subject to the requirements of CARB’s CHC Regulation. Petitioner states that the ATBs at issue in this Petition are “ocean–going tank vessels consisting of a barge connected to a tug; in their cargo–carrying operations in California and elsewhere, the tug does not generally detach from the barge: OGV–ATBs function as a single vessel.”⁶ The Petition primarily requests that CARB cease regulating the subject ATBs under the CHC Regulation, and instead regulate such vessels under the At Berth Regulation. To achieve this, the Petition requests that CARB amend title 17, CCR sections 93130.2(b)(7) and (b)(50) the At Berth Regulation and 17, CCR sections 93118.5(d)–(f), as specified in the Appendices attached to the Petition.

Pursuant to the Government Code section 11340.7, CARB may respond to the Petition in writing or by hearing.⁷ By this letter, CARB is advising you that CARB has denied that Petition. The basis for the denial is set forth in this letter and its accompanying attachments.

² As you are aware, Government Code section 11340.6 provides that “any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in [the California Administrative Procedure Act provisions on rulemakings].” Such a petition must “clearly and concisely” state: “the substance or nature of the regulation, amendment or repeal requested,” “[t]he reason for the request,” and “[r]eference to the authority of the state agency to take the action requested.” (Government Code section 11340.6(a)–(c)).

³ See email from Steve Cliff, CARB Executive Officer, to Matthew Vafidis, counsel for Petitioner, attached as Exhibit A.

⁴ The At Berth Regulation is set forth at California Code Regs. title 13, § 2299.3(c) and title 17, §§ 93118.3 *et seq.* (the superseded 2007 At Berth Regulation), and §§ 93130 through 93130.22 (2020 At Berth Regulation).

⁵ The CHC Regulation is set forth in the California Code of Regulations (Cal. Code Regs.), title 13, section 2299.5 and title 17, § 93118.5. CARB most recently adopted amendments to the CHC regulation on November 14, 2022.

⁶ Petition, p. 1.

⁷ The Petition cites to Government Code, § 11340.7 to support its claim that “CARB is both *required* to both *hear* and *consider* the instant petition.” (p.16, emphasis in the original.) Government Code § 11340.7 only requires notification in writing or schedule the matter for public hearing, but not both. Petitioner does not cite to any additional authority in support of this claim.

¹ Submitted pursuant to Government Code, § 11340.6.

Background on the Regulatory Provisions Addressed by the Petition Commercial Harbor Craft Regulation

Initial CHC Regulation

CARB adopted the initial CHC Regulation on September 2, 2008. The initial CHC Regulation established emission standards and other emissions-related requirements applicable to both new and in-use diesel propulsion and auxiliary engines on commercial harbor craft (CHC) that operate within Regulated California Waters (RCW).⁸

The initial CHC Regulation defined CHC as “any private, commercial, government, or military marine vessel including, but not limited to, passenger ferries, excursion vessels, tugboats, ocean-going tugboats, towboats, push-boats, crew and supply vessels, work boats, pilot vessels, supply boats, fishing vessels, research vessels, U.S.

Coast Guard vessels, hovercraft, emergency response harbor craft, and barge vessels that do not otherwise meet the definition of ocean-going vessels or recreational vessels.”⁹

The initial CHC Regulation defined an “ocean-going vessel” as: “a commercial, government, or military vessel meeting any one of the following criteria: (A) a vessel greater than or equal to 400 feet in length overall (LOA) as defined in 50 CFR § 679.2, as adopted June 19, 1996; (B) a vessel greater than or equal to 10,000 gross tons (GT ITC) per the convention measurement (international system) as defined in 46 CFR 69.51–61, as adopted September 12, 1989; or (C) a vessel propelled by a marine compression-ignition engine with a per-cylinder displacement of greater than or equal to 30 liters.”¹⁰

The initial CHC Regulation expressly specified that it applied to “towboats and tugboats engaged in or intending to engage in the service of pulling, pushing, or hauling alongside tank vessels or tank barges”¹¹ and to ocean-going tugboats and towboats. Specifically, the initial CHC Regulation specified that “[n]otwithstanding the provisions of [the At Berth regulation]... this section shall apply to any ocean-going tugboats and towboats and shall supersede the requirements of [the At Berth regulation] in their entirety for ocean-going tugboats and towboats.”¹²

The initial CHC Regulation required propulsion and auxiliary engines on new CHC to be certified to the

most stringent federal new marine engine emission standards applicable (generally Tier 2 through Tier 4 marine engine emission standards). New ferry vessels capable of transporting 75 or more passengers were required to be equipped with propulsion engines certified to either Tier 4 marine engine standards, or with engines certified to Tier 2 or Tier 3 marine engine standards and to also be equipped with the best available control technology (BACT) to reduce emissions of oxides of nitrogen (NOx) or diesel particulate matter (DPM) to the greatest extent feasible.

New and in-use engines for in-use harbor craft were required to be certified to at least federal Tier 2 or Tier 3 marine emission standards, and in-use Tier 0 and Tier 1 propulsion and auxiliary marine engines in specified categories of in-use CHC—ferries, excursion vessels, tugboats, and towboats—were generally required to demonstrate compliance with Tier 2 or Tier 3 standards by specified compliance dates. These compliance dates were based on both the model year and hours of operation of the in-use engines. In-use CHC with home ports in the South Coast Air Basin were subject to accelerated compliance schedules. CHC owners or operators could comply with the in-use requirements by replacing an in-use engine with a new engine, or by demonstrating that an existing engine complied with the applicable Tier 2 or Tier 3 standards (e.g., through utilization of engine rebuild kits or aftertreatment technologies), or by demonstrating that their CHC would not operate more than 300 hours in a year.

Owners or operators of CHC were also required to install a non-resettable hour meter on each engine, to report certain information including contact information, vessel and engine information, annual hours operated and locations to CARB, and to only fuel diesel engines in CHC vessels with CARB diesel fuel or specified alternative diesel fuels.

2011 Amendments to the CHC Regulation

On April 11, 2011, CARB adopted amendments to the CHC Regulation (hereinafter 2011 CHC Amendments). The 2011 CHC Amendments primarily allowed CHC owners or operators to utilize CARB or EPA Tier 2 or higher certified off-road engines as auxiliary or propulsion engines in both new and in-use CHC vessels and expanded the in-use requirements to three additional categories of CHC: crew and supply, barge, and dredge vessels.

2022 Amendments to the CHC Regulation

Requirements for New and Newly Acquired In-Use CHC

On July 21, 2022, CARB adopted amendments to the CHC Regulation (hereinafter 2022 CHC Amendments or 2022 CHC Regulation). The 2022 CHC Amendments specify that new and newly acquired in-

⁸ Regulated California Waters include all California inland waters, all California estuarine waters, and all waters within a zone 24 nautical miles seaward of the California coastline, except for specified areas along the Southern California coastline. California Code Regs, title 17, § 93118.5(d).

⁹ Cal. Code Regs., title 17, § 93118.5(d)(36).

¹⁰ Id. at § 93118.5(d)(50).

¹¹ Id. at § 93118.5(b)(3).

¹² Id. at § 93118.5(b)(4).

use harbor craft vessels¹³ may not be sold, offered for sale, leased, rented, or acquired unless each propulsion and auxiliary engine on the vessel meets performance standards that are equivalent in stringency to: (1) the most stringent federal marine engine standards (federal Tier 3 or Tier 4 marine standards) or California or federal off-road engine standards (California or federal Final Tier 4 off-road engine standards) applicable to new engines with the same power ratings and displacements as the subject propulsion and auxiliary engines, and that (2) additionally reflect the addition of a level 3 Verified Diesel Emission Control Strategy (VDECS), such as a verified diesel particulate filter (DPF).¹⁴

Engines rated at or below 600 kW in new harbor craft must demonstrate compliance with performance standards that are equivalent to federal Tier 4 marine engine standards equipped with a level 3 verified DPF if any federal Tier 4 marine engines with applicable power and duty cycle ratings have been certified as of the date the keel for the new vessel has been laid. If no Tier 4 marine engines are available, the new engines must demonstrate compliance with performance standards equivalent to federal Tier 3 marine engine standards equipped with a level 3 verified DPF. Federal Tier 4 marine engines are widely available for engines above 600 kW, and consequently engines above this power rating must demonstrate compliance with performance standards equivalent to federal Tier 4 marine engine standards equipped with a level 3 verified DPF.

If no engines or aftertreatment devices needed to comply with the performance standards are available, vessel owners or operators must, before initiating construction of a vessel, submit information to CARB's Executive Officer explaining why the performance standards cannot be met. CARB's Executive Officer may approve requests to install engines meeting federal marine engine, CARB, or federal off-road engine standards but that do not meet generally applicable performance standards, if the information submitted and the exercise of good engineering judgment indicates that the applicable performance standards cannot be met. Engines granted exemptions under this provision are subject to the general in-use requirements described below once the CHC vessels commence operations in Regulated California Waters.

¹³ A "newly acquired harbor craft" is defined as "a harbor craft that a person did not own or operate inside of Regulated California Waters prior to January 1, 2023." Cal. Code Regs., title 13, § 2708(d).

¹⁴ A level 3 VDECS corresponds to at least an 85% reduction of emissions of particulate matter from baseline engine emissions of particulate matter. Cal. Code Regs., title 13, § 2708(b)(1)(D).

Requirements for New and In-Use CHC Engines

Beginning January 1, 2023, new or newly acquired in-use engines for new or in-use harbor craft other than commercial fishing vessels may not be sold, offered for sale, leased, rented, or acquired unless they meet one of four specified criteria:

- The engines are certified to the most stringent federal marine engine standards (Tier 3 or Tier 4), or California or federal Tier 4 Final off-road standards¹⁵ applicable to new engines with the same power ratings and displacements as the subject engines.¹⁶ Engines that additionally meet the performance standards discussed above for new CHC (i.e., they meet either applicable federal marine engine standards or California or federal Tier 4 Final off-road standards and additionally meet at least an 85% reduction of emissions of particulate matter from baseline engine emissions) also meet this criterion.¹⁷
- Engines that are newly acquired within a six month "sell-through" period that commences on the date federal Tier 3 or Tier 4 marine standards, or California or federal Tier 4 Final off-road standards have come into effect for a new engine of applicable horsepower rating and duty cycle rating as the engine being replaced do not need to comply with the newly effective standards. In 2020, EPA amended 40 CFR Part 1042 to delay Tier 4 engine certification requirements for high-power density engines used in some high-speed vessels that are not commonly used in California until 2022 or 2024. CARB staff does not expect this provision will significantly impact the ability of CHC owners or operators to meet the marine Tier 4 or marine Tier 4 and level 3 VDECS performance standards by the established compliance dates;
- Engines acquired to replace non-functioning engines due to equipment failure must be certified to standards that are at least as stringent as the

¹⁵ Engines certified to meet the Tier 4 Final off-road standards in effect on the date of acquisition for a new engine of applicable horsepower rating and duty cycle rating may only be acquired for use as an auxiliary or propulsion engine on harbor craft if the engine or vessel manufacturer has also complied with the provisions of 40 CFR 1042.605, which establish requirements for maritized land-based engines.

¹⁶ Newly acquired marine engines rated below 600 kW are not required to meet federal Tier 4 marine engine standards if no engines with the same engine category and rated horsepower are available.

¹⁷ Engines that are rebuilt to meet Tier 3 or Tier 4 marine standards or Tier 4 Final off-road standards may be acquired if those standards are the most stringent emission standards in effect on the date of engine rebuild for a new engine of the same horsepower rating and duty cycle rating as the subject engine, and provided the owner or operator demonstrates the rebuilt engines do in fact meet applicable standards.

standards of the engines they are replacing, subject to CARB Executive Officer’s determination that no engine certified to the currently applicable standards is produced by any manufacturer with the appropriate physical or performance characteristics to repower the vessel; or

- Engines acquired to replace engines that have been previously granted low–use exceptions must be certified to emission standards that are at least as stringent as the emissions standards of the engines that have been granted the low–use exceptions.

General Requirements for In–Use CHC

The preexisting CHC Regulation generally required specified categories of in–use CHC (ferries, excursion vessels, tugboats, towboats, barges, dredges, and crew and supply vessels) to demonstrate compliance with Tier 2 or Tier 3 standards by specified compliance dates, based on the model years and hours of operation of the in–use engines used in such vessels. The 2022 CHC Amendments expand the categories of in–use CHC to now include all tank barges,¹⁸ pilot vessels, push boats, workboats, research vessels, commercial passenger fishing vessels, commercial fishing vessels, and temporary replacement vessels operating in exceedance of specified low–use exemption limits. For all vessel categories except commercial fishing vessels and temporary replacement vessels, the 2022 CHC Amendments require each engine on regulated in–use vessels to demonstrate compliance with the performance standards discussed above for new and newly acquired in–use CHC, i.e., standards equivalent in stringency to the most stringent federal marine engine standards (Tier 3 or Tier 4) or California or federal Tier 4 Final off–road standards applicable to new engines with the same power ratings and displacements as the subject propulsion and auxiliary engines, plus the addition of a level 3 verified DPF by specified compliance dates. Engines on commercial fishing vessels are required to meet Tier 2 marine or off–road standards by January 1, 2023, or repower to Tier 3 marine or off–road standards by specified compliance dates. Engines on temporary replacement vessels are required to meet Tier 2 marine or off–road standards.

Compliance Extensions

The 2022 CHC Amendments include several provisions that provide vessel owners and operators additional flexibility to comply with the in–use requirements. Those provisions provide qualifying vessel owners and operators up to six to eight years (depending on vessel type) of extensions for engines. However, other provisions can provide potentially unlimited

extensions needed to accommodate situations where no certified engines and/or level 3 VDECS are available, or engines or VDECS are not well suited for specific vessels.

Engine and DPFs are Not Available (Potentially Unlimited Exemptions)

Two–year, renewable compliance extensions are available if vessel owners or operators can demonstrate that no certified engines or DPFs are available to meet the in–use performance standards by specified compliance dates. If engines certified to the most stringent federal Tier 3 or Tier 4 marine engine standards or California or federal Tier 4 Final off–road standards are available, but DPFs are not available, vessel owners or operators must repower their in–use CHC with such engines by the applicable compliance dates to be eligible for an extension from the DPF requirement. If a DPF subsequently becomes available for the engine, the vessel owner or operator must install that DPF on the engine within six months of the DPF’s availability or by the expiration of the compliance extension, whichever is sooner.

If a vessel owner or operator repowers an in–use CHC with an engine that meets the most stringent federal Tier 3 or Tier 4 marine engine standards or California or federal Tier 4 Final off–road standards after January 1, 2023, they need not replace such engines if a verified DPF subsequently becomes available for other engine models that meet the most stringent federal Tier 3 or Tier 4 marine engine standards or Tier 4 Final off–road standards. However, if owners or operators elect to repower an existing engine with a higher tier engine with the same power rating, they must consider all available engine models (within the power and duty cycle ratings needed), regardless of engine manufacturer or engine model.

Engines and DPFs are Not Suited for Specific Vessels, Financial Hardship

Owners or operators of all categories of in–use CHC are eligible for a maximum of six to eight years (depending on vessel type) of compliance extensions if they demonstrate that: (1) no suitable engines (either federal Tier 3 or Tier 4 marine engines or California or federal Tier 4 Final off–road engines) or DPFs can physically fit within existing vessels without compromising the vessels’ structural integrity or stability, and that replacing the in–use vessels with new vessels equipped with compliant engines is not financially possible; or (2) needed vessel modifications will reduce passenger capacity by at least 25%, and will also result in increased operational emissions (i.e., a ferry operator may need to schedule more runs which may accordingly result in increased emissions).

¹⁸ Only tank barges under 400 feet in length and under 10,000 gross tons were subject to the preexisting in–use CHC requirements.

DPFs Not Suited for Vessels Equipped with Tier 4 Engines and With Limited Operating Hours (Potentially Unlimited Extensions)

Owners or operators of all categories of in-use CHC equipped with federal Tier 4 marine engines or California or federal Tier 4 Final off-road engines and with limited operating hours are eligible for renewable two-year extensions, if they demonstrate that no DPFs can be installed in the vessels due to fitment issues, and that the vessels do not operate above specified annual hour thresholds. Those threshold limits are halved if the vessels have a homebase or have a regularly scheduled stop located within 2 miles of a disadvantaged community (DAC).¹⁹

Annual Operating Thresholds for Feasibility Extension (E)4

Homebase or Regularly Scheduled Stop Location	Extension Available if Operating Below
All Other Areas	2,600 hours/year
Within 2 Miles of a DAC	1,300 hours/year

Alternative Control of Emissions (ACE) Plan

The preexisting CHC Regulation provided CHC owners or operators an alternative means of complying with the CHC Regulation’s hour-meter and new vessel and in-use emissions requirements if they implemented CARB approved alternative emission control strategies (AECS) that were demonstrated to achieve DPM and NOx emission reductions equivalent to or greater than the reductions required by the primary compliance requirements.

The 2022 CHC Amendments now provide CHC owners or operators the option to utilize a CARB-approved Alternative Control of Emissions (ACE) plan to comply with the general emissions requirements for in-use CHC. Such alternative strategies can include proposals such as engine modifications, exhaust after-treatment controls, engine repowers, engine rebuild to more stringent standards, or fleet averaging. CHC owners or operators electing to utilize this option must demonstrate that proposed ACE plan will achieve reductions of DPM and NOx emissions that are at least equivalent to the reductions of DPM and NOx emissions that would otherwise occur if they were to comply with the primary emission requirements, and in a single specified air basin or other defined geographic area in California, from the time period beginning January 1, 2023, through December 31, 2034, with a maximum of any two year extension, and all engines

¹⁹ For purposes of this extension, only auxiliary engines on barges or barge-mounted dredges, and main propulsion engines on all other regulated in-use vessel categories must meet federal Tier 4 marine or California or federal Tier 4 Final off-road engine standards and must operate below the specified operational thresholds. Barges and barge-mounted dredges are not equipped with propulsion engines.

receiving extensions pursuant to an ACE plan must comply with applicable general requirements applicable to in-use CHC by December 31, 2034.

ACE plans may only reflect emissions reductions attributable to CHC that are subject to the requirements of the CHC Regulation and may not include emissions reductions attributable to other mobile sources or stationary sources. Moreover, applicants must demonstrate that proposed ACE plan will not result in a higher emissions burden to disadvantaged communities relative to other communities impacted by the emissions from their vessel(s).

If CARB’s Executive Officer approves an application to utilize an ACE plan, the successful applicant must maintain specified records and test records for the lifetime of each engine and must make such records available upon request by CARB. Additionally, the ACE Plan pathway no longer exempts CHC owners and operators from installing non-resettable hour meters.

At Berth Regulation

Initial At-Berth Regulation

CARB adopted the now-superseded initial At-Berth Regulation, the Airborne Toxic Control Measure for Auxiliary Diesel Engines Operated on Ocean-Going Vessels At Berth in a California Port (2007 Regulation), on October 16, 2008.²⁰ The 2007 Regulation applied only to container, refrigerated cargo, and cruise vessels visiting six California ports: Hueneme, Los Angeles, Long Beach, Oakland, San Diego, and San Francisco, and required affected vessels to reduce emissions at berth by either plugging into shore power²¹ or using an equally effective compliance strategy (such as a capture and control system). Specifically, the 2007 Regulation required fleets of container and refrigerated cargo vessels making 25 or more visits or cruise vessels making 5 or more visits to any of the six regulated ports to limit the operations and/or emissions of auxiliary engines while docked, reducing NOx and DPM emissions at berth. The 2007 Regulation required regulated vessel fleets to reduce DPM and NOx emissions by 50% beginning in 2014, increasing to 70% in 2017 and 80% in 2020.

2020 At-Berth Regulation

On August 27, 2020, the Board adopted the 2020 At Berth Regulation. The 2020 At Berth Regulation is designed to build upon the benefits achieved by the 2007 At Berth Regulation by extending auxiliary engine emissions reductions requirements to additional categories of OGVs (roll-on, roll-off (ro-ro) and

²⁰ The now-superseded 2007 At Berth regulation is set forth at Cal. Code Regs. title 13, § 2299.3(c) and title 17, § 93118.3.

²¹ “Shore power” is defined in the 2007 regulation as “electrical power being provided by either the local utility or by distributed generation.” Cal. Code Regs., title 17, § 93118.3(c)(31).

tanker vessels), adding emissions reductions requirements for tanker vessel auxiliary boilers and expanding the applicability of the regulation to new ports and terminals.

It is important to note that the scope of the At Berth Regulation’s requirements is more limited than the requirements of the CHC Regulation. As previously discussed, the CHC Regulation requires owners or operators of affected vessels to demonstrate that both primary and auxiliary engines meet performance standards, while the At Berth regulation primarily establishes requirements that require affected vessels to use a CARB–approved emissions control strategy to achieve at least an 80% reduction in emissions from auxiliary engines or boilers (if applicable) when vessels are docked at berth.²² Consequently, in contrast to the CHC Regulation, the At Berth regulation does not regulate emissions from affected vessels as they transit to and from California berths.

Response to the Petition

The Petition requests that CARB exempt ATBs that have the capacity to store (and transport) over 120,000 bbl. of petroleum products from the CHC Regulation and instead subject such ATBs to the provisions of the At Berth Regulation.²³

The Characteristics and Operational Profiles of ATBs Establish that ATBs are More Properly Characterized as Ocean Going Vessels than as Commercial Harbor Craft

The Petition’s first basis for the proposed amendments is that CARB does not appropriately understand or consider “the nature and operational profiles of the subject ATBs,”²⁴ and that these factors establish that the subject ATBs are more properly characterized as ocean–going vessels that are subject to the At Berth regulation than the vessels subject to the CHC Regulation.²⁵ Specifically, Petitioner maintains that although ATBs are technically comprised of both a high–powered tugboat and an attached barge, in practice its ATBs” do not detach the tug from the barge and the tug does not come out of the notch of the barge”²⁶ and consequently, its ATBs are functionally equivalent to

(and indistinguishable from) single unit tanker vessels that are subject to the At Berth Regulation.²⁷

Response: Based on my review of the documents associated with the 2007 and the 2020 At Berth Regulations, and the 2011 and 2022 Amendments to the CHC Regulation, CARB finds that this claim misstates CARB’s basis for distinguishing ATBs from single vessel tanker vessels and its basis for subjecting ATBs to the requirements of the CHC Regulation rather than the At Berth Regulation.

During the rulemaking action in 2007 for the initial CHC Regulation, commenters (including the American Waterways Operators, a national trade association for the tugboat, towboat, and barge industry, and includes Petitioner as a member) recommended that CARB not regulate ocean–going tugboats and towboats under the CHC Regulation, but instead regulate such vessels under the At Berth Regulation.²⁸ After thoroughly reviewing all of the comments and materials relating to this topic, CARB disagreed with that recommendation, explaining that “while most ocean–going tugboats do not perform harbor tugboat duties, they are functionally equivalent or otherwise very similar to their harbor tugboat counterparts,”²⁹ that it never intended to regulate ocean–going tugboats under the At Berth Regulation, and that such vessels made over 500 annual visits to California ports, indicating a “significant number of these vessels spend time in California ports.”³⁰

During the rulemaking action for the 2020 At Berth regulation, certain commenters (again including Petitioner) recommended that CARB regulate ATBs under the At Berth Regulation instead of the CHC Regulation.³¹ After thoroughly reviewing all of the comments and materials relating to this topic, CARB disagreed with that recommendation.

²⁷ Petition, pp. 1–3, 5,8–10; Exhibit A, pp. 2–5; Exhibit B, pp. 1–2; Exhibit D; Exhibit E, pp. 4–5; Exhibit F, pp. 2–3, 5, 7, Exhibit G.

²⁸CARB. Final Statement of Reasons for Rulemaking: Public Hearing to Consider the Adoption of Regulations to Reduce Emissions From Diesel Engines on Commercial Harbor Craft Operated Within California Waters and 24 Nautical Miles of the California Baseline, pp. 24–25. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2007/chc07/chcfsor.pdf>.

²⁹CARB, Final Statement of Reasons, Public Hearing to Consider the Adoption of Regulations to Reduce Emissions From Diesel Engines on Commercial Harbor Craft Operated Within California (2007), pp. 24–25. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2007/chc07/chcfsor.pdf>.

³⁰ Id at p.25.

³¹ E.g. Petition, Ex. G, December 6, 2019 Letter from Crowley to The California Air Resources Board re Proposed Control Measure for Ocean Going Vessels at Berth (At–Berth Rule). CARB also received and responded to Petitioner’s additional written comments recommending ATBs be regulated under the At Berth Regulation, dated April 24, 2020; June 25, 2020; July 22, 2020; August 27, 2020, as well as oral comments, including June 25, 2020. See CARB, Proposed Control Measure for Ocean–Going Vessels At Berth, Final Statement of Reasons (November 2020).

²² Staff Report, Initial Statement of Reasons: Public Hearing to Consider the Proposed Control Measure for Ocean–Going Vessels At Berth (2019) p. ES–11 (hereinafter 2020 At Berth ISOR). Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/ogvatberth2019/isor.pdf>.

²³ Petition, p. 2, fn. 2; pp. 4–5.

²⁴ Petitioner uses the term “ocean–going ATBs, or “OGV–ATBs” to refer to these ATBs. This Response to the Petition uses the term “ATBs.”

²⁵ Petition, pp. 2–5, 8; Exhibit A, pp. 1–5; Exhibit B, pp. 1–2; Exhibit D; Exhibit E, pp. 4–5; Exhibit F, pp. 2–3; Exhibit G.

²⁶ Petition, Exhibit A, p. 4.

Petitioner repeatedly states in the Petition that CARB’s rationale for not accepting that recommendation was solely based on the following statement in the Staff Report for the 2020 At Berth regulation: “... [D]espite being defined as a subcategory of tankers, articulated tug barges are considered a barge and a tug separately. As such, they are considered a harbor craft instead of an ocean-going vessel and must comply with the requirements of CARB’s Commercial Harbor Craft Regulation and not of this Proposed Regulation.”³² Petitioner further states that CARB never provided a rational explanation for why it excluded ATBs from the definition of ocean-going vessels in the 2020 At Berth regulation.³³

Petitioner understates the analysis and consideration CARB undertook and set forth in the 2020 At Berth related rulemaking proceeding. Over the course of the rulemaking process, Petitioner met and spoke with CARB Board members in addition to submitting written comments regarding this issue for CARB staff to consider. One of the six “master responses” CARB prepared in its Final Statement of Reasons for the 2020 At Berth regulation is dedicated entirely to this exact topic.³⁴ That response states, in part, that:

CARB acknowledges that ATBs can do similar work, at least over shorter routes, as traditional ocean-going tanker vessels. *However, they generally operate on coastal trades and not on trans-oceanic voyages like traditional ocean-going tanker vessels.* From a policy and regulatory perspective, CARB staff disagrees with industry’s position that ATBs should be considered OGVs instead of commercial harbor craft. ATBs consist of two separate vessels (a tugboat and a barge) that are: 1) subject to two separate sets of U.S. Coast Guard regulations, 2) are not equipped with boilers to power steam-driven pumps (like crude oil carriers have), 3) are cheaper to build, and 4) require fewer workers to operate. As such, ATBs align more closely with other definitions of CHC, and CARB intends to regulate them as such. Both tugs and barges (including ATBs) exceeding 400 feet, 10,000 gross tons, or 30 L/cylinder displacement, will still be considered CHC for CARB regulatory purposes. By classifying ATBs as CHC, it ensures that all barges, whether transported as ATBs or line-towed by other

ocean-going tugs, will be subject to the same regulatory requirements.

2020 At Berth FSOR, pp. 61–61.³⁵ After consideration of all the information and analysis, the CARB Board disagreed with Petitioner’s position that ATBs should be regulated under the At Berth Regulation and adopted the 2020 At Berth Amendments.

CARB further notes that Petitioner’s internet website, as well as Exhibit A to its petition to CARB, includes a statement that its 550 class ATBs “were developed and designed specifically for West Coast Operations and weather conditions....”^{36,37}

CARB further determined that subjecting ATBs to the CHC Regulation instead of the At Berth regulation would result in greater emissions reductions.

The CHC regulation requires the use of ultra-low sulfur diesel (ULSD) for all vessels, including tugs and barges. By redefining ATBs as OGVs, there would be a potential for the use of higher sulfur content fuels allowed for use in OGVs, resulting in higher emissions. *Additionally, the CHC regulation includes in-use emission standards for both main and auxiliary engines, resulting in in-transit emissions reductions as well as reductions at berth.* Considering ATBs as OGVs, reduces the opportunity to control in-transit emissions. Because ATBs engage in coastwise trade, additional operations outside of Regulated California Waters could still be impacting air quality in coastal California communities. Regulating ATBs as CHC provides stronger public health protections due to the timing and extent of intended mission reduction targets.

2020 At Berth FSOR, pp.61–62. (Emphasis added).³⁸

Petitioner also raised largely identical issues during the rulemaking action for the 2022 amendments to the CHC Regulation, urging CARB to consider subjecting ATBs to the At Berth regulation instead of the CHC

³² 2020 At Berth ISOR, p.IV–6; See also Petition, pp. 8–9; Exhibit A, pp. 1–2, 4,6; Exhibit D; Exhibit G.

³³ Petition, p. 3.

³⁴ CARB, Final Statement of Reasons, Proposed Control Measure for Ocean-Going Vessels at Berth (2020), at pp. 61–62. (Hereinafter 2020 At Berth FSOR.) Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/ogvatberth2019/fsor.pdf>.

³⁵ In addition to these distinctions provided by the 2020 At Berth FSOR, the California Department of Fish and Wildlife escort tug requirements in the Oil Spill Prevention and Response Act under CCR 14, Division 1, Subdivision 4, Chapter 4, Subchapter 1 Tank Vessel Escort Regulations for the San Francisco Bay Region has separate requirements for the tugs escorting ATBs compared to OGV tank vessels listed in Part 851.9.1.

³⁶ Crowley Shipping, Meet The Fleet: 550 Class Articulated Tug Barges (ATBs), <https://www.crowley.com/shipping/deep-sea/atb/#550-class-articulated-tug-barges-at-bs>, last accessed July 27, 2023. See also Petition, Exhibit A, p. 4.

³⁷ Crowley’s 550 class ATBs have capacities to store and transport over 150,000 bbl of petroleum products. Crowley. See Crowley, 550 Class Articulated Tug Barge Fleet (ATB) Spec Sheet, https://www.crowley.com/wp-content/uploads/sites/7/2020/04/CM_Petro_550ATB_specsheet.pdf, last accessed July 27, 2023.

³⁸ See also 2020 At Berth FSOR, response to comments at pp. 202, 597, and 598.

Regulation.³⁹ In addition to these written comments, CARB’s Executive Officer (EO), Deputy EO, and certain managing staff met with Petitioner regarding its position on the 2022 CHC Amendments.

In responding to those comments, CARB again rejected Petitioner’s characterization that its ATBs are functionally identical to other single vessel tanker vessels:

This comment does not provide CARB staff with an adequate explanation of the “unique nature of ATBs.” [The tug component of a]rticulated tug barges (ATBs) are regulated by USCG as Subchapter M towing vessels (CHC) and have been subject to CARB’s current CHC Regulation since 2009. ATB barges are regulated by USCG as Subchapter O petrochemical tank barges (barges under 400 feet are a CHC category regulated by the current CHC Regulation)

...

2022 CHC FSOR, p. 166

CARB disagrees with the commenter’s assertion that ATBs do not operate like other vessels regulated under the California CHC regulation. The commenter’s statement that “traditional harbor craft predominately operate in California ports and harbors” misstates the fact that the CHC regulation applies to commercial vessels that operate in RCW, which includes waters extending up to 24 nautical miles from the California baseline. Instead, information in the rulemaking record indicates that ATBs and the tugboats pushing such ATB barges regularly operate in RCW. CARB staff understands that ATBs regularly transit along the coast in shipping lanes approximately 50 nautical miles from shore. However, ATBs regularly transit through RCW to and from anchorages and California (CA) refinery terminals inside RCW. CARB’s Emissions Inventory shows ATB tugs generate significant transit emissions inside RCW and CARB staff was told by Crowley that ATB barge engines also generate transit emissions en route to refinery terminals to test and warm up auxiliary engines in the hour before docking at a terminal. ATB tugs and barges at anchor generate emissions from both tug and barge auxiliary generator engine operation.

CARB also disagrees with the commenter’s statements that ATBs are operated analogously to self-propelled ocean-going tanker vessels.

As CARB staff explained in the Staff Report for the CHC 2022 Amendments, an ATB tug and barge is dissimilar to an ocean-going vessel because the tug and ATB barge combination is capable of being separated into two separate vessels, even if the tug and barge do not commonly operate independently. ATB tugs have always been subject to the in-use requirements of the Current Regulation. Additionally, ATB tugs and barges are recognized as dual-mode vessels and are regulated separately by USCG. Moreover, because ATBs are competing with line-towed petrochemical tank barges with most operating over intermediate distance voyages in coastal trade of clean petroleum products, ATBs are more similar in design and operation to other CHC engaged in line towing.

2022 CHC FSOR, pp. 168–69.

CARB also determined that subjecting ATBs to the CHC Amendments would achieve greater emissions reductions than if it subjected ATBs to the At Berth Regulation.

CARB’s Emissions Inventory shows ATB tugs generate significant transit emissions inside RCW and CARB staff was told by Crowley that ATB barge engines also generate transit emissions en route to refinery terminals to test and warm up auxiliary engines in the hour before docking at a terminal. ATB tugs and barges at anchor generate emissions from both tug and barge auxiliary generator engine operation. CARB staff observed during a 2018 ATB vessel visit that when docked at refinery terminals to offload petrochemical product, ATB tugs and barges will separate pinned connections to allow for changes in barge draft height due to load condition changes in the barge as product is offloaded and ballast water is loaded or vice versa. CARB staff was told ATB barges regularly run product and ballast water pump engines at high loads for extended periods of time of up to 24 or 36 hours at a refinery terminal. Many ATB barges operate a combination of multiple auxiliary engines in various applications with cumulative power in the range of three to four megawatts during product and ballast water pumping activity. From CHC Reporting Database, CARB staff is aware many ATB barge auxiliary engines operating in RCW are unregulated pre-Tier marine engines due to a loophole in the current CHC Regulation (from 2008 to the end of 2022) that exempted ATB barge engines from the In-Use Rule portion of the current CHC Regulation due to all ATB barges being over 400 feet in length.

2022 CHC FSOR, p. 168.

³⁹ CARB, Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response, Public Hearing to Consider the Proposed Amendments to the Commercial Harbor Craft Regulation (2022) (hereinafter 2022 CHC FSOR), pp. 167, 188. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/fsor.pdf>.

The CHC 2022 Amendments establish emissions–related requirements that are collectively more stringent than the emissions–related requirements established under the At–Berth regulation, because the At–Berth regulation currently only requires OGVs to reduce emissions generated from engines while OGVs are docked at berth at California ports. Although the CHC 2022 Amendments also establish requirements that require CHC to limit emissions while they are docked, the 2022 Amendments additionally also establish requirements that are applicable to CHC vessels while they are operated in RCW. For instance, the 2022 Amendments require CHC to be fueled with renewable diesel fuel having a sulfur limit not to exceed 15 parts per million (ppm), whereas OGVs operating in RCW are only required by a separate CARB regulation to be fueled with marine gas oil or marine diesel oil with maximum sulfur limits of 0.1% sulfur by weight, (equivalent to 1000 ppm of sulfur). Furthermore, the CHC 2022 Amendments establish requirements applicable to both newly acquired and in–use propulsion and auxiliary engines in CHC that are absent in the At Berth regulation. Consequently, regulating ATBs under the At Berth Regulation would result in increased emissions of harmful air pollutants that adversely impact the health and environment of Californians compared to the 2022 Amendments. Accordingly, there is a rational basis for CARB to regulate ATBs under the CHC regulation rather than the At–Berth regulation.

Additionally, the inclusion of ATBs in the CHC Regulation will result in emission reductions earlier than if ATBs were subject to the At Berth Regulation. Under the 2022 CHC Amendments, pre–Tier and Tier 1 diesel engines on ATBs will be required to be re–powered to the Tier 3 or 4 standard between December 31, 2023, and December 31, 2025, depending on engine model year. The earliest requirements for tanker vessels to reduce emissions under the At Berth Regulation is January 1, 2025, for vessels visiting the ports of Los Angeles and Long Beach, and emission reduction requirements don’t start until January 1, 2027, for tanker vessel visits elsewhere in the state.

Conclusion: The Petition presents no information that differs from the information the Petitioner previously presented to and that was considered by CARB during the development and promulgation of the 2020 At Berth and 2022 CHC Regulations, and, consequently, CARB has no basis to depart from CARB’s prior conclusions that ATBs do in fact exhibit design and operational characteristics that are distinct from the design and operational characteristics of single vessel tanker vessels, or CARB’s determination that regulating ATBs under the CHC Regulation would result in greater reductions of emissions than if ATBs were regulated under the At Berth Regulation.

Cost, Safety, and Availability of Technology Needed to Comply with the CHC Regulation

The Petition’s second basis for requesting the proposed amendments is the claim that the technology needed to comply with the requirements of the CHC Regulation cannot be implemented at a commercially reasonable cost.⁴⁰

Specifically, in a letter dated April 29, 2020, Petitioner estimates that its costs for its ATB fleet to comply with the 2022 CHC Regulation would include \$10,000 per vessel class to conduct a feasibility study assessing the technical feasibility of retrofitting or repowering existing vessels with compliant technologies,⁴¹ and either retrofit costs ranging from \$2,700,000 for a 180,000 bbl ATB barge to \$6,050,000 for a 180,000 bbl ATB tugboat, or replacement costs ranging from \$90,000,000 for a 150,000 bbl ATB to \$105,000,000 for a 180,000 bbl ATB.⁴²

In letters dated November 15, 2021, and June 2, 2022, Petitioner estimated that its costs to retrofit existing vessels would range from \$9.55 million dollars for a 150,00 bbl capacity ATB vessel to \$8.75 million for a 180,000 bbl capacity ATB vessel,⁴³ and estimated its costs to purchase new engines would range from \$90 million dollars for a 150,000 bbl capacity ATB vessel to \$105 million for a 180,000 bbl capacity ATB vessel.⁴⁴ In this Petition, Petitioner maintains that the costs of compliance cannot be recovered through increased charter hire and are accordingly not commercially feasible.⁴⁵

Response: Based on my review of the documents associated with the 2022 Amendments to the CHC Regulation, CARB finds the claim that compliance costs are not commercially feasible is not supported.

In developing the 2022 CHC Regulation, CARB estimated the compliance costs for various vessels, including ATB barges and ATB tugboats, by estimating both the compliance paths vessel owners would likely utilize to comply with the requirements of the 2022 CHC Regulation and the costs associated with those compliance paths. CARB relied on cost data supplied by stakeholders during the rulemaking’s extensive public process, and on data provided in an evaluation conducted by the California State University Mari-

⁴⁰ Petition, p. 6. *See*, Crowley letter dated April 29, 2020, Exhibit C hereto, pp. 1–3; Crowley letter dated November 15, 2021, Exhibit E, p.6; Crowley letter dated June 2, 2022, Exhibit F, p.3.

⁴¹ Petition, Exhibit C, pp. 1–2.

⁴² *Id.* at p. 2.

⁴³ The letter does not expressly state whether these costs only include costs to retrofit barges, or also include costs of retrofitting the tugboats that push the barges.

⁴⁴ Again, the letter does not specify whether these costs only include costs to purchase new engines for only barges or both the barges and the tugboats that push the barges.

⁴⁵ Petition, p. 8.

time Academy (CSU Maritime Academy or CMA) in 2019 that, in pertinent part, determined the feasibility of repowering or retrofitting a specific in-use CHC within each of the 13 vessel categories with Tier 4 marine engines or retrofit aftertreatment, including assessing the extent of reconfiguration that would be required for repowers and retrofits.⁴⁶ The CMA report specifically assessed the likely compliance option for a petrochemical barge vessel equipped with nine auxiliary engines, determined that while no Tier 4 engines were available at the time to repower those engines, retrofitting the engines with a DPF was feasible.⁴⁷

In CARB’s Standard Regulatory Impact Assessment (SRIA), staff documented their comprehensive cost estimates and economic analysis for the 2022 Amendments, with detailed cost inputs described in Appendix A of the SRIA.⁴⁸ This represented the best available data when staff calculated the cost impacts of the 2022 Amendments. CARB estimated the compliance costs for ATB barges and ATB tugs, based in part on information provided by Petitioner in emails dated April 29, May 6, and June 10, 2020,⁴⁹ and determined the direct annual amortized costs of the 2022 CHC Regulation for typical businesses would reach an annual maximum of \$2.2 million dollars for ATB tugs and \$960,000 for ATB barges during the implementation period from 2023 to 2037 (in \$2019).⁵⁰ CARB determined the direct annual non-amortized costs for typical businesses would reach \$7.24 million dollars for ATB tugs and \$1.25 million for ATB barges in 2025.⁵¹

The Petitioner specifically provided the estimated compliance costs as previously discussed in its letters of November 15, 2021, and June 2, 2022,⁵² during the public comment periods for the 2022 CHC Regulation.⁵³ CARB considered this information and ultimately

made no change to the regulation in response to this comment. CARB staff explained that it estimated the costs of retrofitting ATB tugboats and barges with Tier 4 engines and DPFs as \$9.2 million, which was within the range of the \$9.55 million estimate provided by Crowley, and that it estimated that the average cost of replacing ATB vessels was \$59.7 million, which was lower than Crowley’s estimated vessel replacement costs,⁵⁴ but was within 45% of Crowley’s highest cost estimate, and within roughly a third of Crowley’s lowest cost estimate. CARB staff determined that no changes were merited to the regulation after carefully considering this comment, and the Board ratified that decision by approving the adoption of the 2022 CHC Regulation.

Mechanisms Exist for ATBs to Recover Increased Compliance Costs

Petitioner asserts that compliance costs cannot be recovered through increased charter hire and are accordingly not commercially feasible;⁵⁵ this claim, however, is not substantiated by the Navigistics consulting report they cite as the basis.⁵⁶ The report states that “if DPFs are approved and become available, the most likely response is that ATB owner/operators will seek charters that specifically reimburse owners for the cost of retrofitting Tier 4 engines with DPFs.”⁵⁷ The report estimates that the additional daily charter premium would be 27% for a four-year charter,⁵⁸ but this assumes that the Petitioner would seek to be completely reimbursed for its compliance costs by a single charter contract regardless of the length of contract term, and provides that the premium could be reduced substantially by distributing the costs over a longer time period. The Petitioner provides no indication or evidence that its charter company would choose an alternative method of importing and exporting products rather than pay all or part of that premium. Also, this figure does not include any recovery of compliance costs through grant programs provided by CARB and other state agencies, even though CARB is aware that the Petitioner has recently been awarded grant funding for a battery plug-in hybrid tugboat.⁵⁹

CARB also notes that a company that instead chooses to charter OGV tankers would potentially incur costs to comply with the requirements of the At Berth regulation, and Petitioner does not provide any

⁴⁶ CSU Maritime Academy, Evaluation of the Feasibility and Costs of Installing Tier 4 Engines and Retrofit Exhaust Aftertreatment on In-Use Commercial Harbor Craft, 2019 (hereinafter CMA report”). Available at <https://ww2.arb.ca.gov/resources/documents/commercial-harbor-craft-tier-4-feasibility-report>, last accessed February 2021.

⁴⁷ CMA report, p. 28.

⁴⁸ CARB, Standardized Regulatory Impact Assessment, Proposed Amendments to the Regulation to Reduce Emissions From Diesel Engines on Commercial Harbor Craft Operated within California Waters and 24 Nautical Miles of the California Baseline (2021 CHC SRIA). Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/appc-1.pdf>.

⁴⁹ Appendix A, Cost Analysis Inputs and Assumptions for Standardized Regulatory Impact Assessment, Table II–K, pp. A–55 to A–57, and Table II–F, pp. A–41 to A–43. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/appc-1.pdf>.

⁵⁰ CARB, 2021 CHC SRIA, p. 101.

⁵¹ Id. at p. 102.

⁵² See Also Petition, Exhibits E and F.

⁵³ 2022 CHC FSOR p. 280.

⁵⁴ Ibid.

⁵⁵ Petition, p. 8.

⁵⁶ Ibid.

⁵⁷ Navigistics report, p. 15.

⁵⁸ Id., p. 16.

⁵⁹ Port and Freight Infrastructure Program Selected Projects — Project Detail Summary, July 6, 2023, Available at: <https://calsta.ca.gov/-/media/calsta-media/documents/pfip-awards-summary-narrative-7-6-23-a11y.pdf>.

comparison of the impact of such costs. The Navigistics report estimates that the total cost of transporting finished petroleum products to market in a compliant ATB would be \$0.65 per barrel, but does not provide any context for this cost increase for CARB to evaluate its basis. In addition, it does not compare that cost with a similar analysis for OGV tanker compliance with the At Berth Regulation, or for rail and truck alternatives, all of which are expected to result in compliance costs for upcoming regulations affecting those sectors.⁶⁰ Additionally, Petitioner provides no information to substantiate that it is unable to absorb a portion of or all costs associated with compliance with the 2022 CHC Amendments.

However, if the Petitioner chooses to pass along all costs of compliance with the 2022 CHC Amendments, staff estimate that the price increase per gallon of finished petroleum product would be approximately \$0.006 per gallon based on the information provided by the Petitioner describing compliance costs for repowering their 550–class and 650–class ATBs⁶¹ amortized over a 14–year equipment lifetime, and product transport data provided in Exhibit A.⁶² Staff further estimate that the price increase per gallon of finished petroleum product would be approximately \$0.004 per gallon based on CARB’s cost analysis information in the rulemaking record.⁶³

While ATBs would face costs in response to the 2022 CHC Amendments, OGV tankers will also face compliance costs due to the recently adopted Control Measure for Ocean–Going Vessels At–Berth, which will impose requirements for tanker vessels to reduce emissions at berth starting in 2025. As described in the Proposed Control Measure for Ocean–Going Vessels At Berth Standardized Regulatory Impact Assessment (SRIA), staff estimated the cost increase to tankers to comply with the At Berth regulation per gallon of product as \$0.008.⁶⁴

Additionally, as noted above, Petitioner’s website, Exhibit A and Exhibit E of the petition all state that the 550–class ATBs were developed and designed specifically for West Coast operations and weather conditions.⁶⁵ CARB considers it implausible that Crowley would choose to strand or repurpose these assets

⁶⁰ Navigistics report, p. 16.

⁶¹ Petition, Exhibit C, p. 3, and Exhibit E, p. 6.

⁶² Petition, Exhibit A, p. 2.

⁶³ Commercial Harbor Craft Regulation Standardized Regulatory Impact Assessment, Tables II–F and II–K. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/appc-1.pdf>.

⁶⁴ Proposed Control Measure for Ocean–Going Vessels At Berth Standardized Regulatory Impact Assessment, p. 96. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/ogvatberth2019/appc-1.pdf>.

⁶⁵ Petition, Exhibit A, p. 4 and Exhibit E, p. 4.

rather than incur costs to comply with the 2022 CHC Amendments, given opportunities to recover costs and the large market share it holds in the transport of petroleum products to, from, and within California.

Safety Concerns

Petitioner also asserts that DPF technology “is neither safe or feasible for these types of ATB marine engines.”⁶⁶ Specifically, in the letter dated November 15, 2021, it states “[a]t this point, it is highly questionable if DPF technology can be installed with Tier 3 or Tier 4 engines in a technically–feasible or safe manner. Although DPF devices have been used on trucks, albeit with some serious consequences such as fire danger, there is no indication that DPFs can be used on large marine engines, or that it would be safe to do so.”⁶⁷

Response: CARB received and considered this same comment during the rulemaking action for the 2022 CHC Regulation.⁶⁸ CARB made no change to the regulation in response to this comment, but responded, in pertinent part,⁶⁹ that Appendix E to the ISOR⁷⁰ outlined staff’s review and assessment of the feasibility associated with the performance standards associated with the regulation, acknowledged that with respect to retrofitting existing vessels “any additional aftertreatment devices must be consistent with gross register tonnage requirements to maintain USCG compliance,”⁷¹ and specifically stated in response to concerns that required compliance technologies might present overheating or fire concerns:

...Tier 4 engines and DPFs do not operate at a higher temperature than engines certified to less stringent emission standards. This is because DPFs are designed to only increase the temperature of the exhaust if the load of the engine is low and the DPF needs to be regenerated. There are many other vehicles and pieces of equipment that are designed with passive DPFs, meaning, that they are designed to operate under the heat of the engine alone, with no additional heat source to raise the temperature of the aftertreatment. Passive DPFs may be a viable option for certain categories of harbor craft depending on the duty

⁶⁶ Petition, p.8; *See also* Petition, Exhibit C, p.3, and Exhibit E, p. 6.

⁶⁷ Petition, Exhibit E, p. 6.

⁶⁸ 2022 CHC FSOR, p. 271.

⁶⁹ 2022 CHC FSOR, p. 79.

⁷⁰ Appendix E to the 2022 CHC ISOR, Technical Support Document and Assessment of Marine Emission Control Strategies, Zero–Emission, and Advanced Technologies for Commercial Harbor Craft. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/appe.pdf>.

⁷¹ CARB, Response to Comments on the Draft Environmental Analysis for Proposed Amendments to the Commercial Harbor Craft Regulation (2022), (hereinafter RTC) p. 15. Available at: <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/chc2021/chrtc.pdf>.

cycle profile. In addition, the thermodynamic efficiency of modern Tier 4 engines is better than some of the older-tier engines. With more efficient combustion, less waste heat is generated in the exhaust stream. Therefore, Tier 4 engines and DPF aftertreatment are not associated with hotter exhaust temperature potential than Tier 3 and earlier engines without aftertreatment. In addition, vessel owners and operators would be required to continue to meet USCG safety regulations applicable to their vessels, including but not limited to rules governing surface temperature and exhaust manifold insulation requirements within the engine rooms.

RTC, pp. 15–16.

Staff also explained that it met with the U.S. Coast Guard during the development of the 2022 CHC Amendments and discussed topics including the Coast Guard’s guidance on addressing concerns expressed by the regulated industry regarding installing DPFs in numerous CHC vessel types, and regarding vessel design standards relating to harbor craft exhaust systems and their applicability to DPFs.⁷²

CARB requires, as a condition of DPF verification as set forth by 13 CCR 2706(w), analysis of all potential safety and catastrophic failure issues associated with the use of the diesel emission control strategy. Similarly, the U.S. Coast Guard has shared with CARB that they are requiring failure analyses to be performed on the initial set of DPFs being installed on marine vessels in California that are anticipated to meet the Level 3 requirements (and could be used to comply with the Proposed Amendments). These tests and evaluations could be used by DPF manufacturers to satisfy both CARB and U.S. Coast Guard requirements to ensure vessel and DPF safety after installation. Because these evaluations and requirements are in effect, CARB does not anticipate implementation of the Proposed Amendments to introduce any relevant safety concerns after systems have been carefully designed, rigorously tested, and modified to minimize the potential for failure.

RTC, p. 17.

Staff also stated:

The design and performance of DPF systems is reviewed when manufacturers undergo approval through the Verification Program as set forth by 13 CCR 2700 et seq. Many DPFs are designed with active regeneration strategy, where they use fuel injection or electrical resistance to increase the temperature of the exhaust if engines operate for extended periods of time at lower loads.

DPFs are not designed to elevate the temperature to values higher than the engines are capable of achieving...

RTC, p. 48

CARB further notes that a commenter stated that it has developed a set of marine engineered engines that will meet the Tier 4 plus DPF requirements and are “packaged and protected” to present no fire risks,⁷³ and that CARB staff stated it did not receive “any data supporting claims that diesel engine applications with variable duty cycles cause premature component failures and fires.”⁷⁴

No Availability of DPFs

Petitioner further maintains that there are currently no DPFs available that would allow it to meet the performance requirements of the 2022 CHC Regulation.⁷⁵ To support this claim, Petitioner cites to the Navigistics report, which states that “there are no USCG or Classification Society approved DPFs available for marine engines”⁷⁶ and “if no USCG approved marine DPFs are available, ATBs will not be available for serving the California market after the required compliance date.”⁷⁷

Response: These statements reflect a misunderstanding of USCG’s role in approving DPFs, which is discussed in the RTC.⁷⁸ The USCG does not “approve” marine DPFs, rather they approve plans for and inspect installation of marine DPFs on a vessel-specific basis, with an emphasis on overall safety and operability of the vessel. CARB staff are aware of multiple vessels that have received USCG approval to operate in California with DPFs, either for compliance with the BACT requirement for new ferries in the original CHC Regulation, or for durability testing of DPF products currently undergoing CARB’s verification process. At this time, USCG has not indicated to CARB staff that they intend to require DPFs on ATB tugs and barges to be type-classed by a classification society. The statements in the Navigistics report also do not consider that the CHC Regulation contains a renewable two-year compliance extension (E2) specifically for the scenario of a lack of available DPFs for a particular engine.

Additional Response: This claim is consistent with other comments submitted during the rulemaking action for the 2022 CHC Regulation, which generally state that Tier 4 engines and/or associated DPFs are not currently available, and/or requesting that CARB delay the adoption of the regulation until the technolo-

⁷³ 2022 CHC FSOR, p. 29.

⁷⁴ Id. at p. 86.

⁷⁵ Petition, p. 6.

⁷⁶ Navigistics report, p. 8.

⁷⁷ Id. at p. 15.

⁷⁸ RTC, Master Response, pp. 14–17.

⁷² Id. at pp. 16–17.

gy needed to meet the performance standards is commercially available.⁷⁹

CARB responded to those comments in both the RTC and the 2022 CHC FSOR,⁸⁰ explaining that staff based its assessment of the technical feasibility of compliance technologies on the best available technical feasibility data and emissions inventory, and that staff was fully aware that elements of the proposed regulation are technology–forcing and accordingly rely on manufacturers successfully transferring DPF technology from the on–road and off–road sector to the marine sector.⁸¹

CARB also acknowledged that the feasibility of installing compliant technology must be determined on a vessel–specific basis and stated that information contained in Appendix E to the ISOR demonstrated that manufacturers are either currently manufacturing or planning to manufacture the technology needed to meet the requirements of the 2022 CHC Regulation.⁸² CARB specifically noted that as of September 2021, 22 models of Tier 4 engines were available, “and additional engine and DPF manufacturers are undergoing the design, certification, and verification process to bring their products to market.”⁸³ CARB also stated that although it had not verified any level 3 DPFs, it received “multiple applications and is working with the applicants through the Verification Procedure as set forth in 13 CCR 2700 et seq. As of July 2023, one preliminary application for verification has been approved, and the system is currently in operation and undergoing a durability demonstration that is required before full verification.”^{84,85} “Additionally, there are two other retrofit aftertreatment OEMs currently pursuing CARB Marine Verifications, one for a Level III DPF and the other a full exhaust aftertreatment system with a combined Level III DPF and a Mark V SCR system (85% PM and 85% NOx reduction).”⁸⁶

Other commenters stated that technologies needed to comply with the 2022 CHC Regulation are currently commercially available and are capable of being timely applied to marine vessels. For example:

Technologies such as SCRs, DPFs, diesel oxidation catalysts (DOC), and ammonia slip catalysts (ASC) are commercially available today and can be found on millions of highway and off road

engines since 2007. Retrofit DPFs have been installed on many thousands of in–use heavy–duty vehicles and off–road equipment in California and more broadly worldwide to provide significant reductions in diesel particulate matter (PM), as well as reductions in toxic hydrocarbon and carbon monoxide (CO) emissions from the in–use fleet.

MECA agrees with the staff report’s assessment that marine applications pose unique operating environments and challenging packaging envelopes for emission control technologies. However, proper application engineering over the past twenty years has resulted in the successful application of DOCs, DPFs, and SCR catalysts on a variety of marine engines today.

Since the mid–1990s, urea SCR technology has been successfully installed on a variety of marine applications in Europe, including auto ferries, cargo vessels, military ships, and tugboats, with hundreds installed on engines ranging from approximately 450 to over 10,000 kW. In addition, the International Maritime Organization Tier 3 requirements which came into force in 2021 have required that new engines utilize marine specific SCR installations in NOx Emission Control Areas (N–ECAs) which include the coastal waters of Europe, the United States and Canada. CARB funded a demonstration of a DPF+SCR retrofit of a tug boat that achieved over a 95% reduction in PM emissions and more than a 90% reduction in NOx from two parallel Detroit Diesel 525 hp engines. The New York Port Authority retrofitted two Staten Island Ferries with SCR that remain in operation. Globally, there is growing experience with emission control technologies installed on marine diesel engines and in particular in Europe where Euro V engine standards require DPFs on inland waterway vessels to meet strict particulate regulations.

2022 CHC FSOR, p. 30.

“[I]n 2006, Rypos retrofitted a U.S. Navy barge, which operated for over 19,000 total combined hours without incident. In 2014, the U.S. Office of Naval Research in partnership with UC Riverside independently tested these DPFs and found them to be operating as designed. Again, zero operational safety issues have occurred.”⁸⁷

Response: Based on the above–described information, CARB does not agree with Crowley’s claim that no DPFs will be available to enable it to comply with the 2022 CHC Regulation, and CARB accordingly declines to approve the Petition on this basis. CARB fur-

⁷⁹ See, e.g. 2022 CHC FSOR, pp. 66, 68–74, 76, 77, 79–81, 86, 88–90, 94, 97, 99, 100, 101; RTC, pp. 32, 39–41, 47, 49, 50, 53, 55, 57, 58, 60–61, 71, 73, 77, 79, 82, 89, 95, 100–102, 105, 115, 116, 122, 126.

⁸⁰ See, e.g., 2022 CHC FSOR, pp. 67–101; RTC pp. 14–17, 47.

⁸¹ RTC, p. 48.

⁸² 2022 CHC FSOR, p. 75.

⁸³ RTC, p. 47.

⁸⁴ Id. at 240.

⁸⁵ Id. at 90, 92, 98.

⁸⁶ Id. at 99–100.

⁸⁷ Id. at p. 31.

ther notes that Crowley’s asserted need for the amendments based on this factor is mitigated by the fact that, as previously discussed, the 2022 CHC Regulation contains provisions that provide eligible CHC owners additional time to meet the required performance standards, if vessel owners or operators can demonstrate that no certified engines or DPFs are available to meet the in-use performance standards by specified compliance dates, and that will also allow engine and aftertreatment OEMs to further develop and transfer existing technologies in other operational sectors into the marine sector.

Alleged Environmental Impacts Resulting from the Removal of Petitioner’s ATBs From California

The Petition’s third basis for requesting the proposed amendments is the claim that subjecting ATBs to the 2022 CHC Regulation will result in increased emissions of harmful air pollutants by other categories of mobile sources. Specifically, Petitioner maintains that because it will not be able to comply with the 2022 CHC Regulation,

it will no longer operate its ATBs in Regulated California Waters, and that if no other operators elect to operate compliant ATBs, “California will need to import petroleum products from overseas, and movements of petroleum within California will need to be made by truck or by rail (assuming that were possible).”⁸⁸ Relying on an analysis prepared by the Starcrest Consulting Group, Petitioner then asserts that the emissions generated from the trucks and locomotives under this scenario would result in higher harmful emissions in California and potentially, “for communities elsewhere in the U.S. and rest of the world.” Petitioner further maintains that “[t]he Starcrest analysis demonstrates that movement of the ATB cargoes by a truck alternative within California — even assuming enough trucks are available — might reduce NOx and PM emissions in comparison with ATBs, but this alternative would result in much higher GHG emissions. Locomotives — again, assuming there is capacity for rail to be an alternative — and tankers would emit comparatively more NOx than ATBs,”⁸⁹ and further states that utilizing other vessels to transport the petroleum products currently transported by Petitioner’s ATBs would also increase emissions.⁹⁰

Response: This claim is premised on a series of assumptions; namely, if Petitioner elects not to operate its ATBs in Regulated California Waters, other companies will decide to forego the resulting business opportunity and/or elect not to transport the petroleum

products at issue in their ATBs, and that that the business decisions of those other companies will then require California to transport the petroleum products at issue by other modes—trucks, trains, or vessels that are not subject to the 2022 CHC Regulation. However, the Petition does not provide any specific information, data, or other evidence sufficient to establish that the aforementioned assumptions will occur, and, consequently, CARB finds that those claims are speculative and unsubstantiated. CARB also notes that Petitioner submitted a very similar comment during the rulemaking action for the 2022 CHC Regulation,⁹¹ and that the Board similarly determined that Petitioner’s prior comment was speculative and unsubstantiated, and inconsistent with information that ATBs offer cost advantages over medium-range tankers in transporting petroleum products.⁹² Consequently, for the above-mentioned reasons, CARB concludes that this basis does not warrant approving the proposed amendments.

The Navigistics report highlights the operational advantages and cost-effectiveness of ATBs (Articulated Tug Barges) compared to OGV (Oil and Gas Vertical) tankers, with lower manning requirements. Stranding assets may occur if Crowley withdraws its ATBs from the California market, as their design is specifically tailored for West Coast operations. According to the Navigistics report, when an ATB is not in use, its tug is not repurposed for other tasks like ship assist or moving barges.⁹³

The Navigistics report presents four alternatives for transporting petroleum products to and within California, but it fails to provide adequate analysis demonstrating that these alternatives would be more cost-effective than complying with the 2022 CHC Amendments from trucks and locomotives in California, which Starcrest does not consider the following CARB regulations in its emissions analysis:

1. Drayage Truck/ Truck and Bus, and Advanced Clean Fleets Regulations:

The existing Drayage Truck regulation requires all drayage trucks to operate with a 2007 model year or newer engine, while the Truck and Bus Regulation mandates all trucks, including drayage vehicles, to have 2010 or newer model year engines by January 1, 2023. CARB also adopted the Advanced Clean Fleets regulation in April 2023, which, in pertinent part, requires drayage fleets to begin acquiring zero-emission drayage trucks beginning January 1, 2024, and requires

⁸⁸ Petition, pp. 6–7.

⁸⁹ Petition, p. 7.

⁹⁰ Petition, p. 7.

⁹¹ RTC, p. 271; 2022 CHC FSOR, p. 170.

⁹² RTC, pp. 271–272.

⁹³ Navigistics Report, p. 6.

all trucks conducting drayage operations to be zero-emitting by 2035. The Advanced Clean Fleets regulation additionally requires that manufacturers only produce and sell zero-emitting medium- and heavy-duty vehicles starting in the 2036 model year.

2. Advanced Clean Trucks Regulation

Approved on June 25, 2020, this regulation mandates manufacturers to transition from diesel trucks and vans to zero-emission trucks starting in 2024. The aim is to have approximately 100,000 electric trucks in California by the end of 2030 and around 300,000 by 2035.

3. In-Use Locomotive Regulation

From January 1, 2030, Switch, Industrial, or Passenger Locomotives with an Original Engine Build Date of 2030 or newer must operate in a ZE (Zero Emission) Configuration at all times while in California. Similarly, from January 1, 2035, any Freight Line Haul Locomotive Engine with an Original Engine Build Date of 2035 or newer must also operate in a ZE Configuration at all times while in California. These regulations are designed to reduce emissions and promote the use of cleaner, zero-emission locomotives in the state.

Considering the implementation of these regulations, ATB emissions will likely become more significant compared to other transportation modes.

Emissions Consequences of Proposal

Finally, in evaluating this Petition, CARB must necessarily consider the emissions consequences resulting from the amendments proposed by the Petition. The 2022 CHC Amendments are projected to cumulatively reduce statewide emissions of approximately 34,340 tons of oxides of nitrogen (NOx), 1,610 tons of fine particulate matter (PM_{2.5}), and 2,460 tons of reactive organic gases (ROGs), and 415,000 metric tons of greenhouse gases (GHGs) emitted from CHC from 2023 to 2028.⁹⁴ These emissions reductions will assist California in attaining the national and state ambient air quality standards for ozone and particulate matter, in reducing the serious associated risks to the health

⁹⁴ 2022 CHC ISOR, pp. VI-3 to VI-6.

and welfare of Californians,^{95,96} and in addressing climate change induced harms.

Petitioner maintains that subjecting its ATBs to the 2022 CHC Amendments will necessarily result in increased emissions of air pollutants;⁹⁷ however, as previously analyzed, that claim is premised on unsubstantiated and speculative assertions. Furthermore, that claim is not consistent with CARB staff's evidentiary-based conclusion that subjecting ATBs to the 2022 CHC Amendments will in fact result in emission benefits compared to Petitioner's request to subject ATBs to the 2020 At Berth Regulation.

CARB's Emissions Inventory shows ATB tugs generate significant transit emissions inside RCW and CARB staff was told by Crowley that ATB barge engines also generate transit emissions en route to refinery terminals to test and warm up auxiliary engines in the hour before docking at a terminal. ATB tugs and barges at anchor generate emissions from both tug and barge auxiliary generator engine operation. CARB staff observed during a 2018 ATB vessel visit that when docked at refinery terminals to offload petrochemical product, ATB tugs and barges will separate pinned connections to allow for changes in barge draft height due to load condition changes in the barge as product is offloaded and ballast water is loaded or vice versa. CARB staff was told ATB barges regularly run product and ballast water pump engines at high loads for extended periods of time of up to 24 or 36 hours at a refinery terminal. Many ATB barges operate a combination of multiple auxiliary engines in various applications with cumulative power in the range of three to four megawatts during product and ballast water pumping activity. From CHC Reporting Database, CARB staff is aware many

⁹⁵ NOx emissions pose serious risks to the health and welfare of Californians, because NOx emissions not only irritate the respiratory system and aggravate respiratory diseases, they also react in the atmosphere to form additional pollutants — ozone and particulate matter that are harmful to respiratory systems (ISOR, p. I-23). PM, in particular, poses serious risks to the health and environment of Californians, including respiratory ailments that can increase premature mortality, hospital admissions for cardiopulmonary causes, acute and chronic bronchitis, asthma attacks, and developing lung cancer. (ISOR, p. I-22). The 2022 CHC Amendments are expected to reduce the total number of incidents for premature mortality, cardiovascular and respiratory hospitalizations, and emergency room visits between 2023–2038, in an amount equivalent to monetized health benefits of approximately \$5.25 billion (2022 HC ISOR, pp. V-7).

⁹⁶ The 2022 CHC Amendments will reduce emissions of pollutants that adversely impact several nonattainment regions in California: the San Francisco Bay Area, the San Joaquin Valley, Ventura County, the South Coast Air Basin, and San Diego County. Appendix C-1 to 2022 CHC ISOR, p. 22.

⁹⁷ Petition, pp. 4, 5, 7.

ATB barge auxiliary engines operating in RCW are unregulated pre-Tier marine engines due to a loophole in the current CHC Regulation (from 2008 to the end of 2022) that exempted ATB barge engines from the In-Use Rule portion of the current CHC Regulation due to all ATB barges being over 400 feet in length.

...

The CHC 2022 Amendments establish emissions-related requirements that are collectively more stringent than the emissions-related requirements established under the At-Berth Regulation, because the At-Berth Regulation currently only requires OGVs to reduce emissions generated from engines while OGVs are docked at berth at California ports. Although the CHC 2022 Amendments also establish requirements that require CHC to limit emissions while they are docked, the 2022 Amendments additionally also establish requirements that are applicable to CHC vessels while they are operated in RCW. For instance, the 2022 Amendments require CHC to be fueled with renewable diesel fuel having a sulfur limit not to exceed 15 parts per million (ppm), whereas OGVs operating in RCW are only required by a separate CARB regulation to be fueled with marine gas oil or marine diesel oil with maximum sulfur limits of 0.1% sulfur by weight, 35 (equivalent to 1000 ppm of sulfur). Furthermore, the CHC 2022 Amendments establish requirements applicable to both newly acquired and in-use propulsion and auxiliary engines in CHC that are absent in the At Berth regulation. Consequently, regulating ATBs under the At Berth Regulation would result in increased emissions of harmful air pollutants that adversely impact the health and environment of Californians compared to the 2022 Amendments. Accordingly, there is a rational basis for CARB to regulate ATBs under the CHC regulation rather than the At-Berth regulation.

2022 CHC FSOR, p. 168–169 (Emphasis added).

The Petition does not provide any facts, information, or other evidence that refutes CARB’s determination that regulating ATBs under the CHC Regulation will result in more reductions of harmful air pollutants than if it were to regulate ATBs under the 2020 At Berth regulation, and consequently, CARB concludes that the proposed amendments would undermine the emissions benefits of both the existing 2020 At Berth Regulation and the existing 2022 CHC Regulation.

The Petition is fundamentally premised on Crowley’s perception that CARB solely based its determination of whether to regulate ATBs under either the 2020 At Berth Regulation or the 2022 CHC Regula-

tion upon a determination whether ATBs primarily operate as either ocean-going vessels, or instead primarily operate as harbor craft.⁹⁸ That premise is incorrect. As indicated above, CARB also considered the fact that ATBs generate significant quantities of emissions while transiting Regulated California Waters and while docked at refinery terminals, that many ATB barge engines are unregulated engines (i.e., are not equipped with any emissions controls), and that it would achieve greater reductions of emissions by subjecting ATBs to the 2022 CHC Regulation since the 2022 CHC Regulation establishes emissions-related requirements that are collectively more stringent than the emissions-related requirements associated with the 2020 At Berth regulation. In other words, Crowley fails to consider that CARB is authorized to regulate ATBs since ATBs are a mobile source that emits air pollutants, and that authority necessarily extends to decisions regarding which regulation best achieves emissions reductions from ATBs. In this case, the Board determined regulating ATBs under the 2022 CHC Regulation will achieve more emissions reductions than if it regulated ATBs under the 2020 At Berth regulation.

The requested amendments would effectively reduce the emissions benefits of the 2022 CHC Regulation and would accordingly be inconsistent with CARB’s statutory mandates, including directives to achieve the maximum feasible and cost-effective emissions reductions from new and in-use non-vehicular sources, including marine vessels (Health and Safety Code § 43013(b)), to expeditiously reduce NOx emissions from diesel marine vessels and other mobile sources that “significantly contribute to air pollution problems” (Health and Safety Code § 43013(h)), and to reduce emissions of toxic air contaminants from nonvehicular sources (Health and Safety Code § 39666) and to achieve “the maximum technologically feasible and cost-effective reductions of greenhouse gases” (Health and Safety Code § 38560). Consequently, CARB finds that the Petition does not demonstrate that the proposed amendments are consistent with the CARB’s overall statutory charge to improve air quality, to protect the public health and welfare, and to mitigate the harms posed by greenhouse gases by controlling emissions from marine vessels, or that the proposed amendments are reasonably necessary to effectuate the purposes of those statutes.

⁹⁸ Petition, pp. 1–3, 5, 8–10; Exhibit A, pp. 2–5; Exhibit B, pp. 1–2; Exhibit D; Exhibit E, pp. 4–5; Exhibit F, pp. 2–3, 5, 7; Exhibit G.

Request for Clarity Regarding the Alternative Control of Emissions Provision in the 2022 CHC Regulation

Petitioner also requests that CARB amend the 2022 CHC Regulation to “incorporate more certainty” into the regulation, and specifically requests that CARB more clearly state “... that Alternative Compliance Programs or plans for Alternative Control of Emissions may be approved on an interim basis or for a set period of time.”⁹⁹

The proposed amendments to the existing Alternative Control of Emissions (ACE) provision in the 2022 CHC Regulation,¹⁰⁰ however, would go beyond clarifying that provision and would substantively amend existing requirements.

First, the ACE provision does not allow CARB’s Executive Officer to approve a proposed ACE on an interim basis or for a set period of time other than the period of time specified in section 93118.5(f)(1)(A) (January 1, 2023, through December 31, 2034). The ACE provision specifies that applicants electing to use an alternative strategy in lieu of complying with the requirements of the renewable diesel fuel requirements, requirements for Zero–Emission and Advanced Technologies (ZEAT) for short–run ferries, and new and newly acquired excursion vessels, requirements for in–use engines and vessels (excluding commercial fishing vessels), or requirements for engines on commercial fishing vessels must submit specified information, including information that demonstrates a proposed alternative strategy will achieve equal or greater reductions of diesel PM and NOx emissions than would have been achieved than if the applicant were to comply with the corresponding primary compliance requirement for a time period beginning January 1, 2023, through December 31, 2034.¹⁰¹ The ACE provision also clearly provides that after an applicant’s ACE application is deemed to be complete, CARB’s Executive Officer shall “take final action to either approve or deny an ACE application and shall notify the applicant accordingly.”¹⁰²

That regulatory text does not expressly state that CARB’s Executive Officer may conditionally approve an application for an interim basis or for a period of time shorter than the period of time specified in section 93118.5(f)(1)(A), and indeed, it could not impliedly allow CARB’s Executive Officer to do so, since the ACE provision explicitly requires that any approval be based on a determination that the emissions reductions resulting from a proposed alternative strategy are at least equivalent to the emissions reduc-

tions of the primary compliance requirements over a fixed time period,¹⁰³ and in a single specified air basin or other defined geographic area in California.¹⁰⁴ In other words, both the text and the structure of the ACE provision indicate CARB’s Executive Officer can only fully approve or fully disapprove an application. This conclusion is also consistent with CARB staff’s explanation in the 2022 CHC ISOR that it needs the information specified in § 93118.5(f)(1)(A) to fully and critically assess whether proposed alternative compliance strategies will, at a minimum, achieve the same emissions benefits of the 2022 CHC Regulation over a time period extending over eleven years.¹⁰⁵

The Petition provides no explanation of how a conditional or interim approval of an alternative compliance strategy is consistent with the text or structure of the ACE provision or would better fulfill the purpose of the ACE provision, but simply maintains that incorporating such ‘clarity’ would “incorporate the goal of ongoing cooperation between CARB and industry to ensure reasonable alternatives for compliance.”¹⁰⁶ The proposed amendments would not ‘clarify’ existing requirements but would instead establish requirements that are inconsistent with the text, purpose and intent of the ACE provisions, and would accordingly hinder both regulated owners’ and CARB’s abilities to consider alternative compliance strategies.

The Petition also requests that CARB amend the ACE provisions to, in pertinent part, distinguish ATBs from CHC,¹⁰⁷ and to provide ATBs additional compliance flexibilities that are not available to CHC under the ACE provisions. As a threshold matter, CARB disapproves the proposed amendments to distinguish ATBs from CHC for the reasons previously discussed in this response to the Petition.

The Petition also requests that ACE provisions be amended to incorporate additional compliance flexibilities. Specifically, the existing ACE provision specifies that applicants must demonstrate that a proposed alternative compliance strategy achieves at least equivalent emissions reductions as the corresponding primary compliance requirement for those CHC vessels in an applicant’s fleet that operate within a single air basin or other defined areas, as approved by CARB’s Executive Officer.¹⁰⁸

The Petition seeks to expand the applicability of the ACE provisions to all ATBs in an applicant’s fleet, “with respect to every California air basin in which

⁹⁹ Petition, p. 9.

¹⁰⁰ Cal. Code Regs., title 17, § 93118.5(f)(1).

¹⁰¹ See, e.g., §§ 93118.5(f)(1)(A), (f)(1)(F), and (f)(1)(G).

¹⁰² Cal. Code Regs., title 17, § 93118.5(f)(2)(F).

¹⁰³ Cal. Code Regs., title 17, §§ 93118.5(f)(1)(A), (f)(1)(F).

¹⁰⁴ Cal. Code Regs., title 17, § 93118.5(f)(1)(G).

¹⁰⁵ 2022 CHC ISOR, p. IV–98.

¹⁰⁶ Petition, p. 9.

¹⁰⁷ Petition, pp. 10–12.

¹⁰⁸ Cal. Code Regs., title 17, § 93118.5(f)(1)(G).

the ATB is operating,”¹⁰⁹ but provides no rationale or basis for that amendment other than “...[t]he section should include provisions that ... recognize the operational profile of ATBs in more than one air basin in California, and ways for ATBs to comply, in addition, through an approved ACE that allows for an expanded definition of fleet averaging...”¹¹⁰

Because the sole basis for that proposed amendment is Petitioner’s premise that ATBs are distinguishable from other categories of CHC, and because CARB has already determined that premise is not consistent with the evidence in the rulemaking record, CARB disapproves that element of the Petition.¹¹¹

Finally, the Petition requests that the ACE provisions be amended to allow alternative compliance strategies for ATBs to include emissions reduction measures related to potential emissions reductions attributable to emissions sources other than CHC, including cargo handling equipment, drayage trucks, and stationary sources.¹¹² The existing ACE provision expressly limits alternative compliance strategies to strategies involving CHC.¹¹³ As CARB staff already explained during the rulemaking process, this limitation is needed to ensure that “the quantified emission reductions in the ACE plan must occur in the harbor craft sector only, which ensures the emission reductions are achieved from CHC themselves.”¹¹⁴ That explanation constitutes a rational explanation for limiting alternative compliance measures to measures involving CHC, and Petitioner does not provide a countervailing justification or reason why its proposal better effectuates the goals and purposes of the 2022 CHC Regulation or its authorizing statutes. CARB therefore disapproves this element of the Petition.

The Petition’s basis for proposing the amendments does not demonstrate that the proposed amendments are consistent with CARB’s overall statutory charge to improve air quality, to protect the public health and welfare, and to mitigate the harms posed by greenhouse gases by controlling emissions from marine vessels. It also fails to demonstrate that the proposed amendments are reasonably necessary to effectuate the purposes of those statutes, or that the proposed amendments are consistent with the 2022 CHC’s Reg-

ulation’s rationale that emissions reductions resulting from a proposed ACE plan must only encompass emissions from the CHC sector, to ensure that sector will implement actions to reduce emissions from CHC.

Conclusion

Based on the foregoing analysis of the Petition, CARB finds that the Petition does not present any information that significantly differs from the information presented to and considered by the Board in its consideration of either the 2010 CHC Regulation, the 2020 At Berth regulation, or the 2022 CHC Regulation. CARB additionally finds that Petition has not demonstrated that the proposed amendments are consistent with the CARB’s overall statutory charge to improve air quality, to protect the public health and welfare, and to mitigate the harms posed by greenhouse gases by expeditiously controlling emissions of harmful air pollutants from marine vessels; or that the proposed amendments are not reasonably necessary to effectuate the purposes of those authorizing statutes.¹¹⁵

Therefore, the Petition is denied pursuant to Government Code section 11340.7.¹¹⁶ The record upon which this denial is based includes the Petition and all of the material incorporated by reference in the Petition — Exhibits A through G and the Navigistics Report referenced in the Petition and transmitted to CARB by a separate letter. The record also includes this letter and all attachments hereto.

In accordance with Government Code section 11340.7(d), a copy of this letter is being transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. You have cited the following as authority for the requested action: California Government Code section 11340.6, and California Health and Safety Code sections 38505 et. seq., 39650 et. seq., 39666, 39730 et. seq., 41511, and 43013 et. seq.

The agency contact person on this matter is Alex Wang, Senior Attorney, at Alex.Wang@arb.ca.gov or Rebecca Maddox, Senior Attorney, at Rebecca.maddox@arb.ca.gov or (279) 208–7692. Interested parties may obtain a copy of the Petition from Katie Estabrook, Staff Services Manager of the Clerk of the CARB Board, by writing to 1001 I Street,

¹⁰⁹ Petition, p. 11.

¹¹⁰ *Ibid.*

¹¹¹ Please note that, as explained above, the existing ACE provision does allow an applicant to propose alternative compliance strategies that consideration of emissions reductions in more than one air basin. Cal. Code Regs., title 17, section 93118.5(f)(1)(G). Applicants must submit information that the proposed ACE will not result in higher emissions burden to DACs relative to other communities impacted by their vessel operations. Cal. Code Regs., title 17, section 93118.5(f)(1)(F)5.

¹¹² Petition, p. 12.

¹¹³ Cal. Code Regs., title 17, § 93118.5(f)(1)(E).

¹¹⁴ 2022 CHC ISOR, p. IV–99.

¹¹⁵ See California Government Code § 11350(b)(1), which provides that a regulation may be declared invalid if “[t]he agency’s determination that the regulation is reasonably necessary to effectuate the purpose of the statute that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.”

¹¹⁶ The Board may delegate any duty it deems appropriate to its Executive Officer (Health and Safety Code section 39515(a)). Moreover, the Board is conclusively presumed to have delegated any of its powers to the Executive Officer unless it has expressly reserved that power to itself (Health and Safety Code section 39516). The Board has not reserved the power to act on rulemaking petitions, and it is therefore appropriate for me to consider the Petition pursuant to my delegated authority.

P.O. Box 2815, Sacramento, California 95812, Katie.Estabrook@arb.ca.gov or (916) 322–5594.

Sincerely,

/s/

Steven S. Cliff, Ph.D., Executive Officer

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY

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

NOTICE OF INTENT TO LIST CHEMICALS
BY THE LABOR CODE MECHANISM:
COAL–TAR PITCH, FLUORO–EDENITE
FIBROUS AMPHIBOLE, AND
SILICON CARBIDE WHISKERS

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to list coal–tar pitch, fluoro–edenite fibrous amphibole, and silicon carbide whiskers as known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code (HSC) sections 25249.5 et seq., otherwise known as Proposition 65.

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

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

OEHHA’s determination: *Coal–tar pitch, fluoro–edenite fibrous amphibole, and silicon carbide whiskers*

meet the requirements for listing as known to the state to cause cancer for purposes of Proposition 65 (CCR, title 27, section 25904(b)(3)).

IARC has published on its website “IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 100F, Chemical Agents and Related Occupations” (IARC, 2012) and “IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 111, Some Nanomaterials and Some Fibres” (IARC, 2017). IARC concluded that *coal–tar pitch* and *fluoro–edenite fibrous amphibole* are classified in Group 1 (“carcinogenic to humans”) and that *silicon carbide whiskers* are classified in Group 2A (“probably carcinogenic to humans”). IARC concluded that there is sufficient evidence of carcinogenicity in humans and animals for *coal–tar pitch* and *fluoro–edenite fibrous amphibole* (IARC, 2012; IARC, 2017). IARC concluded that there is sufficient evidence of carcinogenicity in animals for *silicon carbide whiskers* (IARC, 2017).

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

Submission of Comments

All written comments must be submitted to OEHHA by electronic submission, mail, or hand–delivery, by **Monday, October 23, 2023**. OEHHA strongly recommends that comments be submitted electronically through our website at <https://oehha.ca.gov/comments>, rather than in paper form. Alternatively, comments can be submitted in paper form, either by mail or delivered in person.

Electronic Submission (preferred):

Through OEHHA website at:

<https://oehha.ca.gov/comments>

Mailed Submission:

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

In–person delivery submission:

Attention: Kiana Vaghefi

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

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

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

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

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

References

International Agency for Research on Cancer (IARC, 2012). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 100F. Chemical Agents and Related Occupations. IARC, World Health Organization, Lyon, France. Available from: <https://publications.iarc.fr/123>.

IARC (2017). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 111. Some Nanomaterials and Some Fibres. IARC, World Health Organization, Lyon, France. Available from: <https://publications.iarc.fr/552>.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

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

Department of Food and Agriculture
File # 2023–0906–02
Queensland Fruit Interior Quarantine and Eradication Area

This emergency action creates an interior quarantine for the Queensland fruit fly, sets Ventura County as an eradication area, and establishes the host list matching the current United States Department of Agriculture list.

Title 03
Adopt: 3445, 3591.30
Filed 09/12/2023
Effective 09/12/2023
Agency Contact: Rachel Avila (916) 698–2947

Department of Food and Agriculture
File # 2023–0906–03
Oriental Fruit Fly Eradication Area

This emergency action amends the Oriental Fruit Fly Eradication Area to include Kern County.

Title 03
Amend: 3591.2
Filed 09/13/2023
Effective 09/13/2023
Agency Contact: Rachel Avila (916) 698–2947

California Energy Commission
File # 2023–0801–02
Amendments without Regulatory Effect

This action by the California Energy Commission amends two regulations to update reference citations and cross-references to the Administrative Procedure Act.

Title 20
Amend: 1221, 1222
Filed 09/13/2023
Agency Contact: Jared Babula (916) 879–3028

Department of Corrections and Rehabilitation
File # 2023–0727–01
Non-Substantive Changes — Deletion of DJJ Terminology

This action by the Department of Corrections and Rehabilitation makes changes without regulatory effect to remove references to the Department of Juvenile Justice.

Title 15
Amend: 3043, 3043.3, 3043.4, 3268, 3075.2
Filed 09/08/2023
Agency Contact: Alison Colavita (916) 445–2269

Occupational Safety and Health Standards Board
 File # 2023–0810–02
 Requirements for Lift Slab Construction Operations

As a change without regulatory effect, the Occupational Safety and Health Standards Board is adding a cross–reference in Section 1722.1(a) to the definition of the term “lift–slab” in Section 1504.

Title 08
 Amend: 1722.1
 Filed 09/13/2023
 Agency Contact:
 Autumn Gonzalez (916) 274–5721

Commission on Peace Officer Standards and Training
 File # 2023–0731–01
 Amend Commission Regulation 1953, Mandate PHS

This action mandates that the personal history statement that peace officer candidates must submit be the Personal History Statement — Peace Officer, POST 2–251 (2023) or an electronic version with the same questions.

Title 11
 Amend: 1953
 Filed 09/11/2023
 Effective 01/01/2024
 Agency Contact: Melani Singley (916) 227–4258

Commission on Peace Officer Standards and Training
 File # 2023–0801–04
 Amend Training and Testing Specifications–LD 3

This action by the Commission on Peace Officer Standards and Training updates the document incorporated by reference, titled “Training and Testing Specifications for Peace Officer Basic Courses (Rev. Oct. 1, 2023),” to modify the training and testing specifications in Learning Domain 3.

Title 11
 Amend: 1005, 1007, 1008
 Filed 09/07/2023
 Effective 10/01/2023
 Agency Contact: Jennifer Hardesty (916) 227–3917

Commission on Peace Officer Standards and Training
 File # 2023–0823–03
 Employment Status Notifications

This action amends section 1003 of Title 11 of the California Code of Regulations to prohibit appointment of an individual to a specified peace officer classification until they meet the minimum training requirements for the classification. The action also specifies that an individual appointed to an agency

while completing the minimum training required for their classification must be appointed as a trainee, unless the individual meets one of two exceptions.

Title 11
 Amend: 1003
 Filed 09/11/2023
 Effective 09/11/2023
 Agency Contact: Michelle Weiler (916) 227–4870

Department of Conservation
 File # 2023–0801–05
 Selection of Professional Service Firms

In this rulemaking action, the Department of Conservation (“DOC”) updates its regulations regarding selection of professional services firms pursuant to Government Code sections 4525–4529.5. The existing regulations only permit DOC’s Division of Oil, Gas, and Geothermal Resources to select professional services firms. DOC is expanding the regulations to permit the entire Department to select such firms. This action does not change the substance of the selection process.

Title 14
 Amend: 1690, 1690.1, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699
 Filed 09/13/2023
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**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.