GAVIN NEWSOM, GOVERNOR

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PROPOSED ACTION ON REGULATIONS

(Continued on next page)

Time-Dated Material

GENERAL PUBLIC INTEREST

SUMMARY OF REGULATORY ACTIONS

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT–OF–INTEREST CODES

AMENDMENT

MULTI–COUNTY: Victory Valley Community College District

Sage Oak Charter Schools

A written comment period has been established commencing on March 8, 2024, and closing on April 22, 2024. Written comments should be directed to the Fair Political Practices Commission, Attention Belen Cisneros, 1102 Q Street, Suite 3050, Sacramento, California 95811.

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

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict–of–interest codes. Any written comments must be received no later than April 22, 2024. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict–of–interest codes should be made to Belen Cisneros, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California 95811, telephone (916) 322–5660.

AVAILABILITY OF PROPOSED CONFLICT–OF–INTEREST CODES

Copies of the proposed conflict–of–interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the

Commission should be made to Belen Cisneros, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California 95811, telephone (916) 322–5660.

TITLE 2. STATE ALLOCATION BOARD

AMEND REGULATION SECTION 1859.76, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO THE LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above–referenced regulation section, 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 section under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and make specific reference Sections 17070.35, 17072.12, 17072.35 of the Education 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 September 27, 2023 meeting, the SAB adopted a proposed regulatory amendment, on an emergency basis, that would extend for two years (until January 1, 2026) the additional grant for general site development. This extension will prevent a lapse in regulatory authority and would continue to allow School Facility Program (SFP) new construction applications be processed with this additional grant. The Governor's budget has appropriated $1.9 billion for funding eligible new construction and modernization projects under the SFP for the 2023/24 fiscal year. The Legislature has declared its intent to appropriate an additional $875 million from the General Fund in the 2024/25 fiscal year for the same purpose, funding eligible new construction and modernization projects under the SFP.

Attached to this Notice is the specific regulatory language of the proposed regulatory action, along with the proposed regulatory amendment. The proposed regulation 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 regulation will be mailed to any person requesting this information by using OPSC's contact information set forth below in this Notice. The proposed regulation amends 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.

Bond Funds Impacted

The following five State school bonds were authorized by the Legislature and approved by the State's electorate for purposes of school facility construction:

- Class Size Reduction Kindergarten–University Public Education Facilities Bond Act of 1998 (Proposition 1A)
- Kindergarten–University Public Education Facilities Bond Act of 2002 (Proposition 47)
- Kindergarten–University Public Education Facilities Bond Act of 2004 (Proposition 55)
- Kindergarten–University Public Education Facilities Bond Act of 2006 (Proposition 1D)
- Kindergarten through Community College Public Education Facilities Bond Act of 2016 (Proposition 51)

General Fund Proceeds

For the 2023/24 fiscal year, the Governor's budget has appropriated $1.9 billion for funding eligible new construction and modernization projects under the SFP. The Legislature has declared its intent to appropriate an additional $875 million from the General Fund in

the 2024/25 fiscal year for the same purpose, funding eligible new construction and modernization projects under the SFP.

Background and Problem Being Resolved

As first implemented, the additional grant for general site development costs was to be suspended "no later than January 1, 2008" unless extended by the SAB. The following is a sequence of events extending the additional grant for general site development:

- First One–Year Extension: The SAB, at its December 12, 2007 meeting, approved emergency regulations extending the suspension date to "no later than January 1, 2009," which was approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on March 3, 2008.
- Second One–Year Extension: The SAB, at its February 25, 2009 meeting, approved extending the suspension date to "no later than January 1, 2010," which was approved by the OAL and filed with the Secretary of State on September 18, 2009.
- Third One–Year Extension: The SAB, at its November 4, 2009 meeting, approved extending the suspension date to "no later than January 1, 2011," which was approved by the OAL and filed with the Secretary of State on April 8, 2010.
- Fourth One–Year Extension: The SAB, at its June 23, 2010 meeting, approved extending the suspension date to "no later than January 1, 2012," which was approved by the OAL and filed with the Secretary of State on April 27, 2011.
- Fifth Two–Year Extension: The SAB, at its July 12, 2011 meeting, approved extending the suspension date to "no later than January 1, 2014," which was approved by the OAL and filed with the Secretary of State on December 28, 2011.
- Sixth One–Year Extension: The SAB, at its May 22, 2013 meeting, approved extending the suspension date to "no later than January 1, 2015," which was approved by the OAL, filed with the Secretary of State on October 30, 2013, and took effect January 1, 2014, due to Senate Bill (SB) 1099, Chapter 295, Statutes of 2012.
- Seventh One–Year Extension: The SAB, at its August 20, 2014 meeting, approved extending the suspension date to "no later than January 1, 2016," which was approved by the OAL, filed with the Secretary of State on February 9, 2015, and took effect on April 1, 2015, due to SB 1099, Chapter 295, Statutes of 2012.
- Eighth One–Year Extension: The SAB, at its May 27, 2015 meeting, approved extending the suspension date to "no later than January 1, 2017," which was approved by the OAL and filed With the Secretary of State on December 21, 2015.
- Ninth One–Year Extension: The SAB, at its May 25, 2016 meeting, approved extending the suspension date to "no later than January 1, 2018," which was approved by the OAL and filed with the Secretary of State on December 12, 2016.
- Tenth One–Year Extension: The SAB, at its June 5, 2017 meeting, approved extending the suspension date to "no later than January 1, 2019," which was approved by the OAL and filed with the Secretary of State on December 20, 2017.
- Eleventh Five–Year Extension: The SAB, at its June 27, 2018 meeting, approved extending the suspension date to "no later than January 1, 2024," which was approved by the OAL and filed with the Secretary of State on December 18, 2018.

OPSC has been involved in an on–going analysis of the SFP new construction base grants for purposes of determining whether the general site development allowance was included in the base grant amounts. The preliminary analysis resulted in discrepancies between the previous funding program, the State School Building Lease–Purchase Program (LPP) and the SFP. It is reasonable to conclude that when the LPP converted to the SFP, general site development was not considered in the base grants.

The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be conducted. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per–pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects.

OPSC performed a search on whether the proposed regulatory amendment is consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that there are no other programs or regulations in existence that would not only provide the additional grant for general site development, but would extend the additional grant for general site development for any length of time. Therefore, the proposed regulatory amendment is determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendment assists school districts in covering the costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent

playground equipment, and athletic fields in order to complete their projects.

Financial Impact

For the 2024 calendar year, OPSC anticipates nine new construction projects will request approximately $10.0 million for the general site development grant and for the 2025 calendar year, nine new construction projects will request approximately $12.1 million. These dollar amounts are based on new construction funding applications currently sitting on OPSC's Workload List and Applications Received Beyond Bond Authority List and are projected to be presented for SAB approval in calendar years 2024 and 2025. In addition, these applications have not yet been processed and, therefore, the project counts and requesting funding amounts may change. Charter School Facilities Program projects and Facility Hardship/Rehabilitation and Seismic Mitigation Program (SMP) projects could be eligible for the general site development grant. Facility Hardship/ Rehabilitation and SMP projects are health and safety projects and are presented to the SAB on an on–going basis.

Anticipated Benefits of the Proposed Regulations

Extending the SFP general site development grant for two years will have a positive impact on California businesses providing landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields, including the companies that supply the materials for these improvements. Without this proposed regulatory amendment, school districts might be required to reduce the scope of work for some school projects.

The State of California benefits from this regulation as it assists in increasing the State's infrastructure investment resulting in a positive impact to the State's economy as well as help to support job creation. This regulation will have a positive impact to various business, manufacturing, and construction–related industries such as architecture, engineering, trades and municipalities, along with the creation of an unknown amount of [temporary or permanent] jobs.

There is a public health and safety impact assigned to the regulation. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive; when finish grading is thorough; when play facilities are of high quality on safe ground cover material; and athletic fields are well–designed with safe playing surfaces, adequate protective fences, and appropriate walkways.

The proposed regulatory amendment is therefore determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of this regulatory amendment will have a positive impact on public health and safety at K–12 public schools because school site occupants will have less risk of injury for the reasons noted above.

Summary of the Proposed Regulatory Amendment

The proposed emergency regulation change was adopted by the SAB at its September 27, 2023 meeting to extend the additional grant for general site development for two years (until January 1, 2026). The proposed additional grant for general site development costs utilizes the continuing availability of new construction funding through the Bond Funds and the General Fund Proceeds both identified on page 2. The Office of Administrative Law approved this regulatory amendment on an emergency basis with an effective date of December 18, 2023.

A summary of the proposed regulation is as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. The proposed amendment provides that the general site development shall be suspended no later than January 1, 2026 unless otherwise extended by the SAB.

Statutory Authority and Implementation

Education Code Section 17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter.

Government Code Section 15503. Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. Unless otherwise provided in the appropriation act, the board may require that applications for allocations or apportionments be submitted to it for approval.

Determination of Inconsistency or Incompatibility with Existing State Regulations

As stated on page 3, OPSC has been involved in an on–going analysis of the SFP new construction base grants for purposes of determining whether the general site development allowance was included in the base grant amounts. The preliminary analysis resulted in discrepancies between the previous funding program, the LPP and the SFP. It is reasonable to conclude that when the LPP converted to the SFP, general site development was not considered in the base grants. Therefore, the proposed regulatory amendment

continues to be extended until a complete analysis of the new construction base grant can be conducted. The analysis must determine whether the extra costs associated with the additional grant for general site development (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields), are included in the SFP per–pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the projects. School districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is required.

After conducting a review, OPSC, on behalf of the SAB, has concluded that this is the only regulation on this subject area, and therefore, the proposed regulation is neither inconsistent nor incompatible with existing State laws and regulations. The proposed regulatory amendment is within the SAB's authority to enact regulations for the SFP under Education Code Section 17070.35 and Government Code Section 15503.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulatory amendment does 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 amendment.

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 amendment creates 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 amendment creates 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

There is a positive economic impact to California business by extending for two years the SFP general site development grant. This will continue to provide the funds to school districts building new construction projects to contract with businesses and suppliers for necessary landscaping, finish grading, driveways, walkways, outdoor instruction play facilities, permanent playground equipment, and athletic fields, thus supporting jobs in these construction–related industries. The proposed regulation:

- Continues to be extended until a complete analysis of the new construction base grant can be conducted. The analysis must determine whether the extra costs associated with the additional grant for general site development, (such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities and permanent playground equipment, and athletic fields) are included in the SFP per–pupil base grant. There has not been conclusive evidence to show that this additional grant is not needed to complete the project.
- Extends this additional grant until "no later than January 1, 2026"; and
- Creates an unknown amount of [temporary or permanent] jobs in landscaping, concrete, asphalt, finishing, playground and athletic field equipment, and other construction trades, along with stimulating the economy.

This regulation affects various business, manufacturing, and construction–related industries, such as architecture, engineering, trades and municipalities, which continues to promote the stimulation of the economy and helps to support job creation. Therefore, the proposed regulatory amendment will have a positive impact on the creation of jobs, the creation of new businesses, and the expansion of businesses in California. It is not anticipated that the proposed regulatory amendment will result in the elimination of existing businesses or jobs within California.

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

- There is a health and safety impact assigned to this regulatory amendment. School site occupants, especially young children, will have less risk of injury and safer ingress and egress when driveways and walkways are wide, level, and extensive, when finish grading is thorough, when play facilities are of high quality on safe ground cover material, and athletic fields are well–designed with safe playing surfaces, adequate protective fences, and appropriate walkways.
- There are continued benefits to the health and welfare of California residents and worker safety. School districts utilize construction and trades employees to work on school construction projects and although this proposed regulation does not directly impact worker's safety, existing law provides for the availability of a skilled labor force and encourages improved health and safety of construction and trades employees through proper apprenticeship training. Further, public health and safety is enhanced because a properly paid and trained workforce will build school construction projects that are higher quality, structurally code–compliant and safer for use by pupils, staff and other occupants on the site.
- There is no impact to the State's environment from the proposed regulatory amendment.

EFFECT ON SMALL BUSINESSES

It has been determined that the proposed regulatory amendment will not have an impact on small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. Although the proposed regulation only applies to school districts and charter schools for purposes of funding school facility new construction projects, the demand on the manufacturing and construction–related industries could potentially stimulate the creation of small business in these areas.

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 April 22, 2024. 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 3rd 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, Deputy Executive Officer, 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 modifications 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. No alternatives were considered because the general site development grant is a supplemental grant to the new construction base grant. The proposed regulatory amendment continues to be extended until a complete analysis of the new construction base grant can be conducted.

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 8. AGRICULTURAL LABOR RELATIONS BOARD

The Agricultural Labor Relations Board (ALRB or Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to:

- Repeal existing sections 20290, 20291, 20292, and 20293; and
- Adopt new sections 20290, 20291, 20292, 20293, 20294, 20295, 20296, 20297, 20297.5, 20391, and 20411.

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 the representative of any interested person, no later than 15 days before the close of the written comment period. A written request for a hearing may be made to ALRB Executive Secretary Santiago Avila–Gomez by letter or email at the addresses below.

WRITTEN COMMENT PERIOD

Any interested person, or the representative of any interested person, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes on April 22, 2024, which is 45 days after the publication of this notice. The Board will consider only comments actually received by that time. Written comments shall be submitted to:

Santiago Avila–Gomez, Executive Secretary
Agricultural Labor Relations Board
1325 J Street, Suite 1900–B
Sacramento, CA 95814

Comments also may be submitted by email to Santiago.Avila–Gomez@alrb.ca.gov.

AUTHORITY AND REFERENCE

Pursuant to Labor Code section 1144, the Board is authorized to adopt, amend, and repeal rules and regulations to carry out the provisions, and effectuate the purposes and policies, of the Agricultural Labor Relations Act (ALRA or Act), codified at Labor Code section 1140 et seq. General reference for **proposed section 20290** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General

reference for **proposed section 20291** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20292** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20293** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20294** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.10, 1160.11, Labor Code. General reference for **proposed section 20295** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20296** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code. General reference for **proposed section 20297** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.330, 995.340, Code of Civil Procedure. General reference for **proposed section 20297.5** of the Board's regulations: Sections 1149.3, 1160.3, 1160.8, 1160.11, Labor Code; Sections 995.130, 995.160, 995.170, 995.710, 995.740, Code of Civil Procedure. General reference for **proposed section 20391** of the Board's regulations: Section 1156.37, Labor Code. General reference for **proposed section 20411** of the Board's regulations: Sections 1164, 1164.3, 1164.5, Labor Code; Sections 995.020, 995.120, 995.130, 995.140, 995.160, 995.170, 995.185, 995.330, 995.340, 995.710, 995.740, Code of Civil Procedure.

POLICY STATEMENT OVERVIEW

The ALRB is a quasi–judicial administrative agency charged with administering and enforcing the ALRA, a landmark law enacted in 1975 that extended collective bargaining rights to farmworkers who were excluded from the coverage of the National Labor Relations Act. The ALRB protects and enforces the organizational rights of farmworkers and oversees labor relations disputes between growers and the unions representing farmworkers. The proposed regulatory action generally is intended to implement recent amendments to the ALRA as enacted by Assembly Bill Number 113 (AB 113), Statutes of 2023, chapter 7, which took effect immediately when signed by the Governor on May 15, 2023.

The ALRA declares the policy of this state "to encourage and protect the right of agricultural employees to full freedom of association, self–organization, and designation of representatives of their own choosing … for the purpose of collective bargaining or other mutual aid or protection." (Labor Code, § 1140.2.) The California Supreme Court has recognized "[a] central feature in the promotion of this policy" is the Act's secret–ballot election procedure by which agricultural employees may elect representatives for the purpose of negotiating with their employers regarding wages, hours, or other terms and conditions of employment. (*J.R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 8; see Labor Code, § 1156.3.)

New Labor Code section 1156.37 establishes an alternative to the secret–ballot election process by which certain labor organizations may be selected by employees to serve as their collective bargaining representative in dealings with their employers upon demonstrating proof of support from a majority of workers. Proposed regulation section 20391 implements this new "majority support petition process," and this proposed rulemaking will provide critical guidance to staff responsible for processing and investigating such petitions and to parties regarding the handling of majority support petitions and their rights and obligations during such proceedings.

The Board also is responsible for adjudicating administrative complaints of unfair labor practices by agricultural employers and labor organizations. (Labor Code, §§ 1153, 1154, 1160, 1160.3.) Such complaints are prosecuted by the Board's general counsel, who has final authority on behalf of the Board with respect to the investigation and prosecution of unfair labor practice charges. (Labor Code, § 1149.) Labor Code section 1160.3 expressly authorizes the Board to award certain remedies to redress the effects of unfair labor practices, including backpay when necessary to make workers whole in cases where an employer's unlawful conduct in terminating or disciplining a worker has caused a loss of pay. (See *Superior Farming Co. v. ALRB* (1984) 151 Cal.App.3d 100, 123–124; *Lily's Green Garden, Inc.* (2022) 48 ALRB Number 3, pp. 4–5.) Labor Code section 1160.3 also authorizes the Board to award "bargaining makewhole" relief to workers when necessary to compensate them for losses incurred as a result of an employer's unlawful bargaining conduct. (*Tri–Fanucchi Farms* (2017) 3 Cal.5th 1161, 1163.)

Under prior law, allegations regarding an agricultural employer's or labor organization's liability for engaging in unfair labor practices were litigated initially, and a party could obtain judicial review of a Board decision on issues of unfair labor practice liability before the commencement of any administrative proceedings to determine the specific amount of a monetary remedy due to workers.

Following the statutory amendments enacted by AB 113, administrative remedial proceedings to determine the amount of a monetary remedy awarded by the Board will be litigated immediately after a Board decision finding unfair labor practice liability and before judicial review of the Board's proceedings is available to a party. (Labor Code § 1160.3 [AB 113 (2023–2024 Regular Session), § 14].) Furthermore, new

Labor Code section 1160.11 requires an agricultural employer who seeks to obtain judicial review of a Board decision where a monetary remedy has been awarded to post an appeal bond in the amount of such monetary remedy as a condition to obtaining judicial review. The proposed regulatory action implements these statutory revisions to the Board's administrative proceedings for determining the amount of monetary remedies owed to workers by restructuring existing regulations governing such remedial proceedings to make them more efficient. The proposed regulations include deadlines by which a compliance "specification" (which operates as a form of pleading during these types of remedial proceedings, similar to a complaint) must issue following a Board decision and include pleading requirements whereby respondents must clearly identify disputed or denied allegations in a specification. In addition, the proposed regulations adopt procedures for determining the amount of civil penalties owed by an employer found to have engaged in an unfair labor practice pursuant to Labor Code section 1160.10. Under the proposed regulations, specifications in remedial proceedings involving monetary and non–monetary remedies, as well as civil penalties, may be consolidated in a single proceeding. This proposed rulemaking also provides guidance to agricultural employers regarding how appeal bonds, or cash deposits in lieu of a bond, will be processed and handled by the Board after the specific amount of the monetary remedy owed is determined.

The Board also administers mandatory mediation and conciliation proceedings under the ALRA, a form of interest arbitration designed to assist labor organizations in obtaining a first collective bargaining agreement with an agricultural employer. (Labor Code, § 1164 et seq.) Similar to unfair labor practice appeal bonds for agricultural employers as described above, AB 113 amended Labor Code section 1164.5 to require agricultural employers to post an appeal bond in the amount of the economic value of a collective bargaining agreement ordered into effect by the Board as a condition of obtaining judicial review of a Board order.

This proposed rulemaking provides guidance to agricultural employers regarding the Board's processing and handling of an appeal bond or cash deposit in lieu of a bond when an employer seeks to obtain judicial review of a Board decision in mandatory mediation and conciliation proceedings.

Finally, last year the Legislature adopted Assembly Bill Number 2183 (2021–2022 Regular Session), Statutes 2022, chapter 673, which added new Labor Code section 1160.10 to the ALRA. This statute requires the Board to assess civil penalties against an employer found to have committed an unfair labor practice, and describes certain factors relevant towards determining the amount of the penalties to be assessed. This proposed rulemaking describes the procedures to be used in determining the amount of civil penalties to be assessed against an employer, and thus provides guidance to ALRB staff and affected parties with respect to the manner in which such civil penalties will be determined and assessed.

INFORMATIVE DIGEST

A. *Repeal of Existing Regulations*

Section 20290:

Subdivision (a) describes the process for commencing a "compliance," i.e., remedial, administrative proceeding when necessary to obtain a party's compliance with remedies ordered by the Board after finding the party has engaged or is engaging in an unfair labor practice. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt substantially similar language in *proposed new section 20290, subdivision (b)*, regarding the requirements of a compliance specification and notice of hearing involving monetary remedies, including when the regional director may proceed with a notice of hearing without a specification, and the requirement that a notice of hearing may not set a hearing to be held before an administrative law judge less than 15 days after service of the notice.

Subdivision (b) authorizes a regional director of the Board to consolidate backpay and liability proceedings when deemed appropriate to do so, including for efficiency purposes and to avoid delay. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt virtually identical language in *proposed new section 20291.*

Section 20291:

Subdivision (a) sets forth the requirements for a compliance specification involving an award of backpay to employees, including allegations regarding how the proposed backpay amount was calculated. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt virtually identical language in *proposed new section 20292, subdivision (a).*

Subdivision (b) sets forth the requirements for a compliance specification involving an award of bargaining makewhole to employees, including allegations regarding how the proposed makewhole amount was calculated. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt virtually identical language in *proposed new section 20292, subdivision (b).*

Subdivision (c) sets forth the requirements for a compliance specification involving non–monetary remedies ordered by the Board, including a requirement that the specification contain a detailed description of the respondent's alleged noncompliance with a Board order or court decree. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt substantially similar language in *proposed new section 20293, subdivision (b).*

Subdivision (d) allows a regional director, upon a showing of good cause, to issue a partial specification when unable to prepare a full specification as otherwise required. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt virtually identical language in *proposed new section 20292, subdivision (c).*

Subdivision (e) allows a regional director to issue a notice of hearing without a compliance specification in appropriate circumstances, which must set forth a clear and detailed statement of the matters in controversy and the relief sought. In such circumstances, the regional director must include in the notice of hearing the reason for proceeding without a specification, and the regional director must substantiate such reasons if requested. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt virtually identical language in *proposed new section 20292, subdivision (d).*

Subdivision (f) allows a regional director in a compliance proceeding against a named respondent to allege that persons not named in the Board's order may be jointly or derivatively liable to comply with the Board's order. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt virtually identical language in *proposed new section 20292, subdivision (e).*

Section 20292:

Subdivision (a) requires each person named as a respondent in a compliance specification or notice of hearing without a specification to file an answer thereto within 15 days after service of the specification or notice of hearing. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt substantially similar language and the same 15–day answer deadline in *proposed new section 20290, subdivision (c).*

Subdivision (b) sets forth the contents required in an answer to a compliance specification or notice of hearing without a specification. The regulation requires a respondent to state which facts alleged in the specification or notice are admitted, denied, or outside the respondent's knowledge. Except for matters not reasonably ascertainable by a respondent, general denials are insufficient. As for ascertainable matters where a respondent disputes the facts or allegations by which a monetary remedy is calculated, the respondent must state the basis for its disagreement and state in detail its proposed methodology for calculating the amount of the remedy, including providing supporting facts and figures on which it relies. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt substantially similar language in *proposed new section 20290, subdivision (c).*

Subdivision (c) describes the consequences where a respondent fails to file an answer to a compliance specification or notice of hearing without a specification or files an answer but fails to deny an allegation. If the respondent does not file an answer, the administrative law judge may find the allegations of the specification or notice of hearing to be true and issue a recommended order. If the respondent filed an answer but did not deny an allegation of the specification or notice of hearing, the administrative law judge may deem the allegation admitted. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt substantially similar language in *proposed new section 20290, subdivision (d).*

Section 20293:

Subdivision (a) states that a compliance specification or notice of hearing without a specification, and answers to them, may be amended in the same manner as unfair labor practice complaints and answers. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt identical language in the first sentence of *proposed new section 20290, subdivision (e).*

Subdivision (b) states that a compliance specification or notice of hearing without a specification may be withdrawn in the same manner as an unfair labor practice complaint. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt identical language in the second sentence of *proposed new section 20290, subdivision (e).*

Subdivision (c) states that after the issuance of a compliant specification or notice of hearing without specification, procedures applicable to the processing of unfair labor practice cases shall apply. As part of the Board's restructuring of its compliance proceedings, the Board proposes to repeal this subdivision but to re–adopt identical language in the third sentence of *proposed new section 20290, subdivision (e).*

B. *Adoption of New Regulations*

Proposed section 20290: Compliance Proceedings Involving Monetary Remedies

Subdivision (a): After the Board issues a decision ordering a respondent to pay a monetary remedy, the executive secretary of the ALRB is required to immediately assign the matter to an administrative law judge for further proceedings to determine the specific amount of the monetary relief owed.

Subdivision (b): The regional director is required to file and serve a compliance specification or notice of hearing without a specification within 90 days of the date of the Board's decision ordering payment of a monetary remedy. In certain cases the regional director may issue a notice of hearing without a specification. A notice of hearing accompanying a specification or issued without a specification may set a hearing not less than 15 days after the date of service of the notice of hearing. These provisions incorporate substantially similar language from *existing regulation 20290, subdivision (a)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (c): Each person named as a respondent in a compliance specification or notice of hearing without a specification shall file an answer thereto within 15 days from the date of service of the specification or notice. The answer shall state specifically which facts alleged in the specification or notice are admitted, denied, or outside the knowledge of the party. Allegations not expressly denied will be deemed admitted. A statement generally denying the allegations of a specification or a denial based only on the party's lack of information are not sufficient. If a respondent disputes facts or allegations concerning the calculation of a monetary remedy, the respondent must set forth facts and figures to support its own calculations and provide its own proposed method for calculating the amount of the monetary remedy. These provisions incorporate substantially similar language from *existing regulation 20292, subdivisions (a) and (b)*, which are proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (d): When a respondent does not file an answer to a specification or notice of hearing without a specification within the time allowed, the administrative law judge may find the allegations of the specification or notice of hearing to be true, and issue a recommended order consistent with such a determination. If a respondent does file an answer but fails to deny an allegation in the specification or notice of hearing, the administrative law judge will deem the allegation to be admitted without taking evidence on it. These provisions incorporate substantially similar language from *existing regulation 20292, subdivision (c)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (e): This subdivision states that (1) a compliance specification or notice of hearing without a specification, and answers to them, may be amended in the same manner as unfair labor practice complaints and answers; (2) a specification or notice of hearing without a specification can be withdrawn in the same manner as an unfair labor practice complaint; and (3) after issuance of a specification or notice of hearing without a specification, the procedures governing unfair labor practice proceedings generally will apply to proceedings to determine the amount of the monetary remedy owed by the respondent. These provisions incorporate identical language from *existing regulation 20293, subdivisions (a), (b), and (c)*, respectively, which are proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Proposed section 20291: Consolidating Unfair Labor Practice and Compliance Proceeding

Subdivision (a): A regional director may consolidate an unfair labor practice complaint with a compliance specification involving a monetary remedy alleged to be owed when the regional director deems it appropriate to do so, including to avoid unnecessary cost and delay. Consolidation of a compliance specification with an unfair labor practice complaint after a pre–hearing conference has begun requires the approval of the administrative law judge or the Board. These provisions incorporate substantially similar language from *existing regulation 20290, subdivision (a)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (b): The regional director's issuance of a compliance specification is not required before the Board may commence judicial proceedings to obtain a party's compliance with remedies ordered by the Board pursuant to Labor Code section 1160.8. Similarly, the regional director's issuance of a compliance specification shall not bar the Board from commencing judicial proceedings to obtain a party's compliance with remedies ordered by the Board. These provisions incorporate identical language from the final sentence of *existing regulation 20290, subdivision (b)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Proposed section 20292: Specification or Notice of Hearing Involving Monetary Remedies

Subdivision (a) sets forth the required contents for a compliance specification involving the amount of backpay ordered to be paid to an employee or employees. This subdivision incorporates identical

language from *existing regulation 20291, subdivision (a)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (b) sets forth the required contents for a compliance specification involving the amount of a bargaining makewhole remedy ordered to be paid to workers. This subdivision incorporates identical language from *existing regulation 20291, subdivision (b)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (c) allows a regional director to issue a partial specification when unable to prepare a full specification. In such cases, the regional director must establish good cause why the regional director is unable to prepare a full specification. The partial specification must set forth in detail all information reasonably available to the regional director in preparing the partial specification and calculating the amount of the monetary remedy owed. This subdivision incorporates virtually identical language from *existing regulation 20291, subdivision (d)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (d) allows a regional director to file a notice of hearing without a specification when the regional director deems it appropriate to do so. The notice of hearing must contain a detailed statement of the matters in dispute, the relief sought, and the reason for proceeding without a specification. The regional director will be required to substantiate the reasons for not proceeding with a specification if called upon to do so. These provisions incorporate virtually identical language from *existing regulation 20291, subdivision (e)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (e) allows a regional director to allege and have determined the joint or derivative liability of a party not named as a respondent in the Board's order directing payment of a monetary remedy. When the regional director contends a person is jointly or derivatively liable for a monetary remedy, the regional director must allege the legal and factual basis for such a contention. These provisions incorporate virtually identical language from *existing regulation 20291, subdivision (f)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Proposed section 20293: Compliance Involving Non–Monetary Remedies

Subdivision (a) requires a regional director to file a compliance specification or notice of hearing without a specification involving non–monetary remedies ordered by the Board within 90 days of the date the Board's decision becomes final. A respondent is required to file an answer within 15 days after service of the specification or notice.

Subdivision (b) sets forth the required contents of a compliance specification involving non–monetary remedies, such as cease–and–desist orders, bargaining orders where a labor organization or employer is ordered to bargain in good faith with the other, or notice remedies ordered by the Board. In such cases, the specification must include a detailed description of the manner in which the respondent has not complied with the Board's order and state the acts necessary to obtain the party's compliance. These provisions incorporate substantially similar language from *existing regulation 20291, subdivision (c)*, which is proposed to be repealed and re–adopted here as part of the restructuring of the Board's compliance proceedings.

Subdivision (c) allows a regional director to combine allegations regarding monetary and non–monetary remedies in a single compliance specification, or notice of hearing without a specification, when the Board's unfair labor practice order includes both monetary and non–monetary remedies. If the non–monetary remedies are not included in a compliance specification regarding monetary remedies, the regional director may commence a compliance proceeding involving the non–monetary remedies at a later date within 90 days after the Board's decision concerning the monetary remedies becomes final. A Board decision ordering the payment of a specific monetary amount becomes final when no appeal is sought and the time to appeal has expired, or when an appeal is filed and the appeal is dismissed or the Board's order affirmed.

Proposed section 20294: Compliance Involving Civil Penalties

Subdivision (a) requires a regional director to file a compliance specification or notice of hearing without a specification regarding the amount of civil penalties to be paid by an agricultural employer within 90 days after the Board's decision finding the employer committed an unfair labor practice becomes final. A respondent must file an answer within 15 days after service of the specification or notice of hearing.

Subdivision (b) requires a specification regarding the amount of civil penalties owed by an employer to set forth specific facts relevant to determining the amount of the civil penalties to be assessed.

Subdivision (c) allows a specification concerning civil penalties owed by an employer with a specification involving monetary remedies ordered by the Board, a specification involving non–monetary remedies ordered by the Board, or with a specification following an administrative law judge's decision that has become final because no exceptions were filed with the Board.

Subdivision (d) provides that when a specification involving civil penalties is included with another specification involving monetary or non–monetary remedies, or when an administrative law judge's decision has become final, that timeframes governing such other compliance proceedings will apply.

Proposed section 20295: Compliance After Administrative Law Judge Decision

This section establishes timeframes governing compliance proceedings when an administrative law judge's decision ordering monetary or non–monetary remedies, or both, as well as civil penalties, becomes final because no exceptions were filed with the Board. In such cases, a compliance specification or notice of hearing without specification regarding the ordered remedies and civil penalties, if any, shall be filed within 90 days after the administrative law judge's decision becomes final, and any answers thereto must be filed within 15 days after service of the specification or notice of hearing.

Proposed section 20296: Continuing Monetary Liability During Judicial Review

This section establishes a compliance procedure to collect on behalf of workers the full scope of a monetary remedy that continues to accrue during the course of subsequent judicial review proceedings after a previous unfair labor practice and compliance proceeding. In such cases, the regional director is required to issue a specification regarding the additional monetary relief owed within 90 days after the judicial review proceedings are final, and the respondent must file an answer within 15 days after service of the specification.

Proposed section 20297: Unfair Labor Practice Appeal Bonds

This section sets forth requirements for an agricultural employer who must post an appeal bond with the Board as a condition to seeking judicial review of a Board decision in an unfair labor practice case. This section further details the required contents of the bond the employer must post with the Board, and provides the Board shall file the bond with the reviewing court.

Proposed section 20297.5: Cash Deposit in Lieu of Appeal Bond

This section sets forth requirements for an agricultural employer who seeks to deposit cash or a cash–equivalent (i.e., check, cashier's check, or money order) with the Board in lieu of an appeal bond as a condition to seeking judicial review of a Board decision in an unfair labor practice case. An employer is required to provide notice to the Board of its intent to submit a deposit of cash so that the Board can arrange a time for the delivery of the deposit. This section further states the Board will hold a deposit in trust in an interest–bearing account. This section further describes the required contents of an agreement an employer must sign when making a deposit with the Board and authorizing the Board to execute and collect on the deposit if the Board's decision is upheld, including that the agreement shall be signed under penalty of perjury by an individual with authorized to sign on behalf of the employer. This section also provides that the Board will provide a receipt to the party confirming the deposit once the deposit is verified to be in the required amount and all other requirements for submitting the deposit are met.

Proposed section 20391: Majority Support Petitions

Subdivision (a) describes the requirements for filing and serving a majority support petition, including that the regional director must notify the employer named in the petition and whose employees are sought to be represented by the petitioning labor organization immediately upon receipt of all required materials for the petition. The petition must include a declaration signed under penalty of perjury attesting the contents of the petition are true to the best of the declarant's knowledge. Evidence of support from a majority of employees in the bargaining unit sought to be represented, whether on petitions or cards, must be physically delivered to a regional office of the Board. This section further describes the required contents of petitions or authorization cards signed by the employees, including that a signature on a petition or card is valid for one year from the date of signature and that it may not be revoked during that time period.

Subdivision (b) describes the requirements for an employer to file a response to the petition, including a list of its agricultural employees. The employer's response and employee list must be filed and served within 48 hours after personal service of the majority support petition on the employer.

Subdivision (c) describes the investigation a regional director must conduct upon the filing of a majority support petition, including that the regional director must dismiss a petition when certain requirements necessary to determine a question of representation are not met. A petitioning labor organization may amend a petition to cure a defect that otherwise would result in its dismissal, upon approval of the regional director. If a regional director dismisses a petition, the regional director must issue a letter to the parties explaining the reasons for the dismissal, and a party may seek review of the dismissal before the Board. In cases where the regional director determines the requirements for the filing of the petition are met but that the proof of employee support from the labor organization is insufficient to establish majority support, the regional director shall notify the parties of this determination in writing, and the labor organization is allowed 30 days to obtain and submit additional employee support.

Any proof of support previously submitted but found by the regional director to be defective will be returned to the labor organization. If at the conclusion of the 30–day cure period the labor organization still has not established proof of majority support, the regional director shall notify the executive secretary of this determination, including a tally of employee support received, and the executive secretary shall certify the result to the parties. If the regional director determines proof of majority support to be established, the regional director shall notify the executive secretary of its determination, including a tally of the support received, and the executive secretary shall certify the result to the parties.

Subdivision (d) describes the requirements for an employer filing objections to the certification of a labor organization. The employer must file its objections within five days after service of the executive secretary's certification of the labor organization.

Subdivision (e) states that the Board must dismiss objections that do not satisfy applicable filing and evidentiary requirements. The Board also must dismiss objections that, even if true, would not be sufficient to revoke the labor organization's certification. This section further describes the circumstances under which the Board will set objections for hearing, and requires that a hearing must begin within 14 days of the date of the Board's order unless the labor organization agrees to an extension. This section further states the general rules applicable to a hearing ordered by the Board.

Subdivision (f) describes procedures applicable when a labor organization files a majority support while a majority support petition filed by another labor organization already has been filed and is pending with the Board. In such cases, the second petition will be held in abeyance pending determination of the first petition, unless the second petition alleges the labor organization that filed the first petition was assisted, supported, created, or dominated by an employer. In cases involving such allegations, this section describes the procedures by which the Board will review them and, if appropriate, set such allegations for hearing. This section further describes the timeframes applicable to hearings conducted in such cases. This section further states the penalties applicable to a labor organization or its representatives that are found to have been supported, assisted, created, or dominated by an employer.

Subdivision (g) describes procedures by which the executive secretary will notify the general counsel when employer objections or a majority support petition contains allegations of employer assistance, support, creation, or domination. Upon notice from the executive secretary, the general counsel may request to consolidate such objections or allegations with any pending unfair labor practice charges containing similar allegations. If the Board grants a consolidation request, this section describes the procedures applicable to a hearing on such issues.

Subdivision (h) states that a majority support petition "campaign" by a labor organization will be deemed to be underway if the labor organization can establish proof of support of at least 10% of an employer's agricultural employees. This threshold requirement applies to situations where a labor organization alleges an employer engaged in an unfair labor practice or misconduct or takes adverse action against an employee during the course of a labor organization's majority support petition campaign under subdivisions (j) and (k) of Labor Code section 1156.37. Under section 1156.37, subdivision (j), a labor organization may be certified by the Board if an employer who engages in an unfair labor practice or misconduct during such a campaign and the Board finds the chances of a new majority support petition reflecting the fair and free choice of the employees to be slight. Under section 1156.37, subdivision (k), an employer who takes adverse action against an employee during a campaign is presumed to have taken such action for unlawful retaliatory purposes unless the employer rebuts the presumption by "clear and convincing" evidence.

Proposed section 20411: Appeal Bonds and Cash Deposits in MMC Cases

This section adopts the unfair labor practice appeal bond and cash deposit requirements for purposes of the appeal bond an employer is required to post with the Board as a condition to seeking judicial review of a Board order in mandatory mediation and conciliation proceedings.

For more information regarding specific proposed regulations, please refer to the proposed regulatory language.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Board has determined the proposed regulatory adoptions are not inconsistent or incompatible with existing regulations. The ALRB has exclusive jurisdiction to enforce and administer the provisions of the ALRA. There are no other regulations adopted by any other state agency that affect the procedures or laws affected by the proposed regulatory action. Thus, the Board has concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The proposed rulemaking is intended to implement statutory amendments to the ALRA enacted by AB 113, including specifically the majority support petition process and new appeal bond provisions.

The proposed regulatory action will provide guidance to ALRB staff and affected parties regarding the processing, handling, and investigation of majority support petitions, and describing affected parties' respective rights and obligations with respect to the processing and disposition of majority support petitions.

In addition, the proposed regulatory action will make more efficient the Board's remedial administrative proceedings in unfair labor practice cases, including specifically with respect to orders involving monetary remedies. In the past, a party aggrieved by a Board decision finding unfair labor practice liability could seek immediate judicial review of the Board's decision, and any subsequent administrative proceedings to effectuate the remedies ordered by the Board, including monetary remedies, would not occur until after the completion of such judicial review proceedings. As a result, workers found to be owed monetary relief could have to wait years after a Board decision before any subsequent proceedings to determine the actual amount of money they are owed. And a party could also seek judicial review of that subsequent Board decision determining the extent of a party's monetary liability, thereby adding further delays for farmworkers entitled to receive a monetary remedy. Under AB 113, remedial proceedings where the Board has awarded monetary relief now must occur before judicial review is available to parties in order to determine the specific amount of the monetary remedy owed. This is because the amount of the monetary remedy will represent the amount of the appeal bond, or cash deposit in lieu of a bond, an employer must post with the Board as a condition of seeking judicial review. This bond requirement will secure payment of the money owed to the workers in the event the employer's judicial challenge to the Board's decision is unsuccessful. This proposed regulatory action restructures the Board's administrative remedial proceedings to occur immediately following the issuance of a Board decision where unfair labor practice liability is found and a monetary remedy is awarded, and imposes new filing deadlines in such proceedings to make the proceedings more efficient and to comply with new statutory requirements that such proceedings be completed in less than one year. The proposed regulatory action also provides guidance to parties regarding procedures governing the Board's handling and processing of appeal bonds or cash deposits when an agricultural employer seeks judicial review of a Board decision awarding a monetary remedy.

Also, the proposed regulatory action includes guidance to ALRB staff and affected parties regarding the procedures by which the Board will determine the amount of civil penalties owed by an employer found to have committed an unfair labor practice. Labor Code section 1160.10 requires the Board to assess civil penalties against an employer found to have committed an unfair labor practice. Subdivision (b) of section 1160.10 describes the factors relevant towards determining the amount of the penalties. This proposed regulatory action would refer determination of the amount of civil penalties owed by an employer to the Board's compliance proceedings, thereby establishing procedures to be used to establish facts relevant to setting the amount of the penalties.

Finally, the procedures described in the proposed regulatory action relating to the Board's handling and processing of appeal bonds in unfair labor practice cases also will provide guidance to parties regarding similar bond requirements in mandatory mediation and conciliation proceedings. Under prior law, an employer who sought to challenge a Board decision ordering into effect a collective bargaining agreement reached through mandatory mediation and conciliation proceedings could do so and effectively forestall and delay implementation of the collective bargaining agreement. Under AB 113, an employer who seeks to challenge a Board decision ordering a collective bargaining agreement into effect must post an appeal bond in the amount of the economic value of the collective bargaining agreement as a condition to seeking judicial review. This will secure for the benefit of the employees the economic value of the contract negotiated by their union on their behalf if the employer's judicial challenge is unsuccessful. This proposed regulatory action provides guidance to agricultural employers regarding the procedures governing the Board's handling and processing of appeal bonds or cash deposits in mandatory mediation and conciliation proceedings.

NO EXISTING AND COMPARABLE FEDERAL REGULATION OR STATUTE

The Board has determined that there are no existing, comparable federal regulations or statutes addressing the matters encompassed by this regulatory action. Agricultural employees are excluded from coverage under the National Labor Relations Act, and labor relations between agricultural employers and employees are governed by state law under the ALRA. Accordingly, the Board has concluded that these regulations are neither inconsistent nor incompatible with existing federal regulations or statutes.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Board has made the following initial determinations:

Mandate, cost or savings imposed on local agencies and school districts: The proposed action will not impact local agencies or school districts, result in any costs or savings to local agencies or school districts, or impose any new mandate on local agencies or school districts that must be reimbursed pursuant to Government Code section 17500 et seq.

Cost or savings to state agency: The proposed action will not result in any new costs or savings to any state agency.

Non–discretionary cost or savings imposed upon local agencies: The proposed action will not result in any non–discretionary costs or savings to local agencies.

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

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

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

Significant effect on housing costs: The proposed action will have no effect on housing costs.

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

The Board has determined the proposed regulations will not affect small business because the proposed regulations will not result in any additional costs or burdens on small businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The proposed regulations clarify procedures to comply with obligations already enacted in statute. The Board concludes that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

BENEFIT ANALYSIS

The ALRB currently lacks regulations detailing procedures governing the handling of majority support petitions where a labor organization seeks to be certified as the exclusive bargaining representative of an appropriate unit of agricultural employees. The proposed regulatory action will provide guidance to staff responsible for processing, handling, and investigating such petitions, as well as parties involved in such proceedings regarding their respective rights and obligations.

In addition, the ALRB aims to improve efficiencies in its administrative processes. The proposed regulatory action seeks to make the ALRB's administrative "compliance," or remedial, proceedings more timely and efficient in order that monetary remedies ordered by the Board, such as backpay owed to workers, are determined more expeditiously.

The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment. The proposed regulatory action will further the policies underlying the expedient determination of questions of representation when a labor organization seeks to represent workers in their negotiations and dealings with their employers. This, in turn, will contribute to achieving stability and labor peace and avoiding disruption in our agricultural industry due to labor disputes. The proposed regulatory action also furthers policies in favor of the prompt resolution of labor disputes, including the determination of monetary remedies owed to workers to make them whole when unfair labor practices have been committed by employers or labor organizations. California residents' general welfare will be benefited by stable labor relations and dispute resolution, which translates to less risk of disruption in California's agricultural industry.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

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

Santiago Avila–Gomez, Executive Secretary
Agricultural Labor Relations Board
1325 J Street, Suite 1900–B
Sacramento, CA 95814
Telephone: (916) 894–6840
Email: Santiago.Avila–Gomez@alrb.ca.gov

The backup person for these inquiries is:

Todd M. Ratshin, Chief Board Counsel
Agricultural Labor Relations Board
1325 J Street, Suite 1900–B
Sacramento, CA 95814
Telephone: (916) 894–6836
Email: Todd.Ratshin@alrb.ca.gov

Please direct requests for copies of the proposed text (i.e., the express terms) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Santiago Avila–Gomez at the above address.

PRELIMINARY ACTIVITIES

The Board's Regulations Subcommittee issued its original draft of proposed regulatory language to implement the statutory amendments to the ALRA enacted by AB 113 on June 9, 2023. The subcommittee conducted a public workshop on June 23, at which it received public comment and input from interested persons and stakeholders. On September 27, the subcommittee published updated proposed regulatory language, which was presented to the full Board and the public at the Board's October 4 public meeting. At this meeting, the Board approved the subcommittee's proposal and directed the subcommittee to commence a formal rulemaking.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations and the initial statement of reasons. Copies of these documents may be obtained by contacting Santiago Avila–Gomez at the above address and are also available on the Board's web site at https://www.alrb.ca.gov/rulemaking/ab–113–implementing–regulations/.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if one is requested, and considering all timely and relevant comments, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations as revised. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Santiago Avila–Gomez at the above address. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Santiago Avila–Gomez at the above address or accessed on the ALRB's web site as set forth below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice of proposed action, the initial statement of reasons, and the text of the proposed regulations in underline and strikeout, can be accessed on the ALRB's web site at https://www.alrb.ca.gov/rulemaking/ab–113–implementing–regulations/ throughout the rulemaking process. Written comments received during the written comment period also will be posted on the ALRB's web site. The final statement of reasons or, if applicable, notice of a decision not to proceed will be posted on the ALRB's web site following the Board's action.

TITLE 8. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

DEPARTMENT OF INDUSTRIAL RELATIONS

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS TITLE 8, DIVISION 1, CHAPTER 7, SUBCHAPTER 1, ARTICLE 2, SECTION 14300.41, APPENDIX H AND APPENDIX I

PUBLIC PROCEEDINGS

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health ("the Division") within the Department of Industrial Relations proposes to amend Section 14300.41 of Title 8 of the California Code of Regulations 8 CCR § 14300.41) regarding employers' duty to record and report occupational injuries and illnesses. The Division proposes to adopt the proposed amendments described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed amendments, on the following date:

Date: April 23, 2024
Time: 10:00 a.m.
Place: Elihu Harris State Office Building — Room 1304
1515 Clay Street, Oakland, CA 94612

The State Office Building and meeting rooms are accessible to people with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other types of reasonable accommodations to facilitate effective communication for people with disabilities are available upon request. Please contact the Statewide Disability Accommodation Coordinator at 1–866–326–1616 (toll free), or through the California Relay Service by dialing 711 or 1–800–735–2929 (TTY/English) or 1–800–855–3000 (TTY/Spanish) as soon as possible to request assistance. Accommodation requests should be made as soon as possible. Requests for an Assistive Listening System or Communication Access Realtime Translation should be made no later than five (5) days before the hearing.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed amendments described below in the Informative Digest. The Division requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or at 3:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the Proposed Rulemaking. Written comments, regardless of the method of transmittal, must be received by the Division by 11:59 p.m. on April 23, 2024, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: tmhenson@dir.ca.gov. It is requested that email transmissions of comments, particularly those with attachments, contain the regulation identifier "Recording and Reporting of Occupational Injuries and Illnesses" in the subject line to facilitate timely identification and review of the comment;
2. By mail or hand–delivery to T. Michelle Henson, Staff Counsel, at Cal/OSHA Legal Unit, 1515 Clay Street, Suite 1901, Oakland, California 94612.

All comments, regardless of the method of transmittal, should include the commenter's name and U.S. Postal Service mailing address or email address to enable the Division to provide the commenter with notice of any changes to the proposed amendments on which additional comments may be solicited.

AUTHORITY AND REFERENCE CITATIONS

Section 14300.41

Authority cited: Sections 50.7, 150(b) and 6410, Labor Code. Reference: Section 6410, Labor Code.

NOTE: Under California Labor Code § 50.7, the Department of Industrial Relations is the state agency

designated to administer the California Occupational Safety and Health Act of 1973 (Cal. Labor Code § 6300 *et seq*.) The California Division of Labor Statistics and Research ("DLSR"), formerly a division within the Department of Industrial Relations, promulgated 8 CCR § 14300.41. This regulation was promulgated by DLSR under the authority of California Labor Code §§ 50.7 and 6410 to fulfill the federal mandate established by 29 CFR §§ 1902.3(j); 1902.7, and 1904.37(a) that California's occupational injury and illness recording and reporting requirements under its state plan be "substantially identical" to the federal requirements.

In 2012, Senate Bill 1038 abolished DLSR and amended Labor Code § 150 by transferring its responsibilities under Chapter 7, Subchapter 1, Article 1 of Title 8 of the California Code of Regulations (commencing with Section 14000) to the Division. Labor Code § 150(b), as amended, provides:

> To the extent not in conflict with this or any other section, on the date this subdivision becomes operative, the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 1 (commencing with Section 14000) and Subchapter 2 (commencing with Section 14900) of Chapter 7 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Occupational Safety and Health and the responsibilities of the Division of Labor Statistics and Research that are specified in Subchapter 3 (commencing with Section 16000) of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations are reassigned to the Division of Labor Standards Enforcement.

The Division now proposes to amend 8 CCR § 14300.41 under the authority provided in Sections 50.7, 150(b) and 6410 of the Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The federal Occupational Safety and Health Act of 1970 (29 USC § 651 *et seq*.) covers most private sector employers and their employees in all 50 states either directly through the federal Occupational Safety and Health Administration ("OSHA") or through a "state plan" approved by OSHA under 29 CFR 1902 *et seq.* A state plan is an OSHA–approved occupational safety and health program operated by an individual state instead of by OSHA. OSHA approves and monitors all state plans and provides funding for those plans. California is a state plan state under 29 CFR 1902 *et seq.* If OSHA establishes a new or revised standard, a state plan must adopt its own standard that is at least as effective as the new or revised federal standard within six months. With regard to OSHA's standards governing employers' duties to record and report occupational injuries or illnesses, a state plan must adopt standards that are "substantially identical" to the federal standards. (See 29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)

DLSR previously promulgated 8 CCR § 14300.41 to ensure that California's occupational injury and illness recording and reporting requirements for employers were "substantially identical" to the federal recording and reporting standard. Existing Cal/OSHA rule requires employers with 250 employees or more during the previous calendar year, employers in specific industries with 20–249 employees during the previous calendar year, and employers who do not fall in the previous categories who are responding to a request from OSHA, to annually electronically submit information from Form 300A Summary of Work–Related Injuries and Illnesses.

On July 21, 2023, OSHA issued a final rule amending the requirements for covered employers to report occupational injuries and illnesses data set forth in 29 CFR § 1904.41. According to OSHA, the amendments in their final rule made the following changes to the prior reporting requirements in 29 CFR, part 1904:

- Establishments that are required to keep injury and illness records under part 1904, that had 100 or more employees in the previous year, and that are in certain designated industries, must electronically submit the required information from the OSHA Log of Work–Related Injuries and Illnesses form (Form 300) and the OSHA Injury and Illness Incident Report form (Form 301) to OSHA or OSHA's designee, on an annual basis.

OSHA's final rule did not change an employer's obligation to complete and maintain occupational injury and illness records, nor did it change the recording criteria for the records. The added data collection provisions in the proposed amendments will assist employers and OSHA in developing a more accurate picture of the extent and severity of work–related incidents. These provisions expand OSHA's, the Division's and the public's access to establishment–specific work–related injury and illness data, thus allowing OSHA (and the Division) to direct more of its enforcement and compliance assistance resources to those establishments where workers are at greatest risk.

Because the Division has assumed the rulemaking authority for the corresponding standards in California, it must now amend 8 CCR §14300.41 to ensure that it remains "substantially identical" to the federal regulations.

§ 14300.41. Electronic Submission of Injury and Illness Records to OSHA.

29 CFR section 1904.37(a) requires a state plan to adopt rules regarding employer recording and reporting of occupational injuries and illness that are "substantially identical" to the federal regulations. Existing Cal/OSHA rule requires employers with 250 employees or more during the previous calendar year, employers in specific industries with 20–249 employees during the previous calendar year, and employers who do not fall in the previous categories who are responding to a request from OSHA, to annually electronically submit information from Form 300A Summary of Work–Related Injuries and Illnesses. The proposed amendment of 8 CCR § 14300.41 would generally track the language and format of its corresponding federal counterpart, 29 CFR section 1904.41.

The proposed rulemaking would make the following specific changes to 8 CCR § 14300.41:

1. Subsection (a)(1) is renumbered to add subsections (i), previously subsection (a)(1) and (ii), previously subsection (a)(2). The renumbering of this proposed amendment tracks federal OSHA's current organization and format.
2. Subsection (a)(1) is amended to add "Form 300A Summary of Work–Related" and deletes the following text: "by establishments with 250 or more employees" The language of this proposed amendment tracks the format and language in 29 CFR section 1904.41(a)(1).
3. Subsection (a)(1)(ii), formerly subsection (a)(2), is amended to delete the first sentence heading. This proposed amendment tracks the format in 29 CFR section 1904.41(a)(1).
4. Subsection (a)(2) is amended to require employers in designated industries that had 100 or more employees at any time during the previous calendar year to submit electronically certain occupational injury and illness data from Forms 300 and 301 to OSHA once per year by the date listed in Section 14300.41(c). The language of this proposed amendment tracks the language in 29 CFR section 1904.41(a)(2).
5. Subsection (b)(1) is amended to add a third category of employers who must annually submit certain occupational injury and illness data to OSHA. If an employer has 100 or more employees at any time during the preceding calendar year, and is classified as an industry listed in newly added Appendix I, then it must submit certain information on its Form 300 and Form 301 to OSHA once a year, in addition to the required information from Form 300A. The language of this proposed amendment tracks the language in 29 CFR section 1904.41(b)(1).
6. Subsection (b)(7) is amended to correct "Web site" to "website" and "Web site's" to "website's" to be consistent with the usage in Title 8 and 29 CFR section 1904.41(b)(5).
7. Subsection (b)(11) is added to specify the information an affected employer must submit from the recordkeeping forms under subsection (a)(2). If an employer is required to submit information under section 14300.41(a)(2), it must submit all the information except the employee name in column B of the Log of Work–Related Injuries and Illnesses, Form 300 and all the information except employee name (field 1), employee address (field 2), name of physician or other health care professional (field 6), facility name and address if treatment was given away from the worksite (field 7) of the Injury and Illness Incident Report, Form 301. The language of this proposed amendment tracks the language in 29 CFR Section 1904.41(b)(9).
8. Subsection (b)(12) is added to specify that an employer must include its legal company name as part of the submission of the occupational injury and illness data for the affected employer to OSHA. The language of this proposed amendment tracks the language in 29 CFR section 1904.41(b)(10).
9. Subsection (c) is amended to eliminate the initial phase–in of the reporting date deadlines for affected employers to submit their occupational injury and illness data to OSHA. The reporting date deadline of March 2 of the year after the calendar year of the form(s) remains the same, with an updated example. The language of this proposed amendment tracks the language in 29 CFR section 1904.41(c).

Appendices H and I for Title 8 Sections 14300–14300.48

1. Appendix H for Title 8 sections 14300–14300.48 is amended to update the North American Industry Classification System (NAICS) codes for specific industries which are included in the reporting requirements set forth in subsection (a)(1)(ii) for employers that had 20 to 249 employees at any time in the previous calendar year. The language of this proposed appendix tracks the language of Appendix A to subpart E of 29 CFR section 1904.41.
2. Appendix I for Title 8 sections 14300–14300.48 is added to specify which industries are included in the reporting requirements set forth in subsection (a)(2) for employers that had 100 or more employees at any time in the previous calendar year.

The language of this proposed appendix tracks the language of Appendix B to subpart E of 29 CFR section 1904.41.

Anticipated Benefits of the Proposed Rulemaking:

The added data collection provisions in the proposed amendments will assist employers and OSHA in developing a more accurate picture of the extent and severity of work–related incidents. These provisions expand OSHA's, the Division's and the public's access to establishment–specific work–related injury and illness data, thus allowing OSHA (and the Division) to direct more of its enforcement and compliance assistance resources to those establishments where workers are at greatest risk.

The public disclosure of the electronic data submission required by the proposals could also lead to safer workplaces for workers. The public disclosure of this information could:

- Encourage employers to abate hazards to prevent occupational injuries and illnesses to their workers so as to preserve their reputations as good places to work or with whom to do business;
- Allow employers to gauge the effectiveness of their injury and illness prevention programs by comparing their occupational injury and illness rates with those of comparable employers;
- Allow investors to compare occupational injury and illness rates among competing employers when looking for investment opportunities;
- Allow members of the public to make more–informed decisions on what businesses to patronize based on competing employers' ability to address workplace hazards impacting their workers;
- Provide better information to job–seekers regarding the occupational injury and illness rates of prospective employers.

Evaluation as to Whether the Proposed Regulations Are Inconsistent or Incompatible with Existing State Regulations: The Division has determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Division concluded that no other state regulations address the same subject matter.

Explanation of Substantial Differences Between the Proposed Regulations and Comparable Federal Regulations or Statutes: The proposed amendments and additions to section 14300.41 would make California's regulations substantially identical to corresponding federal regulations, 29 CFR section 1904.41, being implemented by federal OSHA.

Forms Incorporated by Reference: None.

MANDATED BY FEDERAL REGULATIONS

The proposed amendments to section 14300.41 are compatible with 29 CFR section 1904.41. Because California is a state plan state under 29 CFR, Part 1902, these proposed amendments are mandated by federal law, which requires that California's requirements for employers to record and report occupational injuries and illnesses be "substantially identical" to the corresponding federal requirements. (See 29 CFR §§ 1902.3(j), 1902.7, and 1904.37(a).)

OTHER STATUTORY REQUIREMENTS

There are no other statutory requirements that are specific to the Division or this type of regulation.

LOCAL MANDATE

The proposals do not impose a mandate on local agencies or school districts. The Division has determined that the proposals do not impose a mandate requiring reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because they do not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 or Article XIII B of the California Constitution.

The California Supreme Court has established that a "program" within the meaning of section 6 or Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed amendments do not require any local agency to carry out the governmental function of providing services to the public, nor do they impose unique requirements on local governments that do not apply generally to all entities in the state.

Furthermore, any new costs associated with the recording and reporting of occupational injuries and illnesses required by the proposed amendments are costs mandated by the federal government. As such, even if the proposed amendments were held to constitute a "new program or higher level of service of an existing program" under section 6 of Article XIII B of the California Constitution, any associated costs would not be considered costs mandated by the state. (See Cal. Government Code § 17556(c).)

FISCAL IMPACT

Costs or Savings to any local agency or school district which must be reimbursed in accordance

with Government Code sections 17500 through 17630: None.

Costs or savings to any state agency: The cost to an individual state agency to comply with the proposals will be less than or equal to $136 per year. (See Cost Impacts on Representative Person or Business section below.)

There will be no savings.

Other nondiscretionary costs or savings imposed on local agencies: The cost to an individual local agency to comply with the proposals will be less than or equal to $136 per year (See Cost Impacts on Representative Person or Business section below.)

There will be no savings.

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

HOUSING COSTS

The proposals will not affect housing costs.

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

Although the proposed rulemaking will directly affect covered businesses statewide, the Division anticipates that the statewide adverse economic impact will be insignificant. The Division anticipates that the proposals will have no effect on the ability of California businesses to compete with business in other states because all federal OSHA states and other state plan states will have to adopt substantially identical requirements.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

***Creation or Elimination of Jobs Within California*:** The Division concludes that it is unlikely that the proposals will either create or eliminate jobs within California.

***Creation of New Business, Elimination of Existing Businesses, or Expansion of Businesses Currently Doing Business in California*:** The Division concludes that it is unlikely that the proposed amendments will: (1) create new businesses in California; (2) eliminate any existing businesses in California; or (3) result in the expansion of businesses currently doing business in California.

***Benefits of the Proposed Amendments to the Health and Welfare of California Residents, Worker Safety, and the State's Environment*:**

The proposals will benefit worker safety and health in California. The added data collection provisions in the proposals will provide more detailed reporting on the extent and severity of injuries and illnesses for the occupational injury and illness data that employers are required to record and report under Article 2. These provisions expand OSHA's, the Division's and public's access to additional specific occupational injury and illness data, thus allowing OSHA (and the Division) to direct more of its enforcement and compliance assistance resources to those establishments where workers are at greatest risks.

The public disclosure of the electronic data submission required by the proposals could also lead to safer workplaces for workers. (See Anticipated Benefits of the Proposed Rulemaking section above.)

The proposals will not otherwise significantly benefit the health and welfare of California's residents and will not likely benefit California's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Division has determined that the proposed amendments will have some economic impacts on covered employers, but that these economic impacts will not be significantly adverse.

During its rulemaking process that led to the July 21, 2023 final rule, OSHA conducted an economic analysis to determine the economic impact on employers to comply with the new requirement to report injury and illness data electronically. According to OSHA, the amendments in their final rule made the following changes to the prior recording and reporting requirements in 29 CFR, part 1904:

- Establishments that are required to keep injury and illness records under part 1904, that had 100 or more employees in the previous year, and that are in certain designated industries, must electronically submit the required information from the OSHA Log of Work–Related Injuries and Illnesses form (Form 300) and the OSHA Injury and Illness Incident Report form (Form 301) to OSHA or OSHA's designee, on an annual basis.

OSHA's final rule did not change an employer's obligation to complete and maintain occupational injury and illness records, nor did it change the recording criteria for the records.

OSHA determined that an employer's electronic submission of occupational injury and illness data to OSHA "would be a relatively simple and quick matter" involving, in most cases, these basic steps:

(1) Logging on to OSHA's web–based submission system;

(2) Entering basic establishment information into the system (the first time only);

(3) Copying the required injury and illness information from the establishment's records into the electronic submission forms; and

(4) Hitting a button to submit the information to OSHA.

OSHA's economic analysis of its final rule determined that the average cost to employers to comply with the electronic reporting of Form 300 and Form 301 data would be $136 per year.[1]

BUSINESS REPORT

The proposed regulations will require subject businesses to report additional occupational injury and illness records to OSHA. This reporting requirement is mandated by federal law. It is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SMALL BUSINESS DETERMINATION

The Division has determined that the proposed amendments does not affect small business as the additional reporting requirements apply to employers with 100 or more employees listed in specific industries. (See Cal. Government Code § 11346.3(b)(4)(B).)

ALTERNATIVES STATEMENT

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

No alternatives were considered because the proposed amendments are mandated by federal law. The proposed amendments are compatible with 29 CFR section 1904.41.

[1]Federal OSHA arrived at these cost estimates by dividing the total estimated cost of submission by the estimated number of establishments that would be required to submit data. In its calculation, OSHA estimates 52,092 establishments that would be required to submit data. OSHA looked at the cost for an establishment who submits via batch file and those establishments that submit manually. OSHA estimated batch file submission cost to be $252,048 and manual submission to be $6,647,982 with a sum total cost of $6,900,030 to submit 766,257 records. OSHA then combined the annualized cost of $75,781 per year for familiarization and $122,308 for software upgrade costs to employers submitting batch–files using custom computer software, at a 7 percent discount rate, the estimated total annual cost of the final rule is $7,098,120, which yields an average cost of submission of $136.

The Division invites interested people to present statements or arguments with respect to alternatives to the proposed amendments at the scheduled hearing or during the written comment period.

CONTACTS

Non–substantive inquiries concerning the proposals or this rulemaking, such as requests for copies of the text of the proposed amendments, and the location of public records, may be directed to Omar Robles at (510) 286–7348 or orobles@dir.ca.gov. Inquiries regarding the substance of the proposed amendments may be directed to T. Michelle Henson at (510) 286–7348 or tmhenson@dir.ca.gov.

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

The full text of the proposals, and all information upon which the proposed rulemaking is based, are available upon request from the contacts named in this Notice.

As of the date of publication of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic and Fiscal Impact Statement (Form 399), and a copy of the document entitled "Federal Register, Vol. 88. Number 139, July 21, 2023, pp. 47254–47349." As public comments are received during the rulemaking process, they will be added to the rulemaking file.

The Division's rulemaking file is available for inspection and copying throughout the rulemaking process, Monday through Friday, from 9:00 a.m. to 5:00 p.m., at 1515 Clay Street, Suite 1901, Oakland, CA 94612. The full text of the proposals, and the principle documents upon which the proposed rulemaking is based, also may be accessed through the agency's Internet website at www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

After considering all timely and relevant comments received, the Division may adopt the proposed amendments substantially as described in this Notice. If the Division 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 it adopts the amendments as revised. Any such modifications also will be posted on the Division's website.

Please send requests for copies of any modified amendments to the attention of Omar Robles at the above telephone number or email address. The Division 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 Omar Robles at the above telephone number or email address. The Final Statement of Reasons may also be accessed on the Division's website at: www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html. If adopted, the Proposed Rulemaking will appear in Title 8, California Code of Regulations, Section 14300.41.

TITLE 14. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

SB 54 PLASTIC POLLUTION PREVENTION AND PACKAGING PRODUCER RESPONSIBILITY ACT REGULATIONS
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
DIVISION 7, CHAPTERS 11.1 AND 11.5

NOTICE IS HEREBY GIVEN that the Department of Resources Recycling and Recovery (CalRecycle) proposes to add to the California Code of Regulations, Title 14, Division 7, Chapter 11.1 (commencing with section 18980.1) and Chapter 11.5 (commencing with section 18981). The proposed regulations interpret, make specific, and implement the requirements of Senate Bill Number 54 (2021–2022 Regular Session), the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Statutes 2022, chapter 75), (the Act) and establish various elements of CalRecycle's oversight and enforcement responsibilities under the Act. The proposed regulations will also establish the criteria and procedures necessary to implement the requirement established by Assembly Bill Number 1201 (2021–2022 Regular Session) (Statutes 2021, chapter 504) (AB 1201) that products labeled "compostable" must be certified by third–party entities according to certain technical standards.

After considering all comments, objections, and recommendations regarding the proposed action, CalRecycle may adopt the proposals substantially as described in the below Informative Digest or may modify such proposals if such modifications are sufficiently related to the original text.

PUBLIC HEARING

CalRecycle will hold a hybrid public hearing starting at 9:00 a.m. (PDT) on April 23, 2024, and concluding upon submission of any public hearing comments. The public hearing will be accessible in person in the Coastal Hearing Room located on the 2nd floor of the CalRecycle headquarters at 1001 I Street, Sacramento, California, 95812. The Coastal Hearing Room is wheelchair accessible. The public hearing will also be accessible virtually via Zoom for direct participation and via Webcast for observation only. Instructions for how to access the Zoom public hearing (registration required) or Webcast (no registration required), can be found on CalRecycle's website at https://calrecycle.ca.gov/Laws/Rulemaking/.

Please note that Webcast participants will not be able to provide comments during the public hearing. To participate remotely and provide comments, it is recommended to join via Zoom. No registration is necessary to view the Webcast.

At the public hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. CalRecycle requests, but does not require, that any person who makes oral comments also submit a written copy of their testimony at the hearing. All comments at the public hearing will be collected and recorded.

Simultaneous Spanish interpretation will be available in–person at the public hearing and remotely via Zoom or Webcast. For in–person interpretation services, headsets will be available and can be provided by CalRecycle staff prior to or during the hearing. If interpretation services are needed in a language other than Spanish, please notify CalRecycle at regulations@calrecycle.ca.gov by April 12, 2024, and CalRecycle staff will do their best to accommodate this request.

WRITTEN COMMENT PERIOD

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to CalRecycle. Written comments, which offer a recommendation and/or objection, or support the proposed regulations, should indicate the section to which the comment or comments are directed. CalRecycle will only consider written comments sent to CalRecycle and received during the written comment period, which begins on March 8, 2024, and ends on April 23, 2024. Written comments received

by CalRecycle after the close of the public comment period are considered untimely. CalRecycle may, but is not required to, respond to untimely comments, including those raising significant environmental issues. Comments submitted in writing must be addressed to one of the following:

Postal mail:

Claire Derksen
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I"Street, MS–24B
Sacramento, CA 95814

Electronic submittal via CalRecycle's Public Comment Portal:

SB 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Regulations (45–Day Comment Period)

AUTHORITY AND REFERENCES

Authority: Public Resources Code Sections 40401, 40502, 42041, 42052, 42053, 42057, 42060, 42061.5, 42063, 42064, 42080, 42081, and Government Code Sections 11415.10 and 11440.20 provide authority for this regulation.

Reference: These proposed regulations implement, interpret, and make specific the following provisions of the law: Public Resources Code Sections 40062, 40120.1, 40121, 40192, 42040, 42041, 42050, 42051, 42051.1, 42051.2, 42051.3, 42052, 42053, 42054, 42056, 42057, 42060, 42060.5, 42061, 42061.5, 42063, 42064, 42067, 42070, 42080, 42081, 42355.51, 42356, 42356.1, 42356.2, and 42357, Government Code Sections 7921.500, 7922.530, 11440.20, 11505, 11506, 11520, Code of Civil Procedure 413.10, 413.20, 413.30, 413.40, 416.40 and Civil Code 3426.1.

INFORMATIVE DIGEST

Summary of Existing Laws

The California Integrated Waste Management Act of 1989 (Pub. Resources Code, section 40000 et seq.)), administered by CalRecycle, regulates the disposal, management, and recycling of, among other solid waste, plastic packaging containers and single–use food ware. It also imposes various reporting requirements on disposal facility operators, solid waste handlers, and transfer station operators regarding the types and quantities of materials disposed of, sold, or transferred to other entities.

Pursuant to Assembly Bill Number 341 (2011–2012 Regular Session) (Statutes 2011, chapter 476), the state's policy goal was that at least 75 percent of solid waste generated would be source–reduced, recycled, or composted by 2020. That goal has not yet been met.

Senate Bill Number 1335 (2017–2018 Regular Session), the Sustainable Packaging for the State of California Act of 2018 (Statutes 2018, chapter 510) (SB 1335), restricts certain types of food service packaging that may be used by food service facilities located in a state–owned facility, operating on, or acting as a concessionaire on state property, or under contract to provide food service to a state agency. The food service packaging must be on the list published by CalRecycle identifying it as reusable, recyclable, or compostable.

Senate Bill Number 343 (2021–2022 Regular Session) (Statutes 2021, chapter 507) (SB 343), establishes specific standards for what constitutes deceptive labeling concerning recyclability. Products can only be labeled "recyclable" or with the "chasing arrows" logo if they are regularly collected and processed for recycling and meet certain design and composition characteristics affecting recyclability, or satisfy other criteria related to recycling rates, alternative collection programs, or government programs governing recyclability. The law requires CalRecycle to conduct and publish a material characterization study examining the material types and forms that are collected, sorted, sold, or transferred by solid waste facilities in the state. Determinations of whether items can be considered recyclable in California must be based on the information that CalRecycle publishes.

Effect of the Proposed Action

By interpreting, making specific, and implementing the Act, the proposed regulations will establish the various substantive and procedural requirements applicable to the extended producer responsibility (EPR) program that the Act requires producers of single–use packaging and single–use plastic food service ware (covered materials) to administer. The proposed regulations will also establish how CalRecycle will exercise its oversight and enforcement responsibilities.

The proposed regulations will also implement the AB 1201 requirement that products must be certified by third parties to meet a technical standard established under chapter 5.7 of part 3 of division 30 of the Public Resources Code (commencing with section 42355). By implementing this requirement of AB 1201, the proposed regulations will cause the requirement to take effect generally, not just with respect to covered materials.

These proposed regulations do not substantially differ from a comparable federal regulation or statute because there are no existing comparable federal regulations or statutes.

Policy Statement Overview and Anticipated Benefits of the Proposed Regulations

The broad objective of the proposed regulations is to implement the Act to ensure that it achieves its goals: source reduction of plastic covered material, elimination of covered material that is not recyclable or compostable, and significant improvements in recycling rates for covered material. The proposed regulations also serve the objective of improving the integrity of product labeling by implementing requirements for when covered material can lawfully be labeled "compostable."

These objectives are consistent with the more general policy goals of shifting California to a circular economy and shifting responsibility for end–of–life management of various materials onto the producers of them, thereby lessening the materials' effects on the environment and public health and easing the burdens on local jurisdictions and consumers. Shifting responsibility through EPR statutes like the Act will benefit solid waste handling in the state by requiring producers to address the costs of such management and incentivizing the development of infrastructure, technological innovation, and increased usage of reusable and refillable products.

By giving effect to the certification requirement of AB 1201, the proposed regulations will reduce deception of consumers regarding whether products are compostable. Consumers will be able to make more informed purchasing choices and better understand what materials are appropriate to discard with materials collected for composting. In turn, this will enhance the technical and economic viability of composting programs statewide.

By implementing the Act, the proposed regulations will also spur improvements in recycling and composting infrastructure, which will lead to decreased pollution and environmental harm associated with disposal of covered materials. These effects will, in turn, have positive effects on human health. Decreased disposal of covered material will also decrease greenhouse gas emissions associated with such disposal.

Specific anticipated benefits of the proposed regulations' implementation and enforcement of the Act include:

- Reduction of plastic pollution and litter
- Reduction of greenhouse gas emissions
- Decreased material disposal burdens
- Decreased raw material extraction and virgin material usage
- Greater use of reusable and refillable items and expansion of reuse and refill systems
- Reduced presence of toxins and other chemicals that would render products non–compostable or interfere with recycling
- Increased access to recycling and composting
- Investments in communities disproportionately impacted by the effects of plastic pollution
- Supporting a stable circular economy
- Supporting consistent recycling systems state–wide
- Increased revenue for businesses from the sale of recycled material product
- Decreased public health concerns such as cancer, asthma, and birth defects
- Encouragement of packaging innovation
- Reduced exposure to chemicals and microplastics from use of reusable materials
- Ensuring that refillable or reusable materials can be used and washed safely and hygienically
- Promoting openness and transparency in business and government through creation and implementation of Producer Responsibility Organization (PRO) plans and plans created by individual businesses
- Reduced deception of consumers and increased transparency in business by imposing certification requirements for labeling products as "compostable."

Consistency with State Regulations

Pursuant to Government Code Section 11346.5(a)(3)(D), CalRecycle conducted an evaluation of existing state regulations. CalRecycle determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations and that CalRecycle is the only agency that can implement this proposed regulation.

INCORPORATION BY REFERENCE

The following documents are incorporated by reference in the proposed regulation:

- ISO/IEC FDIS 17025:2017, "General requirements for the competence of testing and calibration laboratories," International Organization for Standardization/International Electrotechnical Commission, November 2017
- ISO/IEC 17065:2012, "Conformity assessment—Requirements for bodies certifying products, processes and services," International Organization for Standardization/International Electrotechnical Commission, September 2012.

OTHER STATUTORY REQUIREMENTS (GOVERNMENT CODE SECTION 11346.5(a)(4))

CalRecycle has determined that no other matters, as prescribed by statute, need to be addressed.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

CalRecycle has made the following initial determinations:

Mandate Imposed on Local Agencies: Yes.

Costs to any local agency which requires reimbursement in accordance with Part 7 of Division 4 of Title 2 the Government Code: None.

The proposed regulations mandate local agencies to include covered material contained on the covered material categories list published by CalRecycle in their collection and recycling programs. Implementation involves collaboration between the producer responsibility organization (PRO), producers complying independently from a PRO, and local authorities for various activities, such as education and outreach, material collection and processing, and infrastructure improvement. Costs, influenced by factors like population density and market proximity, encompass both curbside and non–curbside programs. While the costs associated with these activities are initially borne by local agencies, they are not reimbursable by the State. The PRO is responsible for reimbursing the expenses incurred by local jurisdictions to meet the statutory and regulatory requirements of SB 54. Additionally, potential funding from the California Plastic Pollution Mitigation Fund can be directed towards supporting relevant entities.

Mandate Imposed on School Districts: None.

FISCAL IMPACT

Costs to Any Local Agencies or School Districts Requiring Reimbursement

CalRecycle has determined there are no costs to local agencies or school districts subject to reimbursement by the State required by Part 7 of Division 4 of Title 2 the Government Code.

Cost or Savings to Any State Agency

CalRecycle has determined the total annual cost to the state is estimated to be $76.75 million which will be incurred by CalRecycle and funded by the PRO through the Circular Economy Fund. CalRecycle also anticipates a $4 million reduction in revenue to the state from a decrease in disposal stream tipping fees.

Other Non–Discretionary Cost or Savings Imposed Upon Local Agencies

CalRecycle has determined that the proposed regulations do result in costs to local agencies. These costs are not required to be reimbursed by the State. Rather, the PRO is responsible for fully reimbursing these costs. CalRecycle expects local agencies to improve and expand their recycling collection services to meet the requirements of the Act and estimates that the average cost per Fiscal Year for these activities is anticipated to be $22.2 million through 2023–24, 2024–25, and 2025–2026. Additionally, costs to local authorities may include education and outreach, material processing, and additional infrastructure improvements. In circumstances where communities have been disproportionately affected by plastic pollution and environmental justice related issues, funding from the California Plastic Pollution Mitigation Fund can be directed to local authorities for these costs.

Cost or Savings in Federal Funding to the State

CalRecycle has determined that adoption of these regulations will not have an impact on costs or savings in federal funding to the State.

HOUSING COSTS

CalRecycle has determined that adoption of these regulations will not have a significant effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

CalRecycle has made an initial determination that the adoption of these regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. CalRecycle has considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

The businesses most directly affected by these regulations are referred to in the Act as “producers”

of single–use packaging and plastic single–use food service ware: manufacturers, brand or trademark owners, brand or trademark licensees, and businesses that sell, offer for sale, or distribute such materials in the state.

As of 2032, the Act will require that all single–use packaging and plastic single–use food service ware be recyclable or compostable. It also requires that plastic single–use packaging and food service ware achieve certain recycling rates. These regulations require producers to maintain records that demonstrate their compliance with those overall requirements and to report data related to such compliance to CalRecycle. Producers will also be required to reduce the overall amount of such materials that they create.

These regulations will require producers to comply with their obligations under the Act by participating in a program operated by an organization acting on their behalf pursuant to a plan approved by CalRecycle. Alternatively, producers can create their own plan. Producers, either through such an organization or individually, will be required to prepare and submit plans addressing all requirements stated in the Act, submit annual budgets and reports concerning their plans, and maintain records documenting their compliance with the Act. The reporting and recordkeeping requirements encompass the following: the amount and types of single–use packaging and plastic single–use food service ware that producers sell, distribute, or import; the amount and types of such materials that producers collect for recycling; the basis asserted for certain materials to be considered recyclable; estimations of recycling rates for particular types of materials; calculations of source reduction with respect to plastic single–use packaging and food service ware; and records demonstrating that entities that collect and process materials subject to the Act do so in a manner that satisfies certain criteria.

These regulations will also impose compliance requirements on businesses that assert they are not "producers" of covered material because some other entity is the producer or because the packaging or plastic food service ware at issue is reusable or refillable. Such businesses may be required to support their claim that they are not the producer, such as by demonstrating that such items satisfy the criteria in the regulations to be considered not "single–use."

Solid waste enterprises that provide solid waste handling services on behalf of a local jurisdiction will also be affected because the Act may require them to add certain types of materials to their collection and recycling programs.

RESULTS OF STANDARDIZED REGULATORY IMPACT ASSESSMENT

Creation or Elimination of Jobs within the State of California

CalRecycle has determined that the proposed action will not eliminate jobs within California. Over the course of implementation, it is projected that 102,564 jobs may be created in the manufacturing industries specializing in recyclable plastics, paper, glass, and metal products, as well as within the construction, wholesale, retail, and food service industries.

Creation of New Businesses or Elimination of Existing Businesses within California

CalRecycle has determined that the proposed action will create new businesses within California. It is anticipated that at least 31 businesses will be created statewide. These businesses include at least one PRO, a non–profit organization, and several material recovery facilities (MRFs).

Competitive Advantages or Disadvantages for Businesses Currently Doing Business within the State

CalRecycle has determined that the proposed action will not have competitive advantages or disadvantages for businesses currently doing business within California.

Increase or Decrease of Investment in the State

CalRecycle has determined that the proposed action will increase investment in California. Private investment will experience an initial increase of $172 million in 2024 and peak in 2030 at $1.2 billion. There is no indication that there will be a net decrease in investment in the state because of the proposed regulations.

Incentives for Innovation in Products, Materials or Processes

CalRecycle has determined that the proposed regulations will provide incentives for innovation in products, materials, and manufacturing and waste management processes that ensure cost–effective approaches for producers to be in compliance with the Act. The proposed regulations establish material packaging standards that will incentivize manufacturers to develop innovative and new packaging with covered material, increase the utilization of reuse and refill infrastructure, and develop new processes for recycling in order to meet the requirements of the Act.

Benefits of the Regulation, Including But Not Limited To, Benefits to the Health, Safety, and Welfare of California Residents, Worker Safety, the State's Environment, and Quality of Life

CalRecycle has determined that the proposed action will have benefits, including but not limited

to, benefits to the health and welfare of California residents, worker safety, the state's environment, and quality of life. In addition to generating less packaging waste through plastic source reduction and shifting to reusable and refillable material, reducing plastic pollution through the funds from the California Plastic Pollution Mitigation Fund will lead to a decrease in negative human health and environmental impacts especially in disadvantaged and low–income communities disproportionately affected by plastic pollution. Additionally, California residents will also benefit from greater accessibility to recycling and composting due to the increase in infrastructure for collection, sortation, and processing of such materials. Creating recyclable and compostable packaging will lead to harmonization with our recycling infrastructure that will lead to less disposal and prolong our landfill capacity and use. It will also lead to a decrease in greenhouse gas (GHG) emissions, and a decrease of fossil fuels used in the production of virgin plastic. There is no indication that worker safety will be negatively impacted due to the proposed regulations.

Summary of the Department of Finance's Comments on the Proposed Regulations and the Standardized Regulatory Impact Assessment

DOF Comment #1:

First, the SRIA must identify any changes in the amount of operating income received by state and local agencies. The SRIA estimates that the impact on personal income will exceed $1 billion in several years with the highest impact being $5.2 billion in 2030. State income tax revenue is typically equal to about 4 percent of state personal income, thus, a $1 billion change in income could cause income tax revenue to change by about $40 million unless the affected population has unusually high or low incomes. The SRIA should provide estimates for the regulation's expected impact on tax revenue for each year of the analysis.

CalRecycle Response:

CalRecycle has revised the "State Government" section of the SRIA to include a calculation of the expected change in state income tax revenue for each year of the implementation period. CalRecycle estimates that an additional $766 million in state income tax revenue is likely to be generated over the implementation period as a result of increased personal income, resulting in an overall benefit to California.

DOF Comment #2:

Second, the baseline should include the number and description of affected producers and individuals and/or households. The SRIA indicates the number and type of affected producers in the direct costs to businesses section but does not include this estimate and description in the economic baseline. The number of individuals and/or households affected should also be reflected in the economic baseline.

CalRecycle Response:

CalRecycle has revised the "Baseline" and "Inputs and Assumptions of the Assessment" sections of the SRIA to include the number and type of businesses, producers, individuals, and households expected to be impacted by the Proposed Regulations.

DOF Comment #3:

Finally, while the SRIA states that the direct cost per household after full implementation could be as high as $329 per year, the total direct costs to all affected individuals and/or households throughout the regulation's implementation period must be quantified.

CalRecycle Response:

For purposes of this analysis, CalRecycle assumes that the cost of implementation to producers will be passed down to individuals. The "Direct Cost on Individuals" section of the SRIA has been revised to include the total cost of implementation, representing the total estimated cost to individuals within California over the implementation period. Additionally, CalRecycle has added a discussion of the increase in personal income and environmental benefits, which are expected to offset the costs to individuals, to this section.

COST IMPACTS TO REPRESENTATIVE PRIVATE PERSON OR BUSINESS

Compliance with the proposed regulations will increase costs for producers because packaging and food service ware will be required to use materials that are recyclable, compostable, or reusable and may be more expensive than the traditional, very inexpensive materials widely used currently. The need to avoid design characteristics, such as those related to component sizes, inks, or adhesives, that make sorting and recycling more difficult may also result in increased manufacturing costs.

Producers and non–producers may incur costs related to documenting that certain materials comply with the Act's requirements. For example, producers of covered material claimed to be recyclable or compostable may incur costs to establish that the material meets applicable technical standards. Manufacturers, distributors, and sellers of packaging or food service ware claimed to be reusable or refillable may incur costs to establish that their products satisfy the criteria for being considered not "single–use."

Producers may incur costs related to source reduction, such as the cost of obtaining validation from a third party of post–consumer recycled content or the cost of shifting to non–plastic materials. Producers,

through a PRO or otherwise, may also incur costs related to establishing alternative collection systems, establishing, and expanding recycling infrastructure, developing new materials and technologies, and establishing infrastructure for the convenient and safe reuse and refill of packaging or food service ware.

Producers that participate in a PRO plan will pay fees directly to the PRO according to the fee schedule established by the PRO, and the PRO will pay the circular economy administrative fee to CalRecycle. Producers, through the PRO or otherwise, will also pay annual environmental mitigation surcharges to the California Department of Tax and Fee Administration. Producers and the PRO will also incur costs related to developing and maintaining plans, record keeping, and annual reporting.

Local jurisdictions or recycling service providers may incur costs related to expanding the types of covered material included in their collection and recycling programs.

CalRecycle estimates the direct cost per household after full implementation of these regulations could potentially reach $329 annually, the direct cost for a large producer to potentially reach $646,866 annually, and the direct cost for businesses that are not producers but sell covered material to potentially reach $8,311 annually. The estimated costs to individuals in this analysis includes many assumptions regarding factors that will affect the actual, realized impacts to individuals, most notably decisions by the PRO and producers regarding their compliance pathways, as well as individual consumer decisions. These decisions may result in the actual impacts on individuals potentially being different from the estimates presented here.

BUSINESS REPORT

The proposed regulations address reporting requirements that are authorized by sections 42051.3, 42052, and 42057 of the PRC and direct CalRecycle to adopt a reporting system to enable producers and the PRO to report specific information to CalRecycle. The report requirement applies to businesses. The proposed regulations specify the data that the PRO, producers participating in the PRO or producers complying independently of a PRO are required to report. By specifying the reporting requirements, the proposed regulations allow for producers to be in compliance with the Act and for CalRecycle to provide necessary program oversight to ensure progress towards meeting statutory goals. The proposed regulations satisfy the requirement stated in Government Code Section 11346.3(d) that it is necessary for the health, safety, and welfare of the people of the state that the regulations apply to businesses.

DETERMINATION OF EFFECT ON SMALL BUSINESS

CalRecycle has determined that the proposed regulations will affect small businesses. CalRecycle has estimated that 58% of businesses impacted by the proposed regulations are considered small businesses. Small businesses that meet the definition of producer pursuant to section 42041(w) of the PRC, may be considered small producers, wholesalers, or retailers by the Act if in the most recent calendar year they had gross sales of less than one million dollars ($1,000,000) in the state. The Act authorizes CalRecycle to develop a process to exempt these entities from the majority of requirements of the Act. Producers of covered material granted an exemption from this process would be considered “small producers” and would be exempt from the requirements of the Act [excluding section 42050(b) of the PRC] and would incur an annual cost of approximately $309 for record keeping and exemption application preparation costs. Those small businesses that meet the definition of producer per section 42041(w) of the PRC and that are denied an exemption based on a determination by CalRecycle would need to join an approved PRO or comply with the requirements independently.

CalRecycle expects small businesses to benefit from increased revenue from the sale of products made from recycled material. Additionally, less effort will be needed to review recyclability claims of packaging, and there will be an increased ease of providing product packaging to fit consumer demand. There will also be a reduction in the cost of disposal services as more recyclable material is generated. However, the reduction in disposal costs may shift to recycling services as materials shift to recycling and composting collection streams.

CONSIDERATION OF ALTERNATIVES

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

CalRecycle invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the scheduled public hearing.

CONTACT PERSONS

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

Claire Derksen
SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I"Street, MS–24B, Sacramento, CA 95814
Phone: (916) 327–0089
Email: regulations@calrecycle.ca.gov

The backup contact person is:

Craig Castleton
Regulations Unit Supervisor
Department of Resources Recycling and Recovery, Regulations Unit
1001 "I"Street, MS–24B, Sacramento, CA 95814
Phone: (916) 327–0089
Email: regulations@calrecycle.ca.gov

AVAILABILITY STATEMENTS

Availability of Initial Statement of Reasons, Text of Proposed Regulations, Information Upon Which this Proposal is Based, and Rulemaking File

CalRecycle will have the entire rulemaking file, the express terms of the proposed regulations, and all information that provides the basis for the proposed action, available for public inspection and copying during normal business hours at the address provided above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the text of the proposed regulations, the Initial Statement of Reasons, the documents relied upon for the proposed action, the economic and fiscal impact statement, and standardized regulatory impact assessment. Copies may be obtained by contacting the contact persons at the address, email, or phone number listed above.

Availability of Modified Text

CalRecycle may adopt the proposed regulations substantially as described in this Notice. If CalRecycle makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least fifteen (15) days before CalRecycle adopts the regulations as revised. Requests for the modified text should be made to the contact persons named above. CalRecycle will transmit any modified text to all persons who testify at the scheduled public hearing, all persons who submit a written comment at the scheduled public hearing, all persons whose comments are received during the comment period, and all persons who request notification of the availability of such changes. CalRecycle will accept written comments on the modified regulations for fifteen (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 request from the contact persons identified in this Notice or accessed through CalRecycle's website at www.calrecycle.ca.gov/Laws/Rulemaking.

INTERNET ACCESS

For more timely access to the rulemaking file, and in the interest of waste prevention, interested parties are encouraged to access CalRecycle's Internet webpage for the rulemaking at www.calrecycle.ca.gov/Laws/Rulemaking. All rulemaking files published through CalRecycle's internet website will be available on that page.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 265, 270, 315, 316.5, 399 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5 and 2084 of said Code, proposes to amend Section 7.40, Title 14, California Code of Regulations, relating to Central Valley sport fishing regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations in subsections (b)(4), (b)(43), (b)(66), and (b)(80) of Section 7.40 prescribe the 2023 seasons and daily bag and possession limits for Sacramento River fall–run Chinook Salmon (*Oncorhynchus tshawytscha*; SRFC) sport fishing in the American, Feather, Mokelumne, and Sacramento rivers, respectively. Collectively, these four rivers constitute the "Central Valley fishery" for SRFC for purposes of this document. In considering the current 2023 regulations the Fish and Game Commission (Commission) accepted the Department of Fish and Wildlife's (Department) recommendation for the most conservative option that prohibited fishing for Chinook Salmon in the Central Valley.

Each year, the Department recommends new Chinook Salmon bag and possession limits for consideration by the Commission to align the fishing

limits with up–to–date management goals, as set forth below.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of recreational and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The PFMC will develop the annual Pacific coast ocean salmon fisheries regulatory options for public review at its March 2024 meeting and will adopt its final regulatory recommendations at its April 2024 meeting based on the PFMC salmon abundance estimates and recommendations for ocean harvest for the coming season. Based on the April 2024 recommendation by PFMC, the Department will recommend specific bag and possession limit regulations to the Commission at its April 18, 2024, meeting. The Commission will then consider adoption of the Central Valley sport fishing regulations at its May 15, 2024 meeting.

Proposed Regulations

Chinook Salmon Bag and Possession Limits

The Department recognizes the uncertainty of SRFC in–river harvest projections. Therefore, for the 2024 Central Valley fishery, the Department is presenting four regulatory options for the Commission's consideration to tailor 2024 Central Valley fishery management to target 2024 in–river fisheries harvest projections. The Commission may adopt these options for each river section independently, or in combination to meet PFMC SRFC management objectives.

- American River, subsections 7.40(b)(4)(B), (C) and (D).
- Feather River, subsection 7.40(b)(43)(D) and (E).
- Mokelumne River, subsection 7.40(b)(66)(A), (B) and (D).
- Sacramento River below Keswick Dam, subsection 7.40(b)(80)(C), (D) and (E).

The following options are provided for Commission consideration:

Option 1 — Any Size Chinook Salmon Fishery

This option is the Department's preferred option if the 2024 SRFC stock abundance forecast is sufficiently high to avoid the need to constrain in–river SRFC harvest.

Bag limit of [0–4] Chinook Salmon.

Possession limit — [0–12] Chinook Salmon.

Option 2 — Limited Adult and Grilse Salmon Fishery

Bag limit of [0–4] Chinook Salmon of which no more than [0–4] fish over 27 inches total length may be retained.

Possession limit — [0–12] Chinook Salmon of which no more than [0–12] fish may be over 27 inches total length.

Option 3 — Grilse Salmon Fishery Only

Bag limit of [0–4] Chinook Salmon less than or equal to 27 inches total length.

Possession limit — [0–12] Chinook Salmon less than or equal to 27 inches total length.

Option 4– No Salmon Fishing in all Central Valley Rivers, Streams, and Tributaries

No take or possession of Chinook Salmon.

Benefits of the Proposed Regulations

The Commission anticipates benefits to the environment in the sustainable management of Central Valley Chinook Salmon resources. Other benefits of the proposed regulations are consistency with federal fishery management goals, and health and welfare of California residents.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate sport fishing in waters of the state (Fish and Game Code sections 200, 205, 315 and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to Chinook Salmon sport fishing seasons, bag, and possession limits for Central Valley sport fishing.

PUBLIC PARTICIPATION

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before 5:00 p.m. Thursday, May 2, 2024 at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on Friday, May 10, 2024.** If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244–2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in San Jose Scottish Rite Center, 2455 Masonic Drive, San Jose,

California, 95125 which will commence at **8:30 a.m.** on **Wednesday, April 17, 2024**, and may continue at **8:30 a.m.**, on **Thursday, April 18, 2024**, or as soon thereafter as the matter may be heard. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling (916) 653–4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing which will commence at 8:30 a.m. on Wednesday, May 15, 2024, or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling (916) 653–4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

AVAILABILITY OF DOCUMENTS

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

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

IMPACT OF REGULATORY ACTION/ RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource, while providing inland sport fishing opportunities and thus, the prevention of adverse economic impacts.

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

The Commission does not anticipate significant adverse economic impacts but acknowledges the potential for short–term negative impacts on the creation or elimination of jobs within the state. The Commission anticipates no adverse impacts on the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The management of an ongoing Chinook Salmon sport fishery with annual variations in the bag and possession limits and/or the implementation of a size limit is not anticipated to significantly impact the volume of business activity.

The loss of up to 22 jobs with Option 2, 43 jobs for Option 3, and 108 jobs for Option 4 is not expected to eliminate businesses because projected reduction in fishing days is expected to be partially offset by opportunities to fish for grilse Chinook Salmon and other species for Option 2 and 3 and continued opportunities for other non–salmonid species for Option 4.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a Chinook Salmon sport fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the environment by the sustainable management of Chinook Salmon resources in the Central Valley.

The Commission does not anticipate any benefits to worker safety.

Other benefits of the proposed regulations are concurrence with federal fishery management goals and promotion of businesses that rely on Central Valley sport fishing.

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

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

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

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

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

None.

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

None.

(h) Effect on Housing Costs:

None.

EFFECT ON SMALL BUSINESS

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

CONSIDERATION OF ALTERNATIVES

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 265, 270, 315, 316.5, 399, and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 316.5, and 2084 of said Code, proposes to amend Section 7.40, Title 14, California Code of Regulations, relating to Klamath River Basin sport fishing regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Klamath River Basin, which consists of the Klamath River and Trinity River systems, is managed for fall–run Chinook Salmon (*Oncorhynchus tshawytscha*) through a cooperative system of state, federal, and tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River Basin (in–river) sport fisheries which are consistent with federal fishery management goals.

Tribal entities within the Klamath River Basin maintain fishing rights for ceremonial, subsistence, and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing

regulations are promulgated by individual tribal governments.

Klamath River Fall–Run Chinook Salmon

Adult Klamath River fall–run Chinook Salmon (KRFC) harvest allocations and natural spawning escapement goals are established by PFMC. The KRFC harvest allocation between tribal and non–tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

PFMC Overfishing Review

KRFC stocks have been designated as "overfished" by PFMC. This designation is the result of not meeting conservation objectives for these stocks. Management objectives and criteria for KRFC are defined in the PFMC Salmon Fishery Management Plan (FMP). The threshold for overfished status of KRFC is a three–year geometric mean less than or equal to 30,525 natural area adult spawners. This overfished–threshold was met for KRFC during the 2015–2017 period. The 30,525 KRFC natural area adult spawners is considered the minimum stock size threshold, per the FMP. The KRFC adult natural area spawning escapement for 2022 was 22,051 natural area adult spawners, which is below the one–year conservation threshold of 40,700 natural area adult spawners. The most recent three–year geometric mean of 25,857 is still less than the required 40,700 natural area adult spawners conservation threshold, therefore the KRFC are still considered as an "overfished" stock.

Accordingly, the FMP outlines a process for preparing a "rebuilding plan" that includes assessment of the factors that led to the decline of the stock, including fishing, environmental factors, model errors, etc. The rebuilding plan includes recommendations to address conservation of KRFC, with the goal of achieving rebuilt status. Rebuilt status requires meeting a three–year geometric mean of 40,700 adult natural area KRFC spawner escapement. The plan developed by representatives of National Marine Fisheries Service (NMFS), PFMC, U.S. Fish and Wildlife Service, the Department, and tribal entities, was submitted to PFMC in February 2019, adopted by PFMC in June 2019, and submitted to NMFS in August 2019. Forthcoming recommendations from the rebuilding plan may alter how KRFC are managed in the future, including changing the in–river allocation number, and/or allocating less than the normal target number.

Klamath River Spring–Run Chinook Salmon

The Klamath River Basin also supports Klamath River spring–run Chinook Salmon (KRSC). Naturally produced KRSC are both temporally and spatially separated from KRFC in most cases. Presently, KRSC stocks are not managed or allocated by PFMC. This in–river sport fishery is managed by general basin seasons, daily bag limit, and possession limit regulations. KRSC harvest is monitored on the Klamath River below the Highway 96 bridge at Weitchpec to the mouth of the Klamath River by creel survey. The upper Trinity River, upstream of Junction City, is monitored using tag returns from anglers. When needed, KRSC regulations are amended in a separate rulemaking.

KRFC Allocation Management

The PFMC allocation for the Klamath River Basin sport harvest is normally a minimum of 15 percent of the non–tribal PFMC harvest allocation of KRFC. Preseason stock projections of 2024 adult KRFC abundance will not be available from PFMC until March 2024. The 2024 basin allocation will be recommended by PFMC in April 2024. That allocation will inform the quota that the Department proposes to the Commission for adoption as a quota for the in–river sport harvest at the Commission's May 2024 teleconference meeting.

The Commission may adopt a KRFC in–river sport harvest quota that is different than the quota proposed by the Department or the PFMC 2024 allocation for that fishery. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the FMP.

The annual KRFC in–river sport harvest quota is specified in subsection 7.40(b)(50)(D)1. The quota is split among four geographic areas with a subquota for each area, expressed as a percentage of the total in–river quota, specified in subsection 7.40(b)(50)(D)2. For angler convenience, the subquotas, expressed as the number of fish, are listed for the affected river segments in subsection 7.40(b)(50)(E).

The in–river sport subquota percentages are as follows:

1. Main stem Klamath River from 3,500 feet downstream of Iron Gate Dam to the Highway 96 bridge at Weitchpec –– 17 percent of the in–river sport quota;
2. Main stem Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth of the Pacific Ocean –– 50 percent of the in–river sport quota;

   The spit area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth) closes to all fishing after 15 percent of the total Klamath River Basin quota has been taken downstream of the Highway 101 bridge.
3. Main stem Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat –– 16.5 percent of the in–river sport quota; and

4. Main stem Trinity River downstream of the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River –– 16.5 percent of the in–river sport fishery quota.

These geographic areas are based upon the historical distribution of angler effort to ensure equitable harvest of adult KRFC in the Klamath River and Trinity River. The subquota system requires the Department to monitor or assess angler harvest of adult KRFC in each geographic area. All areas are monitored on a real time basis, except for the Klamath River upstream of Weitchpec and in the Trinity River. Due to funding and personnel reductions, the Department does not currently conduct real time harvest monitoring in the Klamath River upstream of the Weitchpec and in the Trinity River.

The Department has developed Harvest Predictor Models (HPM), which incorporate historic creel survey data from the Klamath River downstream of Iron Gate Dam to the confluence with the Pacific Ocean, and the Trinity River downstream of Lewiston Dam to the confluence with the Klamath River. Each HPM is driven by the positive relationship between KRFC harvested in the respective lower and upper subquota areas of the Klamath River and the Trinity River. The HPMs will be used by the Department to implement fishing closures to ensure that anglers do not exceed established subquota targets. Using this method, the upper Klamath River subquota area generally closes between 28–30 days after the lower Klamath River subquota is reached. Similarly, the upper Trinity River subquota area generally closes 45 days after the lower Klamath River subquota has been met. The Department also takes into consideration several other factors when implementing closure dates for subquota areas, including angler effort, KRFC run timing, weir counts, and ongoing recreational creel surveys performed by the Hoopa Valley Tribe in the lower Trinity River below Willow Creek.

Sport Fishery Management

The KRFC in–river sport harvest quota is divided into geographic areas, and harvest is monitored under real time subquota management. The KRSC in–river sport harvest is managed by general season, daily bag limit, and possession limit regulations.

The Department presently differentiates the two stocks by the following sport fish season in each sub–area:

Klamath River

July 1 through August 14 — General Season KRSC.

For purposes of clarity, daily bag and possession limits apply to that section of the Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth.

August 15 to December 31 — KRFC quota management.

Trinity River

July 1 through August 31 — General Season KRSC.

For purposes of clarity, daily bag and possession limits apply to that section of the Trinity River downstream of the Old Lewiston Bridge to the confluence with the South Fork Trinity River.

September 1 through December 31 — KRFC quota management.

The daily bag and possession limits apply to both stocks within the same sub–area and time period. Current regulations in subsections 7.40(b)(50)(E)2.a. and b. specify bag limits for KRFC stocks in the Klamath River. Current regulations in subsections 7.40(b)(50)(E)6.b., e., and f. specify bag limits for KRFC stocks in the Trinity River. Current regulations in subsection 7.40(b)(50)(C)2.b. specify KRFC possession limits.

Proposed Changes

Option 1: KRFC Adult Stocks (Sport Fishery Quota Management)

Quota: For public notice requirements, the Department recommends the Commission consider a quota range of 0–67,600 adult KRFC in the Klamath River Basin for the in–river sport fishery. This recommended range encompasses the historical range of the Klamath River Basin allocations and allows PFMC and Commission to make adjustments during the 2024 regulatory cycle.

Subquotas: The proposed subquotas for KRFC stocks are as follows:

1. Main stem Klamath River from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec –– 17 percent of the total quota equates to [0–11,492];
2. Main stem Klamath River downstream of the Highway 96 bridge at Weitchpec to the mouth of the Pacific Ocean –– 50 percent of the total quota equates to [0–33,800];
3. Main stem Trinity River downstream of the Old Lewiston Bridge to the Highway 299 West bridge at Cedar Flat –– 16.5 percent of the total quota equates to [0–11,154]; and
4. Main stem Trinity River downstream of the Denny Road bridge at Hawkins Bar to the confluence with the Klamath River –– 16.5 percent of the total quota equates to [0–11,154].

Seasons: No changes are proposed for the Klamath River and Trinity River KRFC seasons:

- Klamath River — August 15 to December 31
- Trinity River — September 1 to December 31

Bag and Possession Limits

Because the PFMC recommendations are not known at this time, ranges are shown in [brackets] below of bag and possession limits which encompass historical quotas. All are proposed for the 2024 KRFC fishery in the Klamath and Trinity rivers.

- Bag Limit — [0–4] Chinook Salmon — of which no more than [0–4] fish over [20–24] inches total length may be retained until the subquota is met, then 0 fish over [20–24] inches total length.
- Possession limit — [0–12] Chinook Salmon of which no more than [0–4] fish over [20–24] inches total length may be retained when the take of salmon over [20–24] inches total length is allowed.

The final KRFC bag and possession limits will align with the final federal regulations to meet biological and fishery allocation goals specified in law or established in the FMP.

As in previous years, no retention of adult KRFC is proposed once the subquota has been met.

Size Limits

KRFC are managed based on adult quotas which is the maximum number of adult fish (age three and older) that can be harvested. Last year, the Department moved away from the fixed standing cutoff size between grilse and adult Chinook Salmon of 23 inches total length to using a range between 20 to 24 inches total length as an annual option for cutoff size. This allows for annual variation in size cutoffs, as informed by previous year(s) data to manage the harvest of the adult KRFC quota more effectively. The Department is currently conducting a post season assessment of KRFC length and age data which will be used to help determine the proposed 2024 size cutoff. The 2024 proposed adult cutoff will be presented at the April Commission meeting.

Option 2: KRFC Fishery Closure

This option would close salmon fishing in the Klamath River Basin as specified by river reach(es) in subsection 7.40(b)(50) to provide protection to KRFC should a reduction in the stock be indicated by PFMC abundance projections. In any year, should the PFMC recommend a complete or near complete closure of ocean recreational salmon fishery and/or an allocation of 0 (zero) adult KRFC to the in–river fishery, this option would give the Department flexibility to respond to and support any federal action. This option prohibits all methods of targeting KRFC including catch and release fishing.

Klamath River Dam Removal ISOR

At this time, the Commission is considering several proposed changes to the existing sport fishing regulations on the main stem Klamath River as part of the Klamath River Dam Removal project and contained in the *Klamath River Dam Removal Sport Fishing Updates ISOR* (OAL Z2023–1106–05). Some of the proposed changes currently under consideration would affect Title 14 regulations contained in this ISOR specifically subsections (b)(50)(E)1. and (b)(50)(E)2. of Section 7.40. concerning the main stem Klamath River. The proposed changes to sport fishing regulations in anticipation of dam removals are anticipated to be approved by the Commission in February 2024 and in effect by mid–April, 2024. These new regulations for sport fishing for dam removal along the Klamath River would become the regulatory baseline for the proposed changes contained within this ISOR, and are planned to be updated as such for the Final Statement of Reasons.

Benefit of the Regulations

The benefits of the proposed regulations are conformance with federal fishery management goals, sustainable management of Klamath River Basic fish resources, health and welfare of California residents, and promotion of businesses that rely on salmon sport fishing in the Klamath River Basin.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. Commission staff has searched the California Code of Regulations and has found no other state regulations related to sport fishing in the Klamath River Basin.

PUBLIC PARTICIPATION

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before 5:00 p.m. Thursday, May 2, 2024 at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on Friday, May 10, 2024.** If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244–2090.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in San Jose Scottish Rite Center, 2455 Masonic Drive, San Jose, California, 95125, which will commence at **8:30 a.m.** on **Wednesday, April 17, 2024**, and may continue at **8:30 a.m.**, on **Thursday, April 18, 2024**, or as soon thereafter as the matter may be heard. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling (916) 653–4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing which will commence at 8:30 a.m. on Wednesday, May 15, 2024, or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling (916) 653–4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

AVAILABILITY OF DOCUMENTS

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

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

IMPACT OF REGULATORY ACTION/ RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected to range from minor to no impact on the net revenues to local businesses servicing sport fishermen. If the 2024 KRFC quota is reduced, visitor spending may correspondingly be reduced, and in the absence of alternative visitor activities, the drop in spending could induce some business contraction. If the 2024 KRFC quota remains similar to the KRFC quotas allocated in previous years, then local economic impacts are expected to be unchanged. Neither scenario is expected to directly affect the ability of California businesses to compete with businesses in other states.

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

An estimated 30–50 businesses that serve sport fishing activities are expected to be directly and/or indirectly affected depending on the final KRFC quota. The impacts range from no impact to small adverse impacts.

Depending on the final KRFC quota, the Commission anticipates the potential for some impact on the creation or elimination of jobs in California. The potential adverse employment impacts range from no impact to the loss of 13 jobs. Under all alternatives, due to the limited time period of this regulation's impact, the Commission anticipates no impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California.

For all of the proposed scenarios, the possibility of growth of businesses to serve alternative recreational activities exists. Adverse impacts to jobs and/or businesses would be less if fishing of other species and grilse KRFC is permitted, than under a complete closure to all fishing. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long–term intent of the proposed regulatory action is to increase sustainability in fishable salmon stocks and, consequently, promote the long–term viability of these same small businesses.

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

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

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

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

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

None.

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

None.

(h) Effect on Housing Costs:

None.

Effect on Small Business

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

Consideration of Alternatives

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

TITLE 21. DEPARTMENT OF TRANSPORTATION

The Department of Transportation (Caltrans) proposes to repeal and replace the Affordable Sales Program regulations (21 CCR 1475 et seq.) with the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

Caltrans will hold a public hearing at the date, time and location listed below. The meeting facility is wheel–chair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Information Digest.

April 26, 2024, from 5:00–8:00 p.m.
South Pasadena High School
1401 Fremont Avenue
South Pasadena, CA 91030

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Caltrans by mail or email as noted below. The written comment period closes at 5:00 p.m. on April 24, 2024. Caltrans will consider only comments received by that time. Please submit comments to:

Mail: Division of Right of Way and Land Surveys
Attention: Carolyn Dabney — SR 710 Sales Program
California Department of Transportation
1120 N Street, MS 37
Sacramento, CA 95815
Email: Carolyn.Dabney@dot.ca.gov

AUTHORITY AND REFERENCE

Streets and Highways Code, sections 118 through 118.6 authorizes Caltrans to dispose of real property no longer required for transportation uses. Government Code sections, 54235 through 54239.5 (the "Roberti Act") requires certain surplus properties owned by Caltrans and located within the State Route (SR) 710 corridor in Los Angeles County, to be disposed of in a manner that preserves, upgrades, and expands the supply of housing available to affected persons and families of low or moderate income. Caltrans has implied authority to adopt the proposed regulations under Government Code, section 54237, and express authority under section 54237.10.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Caltrans acquires real property necessary for state transportation purposes, and must, by law, attempt to dispose of properties no longer required for such purposes (Streets and Highway Code section 118.6). This rulemaking action will implement, interpret, and make more specific the Roberti Act which sets forth the priorities and procedures for disposing of approximately 400 surplus properties owned by Caltrans and located along the SR 710 corridor in Pasadena, South Pasadena, and the El Sereno community of Los Angeles. The Roberti Act was amended by the Legislature with the enactment of Senate Bill 51 (Durazo, 2021), Senate Bill 381 (Portantino, 2021) and Senate Bill 959 (Portantino, 2022). These three bills required adoption of emergency regulations that collectively expire on September 30, 2024.

With the passage of the above bills, the Legislature declared the state's homelessness crisis has compounded the need for affordable housing and reaffirmed its findings that there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford. Consequently, there is a pressing and urgent need for the preservation and expansion of low and moderate income housing. The Legislature, with the initial passage of the Roberti Act in 1979, stated that highway and other state activities contributed to the severe shortage of housing and that such actions were contrary to state housing, urban development, and environmental policies — resulting in a significant environmental effect within the meaning of Article XIX of the California Constitution, which will be mitigated by the sale of surplus residential properties pursuant to the Roberti Act.

The objectives of the proposed regulations include the following:

- Define general provisions applicable to the SR 710 Sales Program;
- Define terms used in the Roberti Act and in the proposed regulations;
- Set forth the sales priorities, procedures, and pricing for disposal of SR 710 surplus residential and non–residential properties;
- Establish the criteria for determining eligibility to participate in the SR 710 Sales Program for existing tenants and occupants and former tenants;
- Specify the procedures for purchasing at an Affordable Price;
- Identify the process for the calculation of an Affordable Price;
- Establish the criteria for approving Housing Related Entities (HREs) for participation in the SR 710 Sales Program;
- Identify the process for HRE sales including submittal of bids for the purchase of surplus residential properties, evaluation and award of surplus residential properties, and the appeals process;
- Identify timelines required for submitting documentation and closing escrow;
- Identify use restrictions to ensure SR 710 surplus residential properties remain available for affordable housing purposes;
- Establish criteria for relocation assistance; and
- Identify appropriate use of funds deposited into the Affordable Housing Trust Account.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The benefits anticipated from this regulatory action include 1) clarifying the sales priorities and procedures for the disposal of the SR 710 surplus properties; 2) addressing current inadequacies in the ASP regulations that were a result of incorrect assumptions previously made; 3) increasing openness and transparency in government by establishing guidelines for the SR 710 Sales Program; 4) allowing Caltrans to more effectively dispose of the surplus properties to meet the intended goal of the Legislature

to preserve and expand the availability of low– and moderate–income housing; 5) creating more vibrant communities by returning the surplus properties to the SR 710 communities; and 6) improving the health and welfare—through homeownership—of those who are eligible and who choose to participate in the SR 710 Sales Program.

DISCLOSURES REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Caltrans had made the following initial determinations regarding the proposed regulatory action:

The proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this matter, Caltrans has concluded these proposed regulations are the only regulations that concern the implementation of the Roberti Act.

Regulations being incorporated by reference include the following documents:

1. Form 1477.2(a)(5) — City of Pasadena, Priority 3, Unoccupied Surplus Residential Properties (02/24); and
2. Form 1477.3(a)(5) — South Pasadena, Priority 4SP (02/24)

The proposed regulations do not impose a mandate on local agencies or schools. The proposed regulations involve no costs or savings to any state agency, no costs to any local agency or school district requiring reimbursement pursuant to Government Code, section 17500 et seq., no other non–discretionary costs or savings imposed upon local agencies, and no costs or savings in federal funding to the state. The proposed regulations will involve minor costs to administer the SR 710 Sales Program, which Caltrans will absorb in its existing budget.

The proposed regulatory action will not have a significant effect on housing costs. The proposed regulations will allow Caltrans to dispose of the SR 710 surplus residential properties more effectively and will expand opportunities for homeownership for those occupants with pending rent obligations—potentially increasing homeownership affordability for persons and families with low or moderate income.

The proposed regulatory action will not have any significant, statewide adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations are limited in scope to certain state–owned surplus properties and are being promulgated to set standards and criteria for the sale of those properties.

The proposed regulatory action imposes no costs impacts to the private sector, no impacts on the creation or elimination of jobs within the State of California, no impacts to the creation of new businesses or the elimination of existing businesses within the State of California, no impacts to the expansion of businesses currently doing business in the State of California, and likely no benefits to the overall health and welfare of California residents, worker safety, and the state's environment. This regulatory action is limited in scope to certain state–owned surplus properties and will not have direct impacts on the private sector, jobs, or businesses, including small businesses. Other than the benefit of creating more vibrant communities specific to the SR 710 corridor—by returning the surplus properties to the SR 710 communities—and the benefit of homeownership on the health and welfare of those who are eligible and who choose to participate in the SR 710 Sales Program—the regulatory action will not have direct impacts on the health and welfare of California residents, worker safety, or the state's environment.

Caltrans is not aware of any cost impacts that a representative private person or business may incur to comply with the proposed regulations, nor does the regulatory action establish any reporting requirements applicable to businesses.

The SR 710 Sales Program is unique to California and is limited in scope to Caltrans owned surplus properties. This regulatory action implements the sales priorities and procedures of a statutorily mandated state program that provides for the sale of state–owned surplus properties—located with the SR 710 communities of Los Angeles, Pasadena, and South Pasadena—to persons and families of low or moderate income or to HREs for affordable housing purposes. The proposed regulations are necessary to clarify the procedures for disposal in accordance with the recent amendments to the Roberti Act. These regulations have no economic impact on businesses within the state and do not regulate a commercial or private individual activity or any private business. Therefore, Caltrans has determined the proposed regulations impose no cost impacts to the private sector and will not have any impact on the creation of jobs or new businesses, or the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

ALTERNATIVES CONSIDERED

In accordance with Government Code, section 11346.5(a)(13) Caltrans must determine that no reasonable alternative to the regulations considered by Caltrans or that have otherwise been identified and brought to the attention of Caltrans would be

more effective in carrying out the purpose for which the regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Caltrans considered leasing the SR 710 surplus residential properties under Executive Order N–06–19 for long–term affordable housing. However, Caltrans prefers to sell the properties pursuant to the Roberti Act to provide its existing tenants and occupants the opportunity for homeownership and to allow HREs the opportunity to purchase SR 710 surplus residential properties to increase the supply of affordable housing within the SR 710 corridor.

Caltrans invites interested persons to present statements with respect to alternatives to the regulations during the written comment period.

CONTACT PERSONS

Any inquiries concerning the proposed regulations may be directed to Carolyn Dabney at (916) 716–7808 or the back–up contact, Angus Chan, at (213) 269–0501.

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

Caltrans has prepared an Initial Statement of Reasons (ISOR) for the proposed action. The ISOR and all information upon which the proposed rulemaking is based, including the express terms of the proposed action, are available and may be obtained upon request. Requests should be directed to the contact person named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, Caltrans may adopt the proposed regulations substantially as described in this notice. If Caltrans makes modifications which are sufficiently related to the originally proposed text, Caltrans will make the modified text, with changes clearly indicated, available to the public at least 15 days prior to adopting the regulations. Caltrans will accept written comments on the modified regulations for at least 15 days after the date on which they are made available. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting Carolyn Dabney or Angus Chan at the address or telephone numbers listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, the Final Statement of Reasons will be available, and copies may be requested from the Caltrans contact person identified above, or the documents may be accessed on the Caltrans' website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the express terms of the proposed regulations can be accessed through the Caltrans website at http://www.dot.ca.gov/710homes.

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

SCOPE OF FERTILITY PRESERVATION SERVICES FOR IATROGENIC INFERTILITY, ADDING SECTION 1300.74.551 IN TITLE 28, CALIFORNIA CODE OF REGULATIONS; CONTROL NUMBER 2023–SFPS

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Department) proposes to add a regulation under the Knox–Keene Health Care Service Plan Act of 1975 (Knox–Keene Act[1]) and corresponding Rules contained in Title 28, California Code of Regulations (CCR). The proposed Rule implements Senate Bill (SB) 600 by enumerating and defining the scope of medical treatments constituting standard fertility preservation services.

This rulemaking action proposes to add section 1300.74.551, Scope of Fertility Preservation Services for Iatrogenic Infertility, to title 28 of the CCR. Before undertaking this action, the Director of the Department (Director) will conduct written public proceedings, during which time any interested person, or such person's duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this Notice.

[1] Health & Safety Code, §§ 1340, et seq.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing pursuant to section 11346.8(a) of the Government Code. The written request for hearing must be received by the Department's contact person, designated below, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written statements, arguments, or contentions (hereafter referred to as comments) relating to the proposed regulatory action by the Department. Comments must be received by the Department, Office of Legal Services, ***by April 23, 2024***, which is hereby designated as the close of the written comment period.

Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Senior Legal Analyst. Comments may be transmitted by standard U.S. mail or email:

Email: regulations@dmhc.ca.gov
Mail: Department of Managed Health Care
Office of Legal Services
Attention: Senior Legal Analyst
980 9th Street, Suite 500
Sacramento, CA 95814

Please note: If comments are sent via email, there is no need to send the same comments by standard U.S. mail. All comments, including via email or standard U.S. mail, should include the author's name and a U.S. mailing address so the Department may provide commenters with notice of any additional proposed changes to the Rule text.

Please identify the action by using the Department's rulemaking title and control number, **Scope of Fertility Preservation Services for Iatrogenic Infertility, Control Number 2023–SFPS**, in any of the above inquiries.

CONTACTS

Inquiries concerning the proposed adoption of this Rule may be directed to the following persons:

Fabiola Murillo
Attorney IV
Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814
(916) 445–4078 (phone)
Fabiola.Murillo@dmhc.ca.gov

Kim Bollenbach
Senior Legal Analyst
Department of Managed Health Care
Office of Legal Services Office of Legal Services
980 9th Street, Suite 500
Sacramento, CA 95814
(916) 414–0790 (phone)
kim.bollenbach@dmhc.ca.gov

AVAILABILITY OF DOCUMENTS

The Department prepared and has available for public review the Initial Statement of Reasons, text of the proposed Rule, and all information upon which the proposed Rule is based (rulemaking file). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Sacramento, CA 95814, Attention: Senior Legal Analyst.

The Notice of Proposed Rulemaking Action, the proposed text of the Rule, and the Initial Statement of Reasons are also available on the Department's website at http://www.dmhc.ca.gov/LawsRegulations.aspx#open.

You may obtain a copy of the Final Statement of Reasons once it is completed by making a written request to the Senior Legal Analyst named above.

AVAILABILITY OF MODIFIED TEXT

The full text of any modified Rule, unless the modification is only non–substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the Department adopts the Rule. A request for a copy of any modified Rule(s) should be addressed to the Senior Legal Analyst. The Director will accept comments via mail or email on the modified Rule(s) for 15 days after the date on which the modified text is made available. The Director may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

California Health and Safety Code section 1341, subdivision (a), authorizes the Department to regulate health care service plans (health plans) and health care service plan business.

Health and Safety Code section 1341.9, vests the Director with all duties, powers, purposes, responsibilities, and jurisdiction as they pertain to health plans and the health plan business.

Health and Safety Code section 1344 grants the Director the authority to adopt, amend, and rescind

such rules, forms, and orders as necessary to carry out the provisions of the Knox–Keene Act.

Health and Safety Code section 1367 requires health care services plans to cover basic health care services consistent with good professional practice.

Health and Safety Code section 1374.551, enacted by SB 600, clarified that when a covered treatment may cause iatrogenic infertility to an enrollee, standard fertility preservation services are a basic health care service.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Law and Effect of the Proposed Action

Existing law, the Knox–Keene Act, provides for the licensure and regulation of health plans by the Department.

Existing law requires health plans to cover standard fertility preservation services when a covered treatment may directly or indirectly cause iatrogenic infertility.

Existing law requires health plans to cover standard fertility preservation services consistent with medical practices and professional guidelines by the American Society of Clinical Oncology (ASCO) or the ASRM (American Society for Reproductive Medicine).

Existing law, codified by the Legislature in 2019,[2] provides that standard fertility preservation services are basic health care services as defined in Health and Safety Code section 1345(b) and are required to be provided by a health plan to its enrollees, where medically necessary.[3]

Health and Safety Code section 1374.551 explains that when a covered treatment may directly or indirectly cause iatrogenic infertility, standard fertility preservation services are a basic health care service and are not within the scope of infertility treatment as defined by law.[4] The Legislature found it necessary to explicitly declare standard fertility preservation services as a basic health care service distinct from infertility treatment. This distinction was necessary because infertility treatment is statutorily exempt from being required as a basic health care service and is often excluded from coverage by health plans, except under a separate contract rider. The Legislature wanted to ensure that health plans were not conflating, and therefore denying, standard fertility preservation services by characterizing requests for standard fertility preservation services as requests for infertility treatments.

Health and Safety Code section 1374.551 eliminates any ambiguity regarding whether fertility preservation services are a basic health care service and therefore must be covered under health plan contracts. Health and Safety Code section 1374.551(b)(3), provides the definition for "standard fertility preservation services" to mean procedures consistent with the established medical practices and professional guidelines published by the ASCO or the ASRM. The Department is further clarifying the specific services that are to be considered standard fertility preservation services in the proposed Rule and further clarifies that such services must be consistent with current guidelines or recommendations established by ASCO and ASRM.

While Health and Safety Code section 1374.551 requires health plans to cover standard fertility preservation services consistent with established medical practices and professional guidelines by ASCO or ASRM, the current law and the professional guidelines contain ambiguity regarding the circumstances prompting the coverage of standard fertility preservation services, the specific services constituting standard fertility preservation services, storage of genetic material once taken from the enrollee, the number of attempts at tissue retrieval, or the length of storage time that must be covered by health plans. Stakeholders opposing SB 600 contended that it is unclear what "standard" fertility services include and how many attempts were required under the bill. Additionally, health plans, consumer advocates, and medical specialists have communicated the need for further clarification in these areas to the Department.

In this rulemaking action, the Department proposes to interpret, implement, and make specific the requirements of Health and Safety Code section 1374.551 by enumerating and defining the scope of medical treatments constituting standard fertility preservation services.

Broad Objectives and Specific Benefits Anticipated by the Proposed Regulation

Introduction

Pursuant to Government Code section 11346.5(a)(3)(C), the broad objective of this proposed rulemaking action is to clarify the specific parameters under which standard fertility preservation services

[2] SB 600, (Portantino, Chapter 853, Statutes of 2019) codified Health and Safety Code section 1374.551 which provides that standard fertility preservation services are basic health care services. Section 1374.551 also provides applicable definitions but does not enumerate specific medical services. This rulemaking action further clarifies the scope of standard fertility preservation services.

[3] Cal. Code Regs., title 28, § 1300.67.

[4] Iatrogenic infertility is medically induced infertility caused by a medical intervention used to treat a primary disease or condition. For example, cancer treatments, such as radiation and chemotherapy (gonadotoxic treatments) or surgical removal of reproductive organs, can cause iatrogenic infertility. Treatments for autoimmune disorders or conditions can also require gonadotoxic or surgical treatments that compromise an individual's fertility. Additionally, individuals with gender and sex diversity, including transgender individuals, may also require gonadotoxic treatments.

are to be provided by health plans to enrollees and enumerate the scope of standard fertility preservation services that shall be provided to enrollees under existing law.

Proposed Rule 1300.74.551. Scope of Fertility Preservation Services for Iatrogenic Infertility

The proposed rulemaking action will benefit California residents and protect public health by ensuring enrollees who are seeking standard fertility preservation services due to receiving a treatment that may cause infertility, are provided with the service to preserve their fertility as required by law. Enumerating the specific parameters and scope of standard fertility preservation services as described in Health and Safety Code section 1374.551, benefits the public health and safety because it further elaborates enrollee rights to basic health care services and describes the obligations of health plans. Establishing the scope of services benefits health plans, providers, and enrollees by clarifying existing law that protects enrollee rights to fertility preservation and ensures all parties understand their rights and obligations.

Proposed Subdivision (a) explains the medical circumstances prompting coverage of medically necessary standard fertility preservation services for enrollees who are undergoing treatments that may cause infertility. This benefits health plans, providers, and enrollees by eliminating any potential confusion regarding what medical circumstances prompt coverage for such services.

Proposed Subdivision (a)(1)(A) and (B) explain the first set of circumstances triggering coverage of standard fertility preservation services pre–treatment. Providing the specific circumstances entitling enrollees to receive standard fertility preservation services benefits health plans, providers, and enrollees by eliminating any potential confusion regarding what medical circumstances prompt coverage for such services prior to receiving treatment that may cause iatrogenic infertility.

Proposed Subdivision (a)(1)(B) specifies a 12–month timeframe for pre–treatment fertility preservation. The 12–month time frame is beneficial to health plans, providers, and enrollees because it establishes a definitive point in time triggering coverage and further clarifies the element established in (a)(1)(A).

Proposed Subdivision (a)(2) explains the set of circumstances under which the health plan is to cover standard fertility preservation services in situations where the enrollee has already received a treatment that may cause iatrogenic infertility. This is beneficial because it establishes and clarifies the situations under which post–treatment services are covered benefits for enrollees and prevents confusion regarding the scope of services. The ASRM recently notified the Department that it is in the process of updating its fertility preservation guideline to clarify that existing guidelines include fertility preservation post–treatment management for anyone at risk for primary ovarian insufficiency or infertility resulting from iatrogenic treatment. The update is expected to be released in 2024.

Proposed Subdivision (a)(2)(A) is beneficial because it sets forth the situations under which post–treatment services are to be provided when the enrollee has already received a covered treatment that may cause infertility. The ability to receive standard fertility preservation services post–treatment benefits California enrollees who may not be able to undergo fertility preserving services prior to receiving treatments by ensuring they still have a chance at fertility even after undergoing treatment potentially causing infertility.

Proposed Subdivision (a)(2)(B) is beneficial because it sets forth the situations under which post–treatment services are to be provided. The ability to receive standard fertility preservation services post–treatment benefits California enrollees who may not be able to undergo fertility preserving services prior to receiving treatments by ensuring they still have a chance at fertility even after undergoing treatment potentially causing infertility.

Proposed Subdivision (a)(2)(C) is beneficial because it clarifies the conditions under which post–treatment fertility services are to be provided. The ability to receive standard fertility preservation services post–treatment benefits California enrollees who face the possibility of infertility because of reproductive damage by ensuring they still have a chance at fertility even after undergoing treatment potentially causing infertility.

Proposed Subdivision (b) is beneficial for health plans, providers, and enrollees because health plans and providers will understand what standard fertility preservation services are to be provided to enrollees who meet the criteria for such services. Enrollees will benefit from the clarification because they will understand what specific services they are entitled to under the law.

Proposed Subdivision (b)(1) specifies that retrieval of gametes is a standard fertility preservation service. Specifying the specific services falling under "standard fertility preservation services" is beneficial for health plans, providers, and enrollees because health plans and providers will understand what standard fertility preservation services are to be provided to enrollees who meet the criteria for such services. Enrollees will benefit from the clarification because they will understand what specific services they are entitled to under the law.

Proposed Subdivision (b)(1)(A) clarifies that oocyte retrieval is a standard fertility preservation service

for enrollees with ovaries and provides that enrollees are entitled to receive a lifetime limit of up to two cycles of oocyte retrieval. This is beneficial because it will afford enrollees more than one opportunity to preserve their future fertility and inform health plans, providers, and enrollees of the number of cycles for oocyte retrieval that are covered services.

Proposed Subdivision (b)(1)(B) specifies that sperm retrieval is a standard fertility preservation service for enrollees with testicles. Further, subdivision (b)(1)(B) explains that enrollees are entitled to a lifetime limit of up to two attempts to collect sperm. This is beneficial because it will afford enrollees more than one opportunity to preserve their future fertility and inform health plans, providers, and enrollees of the number of sperm collection attempts that are covered services.

Proposed Subdivision (b)(2) specifies that embryo creation is a standard fertility preservation service and clarifies that health plans are not required to cover any costs associated with the retrieval of gametes from anyone other than the enrollee undergoing medical treatment that my cause iatrogenic infertility. This is beneficial because it will afford enrollees more than one opportunity to preserve their future fertility and inform health plans, providers, and enrollees of the number of embryo creation attempts that are covered services.

Proposed Subdivision (b)(3) specifies that retrieval of gonadal tissue is a standard fertility preservation service. Further, Subdivision (b)(3) provides for a lifetime limit of up to two attempts at gonadal tissue retrieval. This is beneficial because it will afford enrollees more than one opportunity to preserve their future fertility and provides clear parameters regarding the scope of the standard fertility preservation benefits.

Proposed Subdivision (b)(4) specifies that cryopreservation and storage of sperm, oocytes, gonadal tissue, and embryos are standard fertility preservation services. The specific benefit of this proposed Rule is that it allows enrollees the ability to preserve their genetic material for future use and provides the timeframes for storage based on the enrollees age.

Proposed Subdivision (b)(4)(A) specifies the length of time that genetic material must be cryopreserved and stored. This proposed Rule is beneficial for all interested parties because it clarifies the length of time for storage of genetic material.

Proposed Subdivision (b)(4)(B) specifies the length of time that genetic material must be cryopreserved and stored. The provided timeframe benefits all parties by allowing sufficient time for the enrollee to undergo standard fertility preservation services while imposing reasonable storage requirements on the health plan.

Proposed Subdivision (b)(4)(C) specifies the length of time that genetic material must be cryopreserved and stored. The provided timeframe benefits all parties by allowing sufficient time for the enrollee to undergo standard fertility preservation services while imposing reasonable storage requirements on the health plan.

Proposed Subdivision (b)(5) specifies that gonadal shielding or transposition performed during a covered medical procedure or treatment is a standard fertility preservation service. This provision is beneficial for enrollees because it ensures that if gonadal shielding or transposition services are conducted during a procedure or treatment, the services are covered services under the law and cannot be excluded from coverage.

Proposed Subdivision (b)(6) allows for the inclusion of additional standard fertility preservation services established by ASCO and ASRM. It is beneficial to clarify that "standard fertility preservation services" include future recognized services to ensure enrollees can avail themselves of services that may be identified in the future by ASCO or ASRM.

Proposed Subdivision (c) prohibits a health plan from denying medical coverage for standard fertility preservation services based on the identified protected characteristics or a previous diagnosis of infertility. This Subdivision and its elements benefit public health by preventing the potential of discriminatory practices in health care and ensuring fair treatment for all enrollees.

Proposed Subdivision (c)(1) prevents a health plan from denying coverage requests for standard fertility preservation services based solely on a prior diagnosis of infertility where medical evaluation indicates that the enrollee would have a reasonable chance of responding to such services. This Subdivision benefits public health by preventing the potential of discriminatory practices in health care and ensuring fair treatment for all enrollees. The proposed language in Subdivision (c)(1) is also consistent with the forthcoming update to the ASRM fertility preservation guideline described above clarifying that, under existing guidelines, a prior diagnosis of infertility and/or potentially transient hormone levels do not necessarily exclude fertility preservation.

Proposed Subdivision (c)(2) prevents a health plan from denying coverage requests based solely on the enrollee's age. This Subdivision benefits public health by preventing the potential of discriminatory practices in health care and ensuring fair treatment for all enrollees despite their age.

Proposed Subdivision (c)(3) prevents a health plan from denying coverage requests based solely on an enrollee's gender. This Subdivision benefits public health by preventing the potential of discriminatory

practices in health care and ensuring fair treatment for all enrollees despite their gender.

Proposed Subdivision (c)(4) prevents a health plan from denying coverage requests based solely on the enrollee's gender identity. This Subdivision benefits public health by preventing the potential of discriminatory practices in health care and ensuring fair treatment for all enrollees despite their gender identity.

Proposed Subdivision (c)(5) prevents a health plan from denying coverage requests based solely on the enrollee's sexual orientation. This Subdivision benefits public health by preventing the potential of discriminatory practices in health care and ensuring fair treatment for all enrollees despite their sexual orientation.

Proposed Subdivision (d) clarifies that a health plan is not required to cover storage for an individual who is no longer enrolled with the health plan. This Subdivision benefits health plans, providers, and enrollees because it clarifies the health plan's responsibility and protects the enrollee by ensuring genetic material will continue to be preserved for the remainder of the storage period.

Proposed Subdivision (e) clarifies that health plans cannot deny coverage for standard fertility preservation services based on an exclusion for infertility treatments contained in the health plan's Evidence of Coverage or related documents. This distinction benefits and protects enrollees by eliminating any potential confusion between the distinct services. While health plans can limit or exclude infertility treatments from contracts, standard fertility preservation services are basic health care services and must be offered and covered under all contracts subject to this rule.

Proposed Subdivision (f) clarifies that health plans are not required to cover fertility preservation services that are not medically necessary. The anticipated benefit of this Subdivision is to ensure health plans are able to conduct medical necessity reviews of enrollee requests for standard fertility preservation services.

Proposed Subdivision (g) clarifies that health plans are not required to cover experimental or investigational fertility preservation services. The anticipated benefit of this Subdivision is to ensure health plans are able to conduct the necessary review of requests for standard fertility preservation services while protecting the enrollee's right to an appeal of that decision under Health and Safety Code section 1370.4.

Proposed Subdivision (h) specifies that health plans cannot impose higher deductibles, copayments, coinsurance, longer waiting periods, or other limitation on coverage for standard fertility preservation services than those imposed on other basic health care services. The anticipated benefit of this Subdivision is that it will result in greater access to standard fertility preservation services for enrollees who may be deterred from receiving such services because of disproportionate costs or limits.

Proposed Subdivision (i) implements Health and Safety Code section 1374.551(b)(3). The anticipated benefit of Subdivision (i) is that it further specifies the medical criteria and guidelines a health plan is required to use to ensure medical necessity determinations or utilization review criteria are used consistently and uniformly across health plans.

Proposed Subdivision (j) specifies the types of contracts not subject to the requirements of proposed Rule 1300.74.551. The anticipated benefit of Subdivision (j) is that it eliminates the potential for any confusion as to the applicability of coverage of fertility preservation services under the enumerated contracts.

Proposed Subdivision (j)(1) specifies that specialized health plan contracts are not subject to Rule 1300.74.551 requirements. Clarifying the applicability of the proposed Rule to specialized health plans is beneficial for health plans, enrollees, and providers because it eliminates the potential for any confusion regarding which contracts are subject to the proposed Rule.

Proposed Subdivision (j)(2) specifies that Medicare supplement contracts are not subject to Rule 1300.74.551 requirements. Clarifying the applicability of the proposed Rule to Medicare Supplement contracts is beneficial for health plans, enrollees, and providers because it eliminates the potential for any confusion regarding which contracts are subject to the proposed Rule.

Proposed Subdivision (j)(3) specifies that Medicare contracts pursuant to Title XVIII of the Social Security Act are not subject to Rule 1300.74.551 requirements. Clarifying the applicability of the proposed Rule to these contracts is beneficial for health plans, enrollees, and providers because it eliminates the potential for any confusion regarding which contracts are subject to the proposed Rule.

Proposed Subdivision (j)(4) specifies that Medi–Cal Managed Care contracts are not subject to Rule 1300.74.551 requirements. Clarifying the applicability of the proposed Rule to these contracts is beneficial for health plans, enrollees, and providers because it eliminates the potential for any confusion regarding which contracts are subject to the proposed Rule.

Proposed Subdivision (k) clarifies that the definition of "iatrogenic infertility" described in Health and Safety Code section 1374.551(b)(1) does not include infertility caused by medical treatments performed for the purpose of preventing pregnancy, including vasectomy or tubal ligation. Clarifying this distinction benefits health plans, providers, and enrollees because

it prevents any confusion regarding whether pregnancy prevention services resulting in infertility fall under the definition of "iatrogenic infertility."

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Rule proposed in this rulemaking action is neither inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that this Rule is the only regulation that concerns the scope of fertility preservation service for iatrogenic infertility.

ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency (1) would be more effective in carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to affected private persons than the proposed action, or (3) would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. As described in the Initial Statement of Reasons for this rulemaking action, the Department has determined that there are no known alternatives that meets standards (1)–(3), described above.

The Department invites interested persons to present statements or arguments with respect to alternatives to the requirements of the proposed Rule during the written comment period.

SUMMARY OF FISCAL IMPACT

- Mandate on local agencies and school districts: None.
- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Costs to private persons or businesses directly affected: The Department has determined that this regulation will have cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action. As described in the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action, the impact is estimated to be $220,020 per health plan annually.
- Effect on Housing Costs: None.
- Other non–discretionary cost or savings imposed upon local agencies: None.
- Effect on Small business: None.

DETERMINATIONS

The Department has made the following initial determinations:

- The Department has determined the Rule will not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The Department has determined the Rule will have no significant effect on housing costs.
- The Department has determined the Rule does not affect small businesses. Health plans are not considered a small business under Government Code section 11342.610, subdivisions (b) and (c).
- The Department has determined the Rule will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Please see the Economic Impact Assessment in the Initial Statement of Reasons for this rulemaking action for additional information about this initial determination.
- The Department has determined that this Rule will have no cost or savings in federal funding to the state.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Initial Statement of Reasons for this rulemaking action describes the basis for the following Economic Impact Assessment results:

Creation or Elimination of Jobs Within the State of California

The Department does not believe that health plan employers will create additional positions to comply with the requirements of the proposed Rule. Health and Safety Code section 1374.551, codifying the requirement for health plans to cover standard fertility preservation services when a covered treatment may directly or indirectly cause iatrogenic infertility has been in effect since 2020, and was declaratory of existing law. This proposed Rule simply interprets, implements, and makes specific this requirement.

Additionally, the proposed Rule will not eliminate any existing jobs in California. The Department does not expect that the proposed Rule will require

elimination of any particular job functions within a health plan or among providers of fertility preservation services.

Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

The proposed rulemaking action will neither create new businesses nor eliminate existing businesses. As noted above, this proposed Rule simply interprets, implements, and makes specific the existing requirement that health plans cover standard fertility preservation services and does not create any new requirements for businesses in California. Additionally, this Rule only applies to health plans licensed under the Knox–Keene Act. Therefore, this Rule will not affect the creation of new or eliminate existing businesses in the State.

Expansion of Businesses Currently Doing Business Within the State of California

This Rule is intended to clarify and make specific existing State law for health plans under the Knox–Keene Act. The requirement for health plans to cover standard fertility preservation services when a covered treatment may directly or indirectly cause iatrogenic infertility has been in effect since 2020, and this proposed Rule simply interprets, implements, and make specific this requirement. Therefore, the Department has determined that this Rule will not affect the expansion of businesses currently doing business within the State.

The Benefits to the Health and Welfare of California Residents

The proposed rulemaking action will provide California health consumers with a transparent mechanism to determine health coverage benefits that are required to be covered as standard fertility preservation services. The Department does not anticipate this rulemaking action will have any impact on worker safety, or the state's environment.

BUSINESS REPORT

The proposed Rule in this rulemaking package does not require a report from businesses.

GENERAL PUBLIC INTEREST

FISH AND GAME COMMISSION

FINAL CONSIDERATION OF PETITION

NOTICE IS HEREBY GIVEN pursuant to the provisions of Fish and Game Code Section 2078, that the California Fish and Game Commission (Commission), has scheduled final consideration of the petition to list Mohave (also know as Agassiz's) Desert tortoise (*Gopherus agassizii*) as endangered and the petition to list Southern California steelhead (*Oncorhynchus mykiss*) as endangered species for its April 17–18, 2024 meeting. It is expected that consideration of the petitions will be heard April 18, 2024 in San Jose, California.

Consideration of the petitions will be heard at the San Jose Scottish Rite Center, 2455 Masonic Drive, San Jose, California. Members of the public can participate in person or via webinar/teleconference. Instructions for participation in the hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling (916) 653–4899.

The agenda of the April 17–18, 2024 meeting, and the agendas and video archive of previous meetings where actions were taken on Mohave Desert tortoise and Southern California steelhead are available online at http://www.fgc.ca.gov/meetings/.

Pursuant to the provisions of Fish and Game Code, sections 2075 and 2075.5, the Commission will consider the petition and all other information in the record before the Commission to determine whether listing Mohave Desert tortoise and Southern California steelhead as endangered species is warranted.

The petitions, the California Department of Fish and Wildlife's evaluation reports, and other information in the records before the Commission are posted on the Commission website at https://fgc.ca.gov/CESA.

California Fish and Game Commission

February 27, 2024

Melissa Miller–Henson

Executive Director

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE SECRETARY OF STATE

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

California Energy Commission
File # 2024–0215–02
Revised SB X1–2 Spot Market Reporting Requirements

This emergency rulemaking action by the California Energy Commission adopts regulations to implement the spot market reporting requirements in Public Resources Code, section 25354(l). These regulations are deemed an emergency by Public Resources Code, section 25367(a).

Title 20
Adopt: Article 3, Appendix D
Amend: 1363.2, 1364, 1366
Filed 02/26/2024
Effective 02/26/2024
Agency Contact: Chad Oliver (916) 891–8569

California Debt Limit Allocation Committee
File # 2024–0222–01
Emergency regulations readoption

This is a readoption of emergency rulemaking action number 2023–0802–01E, which amended definitions and requirements pertaining to the Qualified Residential Rental Project Program.

Title 04
Amend: 5020, 5170, 5190, 5193, 5231, 5233
Filed 02/28/2024
Effective 02/28/2024
Agency Contact: DC Navarrette (916) 813–1947

Fish and Game Commission
File # 2024–0216–01
Recreational California Halibut Second Emergency Extension

This second emergency readoption action by the Fish and Game Commission ("Commission") readopts, without amendment, reductions to the daily bag and possession limits of California halibut taken in waters north of a line extending due west magnetic from Point Sur, Monterey County, from three to two fish.

Title 14
Amend: 28.15
Filed 02/22/2024
Effective 02/29/2024
Agency Contact: David Haug (916) 902–9286

Board of Education
File # 2024–0117–02
Conflict–of–Interest Code

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

Title 05
Amend: 18600
Filed 02/21/2024
Effective 03/22/2024
Agency Contact: Kirin Gill (916) 319–0696

California Pollution Control Financing Authority

File # 2024–0116–04

CA Investment and Innovation Program (CalIIP)

This request from the California Pollution Control Financing Authority ("CPCFA") that the Office of Administrative Law ("OAL") file with the Secretary of State and print in the California Code of Regulations adopts regulations for the administration of the California Investment and Innovation Program ("Cal IIP"), Article 7 (commencing with Section 44558) of Chapter 1 of Division 27 of the Health and Safety Code ("HSC"). Pursuant to HSC section 44558.4(a), these regulations are exempt from the rulemaking requirements of the Administrative Procedure Act ("APA"), provided that CPCFA has complied with HSC section 44558.4(b).

Title 04
Adopt: 8140, 8141, 8142, ,8143, 8144, 8145, 8146, 8147, 8148
Filed 02/21/2024
Effective 02/21/2024
Agency Contact: Andrea Gonzalez (916) 651–7284

California Highway Patrol

File # 2024–0117–01

CVSA NAS Out–of–Service Criteria

In this filing for a change without regulatory effect pursuant to section 100 of Title 1 of the California Code of Regulations, the California Highway Patrol is amending section 1239 of Title 13 of the California Code of Regulations to incorporate by reference the most recent edition (April 1, 2024) of the Commercial Vehicle Safety Alliance North American Standard Out–of–Service Criteria. The April 1, 2024, edition will replace the April 1, 2023, edition currently in effect.

Title 13
Amend: 1239
Filed 02/26/2024
Effective 04/01/2024
Agency Contact: J. Lopez (916) 843–3347

California Apprenticeship Council
File # 2024–0112–04
Equal Opportunity in Apprenticeship

This regular rulemaking action by the California Apprenticeship Council amends sections 201, 206, 212, 212.3, 212.4 and 215, and adopts sections 201.1, 214, 214.1, 214.2, 214.3 and 214.4 of Title 8 of the California Code of Regulations regarding equal opportunity in apprenticeships as required by California Labor Code section 3073.9.

Title 08
Adopt: 201.1, 214, 214.1, 214.2, 214.3, 214.4
Amend: 201, 206, 212, 212.3, 212.4, 215
Filed 02/27/2024
Effective 04/01/2024
Agency Contact: Glen Forman (415) 407–7637

Commission on Peace Officer Standards and Training
File # 2024–0112–01
Amend Commission Regulations 1052 and 1059

This action modifies the POST Guidelines for Student Safety in Certified Courses to clarify safety requirements for the courses a course presenter instructs, provide for presenter accountability for safety violations, and address new vehicles for training topics such as virtual reality and electric bicycles.

Title 11
Amend: 1052, 1059
Filed 02/27/2024
Effective 04/01/2024
Agency Contact: Brian South (916) 227–0244

Commission on Peace Officer Standards and Training
File # 2024–0112–02
Amend Commission Regulation 1005 — Coroner Training Requirements

This action amends coroner and deputy coroner training requirements to only require firearms training if required by their employing agency.

Title 11
Amend: 1005
Filed 02/26/2024
Effective 04/01/2024
Agency Contact: Jennifer Hardesty (916) 227–3917

Commission on Peace Officer Standards and Training
File # 2024–0116–06
Course Name Correction

This action updates the regulation that establishes minimum training standards to correct the name of one training course.

Title 11
Amend: 1005
Filed 02/26/2024
Effective 04/01/2024
Agency Contact: Charles Johnson (916) 227–4853

Dental Board of California
File # 2024–0116–01
Replacement Licenses or Permits and Inactive Licenses

This regular rulemaking action changes the processes for dental professionals to obtain replacement pocket licenses and wall certificates. The changes include prescribing the use of a new form, increasing the associated fee, and removing the requirement to submit fingerprints. This action also changes the processes for dental professionals to inactivate or reactivate a license. The changes include revising what evidence must be provided to demonstrate completion of the continuing education requirements for license reactivation and updating the existing form prescribed for use with license inactivation and reactivation.

Title 16
Amend: 1012, 1017.2, 1021
Filed 02/27/2024
Effective 02/27/2024
Agency Contact:
Lawrence Bruggeman (916) 263–2027

Department of Housing and Community Development
File # 2024–0112–05
Fee Realignment

This action by the Department of Housing and Community Development increases fees for the following programs: Mobilehome Parks Program, Special Occupancy Parks Program, Employee Housing Program, and Manufactured Housing Program.

Title 25
Amend: 644, 645, 1004.5, 1008, 1016, 1017, 1020.1, 1020.4, 1020.7, 1020.9, 1025, 2004.5, 2008, 2016, 2017, 2020.4, 2020.7, 2020.9, 4044
Filed 02/27/2024
Effective 04/01/2024
Agency Contact: Jenna Kline (916) 841–5286

Division of Workers' Compensation
File # 2024–0111–02
Qualified Medical Evaluator Process Regulations

In this resubmitted rulemaking action, the Department amends its regulations to revise its definitions, add two hours of anti–bias training as an eligibility requirement for initial Qualified Medical Evaluator (QME) appointment, and revise QME

course requirements. The Department also amends its regulation related to the unavailability of QMEs and various regulations related to reappointments.

Title 08
Adopt: 55.1
Amend: 1, 11, 11.5, 14, 33, 35, 35.5, 50, 51, 55, 63
Repeal: 52, 54, 56, 57, 10133.54, 10133.55
Filed 02/26/2024
Effective 02/26/2024
Agency Contact: Winslow West (510) 286–7100

Secretary of State

File # 2024–0122–01

Election Observations Rights and Responsibilities

This action by the Secretary of State adopts regulations within new chapter 8.2 of division 7 of title 2 of the California Code of Regulations to set forth the rights and responsibilities for election observers and county election officials.

Title 02
Adopt: 20871, 20872, 20873, 20874, 20875, 20876, 20878, 20879
Filed 02/27/2024
Effective 02/27/2024
Agency Contact: Robbie Anderson (916) 216–6488

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.