



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Association of California Water Agencies Joint Powers Insurance Authority
Sonoma-Marin Area Rail Transit

A written comment period has been established commencing on September 29, 2023 and closing on November 13, 2023. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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

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

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return

the proposed codes to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest codes. Any written comments must be received no later than November 13, 2023. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES

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

**TITLE 2. VICTIM COMPENSATION
BOARD**

INDEMNIFICATION OF VICTIMS
OF CRIME

§§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19,
649.24, 649.28, 649.50

The California Victim Compensation Board (CalVCB) proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested individual, or their authorized representative, may submit written comments relevant to the proposed regulatory action. To be considered, written comments must be received by November 13, 2023. CalVCB will consider only comments received at its office by this deadline. Written comments may be mailed to:

Neil Ennes, Legislative Coordinator
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812–0048

Written comments may also be submitted by facsimile (FAX) at (916) 491–6441 or by email to regulations@victims.ca.gov.

AUTHORITY AND REFERENCE

Government Code (Gov. Code) section 13920 authorizes CalVCB to adopt these proposed regulations. The proposed regulations are intended to implement,

interpret, and make specific Government Code sections 13950 through 13963.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

CalVCB was the first established and remains one of the largest victim compensation programs in the nation. A person is eligible for victim compensation if, as a direct result of a qualifying crime, they suffered a pecuniary loss. (Gov. Code, §§ 13955, 13957.) “Crime” is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subdivision (b).) A crime is a “qualifying crime” for purposes of the California Victim Compensation Board (CalVCB), if the victim sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subdivision (f)(1) & (2).) Victims of sexual assault, human trafficking, child molestation, or child abuse are only required to show they sustained an emotional injury. (Gov. Code, § 13955, subdivision (f)(3).) An application for compensation must be filed within seven years of the qualifying crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained, whichever is later. (Gov. Code, § 13953, subdivision (a).) The Board may for good cause grant an extension of the time period to file an application. (Gov. Code, § 13953, subdivision (b).) An applicant may be found to be ineligible for compensation if they failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the person who committed the qualifying crime or were involved in the events leading to the qualifying crime. (Gov. Code, § 13956.)

If CalVCB determines a qualifying crime occurred, CalVCB can help pay certain bills and expenses, as authorized by the Legislature, that are a direct result of the crime the application was based on. (Gov. Code, §13957.) Eligible services include medical and dental care, mental health services, income loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that, if a person is eligible for compensation, CalVCB provides compensation for costs that are not covered by other sources. (Gov. Code, §§ 13951 and 13954.)

The regulations governing victim compensation (Cal. Code Regs., title 2, §§ 601 et seq.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency. The revision of Section 649.4 clarifies when a felon is eligible for compensation. The

revision of Section 649.7 clarifies the requirements for a complete application. The revision of Section 649.15 provides additional factors that may be considered as good cause for filing applications beyond the statutory deadline. The revision of Section 649.16 clarifies who qualifies as a derivative victim. The revision of Section 649.18 identifies ineligible funeral and burial expenses and clarifies the order of payment when there are multiple applications related to a single decedent. The revision of Section 649.19 clarifies the evidence that will be considered and payments that may be made to improve or restore residential security. The revision of Section 649.24 clarifies and expands on the circumstances that may render service providers ineligible for reimbursement. The revision of Section 649.28 clarifies and expands on CalVCB’s ability to oversee medical, medical-related, and mental health providers who seek reimbursement from CalVCB for services provided. The revision of Section 649.50 clarifies when a person is eligible or ineligible for compensation due to their involvement in a vehicle-related qualifying crime.

Anticipated Benefits of the Proposed Regulation:

The proposed regulations comply with the current law governing victim compensation, clarify existing policies and practices, and provide the public with the specificity needed for applicants to successfully obtain compensation. The regulations also interpret and implement general aspects of the law, to ensure their consistent application in specific circumstances. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The proposed regulations are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative, private individual, or business: The Board is not aware of any cost impacts that a representative, private person, or business

would necessarily incur in reasonable compliance with the proposed action.

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

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to interpret and implement the current law governing victim compensation. The proposed regulations comply with the current law governing victim compensation, clarify existing policies and practices, and provide the public with the specificity needed for applicants to successfully obtain compensation. The regulations also interpret and implement general aspects of the law, to ensure their consistent application in specific circumstances. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

When an application for compensation is approved, victims can submit bills for reimbursement of losses. Compensation is awarded after a bill is verified. In fiscal year 2021–2022, CalVCB received 39,015 applications and provided \$40.35 million in compensation to victims; in fiscal year 2020–2021, CalVCB received 40,640 applications and provided \$52.74 million in compensation to victims; in fiscal year 2019–2020, CalVCB received 50,699 applications and provided \$58.69 million in compensation to victims; in fiscal year 2018–2019, CalVCB received 52,973 applications and provided \$61.88 million in compensation to victims. The amount paid in compensation has remained relatively stable over the past four years and CalVCB does not anticipate a significant change in future payouts. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

CalVCB has determined that the proposed regulations will not affect:

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

The proposed regulations do not impact jobs because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking

compensation as a result of being victimized during a crime.

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

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

CalVCB has determined that the proposed regulations do not impact the health and welfare of California residents, worker safety, or the state's environment because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

SMALL BUSINESS DETERMINATION

CalVCB has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), CalVCB must determine that no reasonable alternative it considered 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 individuals 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.

CalVCB invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory revisions may be directed to:

Neil Ennes, Legislative Coordinator
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3728

The backup contact person for inquiries concerning the proposed regulatory revisions is:

Kim Gauthier
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3605

Please direct requests for copies of the proposed text 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 Neil Ennes at the above address.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 R Street Sacramento, CA 95811 and on the website <https://victims.ca.gov>. 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. Copies may be obtained by contacting Neil Ennes at the P.O. Box or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, CalVCB may adopt the proposed regulations substantially as described in this notice. If CalVCB makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before CalVCB adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Neil Ennes at the P.O. Box indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Neil Ennes at the above P.O. Box address.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through CalVCB’s website at <https://victims.ca.gov>.

TITLE 2. SECRETARY OF STATE

ELECTION OBSERVATIONS
RIGHTS AND RESPONSIBILITIES

NOTICE IS HEREBY GIVEN that the Secretary of State (SOS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or email to the address listed under Contact Persons in this Notice, must be received by the SOS at its office not later than **November 13, 2023**.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact persons listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the SOS, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: September 29, 2023, through November 13, 2023.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code, and Section 10, Elections Code.

Reference cited: Sections 303.4, 319.5, 320, 335.5, 336.5, 338.5, 338.6, 339, 353.5, 358, 359.2, 360, 361, 362, 2194, 2300, 2301, 2302, 2550, 3018, 3203, 14422, 14223, 14240, 14251, 14294, 15004, 15101, 15104, 15105, 15106, 15210, 15360, 15367, and 18370, Elections Code.

INFORMATIVE DIGEST

A. *Informative Digest*

Groups and individuals (“election observers”) observe the conduct of various aspects of many California Elections. There are some references to election observation in the Elections Code, but those references are not sufficient to clearly set forth the rights and responsibilities of election observers and elections officials. These regulations are being proposed to close that gap and provide uniform requirements for election observers and elections officials for the election observation process. It is anticipated that having clear requirements with respect to the observation process — in the form of these regulations — will aid elections officials in addressing tense situations with election observers that have appeared more frequently in the past few elections. The clear requirements will also help observers in that they will know what their rights are with respect to observing an elections process or activity.

The purpose of these regulations is as follows:

1. Establish requirements and procedures for elections officials and election observers.
2. Establish the rights of election observers with respect to the elections observation process.
3. Establish rights of elections officials with respect to the elections observation process.
4. Provide clear duties for election observers with respect to the elections observation process.
5. Provide clear duties for elections officials with respect to the elections observation process.
6. Establish requirements for the conduct of election observers.
7. Provide clear requirements and standards for voter challenges.

These regulations are necessary to ensure uniform observation of elections in California. With these regulations, observers will know up front what their rights are, regardless of the jurisdiction where they are observing an election. They can point to these regulations to ensure they have appropriate access to observing election activities. Similarly, elections officials will be clear on how elections observers fit into the election administration process. These regulations balance the rights and needs of elections observers with elections officials’ need to efficiently and accurately complete elections activities.

B. *Consistency/Compatibility with Existing State Regulations*

After conducting an evaluation of regulations in this area, the SOS has determined that these are the only regulations related to observation of the elections process. Therefore, the proposed regulations are nei-

ther inconsistent nor incompatible with existing state regulations.

C. *Documents Incorporated by Reference*: None.

D. *Documents Relied Upon in Preparing the Regulations*: None.

DISCLOSURES REGARDING THE PROPOSED REGULATIONS

The SOS has made the following initial determinations:

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate on Local Agencies and School Districts: The proposed regulation imposes a mandate on local agencies. However, proposed regulation will have a minor fiscal impact on elections officials. The regulations require certain procedures to be developed, and also require county elections officials to create an observation plan that is to be submitted to the Secretary of State's office. Most county elections officials already create and submit the observation plan to the Secretary of State's office. The fiscal impact to elections officials is negligible, and can be absorbed by the elections officials within their existing budgets and resources. This local mandate does not require reimbursement by the state.

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

Business Impact: The SOS has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

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

Significant Effect on Housing Costs: None.

Effect on Small Business: These regulations will have no effect on small businesses. These regulations pertain to elections observation activities and responsibilities only.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SOS has determined that the proposed regulations are (1) unlikely to create or eliminate any jobs in California, (2) unlikely to create or eliminate any California businesses, and (3) unlikely to result in

the expansion of businesses currently doing business within California. These regulations pertain to elections observation activities and responsibilities only. These regulations do not significantly change existing business practices such that jobs or businesses would be created or eliminated.

Benefits of the Proposed Regulations: The benefits of the regulation to the health and welfare of California residents lies in the fact that these regulations will provide greater confidence in the conduct of California's election activities by providing uniform guidance for the rights and responsibilities of observers of the elections process and elections officials. These regulations will ultimately benefit California residents as rules for observing elections will be clear and uniformly applied throughout California.

The regulations do not provide any benefits for worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the SOS 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 or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments with respect to alternatives or to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The SOS has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the SOS's website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the SOS contact or on the website listed below.

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

A Final Statement of Reasons will be created after the closing of the public comment period. A copy of the final statement of reasons can be obtained once it has been prepared from the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

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

Robbie Anderson
Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814
(916) 657-2166
aanderso@sos.ca.gov

The backup contact person is:

Rachelle Delucchi
Secretary of State
1500 11th Street, 5th Floor
Sacramento, CA 95814
(916) 657-2166
rdelucch@sos.ca.gov

Website Access: Materials regarding this proposal can be found at: <https://www.sos.ca.gov/administration/regulations/proposed-regulations/>.

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

**APIARY REGISTRATION FEE AND
REGISTRATION FEE SCHEDULE
SECTIONS 2950 AND 2951**

The Department of Food and Agriculture (Department) proposes to revise Title 3 of the California Code of Regulations (CCR) Sections 2950 and 2951 pertaining to the Apiary Registration Fee and Registration Fee Schedule.

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 USPS, FAX, or email. The written comment period closes on November 21, 2023. The Department will consider only comments received at the Department offices by that date or post-marked no later than November 21, 2023. Submit comments to:

Erin Lovig, Senior Environmental Scientist
Supervisor California
Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
Erin.lovig@cdfa.ca.gov
(916) 403.6650
(916) 651.2900 (FAX)

Questions regarding the substance of the proposed regulation should be directed to Erin Lovig. In her absence, you may contact Dean Kelch at (916) 261-9252 or dean.kelch@cdfa.ca.gov, FAX number (916) 651-2900.

Unless there are substantial changes to the proposed regulations prior to adoption, 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 2950 and 2951, pursuant to the authority vested by Sections 407 and 29044 of the Food and Agricultural Code (FAC).

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 407, 29026, and 29044 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The current assessment fees for colonies in California, last amended in 1984, does not cover the costs associated with apiary registration, administration, and enforcement of the program. The Department, working with the California State Apiary Board, proposes

to change the existing fee from 0.15 cents per colony fee structure to the following fee structure:

<i>Number of colonies</i>	<i>Fee</i>
1–9 colonies	\$0
10–50 colonies	\$100
51+ colonies	\$250

This annual fee will cover a much larger portion of the county agricultural commissioner’s cost in registering apiaries and protecting California from invasive pests associated with the movement of colonies into the state.

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 that the Secretary is directed or authorized to administer or enforce.

Existing law, FAC Section 29026, provides that the (Apiary) Board shall be advisory on all matters related to the beekeeping industry and may make recommendations on all matters affecting the activities of the department in relation to the beekeeping industry including an annual review of the department’s apiary program.

Existing law, FAC Section 29044 provides that each beekeeper, apiary owner, apiary operator, broker, or person in possession of any apiary, shall pay, in addition to any other fees imposed under this chapter, an annual registration fee not to exceed two hundred fifty dollars (\$250) to the Secretary on January 1 of each year, to cover the cost of apiary registration. The Secretary may adopt such regulations and update a schedule of registration fees.

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

The implementation of these amendments will allow for higher registration fees to be collected from apiary owners. Collecting money means there is once again the intended incentive for county commissioners to register apiaries. Having apiaries registered allows the Department and county agricultural commissioners to know the location of the apiaries and notify apiary owners of pesticide applications that can affect the bees, leading to healthier apiaries overall.

The amendment adjusts the registration fee structure for bee colonies and specifies the process for further adjustments to the fee structure.

There is no existing, comparable federal regulations or statute regulating the fee of bee colonies.

There are no known specific benefits to worker safety or the health of California residents, but less exposure to pesticides is a general benefit of the amendment.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Department considered other possible regulations addressing fee structure of bee colonies, it found that the proposed amendments are the only regulations dealing with this subject, and the Department is the only State agency which can designate these eradication areas for plant pests. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of Sections 2950 and 2951 and has determined they are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The amendment is to raise the fees for apiary owners. It is not expected to have a significant effect on any business. The Department has determined that no savings or increased costs to any state agency and no costs or savings in federal funding to the State will result from the amendment of Sections 2950 and 2951. The amendment of this regulation would have no fiscal impact on the Department.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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 Department estimates the direct costs of the amendment of Sections 2950 and 2951 to registrants for annual apiary registration to be \$369,400 (2023 dollars) in the first year. This estimate is based on 2022 apiary registration data from BeeWhere. BeeWhere allows beekeepers to register and identify the number of hives and location online (Bee Safe Program Legislative Report, p. 18). The amendment will have an economic effect on business; however, the fee charged to larger businesses will not be large enough to affect business operations.

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 or minimal/non-consequential, as explained above. The Department makes the initial determination that the proposed action will not have a significant, state-wide adverse economic impact.

Significant effect on housing costs: None.

Small business determination: The proposed action will affect small business.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department has made an assessment that the amendment to these regulations would: (1) not create or eliminate jobs within California, (2) not create new business or eliminate existing businesses within California, (3) not affect the expansion of businesses currently doing business within 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 expected to benefit workers' safety.

Health and welfare: Less exposure to pesticides is a general benefit of the amendment.

Environment: Having apiaries registered allows the Department and county agricultural commissioners to know the location of the apiaries and notify apiary owners of pesticide applications that can affect the bees, leading to healthier apiaries overall.

Workers' Safety: The amendment of these regulations benefits worker safety because the amendments assist with alerting workers to pesticide use in the surrounding area, which is a safely benefit.

CONSIDERATION OF ALTERNATIVES

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

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.cdfa.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. CALSAVERS RETIREMENT SAVINGS BOARD

AMENDMENT REGARDING THE CALSAVERS RETIREMENT SAVINGS PROGRAM

The CalSavers Retirement Savings Board ("Board") proposes to adopt the regulations amendments described below after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments

may be submitted by email to CalSavers@sto.ca.gov, or by mail:

Regular Mail

CalSavers Retirement Savings Board
Re: Rulemaking for the CalSavers Retirement Savings Program
P.O. Box 942809
Sacramento, CA 95815

Courier Delivery

CalSavers Retirement Savings Board
Re: Rulemaking for the CalSavers Retirement Savings Program
901 P Street, Suite 313B
Sacramento, CA 95814

The written comment period will close November 13, 2023. The Board will only consider comments received by that time. All written comments received by the Board are subject to disclosure under the Public Records Act.

PUBLIC HEARING

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with the changes clearly indicated) available to the public at <https://www.treasurer.ca.gov/calsavers/regulations/index.asp> for at least 15 days before the Board adopts the regulations as revised. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AUTHORITY AND REFERENCE

Authority: Section 100048 of Government Code provides the CalSavers Retirement Savings Board the authority to adopt regulations to implement Title 21 of the Government Code.

Reference: Sections 100000, 100002, 100004, 100008, 100010, 100012, 100014, 100032, 100033,

100034, 100043, 100046, and 100048, Government Code.

INFORMATIVE DIGEST

In 2012, the California Legislature enacted and the Governor signed Senate Bills (SB) 1234 and (Chapter 734, Statutes of 2012) and SB 923 (Chapter 737, Statutes of 2012,) which established the California Secure Choice Retirement Savings Investment Board (subsequently changed to the “CalSavers Retirement Savings Board” through Assembly Bill (“AB”) 102 in 2020) and required the Board to conduct a market analysis to determine whether the necessary conditions for implementing the California Secure Choice Retirement Savings Program (subsequently changed to the “CalSavers Retirement Savings Program” through AB 1817 in 2018) could be met. The legislation required the Board to determine, based on the market analysis, if necessary conditions can be met and prohibited the implementation of the Program without subsequent legislation to authorize it.

In 2016, the California Legislature enacted and the Governor signed SB 1234 (Chapter 804, Statutes of 2016,) which, among other things, granted the Board the authority to take the steps necessary to implement the Program, including the adoption of regulations.

On October 31, 2019, the Office of Administrative Law approved permanent regulations for the Program that implement, interpret, and make specific the rules, policies, and procedures for the Program. Specifically, these regulations accomplish the following:

- a) Define terms used in the regulations and further clarify the meaning of definitions in statute;
- b) Define employer eligibility for the Program and establish the means by which the Program shall determine such eligibility;
- c) Establish the deadlines and processes by which eligible employers shall register for the Program;
- d) Define the duties for participating employers and the processes by which participating employers shall comply with the requirements of the Program;
- e) Establish processes for the enrollment of eligible employees into the Program;
- f) Define the default account settings for participants whom do not make an alternative election;
- g) Define the alternative elections available to participants;
- h) Establish the policies for the participation of individuals in the Program outside of an employment relationship with an Eligible Employer;
- i) Define the processes and policies for contributions, distributions, and transfer of savings; and

- j) Define how enforcement of employer compliance shall be conducted.

Due to the COVID–19 pandemic, the Board extended the first employer registration deadline from June 30, 2020, to September 30, 2020, in April 2020 through the emergency rulemaking process. On June 29, 2020, Governor Newsom signed AB 102, which made a variety of amendments to the Program’s governing statutes. The amendments included a change to the name of the Program’s governing board and the Program trust. Nonsubstantive changes to existing regulations were filed with the OAL on July 7, 2020, to change the Board and trust name, pursuant to Section 100 of Title 1 of the California Code of Regulations (CCR).

On July 27, 2020, the Board approved a variety of regulations amendments. The amendments added a new default investment fund for participants born January 1, 2003, to December 31, 2007, a change that was necessary to make before December 31, 2020; removed a feature in which eligible employees who previously opted out are subjected again to automatic enrollment; clarified the tax–qualified retirement plans that, if offered by an employer, would render them exempt; and made a variety of technical amendments that improve the clarity of the regulations.

At the October 19, 2020, Board meeting, the Board voted to authorize the executive director to develop amendments necessary to change the default investment option to one in which contributions are directed to the Capital Preservation Fund (referred to as the Money Market Fund) for the first 30 days of employee participation and, on the 31st day, have all funds directed into a Target Retirement Fund selected based on the Participating Employee’s age. At the meeting, the executive director also informed the Board it would consider a package of regulations amendments, including the enforcement of employer compliance and reduction of the minimum contribution amount for non–payroll contributions at the subsequent meeting.

At the December 7, 2020, Board meeting, the Board voted to approve regulations amendments to change the default investment option as described above, clarify processes for enforcing employer compliance, reduce the minimum contribution amounts for non–payroll contributions, clarify the frequency for recurring non–payroll contributions, and clarify that rollovers and transfers into a CalSavers account, and amend the definition of a Tax–Qualified Plan.

The Board released a notice of proposed rulemaking March 19, 2021, to make permanent the three emergency rulemakings approved by the Board in 2020. The rulemaking was approved by the Office of Administrative Law January 13, 2022.

At the December 13, 2021, meeting, the Board approved a new set of regulations amendments to allow

employers to register earlier than currently allowed in regulations, to specify the date by which newly eligible employers must register for the Program to maintain compliance, to correct a typographical error, to simplify the employer registration process, and to update language to account for longer delivery times by the United States Postal Service. The emergency rulemaking to make the amendments was notified on March 1, 2022. The OAL approved the emergency regulations amendments on March 18, 2022. The certificate of compliance for the rulemaking was posted in the notice register on November 11, 2022, and regular rulemaking process was completed on March 15, 2023.

Currently, an Eligible Employer must provide a Federal Employer Identification Number in order to register for the program. If this is not available, the employer has the option to submit a California Employer Payroll Tax Account Number. After implementation and subsequent discussion, it was resolved that one of the changes to the registration process could have an unwanted, negative effect on the privacy of employer’s data. The proposed regulation will require an Eligible Employer to provide both the Federal Employer Identification Number and California Employer Payroll Tax Account Numbers. The benefits of this proposed regulation are to enhance security, and therefore further protect the privacy of employer data.

The Board is authorized under Government Code Section 100048 to adopt regulations it deems necessary to implement the Program consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the Program meets all criteria for federal tax–exempt benefits. Government Code Section 100048 deems the adoption, amendment, repeal, or readoption of such regulations to address an emergency for purposes of Government Code Sections 11346.1 and 11349.6 and thereby exempts the Board from the requirements of Government Code Section 11346.1(b).

Pre–Rulemaking Activity

These regulations amendments were approved by the Board at the May 22, 2023, Board meeting. Staff posted a notification of proposed emergency rulemaking May 30, 2023, it was approved by the Office of Administrative Law (OAL) on June 19, 2023, and it went into effect on July 13, 2023.

In addition to the public comment periods involved in the rulemaking process and the public comment periods at each Board meeting, the Board also received and considered input from Program employers and participants that have already begun participating in the Program. Through our client services team, our internal outreach team, local chambers of commerce and other business associations, interactive webinars with the public that occur multiple times a week, and

our social media platforms, the Board receives regular feedback about facets of the Program, thoughts on how the Program could be improved, as well as general praise and criticism.

Anticipated Benefits of the Proposed Regulations:

These regulations amendments will make no material impacts on the overall indirect benefits of the program, but the improvements to the registration process will benefit employers by improving the protection of employer data, and that will benefit Eligible Employers' data security and improve the overall opinion of the program.

EVALUATION OF INCONSISTENCY/
INCOMPATIBILITY WITH EXISTING
STATE REGULATIONS

The Board evaluated whether or not there are any other regulations that may be adversely impacted by the adoption of these proposed regulations. Because these regulations are solely for the purpose of operating the Program, and no other regulations exist in the California Code of Regulations pertaining to the operation of the Program, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE
PROPOSED ACTION

The Board has made the following determinations regarding fiscal impact:

- Mandate on local agencies and school districts: none.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.
- Cost or savings to any state agency: none.
- Other nondiscretionary cost or savings imposed on local agencies: none.
- Costs or savings in federal funding to the state: none.
- Cost impacts on a representative person or business: For participating employers, the Program requires no direct costs or fees to participate. Although participating employers' role in facilitating the Program requires minimal activities, employers will be required to perform some duties upon the initial registration and ongoing maintenance to facilitate payroll deductions and assist with the enrollment of new employees. For those duties, the Board estimates approximately \$157 in opportunity costs for the staff time necessary to register and annual ongoing opportunity costs of \$135.

Participation in the Program is completely voluntary for eligible employees. Participating employees will pay an administrative fee taken from their contributions and investment interest. Those fees currently range between 0.32 and 0.49 percent depending on the investment option selected by the participant, with a \$18 annual account fee (\$4.50 quarterly account fee) and two optional fees of \$5 annually for receipt of withdrawals via paper check or \$5 annually for receipt of statements via regular mail.

The amendments included in this rulemaking do not materially change the duties of participating employers nor do they impact the administrative fees for participants, and, therefore, cause no changes to the cost impacts on a representative person or business.

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

- Small Business Determination: The amendments included in this rulemaking do not materially change the duties of participating employers nor do they impact the administrative fees for participants, and, therefore, cause no changes to the cost impacts on a representative person or business or small business.
- Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: none.
- Significant effects on housing costs: none.
- The proposed regulations do not require a report to be made.

RESULTS OF THE ECONOMIC
IMPACT ANALYSIS

Program staff analyzed the economic impacts caused by a direct result of this rulemaking package. These amendments do not materially change the duties or requirements of participating employers so there is no expected change to those business impacts as a result of this rulemaking. The following list identifies the estimated impacts by each category of potential impacts.

The creation or elimination of jobs within the state: no impact.

The creation of new businesses or the elimination of existing businesses within the state: no impact.

The expansion of businesses currently doing business within the state: no impact.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: see previous section on anticipated benefits.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jonathan Herrera
 Director of Strategic Stakeholder Engagement and Customer Experience
 CalSavers Retirement Savings Board
 901 P Street, Suite 313B
 Sacramento, CA 95814
 Telephone: (916) 653–1744
 Email: CalSavers@sto.ca.gov
 CC: Jonathan.Herrera@sto.ca.gov

Please direct any inquiries regarding the regulatory process to Mr. Herrera at the above address. The designated backup contact person is Jessica Stroing, who can be reached at Jessica.Stroing@sto.ca.gov or by phone at (916) 653–1744.

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

The Board will have the rulemaking file available for inspection online at <https://www.treasurer.ca.gov/calsavers/regulations/index.asp>. To request a physical inspection of the rulemaking file, please contact the contact persons identified above and they will schedule a time and location for the inspection.

As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the economic and fiscal impact analysis, and the initial statement of reasons. Copies may be obtained by contacting Jonathan Herrera at the email address or by calling the phone number listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

After it is completed, a copy of the Final Statement of Reasons may be obtained by submitting a written request to the contact person identified above.

TITLE 14. COASTAL CONSERVANCY

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

NOTICE IS HEREBY GIVEN that the **Coastal Conservancy**, 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 29, 2023 and closing on November 13, 2023. All inquiries should be directed to the contact listed below.

The **Coastal Conservancy** 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: identifying new staff positions responsible for reporting, which are: Staff Services Analysts that work as project managers, Fellows, and Interns. Other changes include updating our Procurement and Accounting positions to reflect the current organizational chart. The code revisions also include explicitly identifying alternates or designees to Board members as subject to reporting to avoid any confusion on the obligations of alternates.

Information on the code amendment is available on the agency’s intranet site and/or attached to this email.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than *November 13, 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 29, 2023*.

The **Coastal Conservancy** 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: Mary Small, Deputy Executive Officer, (510) 286-4181, mary.small@scc.ca.gov.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

AUDIO AND VIDEO RECORDINGS FOR SERIOUS RULES VIOLATIONS

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to amend Section 3315 into Title 15, Division 3, Chapter 1, regarding Audio and Video Recordings for Serious Rules Violations.

PUBLIC COMMENT PERIOD

The public comment period begins **September 29, 2023** and closes on **November 17, 2023**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

CONTACT PERSONS

Primary Contact

A. Colavita
Telephone: (916) 322-8344
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Back-Up

Y. Sun
Telephone: (916) 445-2269
Regulation and Policy
Management Branch
P.O. Box 942883
Sacramento, CA 94283-0001

Program Contact

J. Penney
Telephone: (916) 324-4219
Division of Adult Institutions
P.O. Box 942883
Sacramento, CA 94283-0001

PUBLIC HEARING

Date and Time:

November 20, 2023
10:00 a.m. to 11:00 a.m.

Place:

Department of Corrections and Rehabilitation
Room 150N
1515 S Street — North Building
Sacramento, CA 95811

AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director

to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the department require adoption, amendment, or repeal of regulation on an emergency basis.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations establish that inmates shall review non–confidential audio or video recording(s) that are directly relevant to their serious rules violation offense prior to a serious rules violation disciplinary hearing. This change will ensure a fair and equitable disciplinary hearing process for inmates, by providing inmates with the opportunity to review audio or video recording(s) to prepare a defense, before a serious rules violation hearing is held.

This action will:

- Establish that inmates shall review non–confidential audio or video recording(s) that are directly relevant to their serious rules violation offense prior to their serious rules violation disciplinary hearing.

DOCUMENTS INCORPORATED BY REFERENCE

Automated Confidential Information Disclosure Form.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The department anticipates the proposed regulations will ensure a fair and equitable disciplinary hearing process, by establishing a requirement for inmates to review audio or video recording(s) that are directly relevant to their offense before a serious rules violation hearing.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern revising inmates reviewing non–confidential audio or video recording(s) that are directly relevant to their serious rules violation offense.

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement of costs or savings pursuant to Government Code Sections 17500–17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None.*
- Cost to any local agency or school district that is required to be reimbursed: *None.*
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small businesses because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within

California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on worker safety or the state's environment. These regulations may benefit the welfare of California residents by helping to make CDCR institutions safer for inmates, staff, and visitors. Additionally, safer institutions may provide an environment more conducive to rehabilitation, thereby reducing recidivism.

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 the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated,

available to the public for at least 15 days before the department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

TITLE 16. DENTAL BOARD

DISCIPLINARY GUIDELINES

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be **received by the Board at its office no later than 5:00 p.m., November 14, 2023**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Business and Professions Code (BPC) sections 315, 315.2, 315.4, and 1614, and Section 11400.20 of the Government Code to implement, interpret, or make specific BPC sections 315, 315.2, 315.4, 726, 729, 1680 and 1687 and Government Code sections 11400.20 and 11425.50(e), and Section 44010 of the Education Code, the Board is considering amending section 1018 of Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

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

The Board is responsible for disciplining licensees and enforcement of Articles 1 through 8 of Chapter 4 of the Business and Professions Code (BPC) (sect. 1600–1808) and Division 10 of Title 16 of the California Code of Regulations (CCR sections 1000–1088). CCR Section 1018 requires the Board to consult the “Dental Board of California Disciplinary Guidelines With Model Language” (Disciplinary Guidelines) when making decisions on disciplinary cases. In order to better protect the public from licensees who have committed one or more violations of the BPC or the CCR, conform the Disciplinary Guidelines to recent statutory and regulatory changes, and provide clarity to probationers of the terms of probation, the Board needs to revise its Disciplinary Guidelines. The current Disciplinary Guidelines contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law and other changes that have occurred in the probationary environment since the last update in 2010. If the Guidelines are amended, the corresponding regulation, CCR section 1018, must also be amended to incorporate by reference the revised Guidelines as revised and approved by the Board at its February 10, 2023 meeting.

Proposed amendments to section 1018 would update references to the Disciplinary Guidelines and incorporate by reference the February 10, 2023 version of the document. The proposed changes would update the Disciplinary Guidelines to better protect California consumers and ensure consistency in the Board’s enforcement actions. The proposed changes to the regulation and to the Disciplinary Guidelines would include:

- **Changes to Title 16 CCR section 1018**
 - Update the title of the document to “Dental Board of California Disciplinary and Denial Guidelines with Model Language.”
 - Update the revision date to February 10, 2023.
 - Include aggravating circumstances as an additional example of what would justify

- the Board to deviate from the Disciplinary Guidelines.
- Make non–substantive changes to replace the full name of the Dental Board of California with a short form reference to the “Board” (already defined in full at CCR section 1000)
- **Changes to the Disciplinary Guidelines (incorporated by reference at CCR section 1018)**
 - Amend the title in the proposed text and to the Disciplinary Guidelines to include the words “and Denial” to account for references to statutes governing denials of applications (e.g., Business and Professions Code section 480) and recommended enforcement actions in the Guidelines document.
 - Provide additional notes and guidance for when to use the Board’s approved Uniform Standards Related to Substance–Abusing Licensees with Standard Language for Probationary Terms and Conditions (“Uniform Standards”). In compliance with Business and Professions Code section 315, in 2014, the Board adopted the document entitled “Uniform Standards Related to Substance–Abusing Licensees with Standard Language for Probationary Orders,” New February 28, 2013 at California Code of Regulations, title 16 (16 CCR), section 1018.01. The notes further clarify the requirements in Section 1018.01 and restate the requirements in that document that specify the Uniform Standards terms are required to be used in any probationary order of the Board affecting a licensee found to be a substance abuser. This proposal would be updated to also add notes and additional clarifying direction to help assist the users of the Guidelines in understanding how and when the Uniform Standards are to be used in lieu of the terms listed in the Guidelines.
 - Add “terms and” before the word “conditions” throughout the document.
 - Reflect changes to California law since the last version of the Guidelines were approved by the Board, including the adoption of Substantially Related Criteria and Rehabilitation Criteria as outlined in 16 CCR sections 1019 and 1020, respectively, and required by Business and Profession Code (Code) sections 480, 481 and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138).
 - Add the term “Disclosure of Probation Status to Patients” and rationale to the

list of Standard Probationary Terms and Conditions, which is required pursuant to Business and Professions Code (BPC) section 1673 only for probationers meeting specified criteria (e.g., commission of any act of sexual abuse, misconduct, or relations with a patient or client). This new Term reflects the requirements of BPC section 1673, which was put into law since the last Guidelines update, and requires Respondents provide a separate disclosure to patients if a Respondent is on probation due to specified circumstances involving direct harm to patients.

- Rename Term (6) on the Standard Probationary Terms and Conditions from “Status of Residency, Practice, or Licensure Outside of State” to “Tolling of Probationary Period”.
- Remove Term (11) “Function as a Licensee” from the list of Standard Probationary Terms and move substantive provisions of that term to the new Term “Tolling of Probationary Period” Condition and renumber subsequent Terms.
- Add Term (15) “Civil Penalty” and an accompanying Rationale to the list of Standard Probationary Terms and Conditions as this penalty is required in cases where a respondent fails or refuses to comply with a request for patient dental records or fails or refuses to comply with a court order mandating the release of records to the Board pursuant to BPC section 1684.1.
- Add model introductory language for all Disciplinary Orders.
- Add Notes to the Standard Terms section indicating precisely which Terms from the Uniform Standards apply for violations involving Substance Abusing Licensees.
- Add language to Standard Term (1) “Obey All Laws” to clarify compliance and reporting requirements.
- Expand Rationale behind Standard Term (1) to cover relevance of discipline from other boards and/or agencies.
- Strike redundant and unnecessary language on license restoration from Standard Term (3) “Comply with the Board’s Probation Program” and include additional rationale for this term.
- Add language to Standard Term (4) “Address Change, Name Change, License Status” clarifying that Respondent must keep the Board informed of any change in license status during any period of non–practice (as defined in the “Tolling of Probationary Period” term) or suspension of practice unless otherwise specified in the disciplinary order.
- Revise Standard Term (6) with new title “Tolling of Probationary Period” to describe Respondent’s responsibility and timeframe to notify the Board of any periods where the Respondent is not in dental practice for more than 30 calendar days, which it defines as non–practice unless otherwise specified in this term. The Term would define periods of non–practice totaling more than two (2) years as a probation violation and outlines the Respondent’s responsibilities during any periods of non–practice (regardless of whether Respondent is residing in or outside of California).
- Revise Standard Term (6) to specify that it is not considered a violation of probation if Respondent is residing and practicing in another state in the United States and is on active probation with the licensing authority of that state, in which case the two–year tolling limitation period shall begin on the date probation is completed or terminated in that state. This makes it clear that probationers are expected to comply with the Board’s probation, but the Board will permit probation to be considered served (and not “tolled” or paused) as long as the licensee is actively being monitored by another licensing authority.
- Revise Standard Term (6) to include provisions that specify that periods of non–practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Respondent shall continue to comply with all of the terms and conditions of probation, including the obligation to maintain an active and current license with the Board (see Term Number 4 “Address Change, Name Change, License Status”), meetings in person for interviews (see Term Number 5 “Meetings and Interviews”), and cost recovery (see Term Number 8 “Cost Recovery”).
- Revise text and Rationale of Term (8) “Cost Recovery” to further specify the costs Respondents are responsible for covering.
- Revise text of Term (9) “Probation Monitoring Costs” to emphasize that the

- term language is specific to probation monitoring.
- Revise text of re-numbered Term (11) “Continuance of Probationary Term/ Completion of Probation” to clarify the Board’s continuing jurisdiction in the event of probation violations until the matter is final.
 - Remove reference to discipline as unnecessary in the Rationale for re-numbered Term (12) “Sale or Closure of an Office”.
 - Revise re-numbered Term (13) “Notification to Employer” to include copies of additional documents in the notice and to include prospective as well as current employers, supervisors and/or contractors, as appropriate.
 - Add Note to Term (13) indicating when to use the Uniform Standards term for notice to employer rather than this term in the Guidelines.
 - Add clarifying language to re-numbered Optional Term (16) “Suspension” about how monies owed for services prior to the suspension and monies earned by Respondent’s practice during the suspension are to be treated.
 - Revise re-numbered Term (17) “Remedial Education” to indicate that failure to complete the required course in the first year of probation would constitute a violation of probation and specify the process by which a respondent would submit a written request for Board approval of a remedial course.
 - Repeal existing references to the WREB examination and add the American Board of Dental Examiners (ADEX) exam reference to re-numbered Term (18) “Examination”.
 - Add Note to Term (19) “Supervised Practice” to indicate that the Respondent shall be subject to the Uniform Standards term in lieu of this Term with respect to supervised practice if the Respondent is found to be a substance abusing licensee.
 - Revise re-numbered Term (21) “Third Party Monitor (Chaperone)” to add additional enforcement documents to the list that the Monitor is required to review and fully understand in their role as a monitor who would be present at all times while Respondent is consulting, examining or treating specified patients.
 - Revise re-numbered Term (23) “Community Service” to add additional enforcement documents to the list that Respondent must provide to the organization(s) where respondents are providing community service.
 - Revise renumbered Term (24) “Psychological Examination” to delete the Board’s authority to excuse a Respondent from complying with recommendations of the evaluator at its discretion.
 - Revise re-numbered Term (31) “Ethics Course” to include the process for submitting a written request for approval of an ethics course to the Board.
 - Revise Term (32) “Billing Monitor” to expand the list of the types of relationships between the Monitor and Respondent that would disqualify a billing monitor from being approved by the Board (i.e., personal or business relationships perceived as creating conflicts of interest).
 - Revise Rationale for Term (34) “Controlled Substance — Maintenance of Records and Inventories” to clarify the Term should be used only for cases involving dentists.
 - Add Recommended Penalties and new grounds for discipline or enforcement action for violations of Business and Professions Code (BPC) sections 480(a)(1), 480(a)(2), 490, 650.2, 1628.5, 1638.1(j), 1638.5, 1646.1(b), 1646.1(d), 1646.7, 1647.9, 1647.17, 1647.25, 1647.31, 1647.31(b), 1647.31(c), 1647.34, 1658.6, 1670.1, 1680, 1680(g), 1680(n), 1680(af), 1680(ag), 1680(ah), 1683.1, 1683.2 1684.1 and 1687.
 - Strike (i) as outdated and superseded by other revisions to this statute relating to dental group advertising and referral services from the Penalty section for BPC section 650.2.
 - Insert “or Administering” into the Penalty title for “Clearly Excessive Prescribing Drugs or Treatment.”
 - Add notice language to Penalty for BPC section 1680(r) — “Suspension or Revocation by Another State” to link the proposed penalty to the Uniform Standards for substance abusing licensees.
 - Revise Penalty title for BPC section 1680(ad) from “Unsafe and Sanitary Conditions” to “Failure to Follow Infection Control Guidelines”.
 - Add the word “Dental” before “Auxiliaries” in the Penalty section title for BPC section 1680(ae).
 - Revise Penalty title for BPC section 1681(a) from “Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction

related to Controlled Substances” (sic) to “Unlawfully Obtain or Possess Controlled Substance or Dangerous Drug”.

- Add language to Penalty language for BPC section 1681(a), BPC section 1681(b) and BPC section 1681(c) to link penalties for substance abusing licensees to the Uniform Standards.
- Make grammatical, syntax, re-numbering, gender neutral and other nonsubstantive changes for easier comprehension, consistency, and administration of the Guidelines.

ANTICIPATED BENEFITS OF PROPOSED REGULATIONS

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, provide model orders, and strengthen consumer protection. The Board anticipates that the updated Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations. This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and terms and conditions of probation, as applicable.

This regulatory proposal does not affect worker safety or the state’s environment.

EVALUATION OF CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

INCORPORATION BY REFERENCE

This proposal would incorporate by reference the document entitled “Dental Board of California Disciplinary and Denial Guidelines With Model Language” (Revised February 10, 2023). The Disciplinary Guidelines are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

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

The proposed regulations do not result in a fiscal impact to the state.

The regulations help to provide consistency in the application of discipline for violations of laws and/or regulations. This proposal does not change fine amounts for violations, so no additional revenues are anticipated.

This proposal provides a more accurate overview of the Board’s processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Office of Attorney General, and the Administrative Law Judges by outlining relevant and transparent standards directly related to violations outlined in law. The Board does not anticipate additional workload or costs resulting from the proposed regulations.

The Board will ensure compliance with the proposed regulations through its existing continuing licensing and enforcement activities and does not anticipate a change in enforcement cases based on the proposed changes to regulations.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

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

Mandate Imposed on Local Agencies or School Districts: None.

Significant Effect on Housing Costs: None.

Business Impact Estimates:

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

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters. The proposed regulatory action only adversely affects a negligible number dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board’s jurisdiction.

Any “adverse economic impact” would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board’s jurisdiction. Any potential “adverse economic impact” may be avoided simply by complying with the existing laws and regulations governing the practice of dentistry in California.

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations would revise existing disciplinary guidelines but would not change fine amounts.

The proposed regulatory action only adversely affects a negligible number of dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board’s jurisdiction. Any potential “adverse economic impact” may be avoided simply by complying with the existing laws and regulations governing the practice of dentistry in California.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board has determined that these regulations would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because the proposed regulation sets out standard guidance for disciplinary and denial cases. Individuals in compliance with the Dental Practice Act and associated regulations will not be affected by the proposed regulations.

Benefits of Regulation:

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

This regulatory proposal affects the health and welfare of California residents because the proposed

regulation will enhance the Board’s ability to take appropriate action against dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the laws and/or regulations. Additionally, this proposal will benefit Deputy Attorneys General (DAG), Administrative Law Judges, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary and denial actions.

This regulatory proposal will have no impact on worker safety because the proposal does not address worker safety.

This regulatory proposal will have no impact on the California environment as the proposal is not related to the environment.

Business Reporting Requirements

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

EFFECT ON SMALL BUSINESS

While the Board does not have, nor does it maintain, data to determine if any of its licensees (dentists or dental auxiliaries) are a “small business,” as defined in Government Code section 11342.610, the Board has made an initial determination that the proposed regulatory action will not affect small businesses, as it only affects dentist and dental auxiliary licensees and applicants who are disciplined or denied for violations of the Act and/or Board regulations. Businesses operated by dentist licensees and applicants who follow the law will not incur any fiscal impact. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 during the written comment period or at the hearing if one is scheduled or requested.

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

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

TEXT OF PROPOSAL

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

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

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

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

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

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

CONTACT PERSONS

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

Name: David Bruggeman, Staff Services
Manager I
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone Number: (916) 263–2327
Fax Number: (916) 263–2140
Email Address Lawrence.Bruggeman@dca.ca.gov

The backup contact person is:

Name: Christy Bell, Staff Services Manager II
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone Number: (916) 263–2187
Fax Number: (916) 263–2140
Email Address: Christy.Bell@dca.ca.gov

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at:

https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml

TITLE 16. MEDICAL BOARD

CITATIONS AND FINES

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

PUBLIC HEARING

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

COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be *received by the Board at its office no later than by 5:00 p.m., Tuesday, November 14, 2023*, or must be received by the Board at the hearing, if applicable.

AVAILABILITY OF MODIFICATIONS

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 125.9, 148, and 2018 of the Business and Professions Code (BPC), and to implement, interpret, or make specific sections 125.9 and 148 of the BPC, the Board is considering amendments to Sections 1364.10 and 1364.11 of Division 13 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 125.9 authorizes the Board to establish a system by regulation for the issuance of citations to the Board’s licensees, which may contain an order of abatement or fine.

A citation, with or without a fine and/or order of abatement, is used to address technical or minor violations of the law and is not considered a disciplinary action. The Board’s authority to issue a citation furthers public protection, as it allows the Board to take action upon completion of an investigation for violations that do not rise to the level warranting discipline but do raise issues that should be brought to the licensee’s attention for correction. Note, however, that pursuant to 16 CCR section 1364.11, subdivision (e), citations are separate from and in addition to any other administrative, civil, or criminal remedies.

This proposed rulemaking will update the Board’s citation and fine regulations by:

- 1) making them gender neutral;

- 2) making non–substantive changes to improve readability;
- 3) clarifying that the Board is authorized to issue a citation to any of its licensees, which may include an order of abatement and/or fine, for a violation of the statutes and regulations listed in 16 CCR section 1364.11; contained in the Medical Practice Act or the Licensed Midwifery Practice Act of 1993; any regulation adopted by the Board under Division 13, Title 16 of the California Code of Regulations; and any other statute or regulation which would be grounds for discipline by the Board; and
- 4) clarifying that any fine levied by a Board official shall not exceed the amount specified by the applicable statute.

On May 19, 2023, the Board reviewed and approved proposed language for this rulemaking, and authorized staff to proceed with the rulemaking process.

Specifically, this proposed rulemaking will do the following:

Amend 16 CCR section 1364.10

Existing law under 16 CCR section 1364.10 provides that a Board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by individuals of the statutes and regulations referred to in 16 CCR section 1364.11.

This proposed rulemaking will amend section 1364.10, subdivision (a) to make nonsubstantive changes to capitalize “Board” in reference to the Medical Board of California, and to change “his or her” to “their.”

Under section 1364.10, subdivision (b), this proposal will make non–substantive changes to capitalize “Board” in reference to the Medical Board of California and substitute the term “contain” for “containing.”

Additionally, this proposal clarifies that the Board may issue citations, which may contain orders of abatement and/or fines to any person who holds a license, certificate, registration, or permit from the Board, and deletes the reference to the individual license and registration types.

Under section 1364.10, subdivision (c), this proposal makes a minor change by replacing “the” with “each” to indicate that the citation shall include a reference to each statute or regulation alleged to have been violated. This proposal also changes “regulations” to “regulation” so that it is grammatically correct.

Amend 16 CCR section 1364.11

Existing law under 16 CCR section 1364.11 provides that a Board official may issue a citation for a violation of the statutes and regulations specified in that section, as well as to a licensee who violates a term or condition of probation. Additionally, existing law caps

the fine at \$2,500, but permits a fine of up to \$5,000 if the licensee has received two or more prior citations for the same or similar violations, or if the citation involves multiple violations that show a willful disregard for the law.

This proposed rulemaking will amend section 1364.11 to strike the first paragraph in reference to BPC section 125.9 referring to the determination of the fine, as relevant language is being moved to section 1364.11, subdivision (c).

This proposed rulemaking will amend section 1364.11, subdivision (a) to change “his or her” to “their,” and to capitalize “Board” in reference to the Medical Board of California.

Additionally, this proposed rulemaking will delete section 1364.11, subdivision (a), paragraphs (18)–(62) and (87)–(88), because the code sections referenced in those paragraphs are contained in the Medical Practice Act, the Licensed Midwifery Practice Act of 1993, or the Board’s regulations. The Medical Practice Act, the Licensed Midwifery Practice Act of 1993, and the Board’s regulations are being added in their entirety to this regulation under section 1364.11, subdivision (a), paragraphs (44), (45), and (46), respectively. All of subdivision (a) will be renumbered accordingly.

Further, this proposed rulemaking will amend section 1364.11, subdivision (a), former paragraph (84), renumbered as paragraph (39), to delete the reference to subdivisions (a) and (b) under Health and Safety Code section 123110, to clarify that a violation of any provision of that section is citable.

This proposed rulemaking will also amend section 1364.11, subdivision (a) to add a new paragraph (47) to specify that a violation of any other statute or regulation upon which the Board may base a disciplinary action is a citable offense.

This proposed rulemaking will also amend section 1364.11, subdivision (b) to change “his or her” to “their,” and to capitalize “Board” in reference to the Medical Board of California.

Further, this proposed rulemaking will amend section 1364.11, subdivision (c) to delete existing language setting forth the range for any fine amount to be levied and factors to be considered when determining the amount, and to add language to indicate that the Board official shall not exceed the fine amount specified under applicable code sections and shall consider the factors listed under those code sections when levying a fine.

Finally, this proposed rulemaking will amend section 1364.11, subdivision (d) to change “his or her” to “their,” and to capitalize “Board” in reference to the Medical Board of California.

Anticipated Benefits of Proposal

This proposed rulemaking will further consumer protection by updating the Board’s cite and fine reg-

ulations to clarify that the Board may issue a citation to any of its licensees which may contain a fine and/or order of abatement for a violation of any provision in the Medical Practice Act, the Licensed Midwifery Practice Act of 1993, any regulation adopted by the Board, and any other statute or regulation upon which the Board may base a disciplinary action, in addition to certain specified statutes and regulations contained in the existing regulation. These amendments will help keep the list of citable offenses current, as statutes and regulations are added, repealed, and modified.

Further, this proposed rulemaking clarifies the Board’s authority to assess fines to the full extent outlined by applicable code sections, and updates the regulations to make them gender neutral.

Updating the cite and fine regulations will enhance public protection by improving this administrative tool allowing the Board to take action for violations that do not rise to the level warranting discipline, but do raise issues that should be brought to the licensee’s attention for correction.

Evaluation of Consistency and Compatibility with Existing State Regulations

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

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

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

The Board anticipates annual workload and costs related to issuing approximately 88 additional citations per year to total approximately \$15,620. Out of those 88 additional citations, the Board anticipates approximately 25 informal conferences will be requested per year at a cost of approximately \$3,359. Further, out of those 88 additional citations, the Board anticipates that there will be three formal appeals per year at a cost of approximately \$20,118. Therefore, the total annual cost relating to this rulemaking is estimated at \$39,097 per year, and up to \$390,975 over a 10-year period.

With regard to revenues, the Board currently issues an average of 88 citations a year under existing law with an average fine of \$771. The Board anticipates that the average amount of fines will double from \$771 to \$1,542. Consequently, between the increase in fine amounts for the current number of citations issued

on average, and the 88 additional citations with an average fine amount of \$1,542 anticipated under this rulemaking, the Board estimates the average amount of additional revenues to be \$203,544 per year and up to \$2,035,440 over a 10–year period under this proposal.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

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

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

Business Impact Estimates:

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

This initial determination is based on the fact that individuals who are in compliance with the law will not be impacted by the proposed amendments. The Board also only issues citations to individuals not businesses. Over the last two fiscal years, 2020–2021 and 2021–2022, the Board received an average of 10,054 complaints across all license types per fiscal year. Over that same period the Board issued an average of 88 citations with an average fine of \$771 assessed. The Board anticipates that the number of citations issued may double as a result of this rulemaking to an average of approximately 176 citations each fiscal year, as there will additional license types that may receive a citation, and there will be more citable offenses under this proposal.

The average amount of the fine may increase to approximately \$1,542 as a result of this rulemaking package, since the Board is modifying section 1364.11 to refer to BPC section 125.9, which authorizes a fine of up to \$5,000, even for a first offense, unless another limit applies.

Cost Impact on Representative Private Person or Business

There may be a cost impact to a licensee for committing a citable violation. Individuals in compliance with the law will not be impacted by these proposed amendments. Based on data over a two–year period, the average assessed fine amount is \$771.

The average amount of the fine is expected to increase to approximately \$1,542 as a result of this rulemaking package, since the Board is modifying section 1364.11 to refer to BPC section 125.9, which authorizes a fine of up to \$5,000, even for a first offense.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

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

Benefits of Regulation

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents by updating and clarifying the citation and fine regulations as described above which will improve this administrative tool and enhance public protection. This regulation does not impact worker safety or the state’s environment.

Business Reporting Requirements

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

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. The Board issues citations and fines to individuals who violate the law and does not issue citations to businesses.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Medical Board of California in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, during the written comment period, or at the hearing if one is requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board by contacting the person named below, or by accessing the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSONS

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

Name: Alexandria Schembra
Address: Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Telephone Number: (916) 263-2466
Fax Number: (916) 263-2387
Email Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Kerrie Webb
Address: Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Telephone Number: (916) 263-2389
Fax Number: (916) 263-2387
Email Address: regulations@mbc.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

TITLE 16. MEDICAL BOARD

PHYSICIAN AND SURGEON HEALTH AND WELLNESS PROGRAM

Section(s) Affected: Title 16, Division 13, Chapter 2, California Code of Regulations (CCR) amend Article 2, sections 1357, 1357.1, 1357.9, and Article 4, section 1361.5(c)(3); repeal Article 2, sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8; and adopt Article 2, sections 1357.10, 1357.11, 1357.12, 1357.13, and 1357.14.

NOTICE IS HEREBY GIVEN that the Medical Board of California (Board) proposes to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

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

COMMENT PERIOD

Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this notice, must be **received by the Board at its office no later than 5:00 p.m., Tuesday November 14, 2023**, or at the hearing, if applicable.

AVAILABILITY OF MODIFICATIONS

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 2018 and 2340 of the Business and Professions Code (BPC), and to implement, interpret or make specific section 2340, 2340.2, 2340.4, and 2340.6 of said Code, the Board proposes to amend sections 1357, 1357.1, 1357.9, and 1361.5(c)(3); repeal sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8; and adopt sections 1357.10, 1357.11, 1357.12, 1357.13, and 1357.14 of Articles 2 and 4 of Chapter 2 of Division 13 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill (SB) 1177 (Galgiani, Chapter 591, Statutes of 2016), under BPC section 2340, authorized the Board to establish a Physician and Surgeon Health and Wellness Program (PHWP) with the goal of providing early identification of, and appropriate interventions to support rehabilitation from, substance abuse to ensure physicians remain able to practice medicine in a manner that will not endanger the public and that will maintain the integrity of the medical profession.

BPC section 2340.2 generally sets forth the PHWP program requirements and specifies that the PHWP shall comply with the Uniform Standards Regarding Substance–Abusing Healing Arts Licensees (Uniform Standards) adopted by the Substance Abuse Coordination Committee (SACC) of the Department of Consumer Affairs (DCA) pursuant to BPC section 315.

BPC section 2340.4 generally sets forth the requirements for the entity (vendor) that contracts with the Board to administer the PHWP, including requirements for reporting information to the Board about participants, communicating data and program statistics to the Board, and submitting to periodic mandatory audits.

BPC section 2340.6 generally sets forth provisions for participants to enter into an individual agreement with the PHWP that contains certain requirements and disclosures. Additionally, this section sets forth when confidentiality applies to a licensee’s participation in the PHWP.

BPC section 2340.8 provides that the PHWP Account is established within the Contingent Fund of the Board, and that the Board shall adopt regulations to determine the appropriate fee that a participant in the PHWP shall pay to the Board. Additionally, this section provides that the Board may use money from its Contingent Fund to support the initial costs for establishing the PHWP, but these moneys shall not be used to cover any costs for individual licensees participating in the program.

(Note: This current proposed rulemaking does not address the issue of fees for participants in the PHWP. The Board will move forward with proposed regulations to set fees only once the proposed regulations in this current rulemaking are adopted, and the vendor for the PHWP is selected.)

On October 28, 2016, the Board voted to move forward with establishing a PHWP. Board staff held interested parties meetings on January 11, 2017, and October 4, 2017, to review the applicable statutes, the Uniform Standards, and to obtain input on draft regulatory language. On October 27, 2017, the Board authorized staff to move forward with noticing proposed regulations for a 45–day comment period and hearing. While the draft regulations were under review, the SACC of DCA met and approved changes to the Uniform Standards. This development caused Board staff to reconsider the format of the PHWP regulations. On November 8, 2019, staff presented modified language to the Board, and the Board authorized staff to move forward with submitting that language to DCA for review. After additional review and modifications to the proposed text, the Board authorized staff to move forward with this proposed rulemaking on August 25, 2022.

Specifically, this proposed rulemaking will do the following:

Amend the Title of Article 2 of Chapter 2 of Division 13 of Title 16 of the CCR

Under existing law, Article 2 of Chapter 2 of Division 13 of Title 16 of the CCR is titled, “Impaired Physician Program.”

This rulemaking proposes to change the title from “Impaired Physician Program” to “Physician and Surgeon Health and Wellness Program.” The “Impaired Physician Program” refers to the Board’s old diversion program, which was discontinued as of July 1, 2008. Consequently, this rulemaking would change the title consistent with the establishment of the PHWP.

Amend 16 CCR section 1357

Existing law sets forth definitions relating to the Board’s defunct diversion program. This rulemaking proposes to delete definitions relating to the Board’s defunct diversion program and add definitions applicable to the PHWP.

Amend 16 CCR section 1357.1

Existing law sets forth the criteria for admission relating to the Board’s defunct diversion program. This rulemaking proposes to amend this section to make it applicable to the PHWP. The amendments set forth the criteria for admission to the PHWP and specify contractual requirements the licensee must agree to in order to participate in the PHWP.

Repeal 16 CCR sections 1357.2, 1357.3, 1357.4, 1357.5, 1357.6, and 1357.8

Existing law under these sections relate to the Board's defunct diversion program that was discontinued as of July 1, 2008. This rulemaking proposes to repeal these sections in their entirety.

Amend 16 CCR section 1357.9

Existing law sets forth record retention requirements relating to the Board's defunct diversion program. This rulemaking proposes to amend this section to make it applicable to the PHWP and to specify retention of program and participant records.

Adopt 16 CCR section 1357.10

This new section specifies certain requirements for the PHWP vendor and participants, including compliance with statutes and regulations applicable to the PHWP; clinical diagnostic evaluations; notification of employer or supervisor information; biological fluid testing; notification of positive biological fluid tests; testing locations, laboratories and specimen collectors; types of treatment; treatment providers; group support meetings; worksite monitors; and return to practice.

Adopt 16 CCR section 1357.11

This new section sets forth the vendor's reporting requirements when it imposes a practice restriction on a participant and establishes public disclosure requirements regarding practice restrictions on the participant's profile on the Board's website.

Adopt 16 CCR section 1357.12

This new section sets forth the vendor's reporting requirements if a participant withdraws from the program, is terminated, or commits any major or minor violation(s), and requires the vendor to provide specific information about a licensee's participation upon inquiry by the Board.

Adopt 16 CCR section 1357.13

This new section sets forth the requirements for the vendor to communicate certain information and data to the Board for inclusion in the Board's annual reports and within 30 days of the Board's written request.

Adopt 16 CCR section 1357.14

This new section sets forth the requirements for an external independent audit of the vendor at least once every three years to ensure compliance; establishes timelines to respond and cure deficiencies; establishes grounds for the Board to terminate the contract with the vendor for non-compliance; and requires the vendor to have a written plan to transfer the care and monitoring of participants if the vendor's contract is terminated.

Amend 16 CCR section 1361.5(c)(3)

Existing law sets forth the requirements for biological fluid testing for substance abusing licensees. This rulemaking proposes to amend this section to make it

consistent with changes the SACC made to the Uniform Standards effective March 2019 to clarify biological fluid testing requirements and testing frequency.

ANTICIPATED BENEFITS OF PROPOSAL

This proposed rulemaking will repeal old regulations relating to the Impaired Physician Program, which implemented the Board's diversion program and which was terminated as of July 2008. Repealing obsolete sections will improve the clarity of the Board's regulations.

Further, this proposed rulemaking amends existing regulations and adds new regulatory sections necessary to implement the PHWP, as authorized by BPC section 2340, and to further define BPC sections 2340.2, 2340.4, and 2340.6 to make specific the requirements for the PHWP.

The Board anticipates that the PHWP will provide for the early identification of licensees with substance abuse issues, and appropriate intervention and monitoring, consistent with the Uniform Standards, to support licensees in their rehabilitation from substance abuse to ensure they remain able to practice medicine safely. The Board anticipates that this program will provide a framework to assist licensees in overcoming substance abuse issues while rigorously protecting the public from licensees who are not safe to practice, thereby furthering the Board's mission of consumer protection.

This regulatory proposal intends to improve the health and welfare of California residents and worker safety by identifying, assisting, and monitoring physicians with substance abuse issues. This regulatory proposal will not have an impact on the state's environment.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board conducted a search for any similar regulations on these topics and has concluded that these regulations are neither duplicative, inconsistent, nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

The Board has made the following initial determinations:

FISCAL IMPACT ESTIMATES

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

The regulations are necessary to implement SB 1177 and to establish and maintain the PHWP. The total fiscal impact from this proposal is unknown at this time.

The Board received resources in a 2017–18 Budget Change Proposal to fund one Associate Governmental Program Analyst (AGPA) and to contract with a third-party auditor to implement the provisions of SB 1177. The Board estimates current AGPA costs of \$166,000 per year and notes any future auditing costs will be paid by the vendor.

The Board notes participants will be charged a fee for the PHWP, but the fee level amount and revenues are unknown at this time. The fee will be set through regulations once a vendor is selected.

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

BUSINESS IMPACT ESTIMATES

The Board has made the initial determination that this regulatory proposal will have the following impact:

- **It is not likely to create or eliminate jobs within the State of California.** This initial determination is based on the fact that there are vendors within the State of California with employees and contractors that already provide these services, and it is likely that one of them will contract with the Board to administer the PHWP. Further, this rulemaking will not increase or decrease the number of individuals identified as substance abusing licensees in need of monitoring and rehabilitation. Accordingly, it is not likely that this rulemaking will create or eliminate jobs in California.
- **It is not likely to create new businesses or eliminate existing businesses within the State of California.** This initial determination is based on the fact that there are vendors within the State of California that already provide these services, and it is likely that one of them will contract with

the Board to administer the PHWP. Further, this rulemaking will not increase or decrease the number of individuals identified as substance abusing licensees in need of monitoring and rehabilitation. Accordingly, it is not likely that this rulemaking will create or eliminate businesses in California.

- **It is not likely to impact expansion of businesses currently doing business within the State of California.** This initial determination is based on the fact that this rulemaking will not increase or decrease the number of individuals identified as substance abusing licensees in need of monitoring and rehabilitation. Accordingly, it is not likely that this rulemaking will impact expansion of businesses currently doing business in California.
- **It is likely to benefit the health and welfare of California residents.** This initial determination is based on the fact that the regulations establish the PHWP to support the early detection, treatment, and monitoring of physicians dealing with substance abuse issues, while rigorously protecting consumers from licensees who, due to substance abuse issues, are unsafe to practice.
- **It is likely to have a positive impact on worker safety.** This initial determination is based on the fact that the regulations establish the PHWP to support the early detection, treatment, and monitoring of licensees dealing with substance abuse issues, while rigorously protecting consumers from licensees who are unsafe to practice.
- **It is not likely to have an impact on the state’s environment.** This initial determination is based on the fact that the regulations are designed to establish the PHWP to detect, assist, and monitor licensees dealing with substance abuse issues, and do not address environmental issues.

IMPACT ON JOBS/BUSINESSES

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

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

These initial determinations are based on the fact that the Board currently disciplines and monitors licensees who have been found in violation of the Medical Practice Act due to substance abuse issues. The Board does not anticipate that the number of

licensees treated and monitored for substance abuse issues will increase or decrease following implementation of the PHWP.

Business Reporting Requirements

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

Effect on Small Business

The Board has determined that the proposed regulations would not affect small businesses. This initial determination is based on the fact that the Board currently disciplines and monitors licensees who have been found in violation of the Medical Practice Act due to substance abuse issues. The Board does not anticipate that the number of licensees treated and monitored for substance abuse issues will increase or decrease following implementation of the PHWP.

Cost Impact on Representative Private Person or Business

The Board has made the initial determination that there will be cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action. These costs will apply to licensees subject to discipline by the Board as a substance abusing licensee, or who self-refer into the PHWP.

Based on 2020–2021 and 2021–2022 licensee probation data, the Board estimates 40 licensees will be placed in the PHWP per year for the duration of their five-year probation period. As a result, PHWP participation is anticipated to increase in the first five years before leveling off as probation periods expire.

Of these 40 probationers each year, the Board estimates eight participants will be required to undergo a 30-day in-patient treatment program and may be subject to lost wages during that time.

The Board has identified PHWP activities and costs as follows:

- **Clinical Diagnosis:** Licensees participating in the PHWP will likely have to undergo an initial clinical diagnostic evaluation and pay approximately \$3,100 in a one-time payment to the evaluation program, which results total costs of \$124,000 per year and up to \$1.24 million over a ten-year period.
- **Biological Fluid Testing:** Participants will be required to be tested between 52 to 104 times and pay \$6,948 (flat-fee) during the first year and be tested between 36 to 104 times per year thereafter and pay \$5,439 (flat-fee) per year in years two through five, which results in costs ranging from \$277,920 to \$1.15 million per year and up to \$9.3 million over a ten-year period.
- **Group Support Meetings:** Participants may be required to attend monthly support group meetings and pay estimated fees of \$5,460 per year,

which results in estimated annual costs ranging from \$218,400 to 1.5 million per year and up to \$9.5 million over a ten-year period.

- **Worksite Monitoring:** Licensees may be required to have a worksite monitor and pay estimated costs of \$15,600 per year, which results in estimated annual costs ranging from \$624,000 to \$3.1 million and up to \$24.96 million over a ten-year period.
- **In-Patient Treatment:** Licenses may be subject to a 30-day in-patient treatment program with estimated one-time costs of \$40,000, plus lost wages of \$35,583.
- **Other Future Costs:** Participants will have to pay a fee to participate in the PHWP in the future, but the Board does not have an estimate for the fee at this time. The fee will be set through the rulemaking process once the vendor is selected.

PHWP Costs per Licensee: An individual licensee participating in the PHWP for the duration of their five-year probation period will incur costs of approximately \$31,108 in year one and \$26,499 in years two through five and up to \$137,104 over a five-year period. Those individuals requiring in-patient treatment will incur an additional \$40,000 in costs in year one.

Income Loss: Licensees referred to in-patient treatment will be required to cease practicing medicine for a 30-day period. Each licensee is estimated to lose \$35,583 of income during this time, which results in total income losses (8 licensees) of approximately \$284,664 per year and up to \$2.8 million over a ten-year period.

Effect on Housing Costs: None.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Board in writing relevant to the above determinations at the address listed for the Contact Person during the written comment period.

AVAILABILITY OF INITIAL
STATEMENT OF REASONS AND
RULEMAKING FILE

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board by contacting the person named below, or by accessing the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

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

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

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

CONTACT PERSONS

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

Name: Alexandria Schembra
Address: Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Telephone Number: (916) 263-2389
Fax Number: (916) 263-2387
Email Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Kerrie Webb
Address: Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
Telephone Number: (916) 263-2389
Fax Number: (916) 263-2387
Email Address: regulations@mbc.ca.gov

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Actions, the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

GENERAL PUBLIC INTEREST

**OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD**

NOTICE OF PUBLIC MEETING AND
BUSINESS MEETING

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting and Business Meeting:

PUBLIC MEETING

On **November 16, 2023**, at 10:00 a.m.
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)
- Teleconference at (844) 992-4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

BUSINESS MEETING

On **November 16, 2023**, at 10:00 a.m.
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California

as well as via the following:

- Video-conference at www.webex.com (meeting ID 268 984 996)

- Teleconference at (844) 992–4726 (Access code 268 984 996)
- Live video stream and audio stream (English and Spanish) at <https://videobookcase.com/california/oshsb/>

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274–5721 or the state–wide Disability Accommodation Coordinator at 1–866–326–1616 (toll free). The state–wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1–800–735–2929 (TTY) or 1–800–855–3000 (TTY–Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer–Aided Transcription System or Communication Access Realtime Translation (CART), a sign–language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OAL REGULATORY
DETERMINATION**

**STATE WATER RESOURCES
CONTROL BOARD**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATIONS**

(Pursuant to Government Code
Section 11340.5 and Title 1, sections 270, of the
California Code of Regulations)

The attachments are not being printed for practical reasons or space consideration. However, if you would like to view the attachments, please contact Margaret

Molina at (916) 324–6044 or Margaret.Molina@oal.ca.gov.

2023 OAL DETERMINATION NUMBER 1
(OAL MATTER NUMBER CTU2023–0308–01)

REQUESTED BY:

William Ray Consulting, LLC

CONCERNING:

**California Laboratory Assessment Checklist
(4/29/2021), issued by the Environmental
Laboratory Accreditation Program within the
State Water Resources Control Board**

**DETERMINATION ISSUED PURSUANT TO
GOVERNMENT CODE SECTION 11340.5.**

SCOPE OF REVIEW

An Office of Administrative Law (OAL) underground regulation determination evaluates whether a state agency action or enactment complies with California administrative law governing how a state agency must adopt a regulation. If a state agency’s rule is a regulation and the state agency did not adopt it pursuant to the Administrative Procedure Act (APA), but should have, then the rule is an underground regulation.¹

Nothing in this determination evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination. OAL review is limited to the sole issue of whether the challenged rule is a regulation subject to the APA.

CHALLENGED RULES

The State Water Resources Control Board through its Environmental Laboratory Accreditation Program (ELAP), issued a document entitled “California Laboratory Assessment Checklist (4/29/2021)” (Checklist).² ELAP, which did not adopt the Checklist pursuant to the APA, is using the Checklist in conjunction with duly adopted regulations to perform assessments of covered laboratories’ Quality Manuals. An ELAP contractor suspended the petitioner, based upon ELAP’s interpretations, for checking the “N/A” option in the Checklist for both challenged rules. ELAP acknowledges the Checklist language varies from existing regulations in the California Code of Regulations (CCR),

¹ Cal. Code Regs., title 1, § 250, subdivision (a)(1).

² The relevant pages are attached as Exhibit A.

but ELAP explains its position on the matter, saying, “ELAP’s interpretation is that the requirements of our regulations need to be incorporated into every lab’s ... practices.” (Emphasis added.)³ Thus, the Checklist, referenced citations, and related correspondence operate together to govern the content of a laboratory’s Quality Manual. The Checklist contains the following challenged rules:

Challenged Rule Number 1 (General Notification Procedure)

Does the Quality Manual or referenced document, identify that if an analytical result warrants a client notification, then the notification shall occur after the Technical Manager, or designee, has approved of the result?⁴

Challenged Rule Number 2 (Drinking Water Notification Procedure)

Does the Quality Manual, or referenced document, detail procedures when client notification is required?⁵

DETERMINATION

OAL determines Challenged Rule Nos. 1 and 2 are underground regulations because they are regulations ELAP should have adopted pursuant to the APA but did not.

FACTUAL BACKGROUND

On March 8, 2023, OAL received a petition from William Ray Consulting, LLC, specifically challenging each of the two rules identified in the Checklist as an underground regulation, including ELAP’s universal application of the Checklist’s challenged provisions via ELAP’s related correspondence.

On May 8, 2023, OAL accepted the petition. OAL published a summary of the petition in the California Regulatory Notice Register on May 19, 2023, soliciting public comments until June 19, 2023. OAL did not receive any public comments.

On June 30, 2023, in advance of the July 3, 2023, deadline, OAL received a document entitled *CTU2023–0308–01 State Water Resources Control Board Response to Petition by William Ray* as a written response from ELAP (ELAP Response). OAL received a written rebuttal from the petitioner on July 21, 2023, after the July 15, 2023, deadline.

³ Petition, at page 3; ELAP’s written response, at pages 5–6, n. 4 (affirming its correspondence and position on the matter as stated in the petition).

⁴ Checklist, at page 12.

⁵ Checklist, at page 14.

UNDERGROUND REGULATIONS

Government Code section 11340.5(a) bars a state agency from issuing a regulation unless it does so pursuant to the APA.

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5, and the rule is not exempt from the APA, it creates an underground regulation as defined in CCR, title 1, section 250.

OAL may issue a determination as to whether an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA.⁶ An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to due deference in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rules are “regulations” subject to the APA. This analysis will determine (1) whether the challenged rules are regulations within the meaning of Government Code section 11342.600; and (2) whether the challenged rules fall within any recognized exemption from APA requirements.

A regulation is defined in Government Code section 11342.600 as:

... every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court determined a regulation has two elements.

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply

⁶ Gov. Code, §11340, subdivision (b).

generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, §11342, subdivision (g)).⁷

As stated in *Tidewater*, the first element used to identify a “regulation” is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.⁸ The second element used to identify a “regulation” as stated in *Tidewater* is that the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA “shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*” (Emphasis added.)

ANALYSIS

1. Each Challenged Rule is a Regulation.

To determine whether a rule is a regulation, the first issue is whether the challenged rule applies generally. A rule is of general application if it applies to a clearly defined class of persons or situations.⁹

ELAP accredits and has authority over environmental laboratories in California.¹⁰ The Checklist applies to laboratories seeking or maintaining ELAP accreditation. The Checklist prefaces each page with the question, “Does the laboratory comply with this section?” Each Checklist item provides a reference citation to a regulation in the CCR and is read together with checkboxes, apparently designed to indicate whether the laboratory’s Quality Manual contains necessary information or whether the Checklist item is inapplicable. ELAP acknowledges the Checklist

language varies from existing regulations in the CCR, but ELAP explains its position on the matter, saying, “ELAP’s interpretation is that the requirements of our regulations need to be incorporated into **every** lab’s ... practices.” (Emphasis added.)¹¹

ELAP issued and utilizes the Checklist to determine whether a laboratory’s Quality Manual contains required content and information. The provisions at issue require a laboratory to include in its Quality Manual certain information relating to its analytical results and its testing of drinking water. ELAP’s related correspondence indicates ELAP intends to apply the Checklist generally and to generally require every ELAP-accredited laboratory in a drinking water field of accreditation to include in its Quality Manual the information set forth in CCR, title 22, section 64814.00, even if the laboratory does not test drinking water or otherwise trigger a client notification requirement in the course of its actual work. ELAP’s intent to generally apply each challenged rule satisfies the first *Tidewater* element of a regulation.

The second issue is whether each challenged rule implements, interprets, or makes specific the law enforced or administered by the agency, or governs its procedure. ELAP acknowledges the Checklist language differs from the CCR and that ELAP intends the Checklist to further implement or interpret two provisions governing the content of a Quality Manual: CCR, title 22, sections 64802.05 and 64814.00.¹² This satisfies the second *Tidewater* element of a regulation as to each challenged rule.

Each challenged rule satisfies the two *Tidewater* elements of a regulation. Each challenged rule is a regulation.

2. ELAP Should Have Adopted Each Challenged Rule as a Regulation.

The final issue to examine is whether ELAP should have adopted each regulation pursuant to the APA but did not. The APA applies to a state rule unless legislation expressly supersedes or modifies the APA’s requirements.¹³

ELAP suggests its interpretation of existing law requires compliance with the challenged rules, as expressed in the Checklist and its related correspondence.¹⁴

The APA does not apply to a regulation that embodies the only legally tenable interpretation of a provision of law.¹⁵ This APA exception codifies the princi-

⁷ Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

⁸ See also *Roth v. Department of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

⁹ See *Roth v. Dept. of Veterans Affairs*, (1980) 110 Cal.App.3d 622, 629–630.

¹⁰ Health & Saf. Code, §§ 100829, 100830; Cal. Code Regs., title 22, § 64802.05, subdivision (b)(1).

¹¹ Petition, at page 3; ELAP Response, at pages 5–6, n. 4 (affirming its correspondence and position on the matter as stated in the petition).

¹² *Ibid.*

¹³ Gov. Code, §§ 11340.5, 11346.

¹⁴ ELAP Response.

¹⁵ Gov. Code, § 11340.9, subdivision (f).

ple that if a rule is essentially a reiteration of existing law, then no duty exists to enact regulations as a reiteration. But if the rule departs from or embellishes upon existing law, then the agency must promulgate a regulation. The exception applies only in situations where the law can reasonably be read only one way, such that its application is patently compelled by, or repetitive of, the statute’s plain language. To qualify for this exception, the interpretation must follow directly and inescapably from the pertinent provisions of law and be plainly ineluctable.¹⁶

Challenged Rule Number 1 (General Notification Procedure)

Challenged Rule Number 1 in the Checklist reads as follows:

Does the Quality Manual or referenced document, identify that if an analytical result warrants a client notification, then the notification shall occur after the Technical Manager, or designee, has approved of the result?

The Checklist cites CCR, title 22, section 64814.00(b), as a reference. Section 64814.00(b) addresses notification requirements based upon a laboratory’s analytical result, and reads as follows:

If an analytical result warrants a Client notification, the notification shall occur after the Technical Manager or designee, set forth in the laboratory’s Quality Manual, has approved of the result.

This CCR section governs a laboratory’s notification requirements based upon the analytical result of its testing. By contrast, the Checklist language requires a laboratory’s **incorporation of these procedures into its Quality Manual.**

CCR, title 22, section 64802.05(b)(1), governs the content of a Quality Manual and provides in part as follows:

To ensure analytical data produced by the laboratory are of known and documented quality, and sufficient to evaluate the usability of the data for State Regulatory Agency needs, a laboratory shall:

- ...
- (b) Develop and implement a quality assurance program. As evidence of such a program, the laboratory shall:
 - (1) Develop and maintain a Quality Manual. The Quality Manual shall address the quality assurance and quality control practices to be employed by the laboratory and shall include at a minimum:

- (A) The quality assurance and quality control requirements specified in the test methods for which the laboratory seeks to obtain or maintain accreditation for; and
- (B) Documents, or references to documents, that contain the following elements:
- ...
- (viii) Acquisition, reduction, validation and reporting of data...

Whether Challenged Rule Number 1 is an underground regulation depends upon whether the only legally tenable interpretation of CCR, title 22, section 64802.05, and more specifically, subdivision (b)(1)(B) (viii), requires an ELAP accredited laboratory that does not perform tests that would warrant client notification to still include in its Quality Manual the notification requirement in section 64814.00.

The petitioner asserts Challenged Rule Number 1, as provided in the Checklist and related correspondence, is an underground regulation that requires incorporation of an inapplicable rule into its Quality Manual. The petitioner argues the notification procedures set forth in section 64814.00 are conditioned upon a laboratory actually performing testing that would yield results warranting client notification and that no regulation adopted pursuant to the APA requires a Quality Manual to include these notification procedures when the laboratory does not perform such testing. Because the Checklist requires a laboratory that does not perform such work to include these notification procedures in its Quality Manual, the petitioner contends the Checklist is an underground regulation.

ELAP argues “[t]he requirements of [ELAP’s] regulations need to be incorporated into every lab’s ... practices.”¹⁷ ELAP explains its reasoning, as follows:

Laboratories who hold accreditation for Fields of Accreditation (FOAs) in a drinking water matrix are required to have policies and procedures compliant with requirements listed in § 64814.00. While the laboratory may not yet or ever perform analysis on drinking water samples, obtaining accreditation for drinking water FOAs allows the laboratory the ability to do so, and as such, requires it to have procedures specific to drinking water analysis, even if those analyses are used for testing recycled water.¹⁸

ELAP further contends:

Section 64814.05, subdivision (b)(1)(B)(iii), requires a laboratory to develop and maintain a Quality Manual that must contain, at a minimum, ‘documents, or references to documents,

¹⁶ *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 328, 336–337, 340.

¹⁷ Petition, at page 3; ELAP Response, at pages 5–6, n. 4 (affirming its correspondence and position on the matter as stated in the petition).

¹⁸ *Ibid.*

that contain [a]cquisition, reduction, validation, and reporting of data.’ Cal. Code Regs., title 22 § 64802.05, subdivision (b)(1)(B)(viii).) The ‘reporting of data’ provision in Section 64802.05, therefore, must include notification procedures that laboratories put in place to ensure clients are notified when analytical results warrant reporting. (ELAP’s written response, at pages 4–5)

ELAP essentially interprets the applicable regulations and challenged rules to mean a laboratory’s client notification requirements depend upon its **potential** work within a field of accreditation rather than its **actual** work within a field of accreditation. This is not the only legally tenable interpretation of section 64802.05. The parties’ dispute over the very issue of interpretation is indicative. Interpreting section 64802.05 to require a laboratory to include the notification procedure in its Quality Manual pursuant to section 64814.00, based upon a laboratory’s field of accreditation generally, as ELAP asserts, is tenable. But interpreting section 64802.05 to require a laboratory to include the notification procedure in its Quality Manual pursuant to section 64814.00, based upon a laboratory’s actual practice, as the petitioner asserts, is also tenable.

While ELAP’s interpretation may be legally tenable, existing law does not compel that result. ELAP’s interpretation does not flow inescapably from existing law; it is not ineluctable. It is not the only legally tenable interpretation. Challenged Rule Number 1 is therefore an underground regulation.

Challenged Rule Number 2 (Drinking Water Notification Procedure)

Challenged Rule Number 2 in the Checklist states as follows:

Does the Quality Manual, or referenced document, detail procedures when client notification is required?¹⁹

Challenged Rule Number 2 references section 64814.00(c), which provides in part as follows:

A laboratory accredited to perform analyses on drinking water samples shall notify a water supplier’s designated contact person:

- (1) Immediately within 24 hours, when the following results are confirmed:
- ...
- (2) Immediately within 48 hours, when the following results are confirmed:

...²⁰

Like Challenged Rule Number 1, whether Challenged Rule Number 2 is an underground regulation depends on whether the only legally tenable interpretation

of CCR, title 22, section 64802.05 requires a laboratory accredited to test drinking water, but that tests only recycled water, which could not trigger the notification requirements, to still include the drinking water notification requirements of section 64814.00 in its Quality Manual.

The petitioner’s argument with respect to Challenged Rule Number 2 is the same as that for Challenged Rule Number 1 — the requirement to include notification procedures set forth in CCR, title 22, section 64814.00(c) is conditioned upon a laboratory performing drinking water testing and does not apply to a laboratory performing only recycled water testing. The petitioner asserts no regulation adopted pursuant to the APA requires a Quality Manual to include notification procedures set forth in section 64814.00 when the laboratory does not perform testing on drinking water, even if its field of accreditation is described as a drinking water accreditation.

In favor of its position, ELAP contends:

Section 64814.00, subdivision (c) specifically requires laboratories accredited to perform analysis on drinking water samples to notify a water supplier’s designated contact person within a confined time, if specific water analysis results warrant notification. As noted previously, Section 64802.05, subdivision (b) requires laboratories to have reporting procedures in the Quality Manual. The requirements are, therefore, not underground regulations.²¹

Just as with Challenged Rule Number 1, OAL cannot find the only legally tenable interpretation of section 64802.05 is to require a Quality Manual to include notification procedures pursuant to section 64814.00(c), when the laboratory does not perform testing on drinking water. Interpreting section 64802.05 to require a laboratory to include the notification procedure in its Quality Manual, based upon a laboratory’s field of accreditation generally, as ELAP asserts, is tenable. But interpreting section 64802.05 to require a laboratory to include the notification procedure in its Quality Manual, based upon a laboratory’s actual practice, as the petitioner asserts, is also tenable.

While ELAP’s interpretation may be legally tenable, existing law does not compel that result. ELAP’s interpretation does not flow inescapably from existing law; it is not ineluctable. It is not the only legally tenable interpretation. Challenged Rule Number 2 is therefore an underground regulation.

CONCLUSION

OAL determines that Challenged Rules 1 and 2 are underground regulations because they are regulations

¹⁹ Checklist, at page 14.

²⁰ Cal. Code Regs., title 22, § 64814.00, subdivision (c).

²¹ ELAP Response, at page 5.

ELAP should have adopted pursuant to the APA but did not.

Date: September 18, 2023

/s/

Mark Storm
Senior Attorney

Copy:

Eileen Sobek
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

<p>SUMMARY OF REGULATORY ACTIONS</p>

**REGULATIONS FILED WITH THE
SECRETARY OF STATE**

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

California School Finance Authority
File # 2022-0907-03
Charter School Facilities Credit Enhancement Grant Program

This emergency readopt of OAL Matter Number 2022-0310-03ER by the California School Finance Authority updates the Charter School Facilities Credit Enhancement Grant Program to adopt a definition for the term “Financing,” increase the maximum award amount, and limit awards to a per-Financing basis.

Title 04
Amend: 10193, 10195
Filed 09/13/2022
Effective 09/14/2022
Agency Contact: Ryan Storey (213) 620-6360

California School Finance Authority
File # 2022-0907-04
Project Acceleration Notes and Credit Enhancement Alternatives Program

This emergency readoption action by the California School Finance Authority readopts the changes approved in OAL File Number 2022-0310-02ER. That action updated the Project Acceleration Notes and Credit Enhancement Alternatives (“PANACEA”) Program to adopt a definition for the term “Financing.”

increased the maximum award amount, and limited awards to a per-Financing basis.

Title 04
Amend: 10200.1, 10200.3
Filed 09/13/2022
Effective 09/14/2022
Agency Contact: Ryan Storey (213) 620-6360

Office of Administrative Law
File # 2022-0823-04
Conflict-of-Interest Code

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

Title 02
Amend: 51000
Filed 09/15/2022
Effective 10/15/2022
Agency Contact: Rhea Moyer (916) 832-3257

State Personnel Board
File # 2022-0816-02
Training and Development Assignments

This action establishes regulations for crediting training and development assignments as qualifying experience. These regulations are exempt from the Administrative Procedure Act pursuant to Government Code section 18211.

Title 02
Amend: 171.1, 437, 439.2, 439.4
Filed 09/15/2022
Effective 10/01/2022
Agency Contact: Lori Gillihan (916) 651-1043

Board of Accountancy
File # 2022-0817-01
CBA’s Practice Privilege Program

This nonsubstantive action from the Board of Accountancy (CBA) repeals Article 4, Practice Privileges, that expired by its own terms July 1, 2013.

Title 16
Repeal: 26, 27, 28, 29, 31, 32, 33, 34, 35, 35.1
Filed 09/20/2022
Agency Contact: Sarah Benedict (916) 809-4028

Department of Public Health
File # 2022-0805-02
Clinical Laboratory Personnel Standards Article 1 Definitions Update

In this non-substantive action, the California Department of Public Health (“CDPH”) renumbers sections for organizational purposes and makes minor,

non–substantive grammatical changes. CDPH merges sections 17 CCR 1029.32, 1029.33, 1029.53, 1029.116, 1029.117, and 1029.124 into section 1029 and makes minor grammatical changes to section 1029.

Title 17

Amend: 1029, 1029.32, 1029.33, 1029.53, 1029.116, 1029.117, 1029.124

Filed 09/15/2022

Agency Contact: Christy Correa (279) 217–0674

Board of Governors, California Community Colleges
File # 2022–0920–01
Ethnic Studies Requirement

The Board of Governors of the California Community Colleges (Board) submitted this action dealing with the ethnic studies requirement to OAL as a print only file. Pursuant to Education Code section 70901.5, this action was filed with the Secretary of State by the Board on September 20, 2022, is exempt from the Administrative Procedure Act and OAL review, and was submitted to OAL only for the purpose of publishing the regulations in the California Code of Regulations.

Title 05

Adopt: 55063

Repeal: 55063

Filed 09/20/2022

Effective 10/20/2022

Agency Contact: Tanya Bosch (916) 445–4826

Board of Governors, California Community Colleges
File # 2022–0920–02
Equal Employment Opportunity

The Board of Governors of the California Community Colleges (Board) submitted this action dealing with equal employment opportunity to OAL as a print only file. Pursuant to Education Code section 70901.5, this action was filed with the Secretary of State by the Board on September 20, 2022, is exempt from the Administrative Procedure Act and OAL review, and was submitted to OAL only for the purpose of publishing the regulations in the California Code of Regulations.

Title 05

Adopt: 53000, 53001, 53002, 53003, 53004, 53006, 53020, 53021, 53023, 53024.1, 53026, 53033

Amend: 53005, 53022, 53024, 53024.2

Repeal: 53000, 53001, 53002, 53003, 53004,

53006, 53020, 53021, 53023, 53024.1, 53026,

53033, 53034

Filed 09/20/2022

Effective 10/20/2022

Agency Contact: Tanya Bosch (916) 445–4826

Board of Governors, California Community Colleges
File # 2022–0920–03
Chancellor’s Office Information and Data Requests

The Board of Governors of the California Community Colleges (Board) submitted this action dealing with chancellor’s office information and data requests to OAL as a print only file. Pursuant to Education Code section 70901.5, this action was filed with the Secretary of State by the Board on September 20, 2022, is exempt from the Administrative Procedure Act and OAL review, and was submitted to OAL only for the purpose of publishing the regulations in the California Code of Regulations.

Title 05

Adopt: 52012

Filed 09/20/2022

Effective 10/20/2022

Agency Contact: Tanya Bosch (916) 445–4826

Board of Governors, California Community Colleges
File # 2022–0920–04
Excused Withdrawal and Pass–No Pass Grading
Option

The Board of Governors of the California Community Colleges (Board) submitted this action dealing with the excused withdrawal and pass–no pass grading option to OAL as a print only file. Pursuant to Education Code section 70901.5, this action was filed with the Secretary of State by the Board on September 20, 2022, is exempt from the Administrative Procedure Act and OAL review, and was submitted to OAL only for the purpose of publishing the regulations in the California Code of Regulations.

Title 05

Amend: 55000, 55022, 55023, 55024, 55031, 55032, 55033, 58146, 58161, 58509

Filed 09/20/2022

Effective 10/20/2022

Agency Contact: Tanya Bosch (916) 445–4826

Air Resources Board
File # 2022–0802–02
Small Off–Road Engine Regulations

This action amends the Small Off–Road Engine (SORE) Exhaust and Evaporative Emission Regulations and Test Procedures to accelerate the transition of SORE equipment to zero–emission equipment (ZEE). The amendments set SORE emission standards to zero in two phases. In the first phase, for engine model year (MY) 2024 and later, except generators, exhaust emission standards, except carbon monoxide, are set to zero, evaporative emission standards are set to zero, and generator emission standards are made more stringent than the existing

standards. In the second phase, starting in MY 2028, emission standards for generators would be zero. This action also amends related emission reduction credit programs, sunsets the Blue Sky Series engine requirements, repeals the variance provisions in the evaporative emission regulations, amends evaporative emission test procedures, amends TP–901 regarding fuel tank testing configurations, amends evaporative emission control system certification procedure CP–902, and aligns exhaust emission test procedures with updates to the federal test procedures since 2012 with California–specific variances.

Title 13
 Adopt: 2408.2, 2754.3
 Amend: 2400, 2401, 2402, 2403, 2404, 2405, 2405.1, 2405.2, 2405.3, 2406, 2407, 2408, 2408.1, 2750, 2751, 2752, 2753, 2754, 2754.1, 2457.2, 2755, 2756, 2757, 2758, 2759, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2767.1, 2771
 Repeal: 2768
 Filed 09/14/2022
 Effective 01/01/2023
 Agency Contact:
 Bradley Bechtold (916) 322–6533

Department of Food and Agriculture
 File # 2022–0810–03
 Black Fig Fly Eradication Area

This action establishes the entire counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura as a black fig fly (*Silba adipata McAlpine*) eradication area.

Title 03
 Adopt: 3591.29
 Filed 09/20/2022
 Effective 01/01/2023
 Agency Contact: Karen Olmstead (916) 403–6879

Department of Motor Vehicles
 File # 2022–0808–01
 Confidential Records

This regular rulemaking action by the Department of Motor Vehicles clarifies that the confidential records process applies to administrative law judges.

Title 13
 Adopt: 360.00
 Filed 09/15/2022
 Effective 01/01/2023
 Agency Contact: Randi Calkins (916) 282–7294

Board of Barbering and Cosmetology
 File # 2022–0818–01
 Instructional Materials

This action makes changes to the instructional materials that board approved schools must provide to students. Most significantly, it removes the requirement that textbooks be approved by the National Interstate Council of State Boards of Cosmetology (NIC) and adds a requirement that the schools provide the appropriate licensing examination translation guide to students who intend to take the examination in one of the non–English languages offered by the board.

Title 16
 Adopt: 961
 Repeal: 961
 Filed 09/20/2022
 Effective 01/01/2023
 Agency Contact: Allison Lee (916) 575–7139

Department of Developmental Services
 File # 2022–0810–02
 Participant Directed Services Resubmittal

In this regular rulemaking, the Department of Developmental Services (“DDS”) is amending the maximum reimbursement rates for voucher services, non–residential services, and participant–directed services. Additionally, DDS is adding “personal assistance,” “independent living services,” and “supported employment” to the list of participant–directed services.

Title 17
 Amend: 57310, 57332, 58886, 58888
 Filed 09/15/2022
 Effective 09/16/2022
 Agency Contact: Amy Whiting (916) 654–4418

Department of Water Resources
 File # 2022–0805–01
 Enforcement Regulations — Dam Safety Program

This action establishes procedures for administrative enforcement actions to determine compliance with Part 1 of Division 3 of the Water Code and implementing regulations, including procedures for requesting and conducting hearings and methodologies for calculating civil penalties.

Title 23
 Adopt: 306, 337, 337.2, 337.4, 337.6, 337.8, 337.10, 337.11, 337.12, 337.14, 337.16, 337.18, 337.20, 337.22, 337.24, 337.26, 337.28, 337.30, 337.32, 337.50, 337.52, 337.54, 337.56, 337.58, 337.60, 337.62, 337.64, 337.66
 Filed 09/19/2022
 Effective 09/19/2022
 Agency Contact: Shawn Jones (916) 216–8711

**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.