



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: North Fork Kings Groundwater Sustainability Agency
 STATE AGENCY: Labor and Workforce Development Agency
 California Department of Education

A written comment period has been established commencing on May 10, 2024, and closing on June 24, 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 his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed codes will be submitted to the Commission for review.

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

The Executive Director of the Commission, upon their or its own motion or at the request of any interest-

ed 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 June 24, 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. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **June 13, 2024**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **June 11, 2024**.

BACKGROUND/OVERVIEW

Commission staff has identified a need to clarify the application of the new advertisement disclosure requirements under Section 84513, added by SB 678, which provides that if a committee pays a person to post content on an internet website, web application, or digital application to support or oppose a candidate for elective office or a ballot measure, the person shall include a disclaimer with that content stating that the committee paid the person in connection with the post. The primary purpose of new Section 84513 is to require disclosures on campaign advertisements paid for by a committee to be posted by a third person, such as social media “influencers,” instead of the committee posting content itself or paying a traditional vendor to do so. This was the intent conveyed in the SB 678 Senate Floor Bill Analyses.²

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18998 through 18104 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Senate Rules Committee, Office of Senate Floor Analyses, *SB 678 Senate Floor Analyses*, Jul. 05, 2023, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB678.

The provisions of Section 84513 further state that its disclosure requirements do not apply where the electronic media disclosures of Section 84504.3 apply or to content posted on the committee’s own website, profile, or landing page by a person compensated by the committee to post such content, or to ballot measure advertisements falling under Section 84511(c) requiring a spokesperson disclosure.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18450.10 — Advertisements Paid by a Third-Party Influencer

The Commission may consider adopting Regulation 18450.10, which states that the electronic media advertisement disclosures under Section 84504.3 do not apply to advertisements paid for by a committee where the committee pays a third party “influencer” to post content on an “internet website, web application, digital application.” The proposed draft Regulation 18450.10 language provides that a third-party is considered an “influencer” for purposes of Section 84513 if the person whom the committee paid posts content supporting or opposing a candidate for elective office or a ballot measure where it appears as if they are the speaker delivering their own opinion rather than that of the candidate or committee, including on a social media page or account that is not the candidate or committee’s own page or account.

Further, the proposed Regulation 18450.10 language states that Section 84513 does not apply to Section 84511 ballot measure advertisements that require a spokesperson disclosure. Lastly, the draft language includes a subdivision that states a “website, web application, or digital application” includes content posted on the internet platforms, such as social media accounts and blogs, to prevent confusion on whether these platforms are covered by Section 84513.

Amend 2 Cal. Code Regs. Section 18450.9 — Website Advertisements and Social Media Advertisements

The proposed amendments to existing Regulation 18450.9 include repealing subdivision (b) because it is now unnecessary.

With recent updates to Section 84504.3, effective January 1, 2023, disclosures are now required directly on committee-paid advertisements or the committee’s page posting the advertisements. Previously, the statute required disclosure only on the committee’s landing page and not on any other pages where the advertisements were posted, without requiring a link back to the committee’s landing page. Regulation 18450.9(b) was enacted to cure that discrepancy and require a link to missing disclosures.

However, Regulation 18450.9(b) is no longer necessary because such disclosures are now required where the advertisements appear via Section 84504.3, and

new Section 84513 also covers disclaimers on third-party advertisements. Keeping existing Regulation 18450.9(b) is now only an additional/duplicative requirement, and the problem it solved no longer exists.

SCOPE

The Commission may adopt the language noticed herein or choose new language to implement its decisions concerning the issues identified above or any related issues.

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on any federal funding or program.

AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 84504.3 and 84513.

CONTACT

Any inquiries should be made to Katelyn L. Baeta-Orick, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, CA 95811; telephone (279) 237-5921. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

HONORARIUM BAN

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the

Act)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after June 13, 2024, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately 10:00 a.m. Written comments should be received at the Commission offices no later than 5:00 p.m. on June 12, 2024.

BACKGROUND/OVERVIEW

Under the Act’s honorarium ban, candidates and officials may not accept “any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.” There is a limited exception to this ban for earned income in connection with a bona fide business, trade, or profession; however, the exception does not apply when the “predominant activity” of an individual’s business, trade, or profession is making speeches. Current Regulation 18932.3 provides the standards to determine if making speeches is the “predominant activity” of a business, trade, or profession. It defines “predominate activity” as more than 50 percent of the business’s gross income or hours and sets two time periods for making this determination: 12 months for established businesses and 30 days for new businesses. The Commission recently directed staff to propose narrowly tailored changes within the limitations of the honorarium statutes to address situations where an individual’s long-standing business, trade, or profession has less traditional hours and income cycle, such as one that involves authoring and promoting books through “book talks,” in determining whether the business, trade or profession’s predominant activity is making speeches and thus subject to the honorarium ban.

Proposed Repeal and Adoption of Regulation 18932.3

Proposed amendments to Regulation 18932.3 will examine extending this period for certain long-standing businesses that have an activity cycle outside the current periods of examination. Specifically, the proposed language provides an additional examination period of 36 months to determine whether the “predominant activity” (more than 50 percent of the gross income or hours) of an individual’s business, trade, or profession is making speeches. It is anticipat-

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

ed that the Commission will examine both the appropriateness of extending the examination period as well as the appropriate length of the examination period.

It is also currently proposed that the extended examination period would apply only when the business, trade, or profession involves a work product or proprietary work created by the individual, for which income is typically received over a longer period than 12 months, with a large portion received when the work is initially created and with continuing promotional activities that may involve public speaking engagements. Moreover, it is currently proposed that the extended examination period would only apply when a business, trade, or profession has been in existence for at least 12 months before the individual became subject to the honorarium ban. It is anticipated that the Commission may examine more specifically the types of work product, or proprietary work created by an individual, to which the extended examination period should apply and whether the extended examination period should only apply to a business, trade, or profession that had been in existence prior to the individual becoming subject to the honorarium ban.

Additionally, proposed Regulation 18932.3 reorganizes the current language for clarity, requiring the regulation to be repealed and the proposed regulation to be adopted.

REGULATORY ACTION

Repeal 2 Cal. Code Regs. Section 18932.3 and Adopt Proposed Regulation 18932.3

Commission staff proposes to repeal current Regulation 18932.3 to consolidate the current requirements and add an additional period for determining the predominant activity for a long-standing business, trade, or profession that involves a nontraditional activity cycle.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issue identified above or any related issue.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. None.

Fiscal Impact on State Government. None.

Fiscal Impact on Federal Funding of State Programs. None.

AUTHORITY

Section 83112, Government Code, provides that the Fair Political Practices Commission may adopt,

amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE

Sections 89501 through 89506, Government Code.

CONTACT

Any inquiries should be made to L. Karen Harrison, Fair Political Practices Commission, 1102 Q Street, Suite 3050, Sacramento, CA 95811; email: KHarrison@FPPC.CA.Gov; telephone (279) 237-5919. The proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

TITLE 2. LABOR AND WORKFORCE DEVELOPMENT AGENCY

AMEND CONFLICT-OF-INTEREST CODE

NOTICE IS HEREBY GIVEN that the California Labor and Workforce Development Agency, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on **May 10, 2024** and closing on **June 24, 2024**. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include deletion of positions, addition of positions with disclosure categories, and other technical changes to reflect the current organizational structure of the Agency. Copies of the amended code are available and may be requested from the Contact Person set forth below.

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

The proposed amendment and explanation of the reasons can be obtained from the agency's contact.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than **June 24, 2024** or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is sched-

uled. A person may request a hearing no later than **June 10, 2024**.

The California Labor and Workforce Development Agency has determined that the proposed amendments:

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

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

Hina Shah, Assistant General Counsel, 916–980–6532, hina.shah@labor.ca.gov.

**TITLE 4. SCHOOL FINANCE
AUTHORITY**

**CHARTER SCHOOL FACILITIES CREDIT
ENHANCEMENT GRANT PROGRAM**

NOTICE IS HEREBY GIVEN that the California School Finance Authority (CSFA or Authority), organized pursuant to Sections 17170 through 17199.6 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than Friday, June 24, 2024. The Authority Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this Notice as the Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

PROPOSED REGULATORY ACTION

The Authority proposes to amendments to Sections 10193, 10194, 10195, 10196, and 10198 of Title 4 of the California Code of Regulations (Regulations) as permanent regulations. The Regulations implement the Authority’s responsibilities related to the Charter School Facilities Credit Enhancement Grant Program (Program).

AUTHORITY AND REFERENCE

Authority: Section 17179 and 17180 of the Education Code. Section 17180(o) allows the Authority to adopt regulations in order to administer the Program.

Reference: Sections 17173, 17180, 47604, 47604.1, 47604.2, 47605 and 47612.5(e)(1) of Education Code.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The Authority was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). The Authority is authorized to adopt bylaws for the regulation and conduct of its business, and the Authority is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code sections 17179 and 17180).

In 2009, the U.S. Department of Education awarded a grant of \$8,300,000 to CSFA, pursuant to the Credit Enhancement for Charter School Facilities Program (CFDA # 84.354A), authorized under Title V, Part B, Subpart 2 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (Grant). Program funds may be used to credit enhance the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt.

In June 2023, the Authority applied for an additional grant award and was awarded a \$20 million grant award in Fall 2023. Per the Authority’s application to the Department of Education, the Authority is proposing that \$15 million of the grant award be allocated to the Program to fund debt service reserve accounts associated with debt issued through the Authority.

The Program regulation became effective May 19, 2012 and were established in the California Code of Regulations in Title 4, Division 15, Article 3. (OAL Matter Number 2012–0308–04S).

Changes proposed for Sections 10193 and 10195 were submitted and approved through emergency rulemaking process in 2022 but reverted. The Authority let the regulations revert as the Authority did not plan to apply for the additional funding for the Program. Those emergency regulations were adopted

on December 13, 2022 (OAL Matter Number 2022–1206–07EE) and reverted on March 15, 2023.

The anticipated benefits of the proposed regulations are the increased general welfare of students and their related communities, as these awards allow schools to free up assets through the enhance financings related to charter school facilities.

These proposed regulations set the Authority’s policies and procedures for administering the Program, including but not limited to definitions; minimum eligibility requirements; application submission and content requirements; procedures for apportionment of grant funds and appeals; and policies governing grantee obligations, responsibilities, and approval of grant use change.

SUMMARY OF PROPOSED REGULATIONS

1. **Section 10193. Definitions.** Add “Financing” and the associated definition as new subsection (g). Label former subsection (g) to (h) due to the added definition above. Remove “and 47600 et seq.” and add “47604, 47604.1, and 47604.2,” per OAL on References updated in similar regulatory sections.
2. **Section 10194. Applicant Eligibility Criteria.** Remove “and throughout the term of an award” from the subsection (a). Remove “and 47600 et seq.,” and add “47604, 47604.1, and 47604.2,” per OAL on References updated in similar regulatory sections.
3. **Section 10195. Award Allocation and Eligible Use of Program Funds.** Remove “\$1,500,000 per Application” and add “up to maximum annual debt service per Financing, with a maximum award limit of \$2,000,000” in subsection (b).
4. **Section 10196. Application Review and Evaluation Criteria.** Add subsection (e) to establish an application filing fee.
5. **Section 10198. Audits and Conflicts of Interest.** Remove “relying on federal funds to enter into a contract” and “34 CFR 80.36” and add “the acquisition of property or services are funded through a federal grant” and “2 CFR 200.317 through 2 CFR 200.327.” in subsection (c).

CITATIONS FOR PROPOSED REGULATIONS MANDATED BY FEDERAL LAWS OR REGULATIONS

Proposed regulation Section 10198 references sections of the Code of Federal Regulations related to requirements prescribed through the United States’ Department of Education as well as general conflict-of-interest compliance for federal grants. Those sec-

tions are listed in proposed Section 10198 and are cited below.

- Code of Federal Regulations — Title 34, Subtitle A, Part 75, Subpart E — §75.525(a)
- Code of Federal Regulations — Title 34, Subtitle A, Part 75, Subpart E — §75.525(b)
- Code of Federal Regulations — Title 2, Subtitle A, Chapter II, Part 20, Subpart D (§ 200.318 — §200.327)

The full text of the federal regulations referenced above are found in the Code of Federal Regulations, which is available online at <https://www.ecfr.gov/>.

OTHER MATTERS PRESCRIBED BY STATUTES APPLICABLE TO THE SPECIFIC STATE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

No other matters prescribed by statute are applicable to the Authority or to any specific regulation or class of regulations pursuant to Section 11346.5(a)(4) of the California Government Code pertaining to the proposed regulations or the Authority.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Authority has determined the proposed regulations do not impose a mandate on local agencies or school districts.

EVALUATION OF INCONSISTENCY AND INCOMPATIBILITY

The Authority performed a search in the California Code of Regulations and the proposed regulations are neither inconsistent nor incompatible with existing regulation.

FISCAL IMPACT

As related to Fiscal Impact, the Authority is not aware of any cost to local agency or school districts requiring reimbursement pursuant to Gov. Code sec. 17500 et seq.; nor any cost or savings to any state agency beyond the Authority; nor other Non-discretionary costs or savings imposed on local agencies; nor any costs or savings in federal funding to the state; and nor any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

There is an administrative cost taken on by the Authority. The Authority has instituted an application filing fee to offset costs associated with Authority staff reviewing applications and various federal and state

reporting requirements for the grant program. Application review includes, but is not limited to, reviewing and verifying application content, ensuring program eligibility, preparing grant agreements, staff reports and resolutions, liaising with program attorneys and financing team members, ensuring grant funds are disbursed to the trustee, and closing document review associated with the financing. Reporting requirements include, but are not limited to, staff reports, multiple meetings with federal program officials, liaising with program attorneys and borrow trustees, balance confirmations, and account reconciliation. The \$1,000 fee was determined to be adequate enough to cover costs related to staff time, while not being cost prohibitive for applicants.

INITIAL DETERMINATION REGARDING
ANY SIGNIFICANT, STATEWIDE
ADVERSE ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS

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

EFFECT ON SMALL BUSINESSES

The Authority has determined that the adoption of the proposed regulations will not affect small business. The Program is a voluntary grant program available to charter schools to assist in the costs of charter school facilities.

RESULTS OF ECONOMIC
IMPACT ANALYSIS

*Assessment of Effect on Jobs and Business Expansion,
Elimination or Creation*

Adoption of these regulations will not create or eliminate jobs within California, nor create new businesses or eliminate existing businesses within California. The proposed regulations could likely impact the expansion of businesses currently doing business within the State of California. This program will enhance conduit financings for charter school facilities. These facilities are often an expansion of the associated charter school organizations to serve more students. It should be noted that not all charter school facility-related financings are expansions. Some financings are replacement facilities, renovations, or site improvements.

*Assessment of Effect to the Health and Welfare of
California Residents, Worker Safety, and the State's
Environment*

The purpose of the program and proposed regulations is to set forth administrative criteria and requirements for administering this grant program. The Authority do not expect any anticipated benefits to worker safety or the State's environment. However, while each funding is different, funding for facilities may allow schools to free up assets potentially allowing actions resulting in improved worker safety. Additionally, there may be a positive effect on the welfare of some California residents. As the intent of the program is to enhance financings related to charter school facilities, the Program and its proposed regulations have the potential to directly benefit the welfare of students and their related communities.

COST IMPACT ON HOUSING

The proposed regulations will not have any effect on housing costs.

REASONABLE ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority, 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 regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Authority invites interested persons to present statements with respect to alternatives to the proposed regulations during the written comment period.

AGENCY CONTACT PERSONS

Written comments, inquiries, and any questions regarding the substance of the proposed regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director,
California School Finance Authority at:
300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
(213) 620-4608

or

901 P Street, Third Floor, Suite B
Sacramento, CA 95814
(916) 651-7710

or

kjohantgen@treasurer.ca.gov

or

csfa@treasurer.ca.gov

The following person is designated as a backup Contact Person for inquiries only regarding the proposed regulations:

Ryan Storey
300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
(916) 767-3256

or

rstorey@treasurer.ca.gov

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulations to the Authority. The written comment period on the regulations will end on Friday, June 24, 2024. All comments to be considered by the Authority must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for 15 calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF PROPOSED REGULATIONS

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 901 P Street, Third Floor, Suite B, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, in-

cluding reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on the Authority's Web site at www.treasurer.ca.gov/csfa.

PUBLIC HEARING

No public hearing regarding the proposed regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the regulations for which the hearing is being requested.

15-DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the written comment period ends and following a public hearing, if any is requested, the Authority may adopt the proposed regulations substantially as described in this Notice, without further notice. If the Authority 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 (including through the Authority's website described above) for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's website described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

The Department of Alcoholic Beverage Control (ABC) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period begins on May 10, 2024, and closes at 12:00 p.m. on June 25, 2024. ABC will consider only comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Comments may also be submitted by email to rpu@abc.ca.gov, please include “Protests” in the subject line of your email.

AUTHORITY AND REFERENCE

Authority: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections 23001, 23958, 23958.1, 23958.2, 23985.5, 23987, 24013, 24013.1, 24013.2, 24014, and 24015 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking seeks to streamline the protest policy and procedure for both individuals and public agencies or governmental bodies that seek to protest an application for an alcoholic beverage license in the state. During the application process for an alcohol license, prospective licensees are required to post a notice of the intention to engage in the sale of alcoholic beverages at the intended premises. Within 30 days of the posting of this notice, an individual or public agency may submit a protest to ABC regarding the issuance of the alcohol license.

There is confusion for ABC staff, the public, applicants, and protestants about how a protest must be verified as required by law to be accepted by ABC. In addition, the parameters that ABC may use to reject a protest are unclear. Promulgating regulations to create factors clarifying the statutory parameters for the rejection of protests will establish a uniformed system

and create a fair process for all who seek to protest the issuance of an alcohol license. This proposed regulation will establish a uniform system of verification and give ABC specific factors and elements of a protest to analyze to determine if protests submitted are “false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause.”

Summary of Existing Laws and Regulations

Current law requires ABC to accept verified protests but has no clarity as to how a protestant must verify their protest. In addition, current law allows ABC to reject protests that are “false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause.” These terms are broad and lack the specificity necessary for ABC to ever take this action under the statute. There is also some confusion over repeated applications at the same location, withdrawals of both protests or applications during the protest process and how they will affect a scheduled hearing on an accepted protest that has been set.

Summary of Effect

The proposed regulations seek to clarify and establish a uniform protest procedure to be used throughout the state by ABC staff. This is to alleviate confusion by applicants, protestants, ABC staff, and the public due to the broad language used in statute regarding the protests of applications for ABC licenses.

COMPARABLE FEDERAL STATUTE OR REGULATIONS

ABC has determined that this proposed regulation does not have a comparable federal statute or regulation.

POLICY STATEMENT OVERVIEW

The mission of ABC is to provide the highest level of service and public safety to the people of the State through licensing, education, and enforcement. This proposed regulation supports the commitment that ABC has to its licensees by working to streamline the protest process to help applicants open their businesses in a timely manner. While still preserving the rights of individuals, public agencies, and governing bodies to protest the issuance of licenses due to harm to the public health, welfare, and morals a new alcoholic beverage license could create for their homes and jurisdictions.

BENEFITS ANTICIPATED

The proposed regulation should benefit both applicants and protestants by providing clear expectations for all sides of the process and ensure ABC only issues licenses that comply with the law, including preserv-

ing the quiet enjoyment of nearby residences, compliance with applicable laws by licensees, and reviewing all issues raised during a thorough investigation into each application as required by law.

This should both allow protestants better understanding and access to the protest process, while speeding up the processing time for applicants to obtaining issued licenses at the end of the process if found to have met their burden and not be a danger to public health, safety, or welfare.

DETERMINATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

ABC reviewed the existing state regulations and statues currently enforced and has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

EFFECT UPON SMALL BUSINESSES IN CALIFORNIA

Although licensees are often small business owners, this proposed regulation will have negligible regulatory effect on them. It is anticipated that this may be a benefit to small businesses that have applied for an alcohol license and been protested due to the streamlining and speeding up of the protest process, but this will be small and limited to a very small group every year.

DISCLOSURES REGARDING THE PROPOSED ACTION

The ABC has made the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Costs or Savings to any state agency: None.
3. Cost to any local agency or school district that is required to be reimbursed by the state: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impacts on housing costs: None.

DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The ABC has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting busi-

ness, including the ability of California businesses to compete with businesses in other states. The adoption of the regulation will have a negligible impact on businesses, nor will there be a foreseeable impact on businesses.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) that the proposal will not likely create additional jobs, (3) that the proposal will not likely create additional new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state, (6) unlikely that the proposal will impact worker safety.

As stated above under ‘Benefits Anticipated,’ the proposed regulations will benefit the health and welfare of California residents by providing clear guidance for prospective licensees, individuals, and communities during the protest process of issuing an alcohol license. These processes will help ensure ABC only issues licenses that comply with the law and do not disturb the nearby residences all while complying with applicable laws by licensees.

ABC has determined this proposed regulation will have no effect upon the environment.

DESCRIPTION OF ALL ECONOMIC IMPACTS THAT A REPRESENTATIVE PRIVATE PERSON OR BUSINESS WOULD NECESSARILY INCUR IN REASONABLE COMPLIANCE WITH THE PROPOSED ACTION

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on private persons or businesses. There is no foreseeable impact on private persons or businesses based on the process laid out in the proposed regulation. If there is an economic benefit it is negligible and limited to a small segment of ABC license applicants.

These economic benefits would not be derived from any costs imposed by the proposed regulation.

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

THE NEED TO REQUIRE REPORT
FROM BUSINESSES

The proposed regulation does not require any reports from ABC licensees or any other business. It does require the keeping of records in compliance with the ABC Act to ensure the extended hours are not being abused and can be enforced and restricted by actual scheduled voyages.

CONSIDERATION OF ALTERNATIVES

The ABC 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.

ABC invites interested persons to submit alternatives with respect to the proposed regulation during the comment period from May 10, 2024, through 12 p.m. on June 25, 2024.

AGENCY CONTACT PERSON

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Assistant General Counsel, (916) 419–8958 (designated backup contact), Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823–1310 or via email at rpu@abc.ca.gov.

AVAILABILITY OF DOCUMENTS

The ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC’s website listed below or may be obtained from the Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after May 10, 2024.

ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

CHANGE TO THE PROPOSED FULL
TEXT OF THE REGULATION ACTION

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at

least 15 days prior to the date on which the department adopts the resulting regulation.

FINAL STATEMENT OF
REASONS AVAILABILITY

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the department contact persons in this notice or may be accessed on ABC’s website listed below.

INTERNET ACCESS

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC’s website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>.

TITLE 5. EDUCATION AUDIT
APPEALS PANEL

SUPPLEMENT TO AUDITS OF K–12 LOCAL
EDUCATION AGENCIES
FISCAL YEAR 2023–24 AS OF
MARCH 1, 2024

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2023–24, Supplemented as of March 1, 2024, as well as the Guide’s incorporating regulation, as described below, after considering all comments, objections, and recommendations regarding the proposed action. The Supplemented Audit Guide will be derived from and incorporated in Section 19810.

PUBLIC HEARING

A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the written comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be addressed to Mary Kelly.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes on **Monday, June 24, 2024**. EAAP will consider only written comments received by that time.

Written comments for EAAP’s consideration should be directed to:

Mary Kelly, Executive Officer
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814
Fax: (916) 445–7626
Email: mkelly@eaap.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Section 14502.1, Education Code.
Reference: Sections 14502.1, 14503, 42010, and 41024 of the Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking amends title 5, California Code of Regulations, section 19810 to clarify the incorporation by reference language and make reference to the audit guide. It also adopts the Audit Guide for 2023–24, supplemented as of March 1, 2024, with any technical and clarifying revisions and legislative changes that will affect audits and possibly the conditions for apportionment of school funding. This supplemental filing ensures that audits include subjects pertinent to and/or required by legislation through January 1, 2024.

This rulemaking meets the requirements of Education Code section 14502.1, which mandates that an annual audit guide be adopted by EAAP, and the additional laws and Constitutional provisions listed under “Authority cited” below the proposed amended text of Section 19810, as shown below. The purpose of the audit guide is to define terms and specify procedures to guide accountants in the conduct of statutorily required financial and compliance audits of K–12 local education agencies. The Controller, in letters dated February 7 and 14, 2024, pursuant to Education Code section 14502.1, proposed supplemental changes to be reflected in the 2023–24 audit guide. The proposed changes derive from the Controller’s proposals and also contain changes designed to clarify audit steps.

EAAP does not anticipate that these proposed amendments would create specific benefits for the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, nor the increase in openness and transparency in business and government. The regulations direct accountants to perform the steps necessary for the annual audits required by Education Code Section 41020. EAAP has determined that the proposed amendments will ultimately benefit the welfare of California residents by ensuring that local education agencies are complying with regulato-

ry requirements, and that educational funds are being properly utilized, which would ultimately affect the quality of students’ educational experiences. In developing the rulemaking, EAAP evaluated the proposed changes to regulations and determined that they are not inconsistent or incompatible with existing regulations, state or federal.

A description of proposed changes to section 19810, and a discussion of revisions to the audit guide, follow.

Title 5, Division 1.5

Chapter 3. Audits of California K–12 Local Education Agencies

Article 1 General Provisions

§ 19810. Annual Audit Guides.

The “2023–24 Supplemental Guide for Annual Audits of K–12 Local Education Agencies and State Compliance Reporting,” (*March/July 1, 2023/4*), adopted by the Education Audit Appeals Panel, is incorporated by reference. The guide provides the audit steps, reporting requirements, and other guidance for the required annual financial and compliance audits, subject to auditor judgment where alternative or additional audit steps may be appropriate. The annual guide is superseded by a supplemental audit guide, if needed, adopted before March 1 of each fiscal year. Each annual guide, including Appendices A, B and C and any applicable supplement, is available on www.eaap.ca.gov/audit-guide, with paper or electronic copies available on request.

Note: Authority cited: Article XIII, Section 36 and Article XIII A, Section 1, California Constitution; and Sections 14502.1 and 47612, Education Code. Reference: Article XIII B, Section 1.5, California Constitution; and Sections 2574, 14501, 14502.1, 14503, 37700, 41020, 41024, 41480, 42238.02, 43500, 43501, 43502, 43504, 43505, 43509, 43520, 43521, 43522, 44258.9, 45037, 46146, 46300, 47605, 47612, 47614, 47634, 48000, 48206, 48306, 48313, 51747, 51749, 52060, 53071, 56026, 56340 and 76004, Education Code.

Audit Guide Amendments

The proposed annual 2023–24 Supplemental Audit Guide includes the following amendments:

Report Components Section 4.a, LEA Organization Structure is deleted and moved to new Section 5, Other Information. Also, a technical change is made to section 5.a.2 requiring a statement in instances where there was no change in the school district’s boundaries.

Report Components Section 5.b, State Compliance Report is amended to ensure that the audit guide is in compliance with the most recent requirements of the American Institute of Certified Public Accountants.

Section G. Instructional Materials is amended to add a penalty to any finding that the school district

or county office of education did not follow required steps to ensure that each pupil would have sufficient textbooks and instructional materials, in accordance with Section 60150(b).

Section P. Transportation Maintenance of Effort is deleted because there are no audit requirements in statute and no fiscal penalty for failing the requirement. Declining enrollment in some LEAs have reduced transportation expenses, and the Home-to-School Transportation Reimbursement program provides new funding for Home to School transportation.

Section TT. Home-to-School Transportation Reimbursement includes a technical change to reflect the fact that plans may have been updated subsequent to the original adoption on April 1, 2023.

Section T. Clean Energy Jobs Act is deleted due to completion of projects and submission of final expenditure reports.

Section T. Art and Music in Schools implements SB 115 (Stats. 2023, Chapter 49), amending sections 8820–8822, which in turn carry out the mandate of Proposition 28, enacted November 8, 2022, by funding a new, ongoing program supporting arts instruction in schools beginning in 2023–24. Section 8830 subdivision (i) requires the program to be included in the annual audit. Audit steps will review expenditures to ensure they were used to supplement rather than supplant existing services, that after an audit year in which the allocated funds are fully expended or the third year of the program, no more than 20 percent of the expenditures were used for allowable purposes other than certificated or classified salaries and benefits; and that no more than 1 percent of the total funding received in the allocation year was used for administrative expenses, including indirect costs. Other audit steps verify that the LEA certified compliance with Section 8820(g)(1) (or a waiver by California Department of Education), and that the LEA certified compliance with Section 8820(g)(2), concerning the use of art and music funds.

Section Z. Immunizations section is revised to delete review of students in the 1st or 8th grade in the audit year. Review of those grades was necessary because of the disruption caused by the Covid-19 Pandemic. Current immunization rates are approaching rates near pre-pandemic levels and the Department of Public Health is no longer requiring reporting from grades 1 and 8.

Section DZ. Expanded Learning Opportunities Program includes technical amendments to steps 3 and 5 to ensure reference to the correct code section. It is also adding audit procedures that would exempt an LEA from fiscal penalty when it is temporarily prevented from operating the Expanded Learning Opportunities Program because of a school site closure due

to emergency conditions, in compliance with Section 46120(b).

Section EZ. Transitional Kindergarten is amended to delay steps 5 and 6 to 2025–26 as a result of deadlines changed by SB114. It would also add a new procedure to audit transitional kindergarten classroom with early enrollment pupils, also resulting from changes made by SB114 to Section 48000.15.

NOTE: The changes described above are already in effect on an emergency basis.

DISCLOSURES REGARDING THE PROPOSED ACTION

1. Mandate on local agencies and school districts: None.
2. Cost to any local agency or school district which must be reimbursed: None.
3. Cost or savings to any state agency: None.
4. Other non-discretionary cost or savings imposed upon local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Significant effect on housing costs: None.
7. Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
8. The Economic Impact Assessment found that adoption of these regulations will not:
 - create or eliminate jobs within California;
 - create new businesses or eliminate existing businesses within California; or,
 - affect the expansion of businesses currently doing business within California.
 - benefit or harm worker safety or the state’s environment.

As stated in the Informative Digest/Policy Statement Overview above, EAAP has determined that the proposed amendments will ultimately benefit the welfare of California residents by ensuring that local education agencies follow regulatory requirements, and that education funds are being properly utilized, which would ultimately affect the quality of pupils and students’ educational experiences.
9. Cost impact on a representative private person or business: EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
10. Business report requirements: None.

11. Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

**TECHNICAL, THEORETICAL, OR
EMPIRICAL STUDIES,
REPORTS, OR DOCUMENTS**

EAAP relied upon the Controller’s Office letters dated February 7 and 14, 2024, which proposed changes to the 2023–24 Audit Guide.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), EAAP must determine that no reasonable alternative it has considered or that has otherwise been identified and brought to the EAAP’s 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.

AVAILABILITY OF RULEMAKING FILE

The entire rulemaking file will be available for inspection and copying throughout the rulemaking process at EAAP’s office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Economic Impact Assessment. A copy may be obtained by contacting Mary Kelly at the above address. The bill analyses are also available online at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

Following the comment period, a hearing, if requested, and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of Timothy Morgan at the address stated above. EAAP will accept written comments on the modified regula-

tions for 15 days after the date on which they are made available.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, any changed or modified text, and the Final Statement of Reasons will be accessible through the EAAP website: www.eaap.ca.gov.

CONTACT PERSONS

Direct inquiries concerning the proposed administrative action, or requests for the proposed text, the Initial Statement of Reasons, any modified text of the regulations, or technical information supporting the rulemaking to Timothy Morgan, Staff Attorney, (916)445–7745, tmorgan@eaap.ca.gov, or Mary C. Kelly, Executive Officer, (916)445–7745, mkelly@eaap.ca.gov.

**TITLE 27. OFFICE OF
ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
PROPOSITION 65**

**AMENDMENT TO SECTION 25705(c)(2)
SPECIFIC REGULATORY LEVELS POSING
NO SIGNIFICANT RISK:**

**TITANIUM DIOXIDE (AIRBORNE,
UNBOUND PARTICLES OF
RESPIRABLE SIZE)**

Public Availability Date: May 10, 2024

Deadline for Public Comment: June 24, 2024

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to adopt a Proposition 65 No Significant Risk Level (NSRL) for titanium dioxide (airborne, unbound particles of respirable size) by amending Title 27, California Code of Regulations, section 25705(c)(2).¹ OEHHA is proposing an NSRL of 440 micrograms per day for airborne, unbound titanium dioxide par-

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq., is referred to herein as “Proposition 65” or “The Act.” All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated.

ticles with diameters of 10 micrometers or less, and an NSRL of 44 micrograms per day for airborne, unbound titanium dioxide particles with diameters of 0.8 micrometers or less. Both parts of the NSRL must be met before it applies.

SUBMISSION OF PUBLIC COMMENTS

All written comments must be submitted to OEHHA by electronic submission, mail, or hand-delivery, by June 24, 2024, as indicated below. OEHHA strongly recommends that comments be submitted electronically through our website at <https://oehha.ca.gov/comments> rather than in paper form. Alternatively, comments can be submitted in paper form, by either mail or delivered in person.

Electronic Submission (preferred):

Through OEHHA website at: <https://oehha.ca.gov/comments>

Mailed Submission:

Esther Barajas–Ochoa
Office of Environmental Health Hazard
Assessment
P.O. Box 4010
Sacramento, California 95812–4010

In–person delivery submission:

Attention: Esther Barajas–Ochoa
Office of Environmental Health Hazard
Assessment
1001 I Street, 23rd Floor
Sacramento, California 95814

OEHHA encourages all commenters to submit their comments in a format compliant with Section 508 of the federal Rehabilitation Act, Web Content Accessibility Guidelines 2.0 and California Government Code sections 7405 and 11135, so that they can be read using screen reader technology and those with visual impairments are able to listen to them.²

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

Inquiries concerning the action described in this notice may be directed to Esther Barajas–Ochoa, in writing at the address given above, by email at esther.barajas–ochoa@oehha.ca.gov, or by telephone at: 916–445–6900.

² <https://www.w3.org/WAI/standards-guidelines/wcag/>.

PUBLIC HEARING

A public hearing on these proposed regulatory amendments will only be scheduled upon request. To request a hearing, send an email to Esther Barajas–Ochoa at esther.barajas–ochoa@oehha.ca.gov or letter to the address listed above by no later than **June 10, 2024**. If one is scheduled, OEHHA will mail a notice of the hearing to the requester and interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA website at least ten days before the public hearing date. The notice will provide the date, time, and instructions for participating in the hearing.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Esther Barajas–Ochoa at (916) 445–6900, or by email to esther.barajas–ochoa@oehha.ca.gov. Corey N. Friedman is a back–up contact person for inquiries concerning processing of this action and is available at (916) 323–2635 or corey.friedman@oehha.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 65 prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual.³ The Act also prohibits a business from knowingly discharging a listed chemical into water, or onto land where such chemical passes or probably will pass into any source of drinking water.⁴

For carcinogens, an exemption from the warning requirement is provided by the Act when the exposure for which the person is responsible can be demonstrated to produce no significant risk, or when a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water.⁵ A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (Sections 25701–25721). Section 25701 describes alternative methods for making such a determination. Section 25705 sets forth the process for determining “no significant risk” levels for purposes of

³ Health and Safety Code section 25249.6.

⁴ Health and Safety Code section 25249.5.

⁵ Health and Safety Code sections 25249.9 and 25249.10.

Proposition 65 and states those levels for certain listed chemicals.

Businesses are not required to rely on an NSRL to demonstrate their product does not require a Proposition 65 warning. As stated in existing section 25701(a), “Nothing in this article shall preclude a person from using evidence, standards, risk assessment methodologies, principles, assumptions or levels not described in this article to establish that a level of exposure to a listed chemical poses no significant risk.” Thus, an NSRL does not create a requirement or a mandatory threshold; rather, it provides guidance to businesses

that choose to rely on the NSRL instead of developing their own analysis. This eases compliance for regulated businesses.

Details on the basis for the proposed NSRL for titanium dioxide are provided in the Initial Statement of Reasons for this regulatory amendment, which is available on request from Esther Barajas–Ochoa at esther.barajas-ochoa@oehha.ca.gov and is posted on the OEHHA website at www.oehha.ca.gov.

This proposed amendment to section 25705 would add an NSRL for titanium dioxide by amending Section 25705(c)(2) as follows (addition in underline):

...
 (c)(2) The following levels based on state or federal risk assessments shall be deemed to pose no significant risk:

<i>Chemical Name</i>	<i>Level (micrograms per day)</i>
...	
Polychlorinated biphenyls (PCBs)	0.09
Tetrachloroethylene	14
<u>Titanium dioxide (airborne, unbound particles of respirable size). If daily exposure to this chemical is at or below both of the following levels, it is deemed to pose no significant risk:</u>	
<u>Unbound, airborne particles with diameters of 10 micrometers or less</u>	<u>440</u>
<u>Unbound, airborne particles with diameters of 0.8 micrometers or less</u>	<u>44</u>
...	

When OEHHA has not previously established an NSRL for a listed chemical based on its own risk assessment, then under subsection 25705(c), “levels of exposure deemed to pose no significant risk may be determined by [OEHHA] based on state or federal risk assessments.” OEHHA is proposing to establish an NSRL for the listed form of titanium dioxide based on a federal risk assessment, namely Occupational Exposure to Titanium Dioxide, Current Intelligence Bulletin 63, Publication Number 2011–160 (2011), by the National Institute for Occupational Safety and Health (NIOSH).

which promotes Californians’ health and safety. In addition, the NSRL does not require, but may encourage, businesses to reduce exposures to the listed chemical to a level that does not cause a significant risk, thereby providing a public health benefit to Californians.

NO INCONSISTENCY OR
 INCOMPATIBILITY WITH
 EXISTING REGULATIONS

ANTICIPATED BENEFITS OF THE
 PROPOSED REGULATION

Regulated businesses that choose to rely on the NSRL will have an easier time determining if their products expose people to a level of titanium dioxide (airborne, unbound particles of respirable size) that poses no significant risk of cancer. This will ease compliance, reducing the likelihood of over–warning and furthering the right–to– know purposes of the statute,

After conducting an evaluation on any related regulations in this area, OEHHA has found that these are the only regulations dealing with Proposition 65 No Significant Risk Levels for this specific chemical. Therefore, OEHHA has determined that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. The proposed regulation does not impose any mandatory requirements on businesses, state or local agencies and does not address compliance with any other law or regulation.

AUTHORITY

Section 25249.12, Health and Safety Code.

REFERENCE

Sections 25249.5, 25249.6, 25249.9, 25249.10, 25249.11 and 57004, Health and Safety Code.

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

No monetary costs have been estimated for this proposal. An NSRL is not a mandatory limit and does not create a threshold above which warnings are always mandated. Regardless of this rulemaking package, the standard for when a warning is required for titanium dioxide (airborne, unbound particles of respirable size) remains the same: no warning is needed if “the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer...” (Health & Safety Code, §25249.10(c)). Businesses are not required to rely on an NSRL to demonstrate this and are still free to conduct their own analysis.

The regulatory proposal will not affect the creation or elimination of jobs within the State of California. The proposal will also not affect the creation or elimination or expansion of business within the State of California. The proposed NSRL will ease compliance and further the right-to-know purposes of the Act, thereby benefiting the health and welfare of California residents and promoting worker safety. Additionally, the NSRL does not require, but may encourage, businesses to reduce exposures to the listed chemical to a level that does not cause a significant risk, thereby providing a health benefit to Californians and to the state’s environment.

NO SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESS, INCLUDING
ABILITY TO COMPETE

Because the proposed regulatory level provides compliance assistance to businesses subject to Proposition 65, but does not impose any mandatory requirements on those businesses, OEHHA has made an initial determination that the adoption of the regulation 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.

COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES

The proposed NSRL was developed to provide compliance assistance for businesses. Use of the NSRL is not mandatory. No costs are anticipated, because no representative person or business must take any action as a result of this proposal.

EFFECT ON SMALL BUSINESSES

Small businesses will not be required to take any action as a result of this rulemaking. Additionally, Proposition 65 is limited by its terms to businesses with 10 or more employees.⁶

CONSIDERATION OF ALTERNATIVES

Under Government Code section 11346.5(a)(13), OEHHA 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 than the proposal described in this Notice.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs. The proposal provides compliance assistance to businesses subject to Proposition 65 but does not impose any mandatory requirements on those businesses.

PEER REVIEW

This notice, the proposed regulatory change, and the Initial Statement of Reasons are being provided to the OEHHA Science Advisory Board’s Carcinogen Identification Committee for review and comment.⁷

NO IMPACT ON LOCAL AGENCIES OR
SCHOOL DISTRICTS

Because Proposition 65 does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7

⁶ Health and Safety Code section 25249.11(b).

⁷ Title 27, Cal. Code of Regs., section 25701(e).

(commencing with Section 17500) of Division 4 of the Government Code.⁸

OEHHA has also determined that no other nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

Because Proposition 65 expressly does not apply to any State agency, OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.⁹

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has made available for public review an Initial Statement of Reasons for the regulation, all the information upon which the regulation is based, and the text of the regulation. A copy of the Initial Statement of Reasons, the text of the regulation and the documents relied on to develop the proposed regulation are available upon request from OEHHA at the address and telephone number indicated above. These documents are also posted on OEHHA's website at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, if held, or whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such changes. Copies of the notice and the changed regulation will also be available on the OEHHA website at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons for this regulatory action may be obtained, when it becomes available, from OEHHA at the address and telephone number indicated above, and on the OEHHA website at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

FISH AND GAME CODE SECTION 1653
CONSISTENCY DETERMINATION
REQUEST FOR
FRENCH CREEK 2024 RKM 3.2–3.3
RESTORATION PROJECT
(TRACKING NUMBER:
1653–2024–136–001–R1)
SISKIYOU COUNTY

California Department of Fish and Wildlife (CDFW) received a Request to Approve on April 30, 2024, that the Scott River Watershed Council (Council) proposes to carry out a habitat restoration or enhancement project pursuant to Fish and Game Code section 1653. The proposed project involves improving coho spawning and rearing habitat in French Creek by installing engineered log-jams and augmenting spawning gravel. The proposed project will be carried out on French Creek, located within the Scott River Hydrologic Unit 105.42, Siskiyou County, California.

On March 20, 2024, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order for Small Habitat Restoration Projects (General 401 Order) for the French Creek 2024 RKM 3.2–3.3 Restoration Project. The Regional Water Board determined that the Project, as described in the NOI, was categorically exempt from California Environmental Quality Act (CEQA) review (section 15333 — Small Habitat Restoration Projects) and met the eligibility requirements for coverage under the General 401 Order. The Regional Water Board issued a Notice of Applicability (WDID Number 1A24028WNSI) for coverage under the General 401 Order on April 25, 2024.

The Council is requesting a determination that the project and associated documents are complete pursuant to Fish and Game Code section 1653 subdivision (d). If CDFW determines the project is complete, the

⁸ See Health and Safety Code section 25249.11(b).

⁹ *Ibid.*

Council will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) or a Lake or Streambed Alteration Agreement under Fish and Game Code section 1605 for the proposed project.

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

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NUMBER 1653-2024-134-001-R4

Project: Los Banos Wildlife Area Mud Slough Unit Wetland Enhancement Project

Location: Merced County

Applicant: Sean Allen, California Department of Fish and Wildlife

Background

Project Location: The Los Banos Wildlife Area Mud Slough Unit Wetland Enhancement Project (Project) will occur within Mud Slough, in the city of Los Banos, Merced County; centered at coordinates 37.059936, -120.764642; Sections 15 and 16, Township 10 South, Range 11 East; U.S. Geological Survey map Los Banos; Assessor’s Parcel Number 454-020-006-000.

Project Description: Sean Allen (Applicant) proposes to enhance water conveyance through 44 acres of wetlands within the Mud Slough Unit of the Los Banos Wildlife Area to provide a more reliable water supply to over 100 acres of downstream wetlands adjacent to Mud Slough. The Project is likely to benefit populations of Swainson’s hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), both species designated as threatened pursuant to the California Endangered Species Act (CESA); western pond turtle (*Emys marmorata*), proposed threatened under the federal Endangered Species Act (ESA); and giant garter snake (*Thamnophis gigas*), a threatened species pursuant to both ESA and CESA (See 16 U.S.C. § 1531 et seq., Fish & Game Code, § 2050 et seq., and Cal. Code Regs., title 14, § 670.5, subdivision (b)(5)(A, H) and (b)(4)(E)). The Project includes the following activities:

An existing, nonfunctional lift pump station will be removed, and a new lift pump station will be installed approximately 150 feet downstream of the existing

point of diversion. The new pump station will consist of two lift pumps approximately 15 feet high, embedded partially underground, installed on a precast concrete pump stand with a one-foot-deep compacted aggregate base. An 18-inch-thick riprap apron will be installed adjacent to the structure to prevent erosion.

A 24-inch diameter, 25-foot-long pipe will be installed in a five-foot wide trench, backfilled with native soil, to convey water from the pump to wetlands west of Mud Slough. A 24-inch diameter, 160-foot-long pipe will be installed in a five-foot-wide trench under the bed of Mud Slough and backfilled with native soil to convey water from the pump to wetlands east of Mud Slough. The pipe will terminate at a three-foot-by-three-foot concrete horseshoe-shaped outlet, set on four inches of aggregate base. An 18-inch-thick layer of riprap will be placed on top of filter fabric along the levee slope at the pipe outlet to prevent erosion.

Two 24-inch diameter pipes will be replaced with new 42-inch diameter, 45-foot-long polyvinyl chloride pipes under the existing levee crossing. The inlets and outlets will be graded to allow for proper drainage. Precast concrete riser water control structures will be placed on an aggregate base at each pipe inlet. The levee at the culvert crossing will be modified to a 20-foot top width with 2H:1V side slope. An 18-inch-thick layer of riprap with filter fabric will be installed at inlets and outlets along the levee side slope to prevent erosion.

Four water control structures with precast concrete risers will be installed in the Project site, two at the southern end, upstream of the Mud Slough crossing, and two at the northern end. Grading will occur at the northern outlet locations to ensure proper drainage. Two water control structures, composed of 24-inch diameter polyvinyl chloride pipes and precast concrete risers, will be installed within interior berms. Riprap will be installed at the inlet and outlet of all water control structures to prevent erosion.

Four 24-inch diameter polyvinyl chloride pipe culverts and one 30-inch diameter polyvinyl chloride pipe culvert will be installed within existing levees.

A swale with a 15-foot bottom width and 3H:1V side slope will be constructed to convey water within the Mud Slough Unit back to Mud Slough. Spoils from swale construction will be used in levee crossing improvement activities within the Project site.

Work will occur when the Project site is expected to be dry, though if residual water is present, it will be pumped from the work area and discharged to an adjacent vegetated wetland.

Project Size: The total size of the Project site is 60.4 acres. The total area of disturbance is 2.94 acres. The Project will temporarily impact 1.22 acres of wetlands and will permanently impact 0.22 acres of wetlands.

The Project will temporarily impact 0.70 acres of stream and permanently impact 0.05 acres of stream. The Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (CEQA) (Cal. Code Regs., title 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) native soil, (2) rock riprap, (3) culverts, (4) water control structures, and (5) lift pumps.

Project Timeframes: Start date: June 2024.

Completion date: October 2024.

Project term: One year.

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the conveyance and quality of waters in California, the Central Valley Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) Number 5B24CR0010). The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to existing vegetation, water quality, nesting birds, and aquatic species.

Receiving Water: Mud Slough.

Discharge Volume: The Project will incur a discharge volume of 690 cubic yards of native soil from backfill and excavation, 170 cubic yards of rock riprap, five culverts, ten water control structures, and two lift pumps, all associated with water conveyance improvements.

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

On April 4, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on April 4, 2024, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. No-

tice File Number Z-2024-0404-03) on April 19, 2024. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

Avoidance and minimization measures for the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), include, but are not limited to, the following: construction work windows; environmental awareness training; avoidance of vegetation disturbance; and wildlife species avoidance and minimization. The specific avoidance and minimization requirements are found in attachments to the Request to Approve, "02_LosBanosWA-MudSloughUnit_WQC_SupplementalInformation_022624," "05_LosBanosWA-MudSloughUnit_HREA_SpeciesMeasures_032224" and "06_BiologicalEvaluation."

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides performance standards, protocols for assessment, timeframe, and responsible party. Specific requirements of the plan are found in an attachment to the NOI, "02_LosBanosWA-MudSloughUnit_WQC_SupplementalInformation_022624."

Notice of Completion

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

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

- success criteria for the Project.

The NOC shall demonstrate the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant’s NOI. The Applicant shall include the project name and WDID number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. The Applicant shall submit documents electronically to: megan.rooney@wildlife.ca.gov and R4LSA@wildlife.ca.gov.

Project Authorization

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

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

**DEPARTMENT OF
FISH AND WILDLIFE**

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080–2024–004–01

Project: Philo–Greenwood Bridge Road
over the Navarro River Bridge
Rehabilitation and Widening
Project

Location: Mendocino County

Applicant: Mendocino County Department of
Transportation

Background

Mendocino County Department of Transportation (Applicant) proposes to rehabilitate and widen the existing single-lane Philo–Greenwood Road Bridge over the Navarro River in Mendocino County to improve the bridge to current California Department of Transportation (Caltrans) design standards, increase public safety, and improve transportation mobility. The Philo–Greenwood Bridge Road over the Navar-

ro River Bridge Rehabilitation and Widening Project (Project) will take place in unincorporated Mendocino County, 4.0 kilometers (2.5 miles) northwest of the community of Philo in the Anderson Valley, near the entrance to the Hendy Woods State Park. The Project will widen and retrofit the bridge’s existing arch span and replace the timber approach spans with a new concrete approach structure. The Project requires construction of a temporary gravel fill work pad with gravel fill abutments to support a work platform. The work platform will be aligned under the bridge and may be up to 150 feet long (perpendicular to the channel) and approximately 40 to 60 feet wide. Fill will be composed of clean river–run gravel and placed within the active channel with at least a 20-foot-wide channel between the fill on opposite banks to accommodate the typical range of summer flows and not adversely affect hydraulic conditions for fish. To construct the eastern bridge foundation, dewatering activities will be required using a sheet pile cofferdam. The sheet pile cofferdam will be installed using a vibratory pile driver and will dewater an area of the channel approximately 60 feet by 30 feet (a total area of approximately 1,500 square feet) along the east side (right bank) of the channel under the bridge. The dewatered area will be filled with clean river–run gravel and fish will be removed or otherwise excluded from the area to be dewatered before water is pumped to a settling basin created on the floodplain.

The Project activities described above are expected to incidentally take¹ coho salmon (*Oncorhynchus kisutch*) of the Central California Coast (CCC) evolutionarily significant unit (ESU), where those activities take place within the bed, bank, and channel of the Navarro River. In particular, CCC coho salmon could be incidentally taken as a result of the increased turbidity and fine sediment, hazardous materials exposure, impaired fish passage, physical changes to riparian and aquatic habitat, fish relocation and dewatering, and hydroacoustic impacts associated with the Project. CCC coho salmon are designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (a)(2)(N).)

CCC coho salmon individuals are documented as present at the Project site. Because of the possible occurrences of all life stages of CCC coho salmon at the

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

Project site, the known dispersal patterns of CCC coho salmon, and the presence of suitable CCC coho salmon habitat within the Project site, the National Marine Fisheries Service (NMFS) determined that CCC coho salmon are reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of CCC coho salmon.

According to NMFS, incidental take will be exceeded if more than 10 juvenile CCC coho salmon are captured during a construction season or more than 1 juvenile CCC coho salmon are harmed or killed during a construction season. The Project is expected to result in the temporary loss of a 10,800–square–foot reach of aquatic CCC coho salmon habitat during dewatering activities. The Project is not expected to result in permanent habitat loss for the species.

Because the Project is expected to result in take of a species designated as endangered under the ESA, the California Department of Transportation (Caltrans), as a Federal Highway Administration Agent, consulted with NMFS as required by the ESA. On May 5, 2022, NMFS issued a biological opinion (file Number WCRO–2021–02768) (BO) to Caltrans. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. On November 2, 2023, NMFS issued a letter clarifying and amending the ITS and associated BO. The ITS also requires the Applicant to implement and adhere to measures contained within the Project Biological Assessment (BA) dated July 2021, as revised September 2023.

On April 2, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from James Linderman, on behalf of the Applicant, requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS and accompanying BO are consistent with CESA for purposes of the Project and CCC coho salmon. (Cal. Reg. Notice Register 2024, Number 16–Z, p. 468.)

Determination

CDFW has determined that the ITS, along with its accompanying BO, is consistent with CESA as to the Project and CCC coho salmon because the mitigation measures contained in the ITS and accompanying BO, as well as the conditions in the BA, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) for authorizing incidental take of CESA–listed species. Specifically, CDFW finds that: (1) take of CCC coho salmon will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS and accompanying BO and BA will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to

implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of CCC coho salmon. The mitigation measures in the ITS and accompanying BO and BA include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) Caltrans or the contractor will retain qualified biologists with expertise in the area of anadromous salmonid biology, including handling, collecting, and relocating salmonids; salmonid/habitat relationships; and biological monitoring of salmonids. Caltrans or the contractor shall ensure that all fisheries biologists be qualified to conduct fish collections in a manner which minimizes all potential risks to ESA–listed salmonids. Electrofishing, if used, shall be performed by qualified biologists and conducted according to the *NOAA Fisheries Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act, June 2000*. See: <https://media.fisheries.noaa.gov/dammigration/electro2000.pdf>.
- 2) The biologist will monitor the construction sites during placement and removal of cofferdams and channel diversions to ensure that any adverse effects to CCC coho salmon are minimized. The biologist will be on site during all dewatering events to capture, handle, and safely relocate CCC coho salmon to an appropriate location. The biologist will notify NMFS staff one week prior to capture activities in order to provide an opportunity for NMFS staff to observe the activities.
- 3) CCC coho salmon will be handled with extreme care and kept in water to the maximum extent possible during rescue activities. All captured CCC coho salmon will be kept in cool, shaded, aerated water protected from excessive noise, jostling, or overcrowding any time they are not in the stream, and fish will not be removed from this water except when released. To avoid predation, the biologists will have at least two containers and segregate young–of–the–year from larger age classes and other potential aquatic predators. Captured CCC coho salmon will be relocated, as soon as possible, to a suitable instream location in which suitable habitat conditions are present to allow for adequate survival of transported fish and fish already present.
- 4) If any CCC coho salmon are found dead or injured, the biological monitor will contact NMFS staff. All CCC coho salmon mortalities will be retained until further direction is provided by the

- NMFS biologist (listed in the BO). Tissue samples are to be acquired from each mortality prior to freezing the carcass per the methods identified in the NMFS Southwest Fisheries Science Center Genetic Repository protocols and sent to the National Oceanic Atmospheric Administration Coastal California Genetic Repository.
- 5) Non–native fish that are captured during fish relocation activities shall not be relocated to anadromous streams, or areas where they could access anadromous habitat.
 - 6) All cofferdams, pumps, pipes, and sheet plastic will be removed from the stream upon Project completion; any clean native gravel used for the cofferdams will be left in the channel to augment available spawning habitat.
 - 7) All pumps used to divert live stream flow, outside the dewatered work area, will be screened and maintained throughout the construction period to comply with NMFS’ Fish Screening Criteria for listed Salmonids (NMFS 1996).
 - 8) Caltrans/Applicant will allow any NMFS employee(s) or any other person(s) designated by NMFS to accompany field personnel to visit the project site during activities described in the BO.
 - 9) Upon Project completion, Caltrans/Applicant shall revegetate access roads and repair bank areas to pre–Project slope and form. Between construction seasons, access roads shall be made inaccessible to vehicles in order to prevent access to the river channel.
 - 10) Construction equipment used within the river channel will be checked each day prior to work within the river channel (top of bank to top of bank) and, if necessary, action will be taken to prevent fluid leaks. If leaks occur during work in the channel, Caltrans or their contractors will contain the spill and remove the affected soils.
 - 11) Once construction is completed, all Project–introduced material must be removed, leaving the river as it was before construction. Excess materials will be disposed of at an appropriate upland disposal site. Minor grading to return the channel to pre–Project form can be performed if necessary.
 - 12) Caltrans/Applicant shall develop and implement measures to treat post–construction stormwater runoff from hard surfaces to reduce contaminant load entering salmonid habitat. Stormwater runoff from the Project areas associated with road widening/new lanes, must be treated to remove contaminants from at least the 2–year, 24–hour storm size (based on analyses supporting the National Pollutant Discharge Elimination System permit). This may be accomplished by treating stormwater from existing infrastructure in addition to the new infrastructure. If this level of on–site treatment of the proposed Project is not possible, treatment at other sites (preferably within the same watershed) can be discussed as mitigation. Measures shall be designed to avoid or minimize the effects of road–generated runoff to creeks by diverting surface flow through vegetated areas for infiltration and treatment, or through similar constructed features. The proposed stormwater treatment plan shall be provided to NMFS for review and approval at least 120 days prior to the start of Project construction.
 - 13) Measures should be implemented to reduce runoff from the bridge deck to Navarro River.
 - 14) Any structures such as relief ditches, grading to direct flow, and other diversion structures must receive regular long–term maintenance, with a focus on early fall to reduce run–off from the first rains that cause flush of materials accumulated from the summer months.
 - 15) No rubberized asphalt or rubber crumb may be used due to loading of zinc and 6PPD/6PPD–quinone from the recycled tires used to produce the product.
 - 16) Riparian habitat areas temporarily disturbed or restored shall be replanted using riparian species that have been recorded along the Navarro River in the action area, including willow (*Salix* spp.) and red alder (*Alnus rubra*).
 - 17) Onsite creation/restoration shall occur in areas that have been disturbed during project construction. The amount of habitat created/restored shall be at a 3:1 ratio of new plantings per large (6 in. in diameter at breast height) woody plant removed. This replanting ratio will help ensure successful establishment of at least one vigorous plant for each plant removed to accommodate the Project.
 - 18) Non–native tree species removed during project construction will be replaced with native riparian species.
 - 19) Any crushed rock used to surface access paths and work pads within the channel will be removed, leaving only clean spawning–sized gravels graded to conform to the natural streambed and bank contours at the end of construction. The addition of clean spawning–sized gravels would increase spawning habitat availability in the Navarro River, and provide an overall benefit for CCC ESU coho salmon.

Monitoring and Reporting Measures

- 1) **Project Construction and Fish Relocation Report** — Caltrans must provide a written report to NMFS by January 15 of the year following each construction season. The report must be submitted to NMFS’ North–Central Coast Office. The report must contain, at minimum, the following information:
 - a. **Construction related activities** — The report(s) must include the dates construction began and was completed; a discussion of any unanticipated effects or unanticipated levels of effects on salmonids, including a description of any and all measures taken to minimize those unanticipated effects and a statement as to whether or not the unanticipated effects had any effect on ESA–listed fish; the number of salmonids killed or injured during the Project action; and photographs taken before, during, and after the activity from photo reference points.
 - b. **Fish relocation** — The report(s) must include a description of the location from which fish were removed and the release site(s) including photographs; the date and time of the relocation effort; a description of the equipment and methods used to collect, hold, and transport salmonids; if an electrofisher was used for fish collection, a copy of the log-book must be included; the number of fish relocated by species; the number of fish injured or killed by species and a brief narrative of the circumstances surrounding ESA–listed fish injuries or mortalities; and a description of any problems which may have arisen during the relocation activities and a statement as to whether or not the activities had any unforeseen effects.
- 2) **Post–Construction Vegetation Monitoring and Reporting** — Revegetation monitoring will be implemented in compliance with regulatory permit conditions and be initiated immediately following completion of the planting and will be described within a Riparian Wetland Mitigation and Monitoring Plan to be reviewed and approved by NMFS and CDFW. Reports documenting post–Project conditions of vegetation installed at the site will be prepared and submitted annually for the first five years following Project completion. Reports will document vegetation health and survivorship and percent cover, natural recruitment of native vegetation (if any), and any maintenance or replanting needs. Photographs must be includ-

ed. If poor establishment is documented, the report must include recommendations to address the source of the performance problems. Annual reports shall be sent to NMFS’ North–Central Coast Office.

The BO requires the Applicant to submit monitoring reports to NMFS by January 15 of the year following each construction season of the Project. Although not a condition of the BO, CDFW requests that the Applicant also send a copy of the monitoring reports to CDFW’s Northern Region Eureka Office at R1LSAEureka@wildlife.ca.gov.

Financial Security Caltrans has provided funding security for mitigation requirements in compliance with the September 3, 2021 Master Funding Agreement for Financial Assurance under CESA entered into by CDFW and Caltrans. A Child Expenditure Authorization (EA) has been created to contain \$16,294,600 for construction mitigation and monitoring requirements. \$400,000 of this will be set aside specifically for CESA mitigation and monitoring, riparian and fish habitat restoration, and avoidance and minimization measures (See Caltrans letter to Mendocino County Department of Transportation re Financial Assurances for Mitigation/Monitoring for Philo–Greenwood Bridge (Number 10C0032) Rehabilitation and Widening Project FID: BRLO–5904(106), (121), April 26, 2024, attached hereto as Exhibit A). The funds allocated to mitigation and monitoring will be kept in the State Treasury until proposed mitigation work has been completed and accepted by the regulatory agencies and will not be re–allocated to another element of the Project or expended for any purpose other than completing the mitigation and monitoring requirements.

Conclusion

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

CDFW’s determination that the NMFS ITS and accompanying BO are consistent with CESA is limited to CCC coho salmon.

DEPARTMENT OF
FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT
FISH AND GAME CODE
SECTION 2080.3 CONCURRENCE
NUMBER 2080–2024–002–04

Project: Implementation of the San Joaquin River Restoration Program and Accompanying Hatchery and Genetic Management Plan

Location: Butte, Napa, Yolo, and Fresno Counties

Applicant: U.S. Fish and Wildlife Service

Background

On April 2, 2024, the National Marine Fisheries Service (NMFS) issued Scientific Research and Enhancement Permit 20571–2R (Permit) to the United States Fish and Wildlife Service (USFWS), pursuant to section 10, subdivision (a)(1)(A) of the federal Endangered Species Act (ESA). The Permit authorizes USFWS to take ESA-listed Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (spring-run Chinook salmon) from the Feather River Fish Hatchery (FRFH), Butte Creek, and the San Joaquin River for scientific research and enhancement activities associated with the San Joaquin River Restoration Program (SJRRP). The purpose of the research and enhancement program is to produce spring-run Chinook salmon for reintroduction in order to restore a self-sustaining population in the San Joaquin River below Friant Dam. The Permit authorizes collection of wild and hatchery eggs, juveniles, and adults for broodstock development and maintenance, releases of juvenile hatchery-origin and adult spring-run Chinook salmon, and in-stream research, monitoring, and evaluation activities. Spring-run Chinook salmon is designated as a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(2)(C).) The Permit is effective for approximately five years and will expire December 31, 2028.

The Permit that is the subject of this determination (20571–2R), as well as the Permit’s associated Biological Opinion (BO), arise from the SJRRP. The SJRRP executes a legal settlement from the lawsuit, *NRDC et al. v. Kirk Rodgers et al.* In 1988, a coalition of environmental groups led by the Natural Resources Defense Council (NRDC) filed a lawsuit challenging the renewal of long-term water services contracts between the United States Department of Interior and

the Central Valley Project Friant Division contractors. After more than 18 years of litigation, the Settling Parties reached a Stipulation Agreement (Settlement). The Settling Parties, including NRDC, Friant Water Users Authority (now known as the Friant Water Authority), and the United States Departments of Interior and Commerce, agreed on the terms and conditions of the Settlement, which establishes two primary goals:

- Restoration Goal — To restore and maintain fish populations in “good condition” in the mainstem San Joaquin River below Friant Dam to the confluence with the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish.
- Water Management Goal — To reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided in the Settlement.

Through a 2006 memorandum of understanding between the California Department of Fish and Wildlife (CDFW) and other state agencies and the Settling Parties, CDFW stated its intention to assist the Settling Parties in implementation of the Settlement consistent with CDFW’s authorities, resources, and broader regional resource strategies. Subsequently, President Obama signed the San Joaquin River Restoration Act on March 30, 2009, giving the Department of Interior full authority to implement the SJRRP. The implementing agencies, consisting of the Department of Interior, Bureau of Reclamation (Reclamation) and USFWS, NMFS, CDFW, and California Department of Water Resources (DWR) organized a Program Management Team and associated work groups to begin the Settlement implementation.

The Settlement requires the reintroduction of spring-run Chinook salmon into the San Joaquin River. To implement the Settlement, the SJRRP’s Hatchery and Genetics Management Plan (HGMP) (2023) proposes using a Conservation Facility (Interim Facility and future Salmon Conservation and Research Facility [SCARF]) and genetic management and conservation hatchery techniques to develop a self-sustaining population of spring-run Chinook salmon for the SJRRP. The Interim Facility, located in Friant, California, in Fresno County, and the SCARF, will rely on artificial propagation using broodstock to attain sufficient numbers of spring-run Chinook salmon for reintroduction.

Because the implementation of these research and enhancement activities is expected to result in take of a species designated as threatened under the federal ESA, USFWS consulted with NMFS as required by

Section 7 of ESA. The timeline of relevant regulatory activities to date is as follows:

- October 11, 2012 — NMFS issued Enhancement of Survival Permit 14868 to USFWS, authorizing take of spring–run Chinook eggs or juveniles from FRFH to establish broodstock methodologies and begin studies associated with holding practices.
- December 18, 2013 — CDFW issued a concurrence (CDFW file Number 2080–2012–017–014) pursuant to Fish and Game Code section 2080.3 that Permit 14868 would further the conservation of spring–run Chinook salmon.
- December 31, 2013 — NMFS issued final regulations designating an experimental population of spring–run Chinook salmon under Section 1539, subdivision (j) of Title 16 of the United States Code and established take provisions for members of that population.
- March 18, 2014 — CDFW issued a determination (CDFW file Number 2080–2014–005–04) that the management restrictions, protective measures, prohibitions, and exceptions to prohibitions contained in the federal regulations meet the requirements in Fish and Game Code section 2080.4.
- March 21, 2014 — NMFS issued Enhancement of Survival Permit 17781 to USFWS, authorizing take of spring–run Chinook salmon for collection, rearing, and release.
- April 1, 2014– CDFW issued a concurrence (CDFW file Number 2080–2014–006–04) pursuant to Fish and Game Code section 2080.3 that Permit 14868 would further the conservation of spring–run Chinook salmon.
- September 12, 2018 — NMFS issued Scientific Research and Enhancement Permit 20571 authorizing take of threatened spring–run Chinook salmon and threatened California Central Valley (CCV) steelhead (*O. mykiss*) associated with hatchery propagation, research, and enhancement activities.
- November 26, 2018 — CDFW issued a determination (CDFW file Number 2080–2018–014–04) pursuant to Fish and Game Code section 2080.3 that Permit 20571 would further the conservation of spring–run Chinook Salmon.
- February 14, 2023 — USFWS applied to NMFS to renew Permit 20571 in accordance with section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 et seq.) for Reintroduction of Spring–run Chinook Salmon to the San Joaquin River, from the Merced River confluence to Friant Dam.

- November 2, 2023 — NMFS issued an extension for Permit 20571 to USFWS, to be effective from January 1, 2024, until the date that NMFS approves or denies USFWS’ request for a new permit.
- On November 30, 2023, the Director of CDFW received a letter from USFWS notifying CDFW that NMFS issued an extension for Permit 20571 to be effective from January 1, 2024, to the date that NMFS approves or denies USFWS’ request for a renewed permit.
- December 11, 2023 — CDFW issued a determination (CDFW file Number 2080–2023–020–04) pursuant to Fish and Game Code section 2080.3 that Permit 20571, including the extension, would further the conservation of spring–run Chinook Salmon.

On April 2, 2024, the CDFW Director’s Office received a letter from USFWS notifying CDFW pursuant to Fish and Game Code section 2080.3 that it had received Permit 20571–2R authorizing the taking of spring–run Chinook salmon for reintroduction in the Restoration Area for scientific research and enhancement activities associated with the SJRRP, and a request that CDFW to: (1) make a determination that the Permit will further the conservation of the species; and (2) publish the notification as required by Fish and Game Code section 2080.3, subdivision (a)(2).

Project Summary

The activities described in the Permit will incidentally take¹ spring–run Chinook salmon. Spring–run Chinook salmon will be intentionally taken at the FRFH, Butte Creek, and the San Joaquin River. The Permit authorizes take to include one or more of the following: harassment, capture, handling, collection, transport, holding, lethal spawning, biological sampling, tagging, and live release of marked spring–run Chinook salmon in excess of broodstock needs, unmarked spring–run Chinook salmon, and natural–origin steelhead, if encountered. The Permit authorizes take associated with hatchery propagation, research, and enhancement activities at the San Joaquin Conservation Hatchery Facilities, which include the SCARF near Friant Dam on the San Joaquin River, the Interim Facility, and a small Satellite Incubation and Rearing Facility (SIRF; referred to collectively as the Conservation Facilities), as cited in USFWS’ Permit application.

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

Two types of direct take will occur under the Permit: (1) take of spring–run Chinook salmon associated with broodstock collection, maintenance of fish held as captive broodstock, and juvenile rearing and release, and (2) take of spring–run Chinook salmon and CCV steelhead associated with research, monitoring, and evaluation (RM&E) activities.

SJRRP proposes to collect up to 5,400 spring–run Chinook Salmon eggs or juveniles for broodstock across all donor sources. For pathology studies an additional 70 individuals will be collected for each collection event, up to a maximum of 9 events (*i.e.*, 2 FRFH, 3 Butte Creek, 4 San Joaquin River and the tributaries in combination) or 6,030 eggs or juveniles total. The total number of eggs or juveniles collected annually, and the collection source, will be constrained by the Interim Facility or SCARF capacity and donor stream conditions. If conditions are suitable, the SJRRP would prefer to collect equally from all three donor sources, with collection ratios dependent on acceptable take from each donor source.

Broodstock Collection: Broodstock collections, as with all hatchery activities, will occur pursuant to the associated HGMP (CDFW 2023) and include potential collections from Butte Creek (juvenile life stage), FRFH (juvenile and/or egg life stage), the San Joaquin River (adult, juvenile, and/or egg life stage), and/or other opportunistic locations such as the fish trap on Keswick Dam and Big Chico Creek (adults) over the duration of the Permit.

Annual broodstock collections that were initially focused on spring–run Chinook salmon from the FRFH will expand to include collections from wild stocks in Butte Creek and the San Joaquin River beginning as early as 2024. The total number of broodstock collected from each source population over the course of the reintroduction will depend on the viability of those stocks and the effects of removal on the associated population risk factors. Depending on escapement numbers, returning adults and any adult spring–run Chinook salmon that enter the Restoration Area (defined as the San Joaquin River from Friant Dam near the town of Friant, California, to the confluence of the Merced River) from other rivers may also be available for use as broodstock beginning in 2024. Genetic analysis of these returns will inform fish crosses and reintroduction strategies. Broodstock collection from returns generally should not exceed 10 percent of the estimated in–river escapement unless river conditions preclude successful spawning. All broodstock used for spawning will be genotyped for parentage–base tagging and to prepare breeding matrices to maximize genetic diversity.

Feather River Fish Hatchery: If the FRFH is the only available donor source, the SJRRP will collect via hatchery operations a maximum of 5,540 individ-

uals from the FRFH including collections for pathology (*i.e.*, 5,400 for broodstock and 140 for pathology, up to 2 collection events). Actual collection numbers will depend on availability of fish from FRFH and other sources. Spring–run Chinook salmon broodstock collection protocols will follow methods described in the FRFH HGMP (Cavallo *et al.* 2012).

Butte Creek: The SJRRP proposes to collect via rotary screw trap (RST) a maximum of 2,910 juveniles annually from Butte Creek including collections for pathology (*i.e.*, 2,700 for broodstock, and 210 for pathology for up to 3 collection periods). The actual number collected will depend on the number of adult returns to Butte Creek who survive to spawn and the number of individuals collected from other broodstock sources. The SJRRP will collect juveniles from existing sampling occurring on Butte Creek to minimize additional handling and incidental mortality, control cost, and simplify logistics.

San Joaquin River: When spring–run Chinook salmon adults return to the Restoration Area, the SJRRP proposes to collect via redd extraction, emergence trap, RST, fykes or weirs, seine, and/or dip nets a maximum of 2,980 juveniles or eggs, including collections for pathology from the San Joaquin River (*i.e.*, 2,700 for broodstock, and 280 for pathology, up to 4 collection events). If adults are collected for broodstock spawning, the SJRRP proposes to collect a maximum of ten percent of returning adults, up to 250 individuals annually. The SJRRP may collect individuals at three different life stages: eggs, juveniles, or adults. Each life stage has advantages and disadvantages for collection. The number collected in any given year will be determined by the number of adult returns to the Restoration Area and the number of individuals collected from other source stocks.

Broodstock Releases: The SJRRP may release hatchery–produced fish and ancillary broodstock at various life stages based on production targets, hatchery capacity, river conditions, and program needs. The vast majority of releases from the rearing facilities will be the progeny of SJRRP broodstock. Broodstock will also be released to the river for research and reintroduction purposes.

All spring–run Chinook salmon released by the SJRRP will be adipose fin clipped and tagged with a coded wire tag (CWT).

The SJRRP will transport juveniles and eggs collected from donor stocks to an approved quarantine facility and, after clearing a fish health assessment, transfer the juveniles and eggs to the Conservation Facilities. Fish will be reared under controlled hatchery conditions to sufficient age for spawning. Depending on the Conservation Facilities' capacities and production needs, the SJRRP may release a portion of the broodstock to the San Joaquin River as ancillary

broodstock. After fish reach maturity at the Conservation Facilities, they will be spawned and their progeny reared at the facility from the egg stage to be released to the San Joaquin River at the juvenile stage. Once the juvenile spring–run Chinook salmon reach an appropriate size, they will be marked (adipose fin clipped), tagged (CWT), and released directly to the river. Pre–release health assessment requirements, as defined by CDFW pathologists, will be followed for juveniles. The SJRRP will euthanize up to 20 fish per tank or rearing system, but not more than a total of 80 fish, for fish health inspection. Additionally, up to 10 percent of juveniles may be held back and later released as yearlings.

The SJRRP will either release fish from the SCARF directly to the San Joaquin River using a volitional release channel or transport the fish to a release site using a standard fish transport tank. Fish will be released directly from the hatchery when there is adequate flow in the river side–channel and connectivity with the lower San Joaquin River outside the Restoration Area. However, additional release locations may be necessary based on the condition of the river. To minimize straying, juveniles will be released as far upstream as feasible based on river connectivity and expected survival out of the Restoration Area. Juveniles will be released into the San Joaquin River intermittently from October through April. However, most releases will take place between January and April depending on river conditions and fish size. Adult releases into the San Joaquin River will take place intermittently from February through October.

If an emergency release is necessary at the SCARF, Interim Facility, or SIRF due to flooding or other emergency, fish will be crowded into the volitional release channel for release to the river, or be loaded into fish transport tanks, transported to the river at an appropriate location and released according to State and Federal rules and requirements.

The number of juveniles produced and released from the Conservation Facilities will increase over time as the facility reaches maximum production. However, actual production will vary year to year based on broodstock survival, fecundity, and other factors. Target releases are approximately 200,000 juveniles in 2024 and are authorized to reach maximum production of up to 1,250,000 juveniles. To appropriately manage the broodstock population, and in response to river conditions, releases may include up to 5,000 ancillary broodstock annually. Population monitoring and evaluation may include adult monitoring by video, acoustic tracking, visual surveys, and redd and spawning surveys. Adult escapement will be used as a measure for evaluating SJRRP success. Juvenile monitoring will consist of various outmigrant traps and fry emergence monitoring. To evaluate juvenile sur-

vival and abundance, RSTs will be used throughout the Restoration Area. Once established, RST site locations will remain fixed each year unless changes in river conditions warrant moving them or if new RST sites are necessary for long–term study purposes.

Indirect mortality of spring–run Chinook salmon may also occur. Indirect mortality may occur at all life stages from egg to adult. Indirect mortality may occur during permitted activities including collection (FRFH and Butte Creek), releases, and research, monitoring, and evaluation studies. The Permit requires implementation of measures to minimize indirect mortality and harm to ESA–listed fish during the general handling, broodstock collection and mating, juvenile rearing and release, fish culture, and research, monitoring, and evaluation.

Determination

CDFW has determined that the Permit will further the conservation of the species. Specifically, as authorized by Fish and Game Code 2080.3, CDFW finds that: (1) take of spring–run Chinook salmon is for the purpose of establishing or maintaining an experimental population in the San Joaquin River pursuant to Section 1539, subdivision (j) of Title 16 of the United States Code and the San Joaquin River Restoration Settlement Act; and (2) the measures identified in the 10(a)(1)(A) permit, as well as the accompanying BO and the HGMP, include methods and procedures which are necessary to bring spring–run Chinook salmon to the point at which the protections of CESA are no longer necessary.

The measures included in this determination pursuant to Fish and Game Code section 2080.3 are those in the 10(a)(1)(A) Permit. Those Permit conditions include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- 1) USFWS will apply measures to minimize harm to ESA–listed fish. These measures include but are not limited to limits on the duration (hourly, daily, weekly) of trapping; limits on holding time before release; and allowance for free passage through trapping sites when those sites are not actively operated.
- 2) USFWS will anesthetize each ESA–listed fish that is handled for the purpose of collecting biological samples. Anesthetized fish must be allowed to recover (e.g., in a recovery tank) before being released. Fish assessed without handling must remain in water, but do not need to be anesthetized.
- 3) USFWS and its agent are responsible for maintaining the biological samples collected from ESA–listed species as long as they are useful for research purposes. The Permit Holder may only transfer biological samples to a NMFS represen-

- tative or a person listed in the application unless there is prior written approval from NMFS.
- 4) During sampling and processing, USFWS must keep ESA-listed fish in water to the maximum extent possible. Adequate circulation and replenishment of water in holding units is required. When using methods that capture a mix of species, ESA-listed fish must be processed first. The transfer of ESA-listed fish must be conducted using equipment that adequately holds water during transfer.
 - 5) USFWS must not handle ESA-listed fish when water temperature exceeds 25°C (77° F) at the capture site. Trap operation shall cease until temperature drops below the threshold, or pending further consultation with NMFS to determine if continued trap operation poses substantial risk to ESA-listed species. Under these conditions, ESA-listed fish may only be identified and counted.
 - 6) USFWS must use visual observation protocols instead of intrusive sampling methods whenever possible. This is especially appropriate when merely ascertaining the presence of anadromous fish.
 - 7) USFWS should complete a segregation protocol that identifies how, to the greatest extent possible, to prevent introgression between Central Valley (CV) fall-run and spring-run Chinook salmon, one year after issuance of this permit or prior to volitional adult passage in the study area. If there is an opportunity for CV fall-run Chinook salmon to superimpose on spring-run Chinook salmon redds then measures to protect the spring-run redds should be made and introgression rates should be monitored and analyzed. An acceptable segregation protocol identifies how, to the greatest extent possible, to prevent introgression between CV fall-run and spring-run Chinook salmon and measure introgression rates.
 - 8) If third-party research is to be conducted on ESA-listed fish in collaboration with USFWS, the third party should follow the guidelines set for research collaboration. Those guidelines should be provided to the third party by USFWS.
 - 9) The spring-run Chinook salmon broodstock collection target shall be limited to a maximum of 5,400 individuals annually from all potential sources (2,700 is the minimum needed to meet production targets. Sixty fish from each collection event will be sacrificed for pathology screening at the time of collection and another 10 from each collection event will be sacrificed for pathology screening near the end of the quarantine period. Therefore, a maximum of 6,030 CV spring-run Chinook salmon eggs or juveniles will be collected for broodstock across all collections, including 70 for pathology studies from each collection event (up to nine collection events; two FRFH, four from the San Joaquin River, and three from Butte Creek).
 - 10) USFWS should make efforts to minimize the number of hatchery-origin spring-run Chinook salmon that are used as broodstock, to the extent possible, based on the estimated adult escapement and the presence of adequate spawning and rearing conditions in the natural origin broodstock collection locations (i.e., the San Joaquin River and Butte Creek).
 - 11) Each year the USFWS will submit a Donor Stock Collection Plan (DSCP) to NMFS. The DSCP will be prepared through a multi-agency technical team to describe the collection plan for each year. USFWS will submit the annual DSCP to NMFS and CDFW for review and will be developed prior to any collections from the FRFH, San Joaquin River, or Butte Creek. It will include all the expected collection actions and associated monitoring for the year. The criteria below will evaluate FRFH, San Joaquin River, and Butte Creek donor stock collections each year and the number of individuals targeted by life stage:
 - a. Interim Facility or SCARF status and capacity available to rear broodstock;
 - b. Resources available to collect donor stock;
 - c. Genetics;
 - d. Availability of donor stock.

NMFS and CDFW will review the DSCP to ensure that any adverse effects of broodstock collection will not be substantial in the context of the overall population of each spring-run Chinook salmon donor stock.
 - 12) USFWS shall ensure that 100 percent of the spring-run Chinook salmon released from the Conservation Facilities (and any fish subject to direct translocation) are marked (adipose fin-clipped) and tagged (using CWTs), providing a life-long indicator of origin. Alternative marking and tagging strategies approved by NMFS may be used if determined necessary.
 - 13) Release of spring-run Chinook salmon will occur only within the nonessential experimental population area in the San Joaquin River as defined in 50 CFR 223.301, subdivision (b) unless otherwise authorized by NMFS. CV spring-run Chinook salmon juveniles will be released either volitionally or downstream of major passage barriers, and in the best ambient conditions available.

- 14) USFWS shall develop a Pre–Release Report annually and release bulletins, per release. These reports will include information on the proposed number of CV spring–run Chinook salmon to be released, the release location, the tentative date(s) of release, and CWT data. Each year’s Pre–Release plan must be approved by NMFS, prior to its implementation.
- 15) USFWS will adaptively manage hatchery release strategies to improve homing fidelity of adult returns to the release site, minimize precocity rates of hatchery–origin fish, and minimize ecological interactions between hatchery– and natural–origin juveniles as described in the HGMP.
- 16) USFWS shall ensure that transport and quarantine of individuals will occur according to the protocols detailed the Permit application, and the associated HGMP.
- 17) In the event of an emergency, such as flooding, water loss to raceways, epizootic outbreak, or vandalism, *et cetera* that necessitates early release of spring–run Chinook salmon to prevent catastrophic mortality, USFWS shall report any such release within 48 hours to NMFS. The disposition of those fish will be handled according to the emergency release procedures referenced in the HGMP.
- 18) NMFS recognizes the need for management flexibility. Therefore, changes in fish culture protocols consistent with best management practices, conforming to the intent of the hatchery program and having no substantial effects on the survival of any ESA–listed species beyond what is authorized in the Permit, may be implemented by USFWS and CDFW.
- 19) Annually, the Conservation Facilities will seek to achieve 85 percent survival from egg to hatching to match that experienced at FRFH in recent years and 75 percent or better survival from egg to smolt stages over the duration of the program. Finally, the Conservation Facilities will aim to achieve greater than 49 percent survival from smolt to adulthood (as described in the associated HGMP).
- 20) It is permissible for the Conservation Facilities to maintain fish from programs outside the SJRRP and these fish will not be considered part of the SJRRP reintroduction and therefore not party to any restrictions experienced by the SJRRP broodstock.
- 21) Any activities or methods associated with RM&E including, but not limited to: PIT tagging, smolt trapping, spawning ground surveys, and redd surveys must occur according to the general guidelines for handling listed fish detailed above and

within the direct take limits defined in Tables 1–5 and the ITS.

- 22) Conduct surveys annually to determine timing, abundance, and distribution of hatchery origin CV spring–run Chinook salmon originating from the Conservation Facilities that emigrate from (juveniles) and spawn in (adults) the San Joaquin River.

Permit Reporting and Reauthorization Requirements

- 1) USFWS must submit to NMFS for approval, in writing, changes in any aspect of hatchery program implementation and operations, including broodstock collection protocols or numbers, juvenile release numbers, and marking, that could potentially result in increased amount of take, or alter the manner or effect of take of ESA–listed species covered in the Permit.
- 2) If authorized take is exceeded, USFWS must notify NMFS as soon as possible, but no later than two days after authorized take is exceeded. USFWS must submit a written report to the above contact describing the circumstances of the unauthorized take within two weeks of the event. Pending review of these circumstances, NMFS may suspend or amend the permit.

Though it is not a condition of the Permit, CDFW requests to be notified and to receive a copy of the written report described in the condition above.

- 3) For the duration of this permit, work in each succeeding year is contingent upon submission and approval of an annual report on each preceding year’s production, monitoring, evaluation, and research activities. Annual reports must be submitted online at the *Applications and Permits for Protected Species* (APPS) website, <https://apps.nmfs.noaa.gov> by January 31, annually, or other date approved in advance by NMFS. This annual report will be available for download on the APPS website and copies can be provided to the public by NMFS personnel if requested.

The aforementioned report must include the information outlined below:

- a. A detailed description of all adult ESA–listed salmon collection activities conducted under Permit 20571–2R, including the number and composition of ESA–listed fish captured and sampled for tissues, their sex/size/condition, the date of collection and disposition;
- b. The numbers, dates, average size at release, and tag/mark information of fish released into the San Joaquin River;
- c. Estimated survival rates of all life stages;

- d. Precocial maturation rate and disease occurrence;
- e. Any additional monitoring and evaluation activities occurring at the hatchery;
- f. Any problems arising during hatchery activities;
- g. A statement as to whether or not the activities had any unforeseen effects on ESA-listed fish. If unforeseen events did occur, a thorough description of the event and potential effects shall be described.

Once an annual report is submitted to NMFS, USFWS may continue permitted activities unless otherwise notified in writing by NMFS. NMFS will notify USFWS if the annual report is inadequate, or if additional information is required.

General Conditions

- 1) USFWS shall ensure ESA-listed salmonids are taken only by the means, in the areas, and for the purposes set forth in the permit application, as limited by the special conditions in the Permit.
- 2) Should NMFS determine a sampling procedure authorized under the Permit is no longer acceptable, USFWS shall immediately cease the use the procedure until an acceptable replacement has been prescribed by NMFS.
- 3) USFWS, in implementing the hatchery program authorized by the Permit, is considered to have accepted the terms and conditions of the Permit and shall be prepared to comply with its provisions, applicable regulations, and the ESA.
- 4) Efforts should be made to prevent the spread of aquatic invasive species (AIS) such as New Zealand mudsnail (*Potamopygrus antipodarum*), quagga mussel (*Dreissena rostriformis bugensis*) and zebra mussel (*Dreissena polymorpha*). Guidelines presented in the CDFW Aquatic Invasive Species Decontamination Protocol 3 should be followed when working in aquatic habitats to prevent the spread of AIS.
- 5) USFWS is responsible for the actions of all individuals operating under the authority of the Permit. Such actions include operation of adult traps and weirs for broodstock collection and capturing, handling, holding, transporting, releasing, maintaining, and caring for any ESA-listed species authorized by the Permit.
- 6) USFWS personnel, or designated agent acting on USFWS’s behalf, shall possess a copy of the Permit when conducting the activities for which take of ESA-listed salmonids is authorized.

Conclusion

Pursuant to Fish and Game Code section 2080.3, take authorization under CESA is not required for the

research and enhancement activities as described in the Permit for taking of spring-run Chinook salmon in order to establish or maintain an experimental population in the San Joaquin River, as identified in, and in accordance with the federal Permit and associated BO and HGMP. The timing and extent of take authorization under this concurrence is limited to the terms in the federal Permit and expires upon the expiration date the federal Permit. If there are any substantive changes to the hatchery program, including changes to the measures or conditions, or if the NMFS amends or replaces the Permit, BO, or associated HGMP, USFWS shall be required to obtain a new concurrence or a CESA permit for the hatchery program from CDFW. (See generally Fish & Game Code, § 2080.3.)

**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.

Fish and Game Commission
File # 2024-0326-01
Inyo Rock Daisy

This action adds *Perityle inyoensis* synonym *Laphamia invoensis* (Inyo rock daisy) to the list of California native plants declared to be threatened. This action is exempt from the Administrative Procedure Act pursuant to Fish and Game Code section 2075.5(e).

Title 14
Amend: 670.2
Filed 04/24/2024
Effective 04/24/2024
Agency Contact: Jennifer Bacon (916) 902-9285

Board of Registered Nursing
File # 2024-0326-02
Required Curriculum

This action by the Board of Registered Nursing (“Board”) repeals provisions that mandate the minimum percent of clinical hours that a clinical practice course must be in direct patient care, which will allow prelicensure nursing programs to defer solely to Business and Professions Code section 2786(a)(2)’s

statutory requirements for a program to meet a minimum of 500 direct patient care clinical hours with at least 30 hours dedicated to each nursing area specified by the Board.

Title 16
Amend: 1426
Filed 05/01/2024
Effective 07/01/2024
Agency Contact: Marissa Clark (916) 574-7438

Department of Food and Agriculture
File # 2024-0325-01
Noxious Weed Species

This regular rulemaking action amends the list of plants determined to be noxious weeds. The listed species *Volutaria canariensis* (Canary Island knapweed) is being removed and replaced by *Volutaria tubuliflora* (desert knapweed).

Title 03
Amend: 4500
Filed 04/30/2024
Effective 04/30/2024
Agency Contact: Rachel Avila (916) 698-2947

Department of Food and Agriculture
File # 2024-0325-02
White Striped Fruit Fly

This regular rulemaking action by the Department of Food and Agriculture amends sections 3436 and 3591.23 of Title 3 of the California Code of Regulations regarding the White Striped Fruit Fly host list.

Title 03
Amend: 3436, 3591.23
Filed 04/25/2024
Effective 07/01/2024
Agency Contact: Rachel Avila (916) 698-2947

Department of Social Services
File # 2024-0315-03
Protective Supervision Proration, Nonsel-Direction Clarification

This rulemaking action by the Department of Social Services amends provisions in Division 30 of the Manual of Policies and Procedures relating to non-self-directing individuals.

Title MPP
Amend: 30-701, 30-757, 30-763
Filed 04/29/2024
Effective 07/01/2024
Agency Contact: Everardo Vaca (916) 657-2363

State Water Resources Control Board

File # 2024-0320-02

Total Maximum Daily Loads for Nitrogen Compounds in the Santa Ynez

This action under Government Code section 11353 amends the Water Quality Control Plan for the Central Coastal Basin to establish total maximum daily loads for nitrogen compounds and an associated implementation strategy for improving water quality in surface waters of the Santa Ynez basin in Santa Barbara County.

Title 23
Adopt: 3929.21
Filed 05/01/2024
Effective 05/01/2024
Agency Contact: Jamie Pratt (805) 549-3761

Department of Financial Protection and Innovation
File # 2024-0328-01

Investment Adviser Representative Continuing Education

This action adopts the North American Securities Administrators Association's (NASAA) Investment Adviser Representative Continuing Education Model Rule as the standard used for continuing education requirements for Investment Adviser Representatives (IARs).

Title 10
Adopt: 260.236.2
Filed 05/01/2024
Effective 05/01/2024
Agency Contact: Pamela Hernandez (415) 263-8514

**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.