



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. ALLOCATION BOARD

LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

PROPOSED REPEAL OF THE FOLLOWING REGULATION SECTION

- 1859.169.1

PROPOSED AMENDMENTS TO THE FOLLOWING REGULATION SECTIONS

- 1859.2, 1859.70.2, 1859.103, 1859.104, 1859.184.1, AND 1859.199

PROPOSED AMENDMENTS TO THE FOLLOWING FORMS

- Form SAB 50–06, *Expenditure Report*, (Rev. 10/22), which is incorporated by reference and referenced in Regulation Section 1859.2
- Grant Agreement, (Rev. 10/22), which is incorporated by reference and referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to repeal and amend the above-referenced regulation sections, including an associated form and the Grant Agreement master templates, contained in Title 2, California Code of Regulations (CCR). 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 Office of Public School Construction (OPSC) 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, OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Section 17070.35, 17072.13, 17078.64, 17078.72(k) and 17079.30 of the Education Code. The proposal interprets and make specific reference Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.35, 17070.51(a), 17070.63, 17070.71, 17070.77, 17070.99, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.75, 17071.76, 17072.10, 17072.13, 17072.12, 17072.18, 17072.20, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17076.10, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72, 17078.72(k), 17079, 17079.10, 17079.20, 17079.30, 17280, 56026 and 101012(a)(8) of the Education Code; Section 53311 of the Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5, Labor Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill (SB) 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

At its October 26, 2022 meeting, the SAB adopted proposed regulatory amendments that would amend parts of the SFP Regulations, an associated form, and the Grant Agreement master templates. This is a result of the California Court of Appeals’ decision related to the SAB’s historical practice of collecting financial hardship savings.

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed regulatory amendments, the associated form and the Grant Agreement templates. The proposed regulations, the associated form and the Grant Agreement templates can also be reviewed on OPSC’s website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>. Copies of the proposed regulations, the associated form and the Grant Agreement templates will be mailed to any person requesting this information by using OPSC’s contact information set forth below in this Notice. The proposed regulations amend

the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

Background and Problem Being Resolved

Regulation Section 1859.103 was created through SB 50, Chapter 407, Statutes of 1998, and provided that school districts could use the State's share of any savings not needed for a project on other capital facility needs of the school district. Savings was deemed to be any portion of the SFP adjusted grant, including a school district's required matching share, not needed to complete the project. School districts could declare savings at any time.

For projects that received financial hardship funding, in lieu of contributing 100 percent of their required matching share, the savings needed to be used to reduce SFP financial hardship grants within the school district for a period of three years, after which the savings would be returned by the school district. The intent of this section was to allow a school district time to apply the savings towards a future financial hardship project.

What is being resolved now is the implementation of the California Court of Appeals' decision invalidating the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103 above. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. The Court ordered the SAB to declare that school districts can retain financial hardship savings.

OPSC is implementing the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50-06, and the Grant Agreement master templates. The proposed regulatory amendments make the regulations consistent and compatible with existing State laws and regulations. The California Court of Appeals' interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB's previous interpretation.

Anticipated Benefits of the Proposed Regulations

The proposed regulatory amendments promote transparency by implementing the California Court of

Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB's SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50-06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.

Summary of the Proposed Regulatory Amendments

The SFP Regulations are being amended to revise the revision date for the Form SAB 50-06 and the Grant Agreement master templates; to remove existing language in five regulation sections that conform to the California Court of Appeals' decision related to the SAB's historical practice of collecting financial hardship savings; and in one regulation section provide guidance to school districts that they are required to report the expenditure of project savings annually until all state and required matching funds have been expended. The proposed amendments are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments revise the revision date for the Form SAB 50-06 as well as the revision date for the Grant Agreement master templates. These are considered non-substantive changes.

Existing Regulation Section 1859.70.2 sets forth specific criteria allowing new construction projects that included classrooms that were considered ineligible for State funding due to the construction contract being signed in excess of 180 days prior to submittal of an Approved Application to participate and request State funding under the SFP. The proposed amendment removes an existing sentence pertaining to project savings. This is in alignment with the California Court of Appeals' decision that invalidates the SAB's historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.103 identifies SFP project savings and establishes when and how the savings may be utilized. It also specifies how interest earned on financial hardship projects will be treated. Further, it identifies another component for which project savings may be used towards and provides an exception to the required use of savings that reduces the financial hardship grant for apportionments made for district-owned site acquisition. The proposed amendments remove existing language pertaining to

project savings. This is in alignment with the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.104 sets forth the program reporting requirements for school districts receiving funds under the School Facility Program, including progress reports and expenditure reports. This section also requires recipients of Overcrowding Relief Grant (ORG) Program apportionments to submit a certification that replaced portables were removed from the eligible site and from K–12 service. The proposed amendment adds a new subsection that provides guidance to school districts reminding them that they are required to report the expenditure of project savings annually until all state and required matching funds have been expended.

Existing Regulation Section 1859.169.1 requires that State funds remaining at the completion of charter school projects must be returned to the State. The proposed amendments repeal this section in its entirety. This is in alignment with the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.184.1 sets forth the application process for school districts with financial hardship approval under the ORG Program. This section permits financial hardship school districts in the ORG Program to obtain advance site acquisition funding in order to acquire sites through condemnation proceedings. Financial hardship districts may lack the funds for an advance deposit required before the courts will issue orders for condemnation, thereby failing to demonstrate ownership of the site for purposes of SFP funding. Further, this section includes the criteria for a complete application, determination of site acquisition funding for condemnation actions, and the limitation that no over–apportionment of site acquisition funds for condemnation may be applied as “savings” to construction related costs for purposes of Regulation Section 1859.103. The proposed amendment removes existing language pertaining to project savings. This is in alignment with the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings.

Existing Regulation Section 1859.199 identifies the time when a Career Technical Education Facilities Program (CTEFP) project shall be deemed complete, that a completed project is subject to a Program Accountability Expenditure Audit, and that applicant school districts may not retain savings realized by a CTEFP project. The proposed amendment removes an existing sentence pertaining to project savings. This

is in alignment with the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings.

Existing Form SAB 50–06, *Expenditure Report*, (Revised 12/10/22), is used by school districts to record the total amount of funding spent on an SFP project (includes State and district shares). The proposed amendments remove existing language under the Instructions on page 1 and the corresponding information/data fields on page 2 of the form that pertain to project savings. This is in alignment with the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings.

The existing grant agreement templates include sections relevant to funding provided by the New Construction Program, the Modernization Program, the Charter School Facilities Program, and the Career Technical Education Facilities Program. The grant agreements are entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant program’s sections. The grant agreements were developed to address the Office of Statewide Audits and Evaluation’s audit findings by improving program oversight and expenditure accountability. The grant agreement also includes changes that implement the trailer bill language (AB 99, Chapter 15, Statutes of 2017), which the Governor signed into law on June 27, 2017. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount of eligible state funding to the reporting of all project funds, including any savings achieved. This ensures transparency and accountability for the program grants being awarded under the SFP. The grant agreements are in alignment with the amended direct Apportionment process. The proposed amendments 1) include conforming language, pursuant to SB 820 (Chapter 110, Statutes of 2020), which changes the collection agency for amounts due to the State for audit findings from the California Department of Education to the OPSC; and 2) remove existing language pertaining to project savings. This is in alignment with the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings.

Statutory Authority and Implementation

OPSC is implementing the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB

50–06, and the Grant Agreement master templates. The California Court of Appeals’ interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB’s previous interpretation.

Determination of Inconsistency or Incompatibility with Existing State Regulations

Regulation Section 1859.103 was created through SB 50, Chapter 407, Statutes of 1998, and provided that school districts could use the State’s share of any savings not needed for a project on other capital facility needs of the school district. Savings was deemed to be any portion of the SFP adjusted grant, including a school district’s required matching share, not needed to complete the project. School districts could declare savings at any time.

For projects that received financial hardship funding, in lieu of contributing 100 percent of their required matching share, the savings needed to be used to reduce SFP financial hardship grants within the school district for a period of three years, after which the savings would be returned by the school district. The intent of this section was to allow a school district time to apply the savings towards a future financial hardship project.

What is being resolved now is the implementation of the California Court of Appeals’ decision invalidating the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103 above. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34–2019–80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB’s SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, form (Form SAB 50–06), and the Grant Agreement master templates. The Court ordered the SAB to declare that school districts can retain financial hardship savings.

OPSC is implementing the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.104, 1859.169.1, 1859.184.1, 1859.199, Form SAB 50–06, and the Grant Agreement master templates. The proposed regulatory amendments will make the regulations consistent and compatible with existing State laws and regulations. The California Court of Appeals’ interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB’s previous interpretation.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulatory amendments do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies, school districts, or charter schools to incur additional costs in order to comply with the proposed regulatory amendments.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non–discretionary costs or savings to local agencies.
- The proposed regulatory amendments create no costs to any local agency, school district, or charter school requiring reimbursement pursuant to Section 17500 et seq., or beyond those required by law, except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulatory amendments create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact to Businesses and Jobs in California

The proposed regulatory amendments do not impact businesses and jobs in California, nor will the proposed regulatory amendments negatively impact the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulatory amendments will result in the elimination of existing businesses or jobs within California. The proposed regulatory amendments

promote transparency by implementing the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34–2019–80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB’s SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50–06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.

The California Court of Appeals’ interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB’s previous interpretation.

Benefits to Public Health and Welfare, Worker’s Safety, and the State’s Environment

- The proposed regulatory amendments promote transparency by implementing the California Court of Appeals’ decision that invalidates the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Section 1859.103. In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34–2019–80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby necessitating amendments to parts of the SAB’s SFP Regulation Section 1859.103. This also included any other references to the return of any SFP savings throughout the SFP Regulations, Form SAB 50–06, and the Grant Agreement master templates. Further, the Court ordered the SAB to declare that school districts can retain financial hardship savings.
- There are benefits to public health and welfare because the Court of Appeals’ decision stipulates that school districts are no longer required to return project savings from projects that are approved with financial hardship status.
- There is no impact to worker safety from the proposed regulatory amendments.
- There is no impact to the State’s environment from the proposed regulatory amendments.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulatory amendments will not have an impact on small busi-

nesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The proposed regulatory amendments are implemented by OPSC because the California Court of Appeals’ decision invalidates the SAB’s historical practice of collecting financial hardship savings as outlined in Regulation Sections 1859.70.2, 1859.103, 1859.169.1, 1859.184.1, 1859.199, including the Form SAB 50–06 and the Grant Agreement master templates. The California Court of Appeals’ interpretation of Regulation Section 1859.103 pertaining to project savings supersedes the SAB’s previous interpretation.

**SUBMISSION OF
COMMENTS, DOCUMENTS AND
ADDITIONAL INFORMATION**

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, email or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, email or fax must be received at OPSC no later than December 11, 2023. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, email or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator
 Mailing Address: Office of Public School
 Construction
 707 Third Street, 4th Floor
 West Sacramento, CA 95605
 Email Address: lisa.jones@dgs.ca.gov
 Fax Number: (916) 375–6721

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Ms. Lisa Jones at (279) 946–8459. If Ms. Jones is unavailable, these questions may be directed to the backup contact person, Mr. Michael Watanabe, Chief of Administrative Services, at (279) 946–8463.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifi-

cations are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received they will be added to the rulemaking file. The file is available for public inspection at OPSC during normal working hours. Items 1 through 3 are also available on OPSC's Internet Web site at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations> then scroll down to School Facility Program, Pending Regulatory Changes, and click on the links named 45-day Public Notice, Initial Statement of Reasons and Proposed Regulatory Text.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB 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 alternative to these proposed regulatory amendments would be that OPSC does not implement the California Court of Appeals' decision and be in violation of the Court's decision.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the website listed above.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

SECTION 3700 OAK MORTALITY DISEASE CONTROL

The Department of Food and Agriculture (Department) proposes to amend Title 3 of the California Code of Regulations (CCR) 3700 Oak Mortality Disease Control.

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 December 12, 2023. The Department will consider only comments received at the Department offices by that date or postmarked no later than December 12, 2023. Submit comments to:

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

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

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

AUTHORITY

The Department proposes to amend Section 3700 pursuant to the authority vested by Sections 407, 5321, and 5322 of the Food and Agricultural Code (FAC).

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 24.5, 5321 and 5322 of the FAC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The specific purpose of the proposed amendment of the regulation 3700 is to revise and update the known host list for *Phytophthora ramorum*, a fungus which causes oak mortality disease (sudden oak death), in California regulation to coincide with the official *Phytophthora ramorum* host list promulgated on October 31, 2022 by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS).

By pairing the California host list with the USDA host list, the Department will be able to enact any quarantine needed against the *Phytophthora ramorum* using the federal standards.

EXISTING LAWS AND REGULATIONS

Existing law, FAC Section 24.5, states that inasmuch as plants growing in native stands or planted for ornamental purposes contribute to the environmental

and public health and welfare needs of the people of the state, the Legislature hereby finds and declares that such plants shall be considered as a part of the agricultural industry for the purpose of any law that provides for the protection of the agricultural industry from pests.

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

Existing law, FAC section 5321, provides that if the director receives information of the existence of any pest which is not generally distributed within this state, they shall thoroughly investigate the existence and probability of its spread, and the feasibility of its control or eradication.

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

ANTICIPATED BENEFITS OF THE PROPOSED AMENDMENT

Preventing the artificial spread of *Phytophthora ramorum* economically benefits all Californians and businesses involved in the production or sale of host material located outside the infested regulated area. Tourism in the unregulated area isn't negatively impacted by restrictions on access to parks and forests that would be necessary either to prevent disease spread or to ensure protection from hazardous trees, or due to loss of the host trees that would affect parks' and forests' visual aesthetic. Local governments do not face unexpected costs when they must remove infected dead or hazardous trees in parks, parkways, along roadsides or adjacent to public buildings. Homeowners do not have to use protective sprays to protect their specimen oaks or face costs for the removal of hazardous trees and loss of their property values.

There is no existing, comparable federal regulations or statute.

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

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

As required by Government Code Section 1346.5(a)(3)(D), the Department has conducted an evaluation of Section 3700 and has determined that

they are not inconsistent or incompatible with existing State regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any State agency: None.

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

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

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

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The cost impacts are expected to be minimal/non-consequential. The Department makes the initial determination that the proposed action will not have a significant, statewide adverse economic impact.

Significant effect on housing costs: None.

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

The Department also has determined that no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts and no nondiscretionary costs or savings to local agencies or school districts, will result from the amendment of Section 3700.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Department has concluded that the Section 3700 amendment (1) will have no significant impact on the creation or elimination of jobs in the State of California, (2) will have no impact on the creation or elimination of businesses within the State of California, (3) will have no impact on the expansion of businesses within the State of California, (4) is expected to benefit the health and welfare of California residents, (5) is expected to benefit the state's environment, and (6) is not expected to harm or benefit workers' safety

Health and welfare: The proposed action will benefit the health and welfare of California residents by making it more likely that *Phytophthora ramorum* will be detected before an infestation can happen, and, if there

is an infestation, the Department can react quickly and effectively. Speed of response is key to eradicating an incipient pest infestation. Programmatic delays potentially can lead to pest quarantines, as well as increased production costs and potential job loss.

The state's environment: The proposed action will benefit the state's environment by increasing the chance that *Phytophthora ramorum* would be detected before an infestation can happen. If the Department neglected to regulate hosts, this fungus pest could spread into the local environment via the surrounding non-agricultural ecosystems. This could adversely impact private and commercial landscape plantings, local, regional, state and national parks, other recreational sites, open habitats, and wild lands. Affected plants could become less vigorous and may produce fewer seeds. Plants/trees with low propagule output can result in major changes to plant community structure.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected 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 13. DEPARTMENT OF MOTOR
VEHICLES**

DIVISION 1, CHAPTER 1
ARTICLE 4.2 — VEHICLE DEALERS

The Department of Motor Vehicles (department) proposes to amend Sections 272.02 in Article 4.2, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to the location of vehicle dealer business records.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than **December 11,**

2023, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt/amend/ repeal these regulations under the authority granted by Vehicle Code section 1651, in order to implement, interpret, or make specific Vehicle Code sections 320, 1801.1, 4456, 5753, 11709, 11712 and 11714.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Vehicle Code section 11700 prohibits a person from acting as a vehicle dealer unless they have first been issued an occupational license through the department. Vehicle Code section 4456 establishes the process by which a dealer is required to notify the department of a vehicle that has been sold. Vehicle Code section 1801.1 allows the department to accept a document to be submitted using electronic means instead of the submittal of the actual original documents.

Section 272.00 of Article 4.2, requires a licensed vehicle dealer to maintain documents related to the purchase, sale, rental, or lease of a vehicle for a period of no less than three years. As currently written, Section 272.02 requires those original documents to be maintained at the dealer’s principal place of business or branch location for at least 90 days. After the initial 90–day retention period has been met, a dealer may create an electronic copy of the original business record and retain the electronic copy of the business record for the remaining duration of the three–year retention period. Documents stored electronically are also required to be retrievable within three business days when requested by the department.

The department proposes to amend Section 272.02 to allow vehicle dealers to create original business records in an electronic format. Dealers are still required to retain the electronic records for the duration of the three–year retention period and the electronic records must be retrievable when requested by the department. The amended rule does not require vehicle dealers to create electronic records. Those dealers who want to continue creating and storing paper documents can continue to do so and dealers who create paper records and transfer them to electronic copies at a later date may also continue to do so.

The department anticipates this proposed action will benefit vehicle dealers by allowing them more control over their record retention procedures and by relieving them from the potential economic burden of storing paper records.

CONSISTENCY AND COMPATIBILITY
WITH STATE REGULATIONS

The department conducted a review of other regulations and has determined there are no other regulations related to the document retention requirements for licensed vehicle dealers. Therefore, the proposed regulations are neither incompatible nor inconsistent with existing state regulations.

DOCUMENTS INCORPORATED
BY REFERENCE

There are no documents incorporated by reference.

ECONOMIC AND FISCAL
IMPACT DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Effects on Housing Costs:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Cost Impact on Representative Private Persons or Businesses:* The department is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.
- *Small Business Impact:* This proposed action is likely to impact small businesses, however, the amended rule will not change record retention requirements. If a small business chooses to continue to generate original business records in a paper format, they may continue to do so. Conversely, if a business chooses to generate business records in an electronic format, they may do so.
- *Local Agency/School District Mandate:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:* The department does not anticipate this action will have a significant statewide adverse economic impact on businesses,

including the ability of California businesses to compete with businesses in other states. This proposed action intends to allow vehicle dealers to have more control over their record retention processes.

RESULTS OF THE ECONOMIC
IMPACT STATEMENT

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

The department has made the initial determination that this action will not impact, 1) the creation or elimination of jobs within the State of California, 2) the creation or elimination of existing businesses within the State of California, 3) the expansion of businesses currently doing business within the State of California, or 4) worker safety or the state's environment.

This action is intended to benefit the vehicle dealer industry by allowing vehicle dealers greater control over their record retention practices by potentially eliminating the requirement that a dealer retain purchase documentation in paper format.

PUBLIC DISCUSSIONS OF
PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

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

CONTACT PERSON

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

Randi Calkins, Regulations Specialist
Department of Motor Vehicles
Legal Affairs Division
P.O. Box 932382, MS C-244
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 282–7294
 Facsimile: (916) 657–6243
 Email: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Peggy Gibson, Attorney IV
 Department of Motor Vehicles
 Telephone: (916) 657–6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strike-out to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <https://www.dmv.ca.gov/portal/about-the-california-department-of-motor-vehicles/california-dmv-rulemaking-actions/>.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 16. VETERINARY MEDICAL BOARD

UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES

NOTICE IS HEREBY GIVEN that the Veterinary Medical Board (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 Tuesday, December 12, 2023, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section(s) 315.4 and 4808 of the Business and Professions Code (BPC), section 11400.20 of the Government Code (GOV) and to implement, interpret, or make specific BPC sections 315.2, 315.4, 4837, 4845, 4871, 4876, 4883, 4886 and GOV sections 11400.20 and 11425.50(e), the Board is considering amending section 2006 of, and adding sections 2006.5, 2006.51, 2006.52, 2006.53, 2006.54, 2006.55, and 2006.56 to, article 1 of division 20 of title 16 of the California Code of Regulations (CCR)¹.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 4800.1 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is in-

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

consistent with other interests sought to be promoted, the protection of the public shall be paramount. BPC section 4808 authorizes the Board, in accordance with the Administrative Procedure Act (Government Code section 11400 et seq.), to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Veterinary Medicine Practice Act (Practice Act) (BPC section 4800, et seq.).

This regulatory proposal will allow the Board to address the substance–abuse issue within the veterinary profession by implementing the “Uniform Standards Regarding Substance–Abusing Healing Arts Licensees” (DCA Uniform Standards) drafted by the Department of Consumer Affairs (DCA) Substance Abuse Coordination Committee and revised in March of 2019. In this regulatory proposal the Board will adopt seven new regulation sections (16 CCR sections 2006.5, 2006.51, 2006.52, 2006.53, 2006.54, 2006.55, and 2006.56) and amend 16 CCR 2006 to update the Disciplinary Guidelines and incorporate by reference the “Veterinary Medical Board’s Uniform Standards for Substance–Abusing Licensees, January 2022,” (*Vet Med Standards*). In addition, the process will allow the Board to utilize the methods and standards adopted by other healing arts boards under DCA and this will enable DCA to track the overall effectiveness of the monitoring programs of all DCA licensees and registrants.

ANTICIPATED BENEFITS OF PROPOSAL

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

This proposal will enhance consumer protection by implementing the DCA Uniform Standards. This will enable the Board to provide substance–abusing licensees and registrants with continued monitoring and testing to encourage sobriety with the hope that a high proportion of licensees and registrants successfully stop utilizing prohibited substances. This proposal also provides licensees confidentiality as they progress through and complete the program without the worry of their personal information being shared with the public. This proposal establishes consistent standards to apply when dealing with substance–abusing licensees, and notifies applicants, licensees, registrants, evaluators, laboratories, specimen collectors, wellness program vendors, and the public how the Board will implement the DCA Uniform Standards. The *Vet Med Standards* set out required and optional terms and conditions of probation to be applied for substance–abusing individuals. These terms and conditions of probation make clear to Administrative Law Judges, Deputy Attorney Generals, applicants,

licensees, and the public how the Board will implement the DCA Uniform Standards. This proposal will allow the Board to utilize methods and standards that have been adopted by other healing arts boards under DCA to track the overall effectiveness of its monitoring programs.

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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Based on current licensee probation data, the Board estimates twenty (20) veterinarian licensees and six (6) registered veterinary technicians (RVTs) will be in the wellness program per year for the duration of their five–year probation period. As a result, wellness program participation is anticipated to remain unchanged. The Board currently does not anticipate an increase in citations or fines being assessed, but it does anticipate minor additional workload costs associated with probation monitoring.

Board staff spend approximately a third of its probation monitoring time on cases involving prohibited substances, which includes roughly 1,175 hours of staff time per year.

The Board has identified the following processes and costs as follows:

- **Initial Documentation Received:** The Board receives a complaint or conviction information about licensees or registrants and initiates the investigation phase, which results in an estimated total cost of \$19,996 per year and up to \$229,236 over a ten–year period.
- **Review Subsequent Documentation:** The Board will review the documentation to determine if an enforcement action is required, which results in an estimated total cost of \$5,318 per year and up to \$60,965 over a ten–year period.
- **Case Review by the Attorney General’s (AG’s) Office:** After the Board’s review of the documentation, the item is reviewed by the AG’s Office, which results in an estimated total cost of \$8,387 per year and up to \$96,142 over a ten–year period.

- **Probation Monitoring:** Licensees subject to probation monitoring, which includes reviewing reports, informing the licensees of the terms of probation, overseeing the monitoring process, and investigating technical probation violations, results in an estimated total cost of \$62,141 per year and up to \$712,380 over a ten-year period.
- **Review Disciplinary Action Items while on Probation:** Licensees who violate the terms of probation and have an incident while on probation result in an estimated total cost of \$4,606 per year and up to \$52,803 over a ten-year period.
- **Close Probation Case:** Licensees who have completed the terms of their probation and their case should be closed result in an estimated total cost of \$972 per year and up to \$11,143 over a ten-year period.

The Board estimates total probation monitoring costs ranging from \$101,420 to \$132,330 and up to \$1.2 million over a ten-year period.

Additionally, the Board will charge probation monitoring fees during an individual’s five-year probation period, which results in revenues of \$3,200 in year-one and \$1,200 per year thereafter.

The Board estimates total monitoring revenues for 26 probationers and 6 in the wellness program of \$43,200 per year and up to \$432,000 over a ten-year period.

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 regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the inability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- It will not create or eliminate jobs within the State of California because it does not impose requirements for businesses to hire or eliminate licensees.

- It will not create new business or eliminate existing businesses within the State of California because this regulation will only impact licensees who have been placed on probation and are only ordered to cease practice due to testing positive for a prohibited substance.
- It will not affect the expansion of businesses currently doing business within the State of California because it does not impose additional hiring requirements for owners or a managing licensee (veterinarian) over a veterinary premises.

This regulatory proposal has the following benefits:

- It affects the health and welfare of California residents because it requires the licensee to be completely compliant with the conditions in their recovery program and/or probation or the Board can issue a cease practice order.
- It does not affect worker safety because it does not involve worker safety.
- It does not affect the state’s environment because it does not involve the environment.

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 wellness program.

Income Loss Over One Month

Licensees and registrants referred to in-patient treatment will be required to cease practicing veterinary care for a 30-day period. The following estimates are for each license type:

- RVTs are estimated to lose \$3,933 of income (each individual) during this time with an average yearly estimated cost of \$23,597 with a total cost of \$235,971 over a ten-year period.
- Veterinarians are estimated to lose \$10,493 of income (each individual) during this time with an average yearly estimated cost of \$209,868 with a total cost of \$2.10 million over a ten-year period.

Wellness Program Costs per Licensee

An individual licensee participating in the Wellness Program for the duration of their five-year probation period will incur costs of \$33,008 in year one and \$31,499 in years two through five and up to \$159,004 over a five-year period. Those individuals requiring in-patient treatment will incur an additional \$40,000 in costs, plus wage loss of \$3,933 (RVT) or \$10,493 (veterinarian), in year one.

Wellness Program Costs Over the Long-Term

Of these twenty-six (26) probationers each year, five (5) participants will be required undergo a 30-day in-

treatment program and be subject to lost wages during this time estimated at \$43,933 (RVT) or \$50,493 (veterinarian) per participant.

The Board has identified wellness program activities and costs as follows:

- **Wellness Program Costs and Monthly Monitoring:** Licensees participating in the program will have to pay a \$2,000 one-time fee and a \$100 monthly probation monitoring fee, which results in total costs of \$3,200 in year one and \$1,200 in each subsequent year per participant and up to \$146,000 over a ten-year period.
- **Clinical Diagnosis:** Licensees participating in the program will likely have to undergo an initial clinical diagnostic evaluation and pay approximately \$5,000 one-time, which results total costs of \$130,000 per year and up to \$1.30 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 during the first year and be tested between 36 to 104 times per year thereafter and pay \$5,439 in years two through five, which results in costs ranging from \$180,648 to \$746,304 per year and up to approximately \$6.05 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 costs ranging from \$141,960 to \$709,800 per year and up to approximately \$5.68 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 costs ranging from \$405,600 to \$2.03 million per year and up to approximately \$16.22 million over a ten-year period.
- **In-Patient Treatment:** Licensees may be subject to a 30-day in-patient treatment program with estimated one-time costs of \$40,000, plus wage loss of \$3,933 (RVT) or \$10,493 (veterinarian), which results in costs of \$43,933 (one RVT) or \$201,974 (four veterinarians) per year and up to approximately \$2.46 million over a ten-year period.
- **Other Future Costs:** Participants will have to pay a fee to participate in the Wellness Program 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.

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 may affect small businesses. The proposed regulations are expected to require a small number of veterinarians and RVTs to take off time from work in order to meet the requirements of testing and probation monitoring.

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 1747 N. Market Blvd., Ste. 230, Sacramento, California 95834 during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 1747 N. Market Blvd., Ste. 230, Sacramento, California 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written 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: Jeffrey Olguin
Address: Veterinary Medical Board
1747 N. Market Blvd., Ste. 230
Sacramento, CA 95834
Telephone Number: (916) 282–6893
Fax Number: (916) 928–6849
Email Address: jeffrey.olguin@dca.ca.gov

The backup contact person is:

Name: Kim Phillips–Francis
Address: Veterinary Medical Board
1747 N. Market Blvd., Ste. 230
Sacramento, CA 95834
Telephone Number: (916) 282–6907
Fax Number: (916) 928–6849
Email Address: kim.phillips-francis@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 website at https://www.vmb.ca.gov/laws_regs/proposed_regs.shtml.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 PROPOSITION 65

AMENDMENTS TO TITLE 27 CCR § 25601, 25602, 25603, 25607.2 AND NEW SECTIONS 25607.50, 25607.51, 25607.52, AND 25607.53 — CLEAR AND REASONABLE WARNINGS, SAFE HARBOR METHODS AND CONTENT

Publication Date: October 27, 2023
Public Hearing (Hybrid): December 13, 2023
Deadline for Public Comment: December 20, 2023

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 27 of the California Code of Regulations, Sections 25601, 25602, 25603, and 25607.2 and adopt new Sections 25607.50, 25607.51, 25607.52, and 25607.53.¹ The proposal intends to make the Proposition 65 short–form warning more informative to consumers, clarify existing safe harbor warning requirements for products sold on the internet and in catalogs, add signal word options for food warnings, clarify that short–form warnings may be used to provide safe harbor warnings for food products, and provide new tailored safe harbor warnings for passenger or off–highway motor vehicle parts and recreational marine vessel parts.

A copy of the proposed amendments is available on the OEHHA Website at [Notices — OEHHA \(ca.gov\)](https://oehha.ca.gov/Notices).

PUBLIC HEARING

OEHHA has scheduled a public hearing on December 13, 2023, at 10:00 a.m. (PST) in the Sierra Hearing Room located at the CalEPA Headquarters at 1001 I Street in Sacramento to receive comments about this action. The hearing will be hybrid, conducted both remotely and in person. Information concerning how to participate in the hearing remotely will be posted on our website prior to the hearing.

If you have special accommodation or language needs, please contact Monet Vela by telephone at (916) 323–2517 or by email at monet.vela@oehha.ca.gov. TTY/TDD/Speech–to–Speech users may dial 7–1–1 for the California Relay Service.

¹ All further references are to sections of Title 27 of the California Code of Regulations, unless otherwise indicated.

PUBLIC COMMENTS

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. To be considered, **OEHHA must receive comments by December 20, 2023**, the designated close of the written comment period. All written comments will be posted on the OEHHA website after the close of the public comment period.

OEHHA strongly recommends that the public submit written information electronically, rather than in paper form. Comments may be submitted electronically through our website at <https://www.oehha.ca.gov/comments>. Alternatively, comments can be mailed to the address below.

Monet Vela
Office of Environmental Health Hazard
Assessment
1001 I Street, 23rd Floor
P.O. Box 4010
Sacramento, CA 95812–4010
Telephone: 916–323–2517

OEHHA encourages commenters to submit their comments in a format compliant with the accessibility requirements of the Americans with Disabilities Act, so that they can be read using screen reader technology to ensure that people with visual impairments are able to listen to the comments.

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that written and oral comments, attachments and associated contact information (e.g., your name, address, and email etc.) become part of the public record and can be released to the public upon request.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela at (916) 323–2517, or by email to monet.vela@oehha.ca.gov.

Kristi Morioka is a back-up contact person for inquiries concerning processing of this action and is available at (916) 322–5624 or kristi.morioka@oehha.ca.gov.

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

Health and Safety Code sections 25249.6 and 25249.11.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

BACKGROUND

OEHHA is the lead agency that implements Proposition 65² and has the authority to promulgate and amend regulations to further the purposes of the Act. The Act requires businesses to provide a clear and reasonable warning before they cause an exposure to a chemical listed as known to the state to cause cancer or reproductive toxicity.³ The Act also prohibits the discharge of listed chemicals to sources of drinking water.⁴ Article 6 of OEHHA’s regulations includes safe harbor warning methods and content that businesses can use to comply with the Act. OEHHA’s safe harbor regulations are non-mandatory guidance. The proposed amendments would adopt new safe harbor warning content for short-form warnings, clarify existing safe harbor warning requirements for products sold on the internet and in catalogs, add signal word options for food warnings, clarify that short-form warnings may be used to provide safe harbor warnings for food products, and provide new tailored safe harbor warnings for passenger or off-highway motor vehicle parts and recreational marine vessel parts.

SUMMARY OF THE EFFECT OF THE
PROPOSED AMENDMENTS

OEHHA’s regulations include safe harbor warning methods and content that businesses can use to warn for consumer product exposures to listed chemicals. In adopting the existing warning regulations, OEHHA determined that an alternative to the general consumer product warning was needed for use on small packages or labels. The existing short-form warnings do not require identification of a specific chemical exposure for which a warning is being given. Not requiring a specific chemical to be included in the short-form warning has led to its over-use, and many businesses are using the short-form warning prophylactically because it protects from potential litigation. The proposal would require identification of a specific chemical exposure for which the warning is being given. OEHHA has determined that the proposed changes to the short-form warnings will provide sufficient information for consumers to make informed choices about their exposures to listed chemicals in consumer products and are necessary to further the purposes of the

² The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as “Proposition 65” (Health and Safety Code section 25249.5 et seq.) (hereafter referred to as “Proposition 65” or “the Act”).

³ Health and Safety Code section 25249.6.

⁴ Health and Safety Code section 25249.5.

Act and comply with the “clear and reasonable” warning requirement. The proposed changes would also provide clarity for businesses regarding other aspects of short-form warnings and regarding existing safe harbor warning requirements for internet and catalog purchasers.

The proposal would also add new sections 25607.50, 25607.51, 25607.52, and 25607.53 to create tailored warning methods and content for exposures to listed chemicals from passenger or off-highway vehicle parts and recreational marine vessel parts. The regulations would ensure that California consumers buying these parts receive a warning about their exposure and information about reducing the risk of exposure to listed chemicals.

SPECIFIC BENEFITS OF THE PROPOSED AMENDMENTS

The proposal would facilitate compliance with the Act by providing guidance regarding safe harbor warnings for consumer product exposures to listed chemicals. The health and welfare of California residents would likely benefit by increasing the public’s ability to understand the warnings they receive for consumer products they may choose to purchase.

COMPARABLE FEDERAL REGULATIONS

Proposition 65 is a California law that has no federal counterpart. OEHHA has determined that the regulations do not duplicate and will not conflict with federal regulations.

NO INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

OEHHA has conducted an evaluation and has determined that Article 6 is the only regulation concerning Proposition 65 warnings. Therefore, the proposed regulatory action is neither inconsistent nor incompatible with existing state regulations. The action does not change the existing mandatory requirements on businesses subject to Proposition 65, state or local agencies and does not address compliance with any other law or regulation.

NO FORMS OR DOCUMENTS INCORPORATED BY REFERENCE

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

LOCAL MANDATE/FISCAL IMPACT

Because Proposition 65 by its terms does not apply to local agencies or school districts,⁵ OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts would result from the proposed regulatory action, nor would there be any costs or savings to the state or in federal funding to the state because of the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has initially determined that the proposed regulatory action would have no effect on housing costs because it is limited to guidance concerning warnings for consumer product exposures to listed chemicals and because it does not impose any new mandatory requirements on any business.

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

The proposed regulatory action would provide non-mandatory compliance assistance to businesses subject to the Act by providing optional safe harbor warning methods and content for short-form warnings, guidance regarding general consumer product exposure warnings, and additional safe harbor warning options for passenger and off-highway motor vehicle and recreational marine vessel parts. To the extent some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning or to use the new tailored warning options, OEHHA estimates the overall total cost to businesses is well below the threshold that would trigger a Standardize Regulatory Impact Analysis (SRIA). OEHHA has therefore made an initial determination that the adoption of this action would not have a significant statewide adverse economic impact directly af-

⁵ See Health and Safety Code section 25249.11(b).

fecting businesses, including the ability of California businesses to compete with businesses in other states.

**RESULTS OF ECONOMIC
IMPACT ANALYSIS
(Gov. Code section 11346.3(b))**

**CREATION OR ELIMINATION OF JOBS
WITHIN THE STATE OF CALIFORNIA**

This regulatory action would not impact the creation or elimination of jobs within the State of California. The proposed amendments would help businesses comply with the requirements of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings can be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts. The proposed regulatory action would not impact the creation or elimination of jobs within California because the proposed regulatory action would not impose any mandatory requirements on small businesses. The regulations are non-mandatory guidance that businesses *may* use, but are not required to use, to comply with Proposition 65's "clear and reasonable" warning requirements.

**CREATION OF NEW BUSINESSES OR
ELIMINATION OF EXISTING BUSINESSES
WITHIN THE STATE OF CALIFORNIA**

This regulatory action would not impact the creation of new businesses or the elimination of existing businesses within the State of California. The proposed amendments do not impose new regulatory requirements on businesses. Instead, the proposed amendments will help businesses comply with the requirements of Proposition 65 by providing non-mandatory guidance for businesses concerning how safe harbor warnings should be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts. No new businesses will be created because the proposed amendments do not impose a new regulatory requirement, and no businesses will be eliminated.

Some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning or use the new tailored warning options for passenger or off-highway motor vehicle parts or recreational marine vessel parts, OEHHA estimates the overall total cost per business to be: \$4,273.46 (to change existing short-form labels, internet, and cata-

log warnings); \$697.30 (to use the new tailored warning sign for passenger or off-highway motor vehicle parts); and \$81.82 (to use the new tailored warning sign for recreational marine vessel parts).

**EXPANSION OF BUSINESSES CURRENTLY
DOING BUSINESS WITHIN THE STATE**

This regulatory action would not impact the expansion of businesses within the State of California. The proposed amendments would provide non-mandatory guidance for businesses concerning how safe harbor warnings should be provided for exposures to listed chemicals for consumer products, passenger or off-highway motor vehicle parts, and recreational marine vessel parts.

**BENEFITS OF THE PROPOSED
AMENDMENTS TO THE HEALTH AND
WELFARE OF CALIFORNIA RESIDENTS,
WORKER SAFETY, AND THE
STATE'S ENVIRONMENT**

The proposed regulatory action would benefit the health and welfare of California residents by providing more meaningful information regarding their exposures to listed chemicals and help eliminate over-warning for non-existent exposures to listed chemicals. The proposed action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety by providing consumers with information that can assist them in making informed choices about their exposures to listed chemicals. OEHHA has concluded that the public would benefit from the proposed amendments because they will provide a more specific warning option for businesses to use when they provide warnings for passenger or off-highway motor vehicle and recreational marine vessel parts. The action furthers the right-to-know purposes of the statute and therefore promotes public and worker health and safety.

**COST IMPACTS ON REPRESENTATIVE
PERSON OR BUSINESS**

To the extent some businesses currently using the existing short-form safe harbor warning will choose to modify their warnings to comply with the amended short-form safe harbor warning, and some businesses will choose to use the new tailored warning options for passenger or off-highway motor vehicle parts or recreational marine vessel parts, OEHHA estimates the overall total cost to businesses to be approximately \$14,694,927.67. OEHHA estimated that:

- the short-form amendment will result in costs associated with changing existing short-form warning labels and internet and catalog warnings totaling approximately \$14,538.327.67, or \$4,273.46 per business;
- the new passenger or off-highway motor vehicle parts tailored warning will result in costs associated with adoption of new tailored warning signs totaling approximately \$154,800.00, or \$697.30 per business; and
- the new recreational marine vessel parts warning will result in costs associated with the adoption of new tailored warning signs totaling approximately \$1,800.00, or \$81.82 per business.

The basis for these calculations is described in more detail in the Economic Impact Statement (STD 399).⁶

EFFECT ON SMALL BUSINESSES

While the proposal provides non-mandatory guidance, it may affect some small businesses as defined by Government Code section 11342.610. The Act does not apply to small businesses employing less than ten people.⁷ The proposed regulatory action will assist small businesses subject to the Act in determining whether or not a given warning satisfies the “clear and reasonable” warning criteria specified in the Act.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

Pursuant to Government Code section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, 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.

⁶ OEHHA, Economic and Fiscal Impact Statement (Regulations and Orders) STD 399, Amendments to Title 27 CCR § 25601-25603, 25607 et seq. — Clear and Reasonable Warnings, Safe Harbor (August 2023).

⁷ Health and Safety Code section 25249.11(b).

AVAILABILITY OF DOCUMENTS

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulation, all the information upon which the regulation is based, and the text of the proposed regulation. These documents are available on OEHHA’s web site at www.oehha.ca.gov/Proposition-65.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation that is changed or modified from the express terms of this proposed action will be made available to the public at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on the revised proposed regulation and the full text of the proposal will be provided to individuals who submitted oral or written comments at the public hearing, if any, whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such change. Copies of the notice and the changed regulation will also be available on the OEHHA Web site at www.oehha.ca.gov/Proposition-65.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons for this action may be obtained, when it becomes available, from Monet Vela at the email or telephone number indicated above. The Final Statement of Reasons will also be available on OEHHA’s web site at www.oehha.ca.gov/Proposition-65.

GENERAL PUBLIC INTEREST

FISH AND GAME COMMISSION

NOTICE OF FINDINGS FOR SAN BERNARDINO KANGAROO RAT (*Dipodomys merriami parvus*)

SEPTEMBER 19, 2023

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), at a

meeting on February 16–17, 2022, found pursuant to California Fish and Game Code Section 2075.5, that the information contained in the petition to list the subspecies San Bernardino kangaroo rat (*Dipodomys merriami parvus*) and other information in the record before the Commission, warrants adding San Bernardino kangaroo rat to the list of endangered species under the California Endangered Species Act (CESA) (Fish and Game Code, Section 2050 et seq.). (See also California Code of Regulations, Title 14, Section 670.1, subsection (i))

NOTICE IS ALSO GIVEN that, at its October 11–12, 2023, meeting, the Commission adopted the following findings outlining the reasons for its determination.

I. Background and Procedural History

Petition History

On March 15, 2019, the Endangered Habitats League submitted a petition to the Commission to list the San Bernardino kangaroo rat as endangered under CESA. The Commission reviewed the petition for completeness, and pursuant to Section 2073 of the California Fish and Game Code, referred the petition to the California Department of Fish and Wildlife (Department) on March 22, 2019 for evaluation. The Commission gave public notice of receipt of the petition on April 12, 2019 (California Regulatory Notice Register 2019, Number 15–Z, p.575). The Department transmitted to the Commission the Department’s petition evaluation on May 20, 2019, and on June 12, 2019, the Commission formally received the Department’s petition evaluation.

At its August 7–8, 2019 meeting, the Commission determined that listing may be warranted, and subsequently provided notice regarding the San Bernardino kangaroo rat’s candidate species status (California Regulatory Notice Register 2019, Number 34–Z, p. 1182).

Status Review Overview

The Commission’s action designating San Bernardino kangaroo rat as a candidate species triggered the Department’s process for conducting a status review to inform the Commission’s decision on whether to list the species.

On November 19, 2021, the Department transmitted to the Commission the Department’s report to the Commission, *Report to the Fish and Game Commission A Status Review of the San Bernardino kangaroo rat (Dipodomys merriami parvus)* in California, dated November 17, 2021. On December 15, 2021, the Commission formally received the Department’s status review report during a public meeting. On February 17, 2022, the Commission found that the information contained in the petition to list San Bernardino kangaroo rat and other information in the record before the

Commission warranted listing San Bernardino kangaroo rat as an endangered species under CESA.

Species Description

Kangaroo rats are notable for their bipedal locomotion, ability to subsist in dry habitats without drinking water, and external fur-lined cheek pouches used to carry seeds from foraging areas to cache locations. Kangaroo rats have relatively large heads, large hind feet, and long tufted tails, which help provide balance and agility while hopping.

The San Bernardino kangaroo rat is one of 19 subspecies of Merriam’s kangaroo rat (*Dipodomys merriami*) and one of three subspecies occurring in southern California. The San Bernardino kangaroo rat occurs only in California and its geographic range does not overlap with the range of the other Merriam’s kangaroo rat subspecies.

Information in the record indicates that the San Bernardino kangaroo rat is sufficiently different from the other subspecies to potentially warrant taxonomic designation as a full species.

The fur on its back, sides, and head is faintly yellow, with an overwash of dusky brown and with white fur on its belly and legs. The tail has dark brown stripes running along the dorsal and ventral surface, with whitish fur on the sides of the tail. The tail has a tuft of longer fur at its end. There are four toes on each hind foot, which distinguishes it from other similar sized kangaroo rats within its range, which have five toes on the hind feet.

II. Statutory and Legal Framework

The Commission, as established by the California State Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (California Constitution, Article IV, Section 20, subdivision (b); Fish and Game Code Section 2070.) The CESA listing process for this species began in the present case with the submittal of the petition to the Commission. The regulatory and legal process that ensued is described in some detail in the preceding section, along with related references to the Fish and Game Code and controlling regulations. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- Natural Resources Defense Council v. California Fish and Game Commission (1994) 28 Cal. App.4th 1104;
- Mountain Lion Foundation v. California Fish and Game Commission (1997) 16 Cal.4th 105;
- California Forestry Association v. California Fish and Game Commission (2007) 156 Cal.App.4th 1535;

- Center for Biological Diversity v. California Fish and Game Commission (2008) 166 Cal.App.4th 597;
- Central Coast Forest Association v. California Fish and Game Commission (2017) 2 Cal. 5th 594;
- Central Coast Forest Association v. California Fish and Game Commission (2018) 18 Cal.App. 5th 1191; and
- Almond Alliance of California v. California Fish and Game Commission (2022) 79 Cal.App. 5th 337.

The “is warranted” determination stems from Commission obligations established by Fish and Game Code Section 2075.5. Under the provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether listing a species is warranted or is not warranted. Here, the Commission made the finding under Section 2075.5(e)(2) that listing is warranted.

The Commission was guided in making its determinations by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease” (Fish and Game Code Section 2062). Similarly, the Fish and Game Code defines a threatened species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter” (*Id.*, Section 2067).

The Commission also considered Title 14, Section 670.1, subsection (i)(1)(A), of the California Code of Regulations in making its determination. The provision provides, in pertinent part, that the Commission will list the species or subspecies as endangered or threatened under CESA if the Commission determines that its continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or

6. other natural occurrences or human-related activities.

Fish and Game Code Section 2070 provides similar guidance, providing that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides that it is the policy of the state, not specific to the Commission per se, that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and to utilize their authority in furtherance of the purposes of CESA (Fish and Game Code Section 2055). The statutory guidance does not compel a particular determination by the Commission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA are of great remedial and public importance and thus should be construed liberally.” (*California Forestry Association v. California Fish and Game Commission*, supra, 156 Cal.App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish and Game Code sections 2051, 2052.)

Finally, in considering the six identified factors, CESA and controlling regulations require the Commission to actively seek and consider related input from the public and any interested party (see, e.g., *Id.*, sections 2071, 2074.4, 2078; California Code of Regulations, Title 14, Section 670.1, subdivision (h)). The related notice obligations and public hearing opportunities before the Commission are also considerable (Fish and Game Code sections 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; California Code of Regulations, Title 14, Section 670.1, subdivisions (c), (e), (g), (i); see also California Government Code Section 11120 et seq.). The referenced obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition, a related recommendation regarding candidacy, and a review of the candidate species’ status, culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science (Fish and Game Code sections 2073.4, 2073.5, 2074.4, 2074.6; California Code of Regulations, Title 14, Section 670.1, subdivisions (d), (f), (h)).

III. Factual and Scientific Bases for the Commission’s Final Determination

The factual and scientific bases for the Commission’s determination that designating San Bernardino kangaroo rat as an endangered species under CESA is warranted are set forth in detail in the Commission’s record of proceedings, including the petition; the Department’s petition evaluation report; the Department’s status review report; written and oral

comments received from members of the public, the regulated community, tribal entities, and the scientific community; and other evidence included in the Commission’s record of proceedings, which is incorporated herein by reference.

The Commission determines that the continued existence of San Bernardino kangaroo rat in the State of California is in serious danger by one or a combination of the following factors as required by the California Code of Regulations, Title 14, Section 670.1, subsection (i)(1)(A):

1. Present or threatened modification or destruction of its habitat,
2. overexploitation,
3. predation,
4. competition,
5. disease, or
6. other natural occurrences or human–related activities.

The Commission also determines that the information in the Commission’s record constitutes the best scientific information available and establishes that designating San Bernardino kangaroo rat as an endangered species under CESA is warranted. Similarly, the Commission determines that San Bernardino kangaroo rat is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease.

The items highlighted here and detailed in the following section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for San Bernardino kangaroo rat. Similarly, the issues addressed in these findings represent some, but not all, of the evidence, issues, and considerations affecting the Commission’s final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission.

Background

The Commission bases its “is warranted” finding for San Bernardino kangaroo rat most fundamentally on modification or destruction of habitat as well as the other listing factors identified below.

Threats

San Bernardino kangaroo rat is endangered due to:

- present or threatened modification or destruction of its habitat (See, e.g., Department’s status review report at 34–37 and 65, and references cited therein), and
- other natural occurrences or human–related activities, particularly:

- small population size (see, e.g., Department’s status review report at 37–40 and 66, and references cited therein),
- population genetics factors (see, e.g., Department’s status review report at 40–42 and 66, and references cited therein), and
- climate change (see, e.g., Department’s status review report at 50–52 and 67, and references cited therein).

The Commission finds these factors to result in a significant threat to the continued existence of San Bernardino kangaroo rat as explained in the Department’s status review report. This finding and the Department’s explanation are supported by the whole of the record before the Commission.

IV. Final Determination by the Commission

The Commission has weighed and evaluated the information for and against designating San Bernardino kangaroo rat as an endangered species under CESA, including scientific and other general evidence in the petition; the Department’s petition evaluation report; the Department’s status review report; the Department’s related recommendations; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission’s record of proceedings.

Based upon the evidence in the record, the Commission has determined that the best scientific information available indicates the continued existence of San Bernardino kangaroo rat is in serious danger by present or threatened modification or destruction of the species’ habitat, predation, competition, disease, or other natural occurrences or human–related activities, where such factors are considered individually or in combination (see generally, California Code of Regulations, Title 14, Section 670.1, subdivision (i)(1)(A); Fish and Game Code sections 2062, 2067). The Commission determines that there is sufficient scientific information to indicate that designating San Bernardino kangaroo rat as an endangered species under CESA is warranted, and that with adoption and publication of these findings San Bernardino kangaroo rat, for purposes of its legal status under CESA, shall be listed as endangered.

DEPARTMENT OF FISH AND
WILDLIFE

HABITAT RESTORATION AND
ENHANCEMENT ACT
CONSISTENCY DETERMINATION
NUMBER 1653–2023–127–001–R1

Project: Improving the Structural Integrity of
Beaver Dams and Naturally
Occurring Log Jams in Mid–French
Creek Project

Location: Siskiyou County

Applicant: Betsy Stapleton, Scott River Watershed
Council

Background

Project Location: The Improving the Structural Integrity of Beaver Dams and Naturally Occurring Log Jams in Mid–French Creek Project (Project) is located along French Creek, tributary to the Scott River, Etna, California, 96027. The coordinates of the Project are 41.391664° N, 122.871463° W (upstream) and 41.402589° N, 122.867706° W (downstream), at a property owned by Betsy Stapleton. French Creek is a tributary to the Scott River and supports populations of southern Oregon/northern California coho salmon (*Oncorhynchus mykiss*), steelhead trout (*Oncorhynchus kisutch*) and North American Beaver (*Castor canadensis*).

Project Description: Scott River Watershed Council (Applicant) proposes to enhance or restore habitat within French Creek to provide a net conservation benefit for coho salmon. French Creek has been identified as one of the highest priority Scott River tributaries for restoration in multiple recovery plans.

The goal of the Project is to improve rearing habitat for both over–summering and over wintering coho salmon, and other aquatic species, by improving the structural integrity of beaver dams and naturally occurring log jams. The Project will consist of pounding vertical posts at locations where beavers are constructing, or have historically constructed, dams, and at locations of naturally occurring log jams along a 1.45–kilometer reach of French Creek.

The treatment reach varies from incised stream channel to areas with rock revetment extending eight feet in elevation above the base flow thalweg. Historically, beavers have built dams throughout the reach creating significant over wintering and over summer habitat for coho salmon. However, due to the incision and the resulting concentration of flow, the dams blow out most winters, requiring the beavers to reconstruct them on an annual basis. The log jams typically blow out in a two–year event, resulting in further incision

of the streambed, which limits in–stream habitat and lowers the water table, further stressing riparian vegetation.

To improve the structural integrity of beaver dams and naturally occurring log jams, the Project will include the use a handheld hydraulic post pounder or a manual post pounder to drive untreated wood posts in key locations where beaver dams or log jams occur or have occurred in the past. The post may be driven in a line perpendicular to the stream channel, following the crest of a beaver dam, or strategically placed to provide in–stream features structural integrity in desired locations.

The Project will be implemented in phases over the next five years and will be carried out with a field fit, adaptive management strategy during annual work windows. Activities may proceed as needed within the work windows using the tools, techniques, and resource protection measures as described in the application package. The Applicant will notify the Regional Water Board and the California Department of Fish and Wildlife at least two weeks prior to commencing activities with work dates with a general description of the work activities. Techniques may also include riparian planting, planting maintenance, invasive vegetation management, and caging or sand painting of native trees. The cumulative project size shall not exceed five acres or 500 linear feet over the five–years of phased implementation.

Phase 1 will place four post lines; one in a beaver dam at the most downstream portion of the treatment reach, one in a naturally occurring log jam midway in the reach, and two additional locations as determined by beaver activity. It is anticipated that 200 posts will be placed, resulting in approximately eight feet and 0.005 acres of temporary impacts to the stream channel.

The Project design, implementation, and best management practices will be carried out in accordance with the Low–Tech Process Based Restoration of Riverscapes Design Manual (2019) and the Beaver Restoration Guidebook (2015) and will adhere to all information provided in the Notice of Intent (NOI) package.

Project Size: The total area of ground disturbance associated with the Project is approximately 5 acres maximum and 500 linear feet maximum. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) Up

to 2,000 untreated wood posts (no larger than ten feet in length and 18 inches in diameter).

Project Timeframes: Start date: September 2023.

Completion date: September 2028.

Work window: Instream work: September 1 and November 15, Out of stream work: March 1 and November 15.

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish spawning and rearing habitat, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) Number 1A23123WNSI, Electronic Content Management Identification (ECM PIN) Number CW-889853 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Oregon/Northern California coho salmon, steelhead trout, and migrating birds.

Receiving Water: French Creek, tributary to the Scott River.

Filled or Excavated Area: Permanent area impacted: none.

Temporary area impacted: 5 acres maximum.

Length permanently impacted: 0 linear feet.

Length temporarily impacted: 500 linear feet.

Discharge Volume: 2000 wooden posts.

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

Noticing: On September 5, 2023, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on September 5, 2023, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2023-0905-08) on September 15, 2023. Upon approval, CDFW will file a final notice

pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

Specifically, CDFW finds that: (1) The Project purpose is voluntary habitat restoration and the Project is not required as mitigation; (2) the Project is not part of a regulatory permit for a non-habitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order; and (3) the Project meets the eligibility requirements of the State Water Resources Control Board's Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects.

Avoidance and Minimization Measures

The avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI. The specific avoidance and minimization requirements are found in the addendum titled: Improving the Structural Integrity of Beaver Dams and Naturally Occurring Log Jams in Mid French Creek 1.doc in the section titled, Best Management Practices and Resource Protection Measures (beginning on page 11), of the addendum.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI titled: Improving the Structural Integrity of Beaver Dams and Naturally Occurring Log Jams in Mid French Creek 1.doc in the section titled, Monitoring Plan and Reporting (beginning on page 10), of the addendum.

Notice of Completion

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

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

- success criteria for the Project.

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant’s NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: Stacey.Alexander@wildlife.ca.gov.

Project Authorization

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

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

On 9/13/2023, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the South Fork Ten Mile River Large Wood Enhancement Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID Number 1B23143WNME; ECM PIN Number CW–890417) for coverage under the General 401 Order on 10/10/2023.

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

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

DEPARTMENT OF FISH AND WILDLIFE

FISH AND GAME CODE SECTION 1653
 CONSISTENCY DETERMINATION
 REQUEST FOR
 SOUTH FORK TEN MILE RIVER LARGE
 WOOD ENHANCEMENT PROJECT
 (TRACKING NUMBER:
 1653–2023–129–001–R1)
 MENDOCINO COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on 10/12/2023, that Trout Unlimited proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves building 33 distinct large wood structures with 86 pieces of wood to enhance spawning and rearing habitat for salmonids. The proposed project will be carried out on South Fork Ten Mile River, located 6.25 miles upstream of the confluence with Ten Mile River, Mendocino County, California.

DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING BY THE REAL
 ESTATE COMMISSIONER:
 ANNUAL FEE REVIEW —
 REQUIRED BY STATUTE

Real Estate Commissioner Douglas R. McCauley proposes to consider whether the fees charged by the Department of Real Estate (“DRE”) should be lower than the maximum amount allowed pursuant to California Business and Professions Code (“the Code”) Sections 10209.5, 10210, 10214.5, 10215, 10250.3 and 11011. The Commissioner’s consideration will include all comments, objections and recommendations regarding such fees.

PUBLIC HEARING ANNOUNCEMENT

Sections 10226 and 11011 of the Code require, among other things, that at least one regulation hearing be held each calendar year to determine if fees

lower than those authorized under Section 10226.5 (b) of the Code should be prescribed. The hearing referred to below shall serve as the regulation hearing for the purpose of satisfying the requirement of Sections 10226(a) and 11011(a) of the Code. DRE may present, at this hearing, relevant data compiled by the DRE, and other sources, if appropriate, that have been used or which may be used in making the determination if fees should be lower. There is no proposal to adopt, amend and/or repeal any sections of the California Code of Regulations (CCR) at this time. However, the Commissioner wishes to consider all comments, objections and recommendations regarding such fees.

DRE will hold a public hearing starting at 10:00 a.m., on Tuesday, December 12, 2023, at the DRE's Sacramento Office, located at 1651 Exposition Boulevard, Sacramento, California. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

DRE is also making this year's hearing available online through Microsoft Teams. Contact DRE's contact person via the channels listed below for an email invitation to the event.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to DRE's fee structure. The written comment period closes on December 12, 2023. All written comments must be received by 5:00 p.m. on that date at DRE's Sacramento Office as follows:

Daniel E. Kehew, Real Estate Counsel
California Department of Real Estate
P.O. Box 137007
Sacramento, CA 95813-7007
Email: DRE.RegComments@dre.ca.gov
Telephone: (916) 576-7842

Backup contact person for this proposed action is James B. Damrell at (916) 576-8100.

DRE will mail or deliver a copy of this Hearing Notice by the Commissioner to DRE's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with DRE.
2. The Secretary of the Business, Consumer Services and Housing Agency.
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be affected by any fee adjustment. (To restate: This announcement involves no such

adjustment.) DRE has no way of knowing which licensees are small businesses.

4. The California Association of Realtors (a real estate licensee trade organization) and the California Building Industry Association (a home builders trade organization).
5. A substantial number of land developers. Not small businesses by definition, they may, nevertheless, be affected by any fee adjustment. (To restate: This announcement involves no such adjustment.)

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF PUBLIC COMMENT PERIOD FOR SETTLEMENT AGREEMENT MOMIN LODGE

PUBLIC COMMENT PERIOD:
OCTOBER 27, 2023 TO NOVEMBER 26, 2023

WHAT IS PROPOSED — The Department of Toxic Substances Control (DTSC) invites the public to review and comment on the Settlement Agreement executed between DTSC and the Momin Lodge Islamic Research & Education Center (Momin) regarding recovery of environmental response action costs incurred from 2012 to date at the Momin Lodge site located at 1918 Artesia Boulevard, Torrance, California 90504 (Site). DTSC and the responsible party entered into this agreement under Health and Safety Code 25358.3 and 58009. DTSC and Momin agree that settlement without litigation or admission of any issue of fact or law is the most appropriate means of resolving all issues related to the Site.

The Site consists of 3.5 acres and is identified by Assessor's Parcel numbers 4096-004-017 and 4096-004-018. DTSC determined that environmental response actions are necessary at the Site because there has been a release and/or there was a threatened release of hazardous substances. DTSC conducted a response action to protect public health and the environment. Momin has claimed an inability to pay past and future response costs and DTSC has relied upon Momin's documents in conducting an ability to pay analysis. Momin has offered \$125,000.00 to resolve its liability for past and future response costs at the Site. DTSC is recovering a part of its response costs from responsible parties under the California Hazardous Substances Account Act. Additional details are outlined in the Settlement Agreement.

HOW CAN I GET INVOLVED — DTSC will consider written public comments on the proposed

Settlement Agreement that are postmarked or emailed by November 26, 2023. Comments should be addressed to: Farah Itani, Project Manager, 5796 Corporate Avenue, Cypress, California 90630, or email your comments to Farah.Itani@dtsc.ca.gov.

WHERE DO I GET INFORMATION — The proposed Settlement Agreement and other documents related to the Site are available at the following location: **DTSC Cypress Office**, 5796 Corporate Avenue, Cypress, California 90630; phone: (714) 484–5337 (By appointment only; Monday–Friday, 8 a.m. to 5 p.m.) Copies of these documents, key technical reports, and other site–related information are also available online at DTSC’s database: https://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=60001010.

FOR MORE INFORMATION — Contacts for project related questions:

Farah Itani, DTSC Project Manager
Tel: (714) 484–5471
Email: Farah.Itani@dtsc.ca.gov

Chinh Sheow, DTSC Public Participation
Tel: (818) 717–6571
Email: Chinh.Sheow@dtsc.ca.gov

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 **December 14, 2023**, at 10:00 a.m.
at the Robert H. Miller III Rotary Clubhouse
7150 Baldwin Dam Road, Folsom, 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 in-

terested persons on any item concerning occupational safety and health.

BUSINESS MEETING:

On **December 14, 2023**, at 10:00 a.m.
at the Robert H. Miller III Rotary Clubhouse
7150 Baldwin Dam Road, Folsom, 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.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State,

CALIFORNIA REGULATORY NOTICE REGISTER 2023, VOLUME NUMBER 43-Z

Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

Department of Social Services
File # 2023-1010-02
Group Homes for Children with Special Healthcare Needs

This action is a readoption of emergency regulations that added a new Subchapter 7, concerning Group Homes for Children with Special Health Care Needs, in Chapter 5 of Division 6 of Title 22 of the California Code of Regulations. This action is exempt from Office of Administrative Law review and deemed to be an emergency situation pursuant to Health and Safety Code section 1567.51(c)(2)(B).

Title 22, MPP
Adopt: 84700, 84701, 84710.2, 84718, 84720, 84722, 84723, 84740, 84742, 84761, 84764, 84765, 84765.5, 84766, 84769.2, 84770, 84772, 84775, 84775.1, 84787
Amend: 80061, 80068.2
Filed 10/17/2023
Effective 10/24/2023
Agency Contact:
Kenneth Jennings (916) 216-5845

State Water Resources Control Board
File # 2023-1012-04
Emergency Regulation Amending ELAP Fee Regulations

This emergency action by the State Water Resources Control Board (the "State Water Board") amends the fee schedule for the Environmental Laboratory Accreditation Program (ELAP) by increasing fees 30 percent. Pursuant to Health and Safety Code section 100829(f)(3), this action is a deemed emergency, exempt from OAL review, and remains in effect until revised by the State Water Board.

Title 22
Amend: 64802.25
Filed 10/18/2023
Effective 10/18/2023
Agency Contact: Justin Davis (916) 449-5670

California Health Benefit Exchange
File # 2023-1003-01
Individual Eligibility and Enrollment and Appeals Process

The California Health Benefit Exchange (Exchange) adopted emergency regulations, pursuant to Government code section 100504, related to definitions, abbreviations, standards for notice, standards for eligibility determination and redetermination for qualified health plans, requirements for coverage el-

igibility, procedures for termination of coverage, and an appeals process. In this fifth emergency re-adopt, the Exchange amends its regulations to revise provisions related to applications and terms of eligibility, redetermination, special enrollment periods, and appeals procedures.

Title 10
Amend: 6408, 6410, 6470, 6472, 6474, 6476, 6478, 6482, 6484, 6486, 6492, 6494, 6496, 6498, 6500, 6502, 6504, 6506, 6508, 6602, 6604, 6606, 6608, 6610, 6612, 6614, 6616
Filed 10/13/2023
Effective 10/13/2023
Agency Contact:
Faviola Ramirez-Adams (916) 228-8668

California Unemployment Insurance Appeals Board
File # 2023-1004-02
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. OAL filed this regulation with the Secretary of State and will publish the regulation in the California Code of Regulations.

Title 22
Amend: 5200
Filed 10/17/2023
Effective 10/17/2023
Agency Contact: Kim Hickox (916) 263-6806

Board of Registered Nursing
File # 2023-0907-01
Scope of Practice (SB 1237)

In this change without a regulatory effect, the Board amends its regulation to change the language to gender neutral pronouns.

Title 16
Amend: 1463
Filed 10/18/2023
Agency Contact: Marissa Clark (916) 574-7438

Department of Motor Vehicles
File # 2023-0908-01
Business Partner Automation Program: Customer Fee

This change without regulatory effect increases, from 27 to 28 dollars, the fee that automobile dealerships may charge their customers for processing vehicle registration and titling transactions and services related to reporting vehicle sales and producing temporary license plates.

Title 13
 Amend: 225.45
 Filed 10/13/2023
 Agency Contact: Randi Calkins (916) 282–7294

California Architects Board
 File # 2023–0914–01
 Form of Examinations

In this regular rulemaking, the California Architects Board is revising the eligibility requirements to take the Landscape Architect Registration Examination.

Title 16
 Amend: 2615
 Filed 10/12/2023
 Effective 10/12/2023
 Agency Contact: Kourtney Fontes (916) 575–7233

California Architects Board
 File # 2023–1005–01
 Examination Transition Plan

This action amends section 2614(g)(2) of title 16 of the California Code of Regulations to enable landscape architecture license applicants, who pass sections of the Landscape Architect Registration Examination (LARE) during the October 2023 administration of the examination, to earn credit toward passage of the restructured LARE which will be administered beginning December 1, 2023.

Title 16
 Amend: 2614
 Filed 10/11/2023
 Effective 10/11/2023
 Agency Contact: Kourtney Fontes (916) 575–7233

California Horse Racing Board
 File # 2023–0901–03
 Conduct Detrimental to Horse Racing

This action prohibits licensee participation in or attendance at non-recognized race meetings.

Title 04
 Amend: 1902
 Filed 10/13/2023
 Effective 01/01/2024
 Agency Contact: Sidney Villareal (916) 263–6008

California School Finance Authority
 File # 2023–0831–01
 Charter Finance Enhancement Program

This action adopts regulations to implement the Charter Finance Enhancement (Charter FinE) Program via funding by a grant award under the U.S. Department of Education’s (DOE) Credit Enhancement for Charter Schools Facilities Program (CFDA #84.354A) Grant for the purpose of funding

debt reserves for the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt.

Title 04
 Adopt: 10200.16, 10200.17, 10200.18, 10200.19, 10200.20, 10200.21, 10200.22, 10200.23
 Filed 10/12/2023
 Effective 10/12/2023
 Agency Contact: Ryan Storey (213) 620–6360

Department of Alcoholic Beverage Control

File # 2023–0905–01

Beer Price Posting

This rulemaking action amends beer price posting requirements to further implement standards for promotional allowances, define beer price posting terminology, and update the method in which beer price schedules are posted by switching to an online platform.

Title 04
 Adopt: 105.1, 105.2
 Amend: 105
 Filed 10/17/2023
 Effective 10/17/2023
 Agency Contact:
 Robert de Ruyter (916) 419–8958

Department of Health Care Access and Information

File # 2023–0906–01

LTC Financial Reporting — Expanding Managed Care

In this rulemaking action, the Department amends its regulations to update two documents incorporated by reference: the Accounting and Reporting Manual for California Long-Term Care Facilities, Second Edition (LTC Manual), and the Instructions and Specifications for Developing Approved Software to Prepare the California Long-Term Care Facility Integrated Disclosure and Medi-Cal Cost Report (LTC Report). The amendments update the agency’s name in the documents, revises reporting procedures and software specifications, and expand the number of payer categories.

Title 22
 Amend: 97019, 97041
 Filed 10/18/2023
 Effective 01/01/2024
 Agency Contact: Lexie Bloyd (916) 326–3833

Department of Pesticide Regulation
File # 2023-0901-02
Spray Adjuvant Ingredient Statement Requirements

In this rulemaking action, the Department of Pesticide Regulation is adopting regulations regarding labeling the ingredients used in spray adjuvants.

Title 03
Adopt: 6247
Filed 10/12/2023
Effective 01/01/2024
Agency Contact: Lauren Otani (916) 445-5781

California Student Aid Commission
File # 2023-1002-02
Learning-Aligned Employment Program (LAEP)

This regular rulemaking action by the California Student Aid Commission adopts requirements for the Learning-Aligned Employment Program for eligible college and university students.

Title 05
Adopt: 30600, 30601, 30602, 30603, 30604
Filed 10/18/2023
Effective 01/01/2024
Agency Contact:
Synequeen Alasa-as (916) 464-6411

Department of Justice
File # 2023-0831-02
Racial and Identity Profiling Act (RIPA) Regulations

This rulemaking by the California Department of Justice makes amendments to regulations imple-

menting California's Racial and Identity Profiling Act of 2015, relating to the collection and reporting of stop data pursuant to Government Code section 12525.5. This includes adding the new data element "Reason Given to the Stopped Person," as required by Government Code section 12525.5, subdivision (b) (3), as amended by Assembly Bill 2733 (Stats. 2022, c. 805), effective January 1, 2024.

Title 11
Amend: 999.226, 999.227, 999.228
Filed 10/11/2023
Effective 10/11/2023
Agency Contact: Marlon Martinez (213) 269-6437

**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.