GAVIN NEWSOM, GOVERNOR

OFFICE OF ADMINISTRATIVE LAW

California Regulatory Notice Register

REGISTER 2024, NUMBER 23–Z PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW JUNE 7, 2024

PROPOSED ACTION ON REGULATIONS

GENERAL PUBLIC INTEREST

(Continued on next page)

Time-Dated Material

SUMMARY OF REGULATORY ACTIONS

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

CALIFORNIA REGULATORY NOTICE REGISTER is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for $338.00 (annual price). To order or make changes to current subscriptions, please call (800) 328−4880. The Register can also be accessed at **https://oal.ca.gov**.

PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

TITLE 2. STATE PERSONNEL BOARD

HEARINGS AND APPEALS 2024–03

Notice is hereby given that the State Personnel Board (Board) proposes to adopt Section 58.14 and amend Sections 58.12, 58.13, 59.3, 60.1, and 60.2 in order to clarify, streamline or correct the deficiencies of rules related to hearings and appeals. (Cal. Code Regs., title 2, §§ 58.12, 58.13, 59.3, 60.1, and 60.2.)

PUBLIC HEARING

A public hearing regarding the proposed regulatory action will be held on July 23, 2024, at 10:00 a.m. via WebEx. In order to participate in the public hearing, please see the following options:

- Via Video (Online)

You may click, or copy and paste into your web browser, the following link: https://spb-meetings.webex.com/wbxmjs/joinservice/sites/spb-meetings/meeting/download/c71d9077d6c94d29a7846ca4dd412986?siteurl=spb-meetings&MTID=m52e2a0c36ffabba60b962a1c4dbcd815

Then enter the following information to gain access to the hearing:

Meeting Number: 2556 476 6011
Meeting password: jjSuzAkC332

- Via Telephone

You may also participate by dialing the phone number first and then the participant code listed below:

Phone Number: +1–408–418–9388
Participant Code: 25564766011##

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN COMMENT PERIOD

Any interested party, or their duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Michelle La Grandeur, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Email: michelle.lagrandeur@spb.ca.gov

The written comment period closes on July 22, 2024. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

AUTHORITY AND REFERENCE

The Board proposes to adopt section 58.14 and amend sections 58.12, 58.13, 59.3, 60.1, and 60.2 of Title 2, Chapter 1 of the California Code of Regulations pursuant to the authority vested in it by the California Constitution, article VII, section 3, and Government Code (Gov. Code) section 18701. The proposed regulation will implement, interpret, and make specific the provisions of the California Constitution, article 7, section 3, and Government Code sections 18672 and 18675.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., article VII, §§ 1, subdivision (b), and 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid*.)

Regulations adopted by the Board are exempt from the Administrative Procedure Act, except as expressly specified. (Gov. Code, §§ 18211, 18215, and 18216.)

The amendments will ensure that California Code of Regulations related to hearings and appeals are consistent with existing practices.

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ON PUBLIC AGENCIES

- Mandate on local agencies and school districts: None.

- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

ECONOMIC IMPACT ON BUSINESS

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: None. The proposed regulations only set standards related to temporary assignments. Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts hearings and appeals within state civil service.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service selection process.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Michelle La Grandeur, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651–0924
Email: michelle.lagrandeur@spb.ca.gov

The backup contact person for these inquiries is:

Carlos Gomez, Analyst
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651–8350
Email: carlos.gomez@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Compliance Review Division Chief, Michelle La Grandeur, at the above address.

AVAILABILITY OF RULEMAKING FILE

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout and underline;
2. A copy of this notice and initial statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for

public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed on the Board's website at www.spb.ca.gov under "What's New?"

TITLE 4. SCHOOL FINANCE AUTHORITY

CHARTER SCHOOL FACILITY GRANT PROGRAM

NOTICE IS HEREBY GIVEN that the California School Finance Authority (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 Monday, July 22, 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 10170.5 and 10170.6 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 Facility Grant Program.

AUTHORITY AND REFERENCE

Authority: Section 47614.5 of the Education Code. Section 47614.5(m) allows the Authority to adopt regulations in order to administer the Program.

Reference: Sections 47614.5 of Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California School Finance Authority (Authority) is organized and operated pursuant to the California School Finance Authority Act under sections 17170 through 17199.5 of the Education Code.

Pursuant to Education Code, Section 47614.5, the State Legislature directed the Authority to commence administration of the Charter School Facility Grant Program with the 2013–14 fiscal year and to adopt regulations to implement the statute. Effective July 1, 2013, the Authority initiated its administration of the Charter School Facility Grant Program, and pursuant to Section 47614.5(m), a Certificate of Compliance was approved on August 6, 2014 (OAL Regulatory Action #2014–0625–01C).

The Charter School Facility Grant Program (Program) provides annual grants to offset annual on–going facility costs for charter schools that service a high–percentage of students eligible for free or reduced–price meals (FRPM) or located in a public elementary school boundary serving a similar demo-

graphic. Funds are made available to Charter Schools through an application and review process.

In order to be eligible for Program grant funds, Applicants are required to meet minimum eligibility requirements, which include, but are not limited to, the following: (1) applications are to be submitted by or on behalf of a Charter School; (2) a current charter has been awarded and is in place at the time of the application submission, or in the case of a first year charter, there is evidence that a charter petition has been submitted for approval to the Chartering Authority; and (3) either fifty–five percent (55%) or more of the student enrollment at the charter school site must be eligible for free or reduced–price meals (FRPM); or the charter school site for which grant funds are requested must be physically located in the local attendance area of a public elementary school that has fifty–five percent (55%) or more of its students eligible for FRPM.

The anticipated benefits of the proposed regulations are the increased general welfare of students and their related communities as these grant funds subsidize facility related costs that would typically be paid out of the charter school's general funding.

The proposed regulations set forth Authority's policies and procedures for administering the Program as it relates to application and submission dates.

SUMMARY OF PROPOSED REGULATIONS

1. **Section 10170.5, subdivision (a)(1)** — These changes add "by 9:00 a.m. on April 10.," "August 31." and "and deadlines." Also, the removal of "in the month of" and "the date five weeks from the date the Application is made available by the Authority." This change was establishing static dates for the initial application to provide consistency as well greater transparency for potential Applicants. The August deadline date was chosen based on feedback from stakeholders. The August 31 date allows for school staff to return from summer breaks, as well. For understandable reasons, this period for communication with school is limited. This date avoids that concern.
2. **Section 10170.5, subdivision (a)(4)** — Add "If any of the dates listed in 10170.5(a)(1) and (2) fall on a Saturday or Sunday or a holiday listed in Education Code Section 45203, the new date will be the following business day." This change was to ensure the opening and/or closing dates were held on business days where staff can assist with issues or concerns.
3. **Section 10170.6, subdivision (e)** — Remove "July 15" as the deadline for other facility related cost submission and replace with "August 31." This date was chosen based on feedback from stakeholders. The August 31 date allows for school staff to return from summer breaks as well. For understandable reasons, this period for communication with school is limited. This date avoids that concern.

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 state regulation.

CITATIONS FOR PROPOSED REGULATIONS MANDATED BY FEDERAL LAWS OR REGULATIONS

Not applicable.

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.

FISCAL IMPACT

The Authority has determined that the Regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other non–discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

On an annual basis, the State Legislature will issue appropriations for purposes of the Program grant funds based on availability of funding and demand for the Program. There will be no cost or savings to any State Agency pursuant to Government Code Sections 11346.1(b) or 11346.5(a)(6).

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. The purpose of the proposed regulations is to set forth administrative criteria and requirements for administering a Grant program that will disburse funds to existing charter schools in need across the State of California for per pupil facilities funding.

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 Charter FinE Program and its proposed regulations have the potential to directly benefit the welfare of students and their related communities.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

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
(213) 620–6360

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 Monday, July 22, 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, including 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. TAX CREDIT ALLOCATION COMMITTEE

The California Tax Credit Allocation Committee (CTCAC) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to anthony.zeto@treasurer.ca.gov and ricki.hammett@treasurer.ca.gov. Comments may also be submitted via mail to:

California Tax Credit Allocation Committee
Attention: Anthony Zeto/Ricki Hammett
901 P Street, Room 213A
Sacramento, CA 95814

The written comment period closes on July 22, 2024. To ensure CTCAC will consider your comment it must be received by July 22, 2024.

PUBLIC HEARING

CTCAC does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

AUTHORITY

Section 17053.91 and 23691 of the Revenue and Taxation Code authorizes CTCAC to adopt regulations relating to an allocation system to administer the allocation of State Historic Rehabilitation Tax Credits.

REFERENCE

Section 17053.91 and 23691, Revenue and Taxation Code (RTC).

INFORMATIVE DIGEST

Summary of Existing Laws and Effect of the Proposed Action

CTCAC was statutorily created by Chapter 658, Statutes of 1987, in response to the 1986 Federal Tax Reform Act.

The Legislature adopted Senate Bill Number 451 (Chapter 703, Statutes of 2019), as amended by Assembly Bill Number 150 (Chapter 82, Statutes of 2021), adding Sections 17053.91 and 23691 to the Revenue and Taxation Code. This allows a taxpayer that receives a tax credit allocation to claim credit against those taxes for each taxable year beginning on or after January 1, 2021, and before January 1, 2027, for the rehabilitation of certified historic structures. The legislature finds that California's historic buildings are an important asset to communities throughout the state, and the preservation and restoration of these buildings is vital to economic development, enhancing civic pride, increasing tourism, and maintaining vibrant and inclusive neighborhoods.

There shall also be allowed a credit for qualified rehabilitation expenditures for a qualified residence determined by CTCAC and the Office of Historic Preservation (OHP) to rehabilitate the historic character and improve the integrity of the residence in the year of completion.

Revenue and Tax Code sections 17053.91 and 23691 authorize OHP to adopt regulations to implement the requirements of these sections within the bill, establish a written application in coordination with CTCAC, establish a process to determine that an applicant meets the requirements of these sections and to ensure that the rehabilitation project meets the Secretary of the Interior's Standards for Rehabilitation, and establish a process to approve or reject all historic tax credit allocation applications.

Anticipated Benefits of the Proposed Regulations

The broad objective of the legislation is to leverage dollars in private investment enabled by allocation of the credits, create construction jobs as a result of this investment, create long–term jobs associated with the use of rehabilitated historic buildings, and stimulate economic activity associated with the rehabilitation of historic buildings facilitated by the credits.

When used in conjunction with the federal historic preservation tax credits, state historic rehabilitation tax credits prove an important financial incentive for reinvestment in the historic cores of communities. Historic preservation tax incentives generate jobs, enhance property values, create affordable housing, and augment revenues for federal, state, and local governments.

States that have partnered a state incentive with the federal Historic Preservation Tax Incentives program have reaped significant economic development benefits, including construction and building industry job creation, increased state tax revenues through increased employment and wages, increased local property tax revenues through increased property values, and increase local tax revenues through state taxes and heritage tourism.

The specific benefits from the legislation are a 20% or a 25% personal income tax or corporate tax credit for the certified rehabilitation of a certified historic structure or a qualified residence.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Committee has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. Application for tax credit allocations is a nonmandatory activity and these regulations ensure a fair and efficient process for allocations as to both applicants and the Committee.

The proposed regulations are compatible with OHP's regulations, Title 14, California Code of Regulations, Division 3, Chapter 11.5 California Register of Historical Resources: Adoption of New Subchapter 1, Section 4859.01–4859.06. Per RTC Section 17053.91 and 23691. OHP is required to develop regulations and work with CTCAC to implement the program, adopt regulations, establish a written application and deter-

mine project requirements to ensure that the rehabilitation project meets the Standards for Rehabilitation.

OHP and CTCAC developed a joint application which will be reviewed by both OHP and CTCAC and while OHP and CTCAC regulations are compatible there are differences in the definitions that are listed between OHP and CTCAC. Though they have the same meaning, different statutes may be referenced. OHP also must determine if a structure is a certified historic structure and OHP's regulations explain what the requirements are.

DISCLOSURES REGARDING THE PROPOSED ACTION

CTCAC has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code sec. 17500 et seq: None.

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

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

Pursuant to the State Administrative Manual Section 6614, an Economic and Fiscal Impact Statement (Form 399) has been completed and is part of the rulemaking record."

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states

As a voluntary program offering state tax credits for the rehabilitation of certified historic structures, the proposed action will have no adverse economic impact directly affecting business. Because the program is voluntary, businesses and individuals are not required to comply with the program regulations or requirements or incur any costs if they do not submit an application applying for the tax credit program.

Applicants for the state tax credits described in the regulations may incur costs including but not limited to application fees, consultant and project team fees, project and/or development reports, application preparation including photograph compilation, drawing preparation, and reproduction.

SB 451 cites that OHP and CTCAC may charge a reasonable fee in an amount that does not exceed the reasonable costs incurred by fulfilling its responsibilities under SB 451.

OHP Fees include the following:

Qualified Residence fees are set at a flat rate of $900. $450 is paid with the Initial Project Application and $450 is paid with the Completed Project Application.

All income–producing properties incur a fee of 1% of the Completed Qualified Rehabilitation Expense (QRE) up to the first $125,000. An additional 0.15% for the QRE expenses above $125,000 is added to the 1% base fee. Fees are capped at $6000.

The Initial Project Application fee is one half of the estimated QRE cost declared on the Initial Project Application.

The Completed Project Application fee is the balance of the final fee calculated from the final total QRE cost declared on the form minus the Initial Application fee.

CTCAC Fees include the following:

A processing fee in the amount of $500 for Qualified Residence projects and $1,000 for all other projects submitted when the Initial Project Application is forwarded to the CTCAC.

An administrative fee in the amount of 2% of the tax allocation credit due within 10 calendar days of the allocation award at project completion.

Significant effect on housing costs: The proposed changes will ensure the award of allocation for the rehabilitation of qualified residences.

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

Results of the Economic Impact Analysis/Assessment

Program regulations will require an applicant to submit an application for approval, establish the economic benefits of the project and pay a fee that has been approved by the OHP and CTCAC.

There will be some cost involved in applying for and receiving the credits, including fees. The fees are considered reasonable to support the staff time to review applications, as there are no administrative funds available for the allocation of this credit. Any costs should be easily offset by the state tax credit issued to lower the applicant's state tax obligation.

Beyond the fees to apply for the program, these regulations do not create any costs or benefits. Based on the legislation that created the tax credit program, however, OHP and CTCAC concludes that it is:

1. Unlikely that the program will eliminate any jobs.
2. Likely that the program will create an unknown number of jobs.
3. Likely that the program may create an unknown number of new businesses to cater to the creation of a new state tax credit.
4. Unlikely that the program will eliminate any existing businesses.
5. Likely that the program will affect the expansion of businesses currently doing business in the state.

6. Likely that the public and private benefits of the program will include long term jobs associated with the use of rehabilitated historic buildings and the overall economic activity associated with the rehabilitation of historic buildings facilitated by the state credits, and a 20% or 25% state tax credit for the certified rehabilitation of a certified historic structure.

Despite the fact that these regulations do not create any economic impacts beyond the fees being charged to apply for the tax credits, the specific goals, purposes, and objectives that the tax credits authorized by this legislation are anticipated to achieve over the five–year term of the credit are as follows:

- Leveraging two hundred eighty–seven million ($287,000,000) in private investment.
- Creating 1,300 construction jobs and an additional 2,140 ongoing jobs.
- Creating eight hundred million dollars ($800,000,000) in economic activity.
- Reusing existing culturally contributing buildings that lower the cost of construction compared to new construction and lower construction–related greenhouse gas production associated with procurement and transportation of new materials.

Returning many underused or vacant properties to a useful life through the repair and restoration of vintage materials and features that were the product of now rare skilled trades brought by diverse cultures and which contributed to California's own unique culture and community fabric.

The proposed regulations are not expected to affect worker safety or the state's environment.

Small Business Determination

CTCAC has determined there is no cost impact on small businesses. Federal tax credit program history has shown that small businesses benefit by the tax credit program. Many of the tax credits go to entities that utilize small businesses when they purchase goods and services or lease space to small businesses.

The proposed regulation may also positively affect small businesses in the rehabilitation of a certified historic structure under their ownership. Small business owners of certified historic structures may benefit by an eight million dollar ($8,000,000) set aside for taxpayers with qualified rehabilitation expenditures of less than one million dollars ($1,000,000).

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed rulemaking action may be directed to:

Anthony Zeto
California Tax Credit Allocation Committee
901 P Street, Suite 213A
Sacramento, CA 95814
916–654–6340
anthony.zeto@treasurer.ca.gov

or

Ricki Hammett
California Tax Credit Allocation Committee
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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CTCAC will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address and online at https://www.treasurer.ca.gov/ctcac/programreg/regulations.asp. As of the date this notice is published in the Notice Register, the rulemaking file consists of the Notice of Proposed Action, the proposed text of the regulations, the Initial Statement of Reasons, and the STD. 399. Please direct requests to inspect or copy the rulemaking file to the contact person(s) listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

the public for at least 15 days before adopting the regulations as revised. Please direct requests for copies of any modified regulations to the contact person(s) listed above. If substantive modifications are made, CTCAC will accept written comments on the modified regulations for the duration of the period of public availability.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, CTCAC will make copies of the Final Statement of Reasons available. Please direct requests for copies to the contact person(s) listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified text, if any, may be accessed via CTCAC's website at https://www.treasurer.ca.gov/ctcac/programreg/regulations.asp.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION — UTILIZATION REVIEW

AMEND, ADOPT, OR REPEAL SECTIONS 9767.6, 9781, 9785, 9785.6, 9786, 9792.6, 9792.6.1, 9792.7, 9792.7.1, 9792.8, 9792.9, 9792.9.1, 9792.9.2, 9792.9.3, 9792.9.4, 9792.9.5, 9792.9.6, 9792.9.7, 9792.9.8, 9792.9.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.8, 9792.11, 9792.12, 9792.13, AND 9792.15, 9792.27.1, AND 9792.27.17

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, Department of Industrial Relations (hereinafter "Administrative Director"), pursuant to the authority vested in him by Labor Code sections 59, 133, 4603.5, 4610, 5307.3, and 5307.27, proposes to amend sections 9767.6 through 9727.27.17, to establish and implement legislative changes under Senate Bill 1160 relating to utilization review ("UR") and related rules.

PROPOSED REGULATORY ACTION

The Administrative Director proposes to amend, adopt, or delete, as specified, the following regulations into Article 3.5, Article 5, Article 5.5.1, and Article 5.5.2 of Division 1, Chapter 4.5, Subchapter 1, of title 8, California Code of Regulations:

Article 3.5 Medical Provider Network

Amend section 9767.6 Treatment and Change of Physicians within Medical Provider Network (MPN)

Article 5 Predesignation of Personal Physician; Request for Change of Physician; Reporting Duties of the Primary Treating Physician; Petition for Change of Primary Treating Physician

Amend section 9781 Employees Request for Change of Physician

Amend section 9785 Reporting Duties of the Primary Treating Physician

Adopt section 9785.6 DWC Form PR–1: "Treating Physician's Report" Mandatory for Services On or After 1/1/19

Amend section 9786 Petition for Change of Primary Treating Physician

Article 5.5.1 Utilization Review Standards

Delete section 9792.6 Utilization Review Standards—Definitions — For Utilization Review Decisions Issued Prior to July 1, 2013 for Injuries Occurring Prior to January 1, 2013

Amend section 9792.6.1 Utilization Review Standards—Definitions — On or After January 1, 2013

Amend section 9792.7 Utilization Review Standards—Applicability

Adopt section 9792.7.1 DWC Form UR–01: "Application for Approval as Utilization Review Plan"

Amend section 9792.8 Utilization Review Standards — Medically–Based Criteria

Delete section 9792.9 Utilization Review Standards — Timeframe, Procedures and Notice Content — For Injuries Occurring Prior to January 1, 2013, Where the Request for Authorization is Received Prior to July 1, 2013

Amend section 9792.9.1 Utilization Review Standards — Timeframe, Procedures and Notice — On or After July 1, 2013

Adopt section 9792.9.2 Utilization Review — Dispute of Liability; Deferral

Adopt section 9792.9.3 Utilization Review — Timeframes

Adopt section 9792.9.4 Utilization Review — Decisions to Approve a Request for Authorization

Adopt section 9792.9.5 Utilization Review — Decisions to Modify or Deny a Request for Authorization

Adopt section 9792.9.6 Utilization Review — Extension of Timeframe for Decision

Adopt section 9792.9.7 Utilization Review — Medical Treatment — First 30 Days of the Date of Injury

Adopt section 9792.9.8 Utilization Review — MTUS Drug Formulary

Amend section 9792.10.1 Utilization Review — Dispute Resolution — On or After January 1, 2013

Amend section 9792.10.2 Application for Independent Medical Review, DWC Form IMR

Amend section 9792.10.3 Independent Medical Review — Initial Review of Application

Amend section 9792.10.4 9792.10.4. Independent Medical Review — Assignment and Notification

Amend section 9792.10.5 Independent Medical Review — Medical Records

Amend section 9792.10.6 Independent Medical Review — Standards and Timeframes

Amend section 9792.10.8 Independent Medical Review — Payment for Review

Amend section 9792.11 Investigation Procedures: Labor Code § 4610 Utilization Review Violations

Amend section 9792.12 Administrative Penalty Schedule for Utilization Review and Independent Medical Review Violations

Amend section 9792.13 Assessment of Administrative Penalties — Penalty Adjustment Factors

Amend section 9792.15 Administrative Penalties Pursuant to Labor Code §§4610, 4610.5, and 4610.6 — Order to Show Cause, Notice of Hearing, Determination and Order, and Review Procedure

Article 5.5.2 Medical Treatment Utilization Schedule

Amend 9792.27.1 Medical Treatment Utilization Schedule (MTUS) Drug Formulary — Definitions

Amend section 9792.27.17 Formulary — Dispute Resolution

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed regulatory action, as follows:

Date: Thursday, July 25, 2024
Time: 11:00 a.m.–5:00 p.m.
Place: Elihu Harris State Office Building — Auditorium
1515 Clay Street
Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Maureen Gray, at 1–866–681–1459 (toll free), or through the California Relay Service by dialing 711 or 1–800–735–2929 (TTY/English) or 1–800–855–3000 (TTY/Spanish) as soon as possible to request assistance.

Public comment will begin promptly at 11:00 a.m. and will conclude when the last speaker has finished his or her presentation or at 5:00 p.m., whichever is earlier. If public comment concludes before the lunch recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any person who makes oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at the **end of the day on Thursday, July 25, 2024.** The Division of Workers' Compensation (Division) will consider only comments received at the Division by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above–named contact person at (510) 286–0687. Written comments may also be sent electronically (via email) using the following email address: dwcrules@dir.ca.gov.

All written comments must be received by the regulations coordinator **by the end of the day on Thursday, July 25, 2024**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in him by Labor Code sections 59, 133, 4603.5, 4610, 4616, 5307.3, and 5307.27.

Reference is to Labor Code sections 4600, 4600.4, 4601, 4603, 4603.2, 4604.5, 4610, 4610.5, 4610.6, and 5307.27.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation ("DWC"), to compensate an employee for injuries sustained in the course of their employment. Labor Code section 4600 requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. Existing law further defines medical treatment reasonably required to cure or relieve the injured worker from the effects of the work injury as meaning treatment based upon the guidelines adopted by the Administrative Director under Labor Code section 5307.27, i.e., the medical treatment utilization schedule ("MTUS").

Prior to January 1, 2018, Labor Code section 4610 required employers to establish a utilization review ("UR") process either directly or through its insurer (or an entity with which an employer or insurer contracted with for these services) to be governed by written policies and procedures designed to ensure that decisions were consistent with the MTUS. This UR process required treating physicians to submit their treatment recommendations (prospectively, concurrently, or retrospectively) along with supporting documentation to the claims administrator who would then review the recommendations to determine medical necessity according to rules adopted by the Administrative Director ("AD") of the DWC. Except under very specific circumstances or unless they fell within a claims administrator's own prior authorization list, treatment requests were generally required to be submitted prospectively (i.e., prior to treatment) for approval or authorization, or else risk non–payment if the treatment was later determined by UR to have not been medically necessary.

This process was tweaked under AB 1124 (Statutes 2015, Chapter 525), which amended Labor Code section 5307.27 to require the Administrative Director to adopt and incorporate an evidence–based drug formulary (Drug Formulary) into the MTUS by July 1, 2017. Generally, under the Drug Formulary, drugs classified as exempt can be dispensed as prescribed without undergoing prospective review so long as they are prescribed in accordance with the medical treatment utilization schedule. Unlisted drugs or drugs classified as non–exempt are still subject to the general rule requiring authorization via prospective UR. The legislation's aim was to speed up delivery of medications proven to be appropriate and effective. Claims Administrators were still allowed to perform retrospective UR on exempt drugs for which payment may be withheld if determined to have been not medically necessary, but they cannot withhold the medication pending prospective UR if the drug was exempt on the Drug Formulary.

Senate Bill 1160 (Statutes 2016, Chapter 868) ("SB 1160"), effective January 1, 2018, amended Labor Code section 4610 to exempt from prospective review treatment rendered within thirty days of the initial date of injury (unless an exception applied) so long as the treatment was rendered by an appropriate physician, and the physician complied with specified reporting and billing requirements. This "30–day exemption" rule would apply to exempt drugs (but not non–exempt) on the formulary as well. Claims administrators could still perform retrospective UR but solely for the purpose of determining if the treatment was medically necessary. If such review reflected that the treatment was not medically necessary, a number of remedies other than withholding payment becomes available to the claims administrator.

A retrospective review showing that the rendered treatment was not medically necessary would constitute good cause allowing the claims administrator to petition for a change of physician and could serve as grounds for termination of the physician from its medical provider network or health care organization. Further, if a physician was found to have a pattern and practice of rendering treatment under the 30–day exemption period that was inconsistent with the MTUS, a claims administrator, after appropriate notice, could prohibit the physician from rendering treatment under the 30–day exemption period for any employee entirely. Additionally, for the lesser offense of failing to submit the report required under Labor Code section 6409 and a complete request for authorization, an employer could remove the physician's ability to provide further exempt treatment to the particular employee.

SB 1160 also imposed a faster UR timeframe for (non–exempt) formulary medications than for other treatment requests. Instead of allowing for an extension of time (of up to fourteen days) where additional information or an additional consultation or examination is required as is generally the case for prospective treatment requests, a UR decision in response to a request for a formulary drug is required to be completed within five normal business days from receipt of the request. This expedited timeframe also applies through the UR appeals process: for formulary disputes, an injured worker has 10 days from service of the adverse UR decision letter to submit an application for independent medical review ("IMR"), and the IMR organization has 5 working days from receipt of the IMR application and supporting documentation to issue a final determination.

SB 1160 further purported to improve oversight of UR companies by authorizing the DWC to have approval authority over UR plans and by requiring UR entities performing modifications or denials of treatment requests to obtain accreditation with an independent, nonprofit organization. The legislature designated Utilization Review Accreditation Commission (URAC) as the accrediting organization until or unless further rules changed such designation.

The regulations proposed in this notice of rulemaking are intended to cement, implement, and enforce the legislative mandates in SB 1160 with the aim of expediting treatment to injured workers; improving oversight of UR plan entities; and supporting the use of industry best practices. Additionally, the DWC has taken this opportunity to make changes to some existing regulations to improve or fix issues related to medical treatment that have been problematic in the workers' compensation system. Significantly, this includes the addition of a physician reporting form, the PR–1, which combines the PR–2 (physician progress report) and the RFA (request for authorization) form, and adds information fields for the reporting of occurrences currently required by law of a primary treating physician. Further, references in the regulations to the word "delay" have been deleted in the proposed rules to comply with the legislative deletion of that word in Labor Code section 4610 and related sections.

A closer look at the changes in the proposed rulemaking by subject matter follow:

Improvements to care coordination and changes to medical treatment processes

- When an employee is required to obtain health care for an occupational injury through a medical provider network (MPN), the employer or insurer is obligated to take specific actions to assist the injured employee in obtaining medical care. This includes arranging for an initial medical evaluation with an MPN physician, and notifying the injured employee of his/her right to be treated by any physician of choice within the MPN after the initial visit. The same types of obligations apply for when treatment is obtained outside of the MPN system.

The proposed regulations add to the employer or insurer's obligations to better coordinate care by requiring delivery of all relevant medical records relating to the claim to the initially selected physician within 20 days of notice of the employee's selected physician. The employer or insurer must advise any subsequently selected physician, whether in an MPN or not, that any medical records deemed relevant by the provider shall be delivered upon request. Additionally, all selected physicians must be advised by the employer or insurer of the relevant MPN identification number if applicable, name, telephone number, fax number, email address, and mailing address of the person or entity to whom the request for authorization and bills should be sent. For treatment outside of an MPN, if applicable, the claims administrator must also provide the physician with a list of medical treatment services that can be rendered without the submission of a request for authorization. (See proposed section 9767.6(f) and 9781(d).)

- Existing law requires each new primary treating physician to file a report following the initial examination entitled, "Doctor's First Report of Occupational Injury or Illness" with the employer or employer's insurer and with the Division of Workers' Compensation within 5 days of the initial examination in the manner prescribed by the Administrative Director.

The proposed regulation clarifies that only the initial primary treating physician (PTP), which may include physicians rendering first aid, are required to file such report. (See proposed section 9785(e).)

- Existing law sets forth a number of circumstances for which a PTP is required to issue a report within 20 days to the claims administrator. A report must be issued if the employee's condition undergoes a significant change; if there is any significant change in the treatment plan; if the employee may return to modified or regular work; if the employee's condition requires him or her to leave work or requires changes in working conditions; if the employee is released from care; etc. When a report is required, except for a response to a request for information, the PTP is required to make such report on a Primary Treating Physician's Progress Report (Form PR–2) or in narrative form as prescribed. Alternatively, by mutual agreement between the claims administrator and physician, the PTP may make reports in any other manner and form. If a physician needs to make a treatment request, the physician must, in addition to the Form PR–2, file a Request for Authorization on the DWC Form RFA in the manner prescribed by the Administrative Director.

These regulations propose a new form, the PR–1, to be used whenever one of the conditions prompting the PTP to file a report within 20 days occurs and for requesting treatment. Essentially, the new PR–1 form combines the PR–2 and the DWC Form RFA. This form shall replace the need for both the PR–2 and DWC Form RFA, and be required after six months following the effective date of these regulations. However, a PTP will still have the option to file a narrative report to fulfill the reporting requirements as prescribed. The new PR–1 form retains many of the same attributes of the PR–2 and DWC Form RFA but will add fields to facilitate efficient and effective treatment. It will allow

the physician to indicate the purpose of the form and then only fill out those relevant sections. The first section of the form will require basic information which can be saved and used again when the need for another report arises. If the purpose of the report is to request treatment, the physician will have the opportunity to indicate the specific MTUS/ACOEM guideline that supports the treatment request. (See proposed sections 9785(g) and (h); and 9785.6.)

- Under existing law, when a treating physician submits a request for authorization of treatment to a claims administrator, unless the request is exempt from prospective utilization review (UR), the claims administrator may approve the request or alternatively put the request through UR to determine whether the requested treatment is medically necessary. Existing law requires that a request for authorization be set forth on an RFA form (or as otherwise allowed), signed by the requesting physician, and sent to the claims administrator's designated address, email address, or fax number. In order for an RFA to be "complete," the RFA must identify the employee and provider, specifically identify the recommended treatment(s), and be accompanied by supporting documentation.

The proposed regulations amend the definition of a "complete RFA" to include the requirement that the treatment recommendations be included in the specifically designated section of the form; that the documentation accompanying or substantiating the request have issued or been created no earlier than 30 days prior to the submission of the RFA; and that the request be signed by the requesting physician. The regulations also propose that electronic submission of an RFA be sent through the use of a secure, electronic email system. (See proposed section 9792.6.1(u).)

The 30–day exemption to prospective UR

- Existing law requires employers to pay for necessary medical treatment arising from an occupational injury. In order to ensure the necessity of recommended medical treatment, existing law allows an employer or claims administrator to review treatment requests through a process called utilization review ("UR"). For payment of medical treatment to be guaranteed, a treating physician must obtain authorization for the treatment by submitting a request for authorization of treatment ("RFA") prior to rendering the treatment.
- Existing law enacted under SB 1160, effective January 1, 2018, barring a dispute of liability and unless expressly excluded, exempts medical treatment rendered within 30 days of the date of injury from prospective utilization review ("30–day exemption") if addressed by the Medical Treatment Utilization Schedule (MTUS) and if proper reporting requirements are met (i.e., timely submission of the report required under Labor Code section 6409 and a complete RFA) by an authorized provider.

The proposed regulations would require the treatment or services anticipated to be provided to the injured worker in the first 30 days after the date of injury, including the exempt drugs prescribed to the injured worker under the MTUS Drug Formulary, to be set forth in an RFA as specified in the regulations (see proposed 9792.9.7(a)(4) referring to section 9785(h)); and to be submitted concurrently with the Doctor's First Report of Occupational Injury or Illness (DFR). The proposed regulations would require subsequent treating physicians who treat the injured worker within the first 30–day period to also submit an RFA indicating treatment being rendered following the initial visit.

- Existing law enacted under SB 1160 allows a claims administrator to bar a physician who does not comply with timely reporting requirements from providing further treatment to the employee under SB 1160's 30–day exemption. Additionally, a claims administrator could perform retrospective UR for any treatment provided under the 30–day exemption to determine whether the provider has a pattern and practice of rendering treatment inconsistent with the MTUS. If so, a number of remedies become available to the claims administrator, including removal of the provider's ability to render treatment under the 30–day exemption, termination of the provider from the claims administrator's network of providers (whether medical provider network or health care organization), or substantiation as good cause of a claims administrator's petition for a change of physician.

The proposed regulations would allow a claims administrator to remove a physician's ability to provide treatment under the 30–day exemption for the remainder of the 30–day period to an injured worker for whom the physician failed to timely submit the DFR or RFA as required by law by issuing written notice to the physician which identifies the specific reporting failure, informs the physician that they can no longer render exempt treatment for the particular injured worker and that any such treatment is subject to prospective utilization review. (See proposed section 9792.9.7(d).)

Where a PTP has been found to have a pattern and practice of failing to render treatment that is consistent with the Medical Treatment Utilization Schedule (MTUS), the proposed regulations would allow the claims administrator to remove the ability of the physician to render treatment under the 30–day exemption

to all claims administered by the claims administrator by (1) providing written notice to the physician that documents, via retrospective review, the physician's pattern and practice of failing to render treatment that is consistent with the MTUS (including the MTUS Drug Formulary); (2) advising the physician that they can no longer render exempt treatment to any injured worker whose claims are administered by the claims administrator; and (3) advising of the requirement that all subsequent medical treatment is subject to prospective utilization review. (See proposed section 9792.9.7(c)(1)(A).)

Where a PTP has been found to have a pattern and practice of failing to render treatment that is consistent with the Medical Treatment Utilization Schedule (MTUS), the proposed regulations would allow a claims administrator to petition for a change in primary treating physician (PTP) under "good cause" despite the PTP's membership in the claims administrator's MPN. (See proposed section 9786(b)(6) and 9792.9.2(c)(1)(B).) If the petition is granted, the regulations propose that the replacement PTP be chosen from within the MPN listing and shall meet the MPN access standards. (See proposed section 9767.6(g).)

Where a PTP has been found to have a pattern and practice of failing to render treatment that is consistent with the Medical Treatment Utilization Schedule (MTUS), the proposed regulations would allow a claims administrator to terminate the physician from the claims administrator's or employers medical provider network or health care organization. (See proposed section 9792.9.7(c)(1)(C).)

The proposed regulations would define "pattern and practice" as used in this context to mean when treatment is rendered inconsistent with the MTUS (including the MTUS Drug Formulary) for 20 separate and unrelated, recommended medical services or goods with 10 or more injured workers over the course of 3 months; or for eight separate and unrelated medical services or goods with 2 or less injured workers within one month. (See proposed section 9792.9.7(c)(2).)

The proposed regulations would further require any disputes between the treating physician and the claims administrator regarding these provisions to be resolved by the Workers' Compensation Appeals Board (WCAB). (See proposed section 9792.9.7(e).)

- Existing law enacted under SB 1160 limits the application of the 30–day exemption to prospective UR to expressly exclude the following: (1) pharmaceuticals, to the extent they are neither expressly exempted from prospective review nor authorized by the drug formulary; (2) nonemergency inpatient and outpatient surgery, including all presurgical and postsurgical services; (3) psychological treatment services; (4) home health care services; (5) imaging and radiology services, excluding X–rays; (6) all durable medical equipment, whose combined total value exceeds two hundred fifty dollars ($250), as determined by the official medical fee schedule; (7) electrodiagnostic medicine, including, but not limited to, electromyography and nerve conduction studies; and (8) any other service designated and defined through rules adopted by the administrative director.

The proposed regulations would clarify the nonemergency inpatient and outpatient surgery category limitation to the 30–day exemption to include such services provided in any setting (inpatient hospital, outpatient hospital, surgical clinic, ambulatory surgical center, or physician's office), and to services and treatments necessary and routinely furnished for the purpose of surgery, before, during, and after a procedure; including, but not limited to, related diagnostic tests or procedures, rehabilitation services, durable medical equipment or supplies, and routine post–surgical pain management treatment or services. The proposal would further define "surgery" to mean: (1) any procedure set forth in the Surgery section of the American Medical Association's *Current Procedural Terminology (CPT®)* pursuant to the physician and non–physician practitioner fee schedule at section 9789.12 et seq., and (2) any Healthcare Common Procedure Coding System (HCPCS) procedure code defined as "surgery" in the Hospital Outpatient Departments and Ambulatory Surgical Centers Fee Schedule at section 9789.30 et seq. (See proposed section 9792.9.7(b)(2).)

The proposed regulations would also clarify that the limitation regarding psychological treatment services includes diagnostic services, psychotherapy, and other services or procedures to an individual or group in all care settings provided by a physician or other qualified health care provider; and includes psychiatric pharmaceuticals, to the extent they are not expressly exempt from prospective utilization review under the MTUS Drug Formulary. (See proposed 9792.9.7(b)(3).)

The proposed regulations would also clarify that the limitation regarding home health care includes medically necessary health care as well as associated services provided to the injured worker in the residential setting. (See proposed 9792.9.7(b)(4).)

The proposed regulations would further clarify that the limitation regarding durable medical equipment extends to prosthetics, orthotics, and supplies where the purchase or rental cost of the item with necessary supplies, if any, for the expected course of treatment is greater than $250.00 as determined by the DWC Official Medical Fee Schedule (OMFS) or, for an unlisted item, where the billed amount will be greater than $250.00. (See proposed 9792.9.7(b)(6).)

The proposed regulations would, with respect to the electrodiagnostic medicine limitation, define it to be a medical specialty where the physician uses neurophysiologic techniques to diagnose, evaluate, and treat patients with impairments of the neurologic, neuromuscular, and/or muscular systems. This would include, but is not limited to, procedures set forth in the American Medical Association's *Current Procedural Terminology (CPT®)* Medicine section, under the subheading "Neurology and Neuromuscular Procedures," and any test that measures the speed and degree of electrical activity in the muscles and nerves in order to make a diagnosis. (See proposed 9792.9.7(b)(7).)

The proposed regulations would expressly add the following to the list of services or treatments for which the 30–day exemption does not apply: spinal injections including therapeutic medial branch nerve block injections; facet joint injections; intradiscal injections; epidural injections; and sacroiliac joint injections. (See proposed 9792.9.7(b)(8).)

UR Relating to the MTUS Drug Formulary

Existing law requires medical treatment reasonably required to cure or relieve the injured worker from the effects of his or her injury to mean treatment that is based upon the MTUS guidelines adopted pursuant to Labor Code section 5307.27. Existing law requires all prescribers and dispensers of medications in the workers' compensation system to adhere to an evidence–based drug formulary ("MTUS Drug Formulary") that was incorporated into the MTUS under Assembly Bill 1124 (Statutes 2015, Chapter 525), and which became effective January 1, 2018. Existing law under the MTUS Drug Formulary exempts expressly listed medications from prospective UR while requiring it for others.

Senate Bill 1160 (Statutes 2016, Chapter 868), in addition to creating the 30–day exemption to prospective utilization review (UR), amended Labor Code section 4610 to require that all prospective decisions regarding requests for treatments covered by the formulary be made in no more than five normal business days from the receipt of a request for authorization. Although other, non–formulary treatment requests may warrant an extension of time under specified circumstances, no such extension was allowed for treatments covered by the formulary. Additionally, the 30–day exemption to prospective UR (and concomitant rules regarding claims administrators' right to retrospective UR and applicable remedies) would only apply to medications that were exempt on the MTUS Drug Formulary.

- The proposed regulations would incorporate these statutory changes within the regulatory scheme starting with the inclusion of a definition for "MTUS Drug Formulary." (See proposed section 9792.6.1(s).)
- The proposed regulations would further expressly indicate that existing utilization review timeframes apply so long as they do not contravene the timeframes relating to formulary disputes, which follow the timeframes set forth specifically for those types of disputes under proposed section 9792.9.8. (See proposed section 9792.9.3(e).)
- The proposed regulations would clarify that drugs identified as "exempt," identified as subject to the Special Fill policy, or identified as subject to the Perioperative Fill policy on the MTUS Drug List would be exempt from prospective UR. (See proposed section 9792.9.8(a).)
- The proposed regulations would instruct that, for a drug that did not qualify as exempt on the MTUS Drug Formulary, regardless of whether such drug was requested within the 30–day exemption time period, a request for authorization via prospective UR is required in the manner set forth in the regulations or in a manner agreed upon by the treating physician and the claims administrator. (See proposed section 9792.9.8(b).)
- The proposed regulations would reiterate the statutory mandate that prospective UR decisions to approve, modify, or deny an request for authorization (RFA) for a drug that does not qualify as exempt on the MTUS Drug Formulary must not exceed 5 business days from the date of receipt of the RFA. Where additional information is required on an RFA for medication not qualified as exempt on the MTUS Drug Formulary, the proposed regulations would require that a request for such information to be made within 2 business days from the date of receipt of the RFA. If the information is not received within 5 business days from the date of the RFA, the request may be denied in accordance with applicable regulations. (See proposed section 9792.9.8(b)(1).)
- The proposed regulations would require UR for any medication not listed on the MTUS Drug Formulary to be processed pursuant to rules applicable to treatment not exempt under the 30–day exemption and not covered by the MTUS Drug Formulary. This means that the "default" timeframe for UR, which applied to all treatment before the formulary and 30–day exemption were created, would apply to such unlisted medications. (See proposed section 9792.9.8(d).)
- The proposed regulations would clarify that, except for medications that qualified as exempt from prospective UR under the 30–day exemption, a UR decision to deny an RFA for a drug that would otherwise be exempt because it fell into an exempt category under the MTUS Drug

Formulary, may be cause for denial of payment. (See proposed section 9792.9.8(e).)

- The proposed regulations would clarify that disputes over the medical necessity of medications covered under the MTUS Drug Formulary are to be resolved either via a claims administrator's voluntary internal UR appeals process or by independent medical review (per Labor Code section 4610.5 and 4610.6). With respect to a decision to modify or deny a request for authorization because of a reason other than medical necessity, the proposed regulations would clarify that such disputes would be resolved only through the claims' administrator's voluntary internal appeals process or by the Workers' Compensation Appeals' Board. With respect to disputes based on both medical necessity and a reason other than medical necessity, the proposed regulations would require the non–medical necessity reason to be resolved first. (See proposed section 9792.9.8(f).)
- The proposed regulations would clarify the rules that would apply when an initial treating physician dispenses or prescribes a drug listed on the MTUS Drug Formulary within the first 30 days of the date of injury (i.e., under proposed section 9792.9.7(a)). The proposal would require the physician to include all drugs being prescribed or dispensed to treat the injured worker in the treatment plan section of the DFR and to list them also on the RFA. Additionally, subsequent primary treating physicians would also be required to submit an RFA on which all drugs being prescribed or dispensed are indicated following their first visit with the injured worker. (See proposed section 9792.9.8(g)(1).)
- The proposed regulations would allow [or repeat the statutory mandate that?] a treating physician to prescribe or dispense a drug identified as exempt on the MTUS Drug List without the need to obtain authorization through prospective review. (See proposed section 9792.9.8(g)(2).)
- The proposed regulations would require a treating physician who prescribes a drug not identified as exempt on the MTUS Drug List to request authorization through prospective UR by submitting an RFA as prescribed by law or in a manner agreed upon by the physician and the claims administrator. (See proposed section 9792.9.8(g)(3).)
- The proposed regulations would allow a claims administrator to conduct retrospective review of an exempt drug prescribed or dispensed to the injured worker within 30 days of the date of injury solely for the purpose of determining whether the use of the drug is consistent with the recommendations set forth in the applicable guideline of the MTUS. (See proposed section 9792.9.8(g)(4).) Where such retrospective review results in a determination that the use of the exempt drug was inconsistent with the MTUS, the proposed regulations would prohibit the denial of payment, but would allow such determination to be included as a basis to find that the physician has a pattern and practice of failing to render treatment consistent with the MTUS. (See proposed section 9792.9.8(g)(4)(A) and (B).)

UR Appeals

Under existing law, a UR decision that modifies or denies a treatment request may be appealed via independent medical review ("IMR"). To do so, an injured worker (or other eligible person) must submit an IMR application to the IMR organization within 30 days of receipt of the adverse UR decision letter. Under SB 1160, however, an IMR application pertaining to medications prescribed under the drug formulary adopted under AB 1124, must be submitted within 10 days of service of the written UR decision letter.

- The proposed regulations would require that the expedited 10–day timeframe for submitting an IMR of a medication covered under the drug formulary apply where a UR decision letter only modifies or denies a medical treatment request for a drug listed on the MTUS Drug List. (See proposed section 9792.10.1(a)(2).)

Existing law allows a claims administrator or UR entity to offer an internal appeals process so long as it does not preclude the availability of IMR. Existing law requires that a request for an internal UR appeal be made within 10 days after receipt of a UR decision letter, and for a determination to be issued by the claims administrator within 30 days of receipt of the request.

- The proposed regulations would require, for a UR decision that only modified or denied a request for a drug listed on the MTUS Drug List, that any internal UR appeal decision to be completed and issued within 10 days after receipt of a request for an internal UR appeal. (See proposed section 9792.10.1(f)(2).)

After a request for IMR has been deemed eligible, existing law requires an IMR organization ("IMRO"), within one business day, to send out a written notice of the case assignment to the employer, employee (or employee's representative), and the requesting physician. The notice must indicate that, among other things, the claims administrator has 15 calendar days to submit medical records pertinent to the dispute. The notice must also warn that failure to comply with such requirement may result in fines, penalties or other remedies, up to $5,000. The same applies to expedited

review cases except that the submission of records must be made within 24 hours following receipt of the notice.

- The proposed regulations would add a requirement that, for a dispute only involving a drug or drugs listed on the MTUS Drug Formulary, the submission of records must be made within 10 calendar days of the date of the notice. The submission of records for all other disputes would remain at 15 calendar days. (See proposed section 9792.10.4(b)(5).)
- The proposed regulations would delete the $5,000 cap. (See proposed section 9792.10.4(b)(5) and (6).)

Existing law authorizes the IMRO to reasonably request appropriate additional documentation or information necessary to make a determination of medical necessity. When such a request is made, the party to whom the request was made must submit the requested documentation within 5 business days after the request is received in routine cases, or 1 calendar day in concurrent or expedited cases.

- The proposed regulations would require a party to submit the requested documentation in 2 business days where the dispute is only about a drug listed on the MTUS Drug Formulary. (See proposed section 9792.10.5(c).)

Existing law requires the IMRO to complete its review and make a final determination of a regular (i.e., not expedited) medical treatment dispute within 30 days of receipt of the application for IMR and supporting documentation.

- The proposed regulations would require the IMRO to complete its review and make a final determination of a non–expedited medical treatment dispute, other than a dispute that only denies or modifies a medical treatment request for a drug listed on the MTUS Drug List, within 30 days of receipt of the IMR application and supporting documentation and information. (See proposed section 9792.10.6(g)(1).)
- The proposed regulations would require the IMRO to complete its review and make a final determination of a dispute that only denies or modifies a medical treatment request for a drug listed on the MTUS Drug List within 5 business days of receipt of the IMR application and supporting documentation and information. (See proposed section 9792.10.6(g)(4).)

Existing law sets forth costs for IMR, borne by the claims administrator, for years 2013 and 2014. The costs are distinguished based on whether the review is regular, expedited, or withdrawn. Expedited reviews are more costly than regular reviews and, for each type, more costly if performed by a physician as defined by Labor Code section 3209.3 who holds an M.D. or D.O. degree (as opposed to a degree of another kind). Additional costs apply if a review requires two more medical reviewers to participate.

- The proposed regulations would omit all of the factors affecting cost except for withdrawn reviews. Under the proposal, all requests for IMR would cost $345.00 regardless of whether the review is regular or expedited, regardless of the reviewer's credentials, and regardless of whether there were more than one reviewer who participated in the review. (See proposed section 9792.10.8(a)(1).)

Existing law requires a lesser payment (currently $215.00) for each application where review is terminated by the independent organization prior to the receipt of the documentation and information provided under section 9792.10.5 by a medical reviewer. If, however, the review of an application and documentation and information provided under section 9792.10.5 is terminated by the independent review organization subsequent to the review by the medical reviewer, the cost will be the same as if a determination had been issued.

- The proposed regulations would clarify that if the withdrawal of an IMR occurs during (and not only subsequent to) the receipt of documentation and information under section 9792.10.5 by the medical reviewer, it would not qualify for the lower fee associated with a withdrawal. (See proposed section 9792.10.8(a)(2).)

Under existing law, an IMR final determination may be appealed under Labor Code section 4610.6(h) if one or more specified legal findings are made. The remedy for such a finding is to remand the issue back to the same independent medical review organization (IMRO) for re–review with a different reviewer, or for re–review with a different IMRO. No cost is currently associated with ordered re–reviews.

- The proposed regulations would set forth that a first order for re–review would be performed by the independent review organization at no cost, but that any subsequent ordered re–reviews on the same IMR case after the first one would incur a cost of $295.00. (See proposed section 9792.10.8(a)(3).)

Existing law requires disputes over formulary rules, other than medical necessity disputes covered by UR and IMR, to be resolved through the procedure for non IMR/IBR disputes set forth in the applicable WCAB regulations.

- The proposal would amend the reference to the WCAB rule to align with recent changes. (See proposed section 9792.27.17(b).)

Greater Oversight: URAC Accreditation and DWC Approval

Prior to SB 1160, claims administrators or their contracted UR organizations were only required to file their UR plan with the DWC before operating in the California workers' compensation system. The legislature determined that more oversight was required of UR entities to ensure industry best practices and to reduce frictional costs associated with disputes over treatment. As such, beginning July 1, 2018, SB 1160 required UR processes that modified or denied treatment requests to obtain accreditation with URAC (or other entity named by the Administrative Director) and approval of their UR plans with the Administrative Director ("AD").

DWC Approval of UR plans:

Existing law requires every claims administrator to establish and maintain a UR process to be set forth in a UR plan. A claims administrator or an external UR organization contracted by the claims administrator to perform UR must file its UR plan, consisting of the policies and procedures and a description of the UR process, with the AD. A claims administrator who contracts with an external UR organization may, in lieu of its own plan, file a letter with the AD identifying its contracted UR organization with whom it contracts for UR services so long as that entity has filed its own complete plan with the AD.

The proposed regulations would require all UR organizations who modify or deny treatment requests to have their plan approved by the AD. The UR plan would be required to submit its plan for approval to the DWC on a new form, signed by the medical director, called the DWC Form UR–01, "Application for Approval as Utilization Review Plan." (See proposed 9792.7.1.) The UR plan must be submitted in compact discs or flash drives in word–searchable PDF format. The hard copy of the completed, signed original shall be maintained by the applicant and made available for review by the AD upon request. (See proposed 9792.7(c)(2).)

The proposed regulations further indicate that the submission of an application for approval to the AD would release URAC from any obligation it may have to the UR applicant, contractually or otherwise, with respect to nondisclosure of any of URAC's files relating to the applicant's URAC accreditation or audits. The DWC may obtain such documentation from URAC for the purpose of ensuring compliance with UR rules. (See proposed 9792.7(c)(3).)

The proposed regulations further set forth the process for UR plan approval once an entity has submitted an application for approval of a UR plan. The proposal would allow the AD 30 days after receipt of an application to review and notify the organization as to the completeness of the UR plan. If the plan is incomplete, the AD shall specify the additional information or documents needed. (See proposed 9792.7(d).) Following receipt of a complete UR plan, the AD shall have 60 days to approve or deny the plan. If the plan is in substantial compliance except for specific deficiencies, a conditional approval may be granted for up to six months to allow the applicant the opportunity to correct those deficiencies. If the deficiencies are not corrected within the first period of conditional approval, the conditional approval may be extended for up to another six months if the applicant has shown a good faith effort and ability to correct the deficiencies. Unless the deficiencies are removed prior to the expiration of the conditional approval and an approval has been granted, a conditional approval expires at the end of its stated period and the application shall be deemed denied. (See proposed 9792.7(e)(1).)

The proposed regulations would require the AD to notify a UR plan applicant of a denial in writing, which shall include the reasons for non–approval. The denial shall be transmitted via certified mail and remain in effect for 12 months unless a lesser timeframe is agreed upon by the AD for good cause. (See proposed 9792.7(e)(2).)

The proposed regulations would allow a UR plan applicant whose plan has been denied by the AD 20 days to file an appeal with the Workers' Compensation Appeals Board. Petitions shall be concurrently served on the AD. (See proposed 9792.7(f).)

The proposed regulations would allow the AD to require an organization to update its approved plan if needed for compliance. It would allow a plan who receives a Notice of Required Update from the AD 30 days to bring its plan into compliance. Failure to adopt and implement required changes could result in probation or suspension of a plan or revocation of its approval. (See proposed 9792.7(g).)

The proposed regulations would set forth the following reasons for which probation, suspension, or revocation for approved UR plans could occur: the plan is operating out of compliance with the terms of its approved plan or the law; the plan fails to timely adopt and implement updates to its UR plan as specified by the AD; the plan knowingly makes false statements or representations to the AD or fails to submit plan modifications or updates as required by this Article; the plan fails to respond to at least two or more repeated requests or inquires by the AD concerning plan compliance. (See proposed 9792.7(h)(1).)

If the AD determines that one or more of the preceding circumstances applies, the proposed regulations would require the AD to issue written notice of the violation after which the organization would have 14 days to correct the violation or respond with a plan to correct the violation. (See proposed 9792.7 (h)(2).)

The proposed regulations would allow the AD to place a UR organization on suspension, probation, or revoke its approval by issuing a Findings and Notice of Action to the organization specifying the time period for which such action will take place. For revocations, the proposed regulation would bar the organization from applying for UR plan approval for 12 months following the issuance of the Findings and Notice of Action unless a lesser timeframe is agreed upon for good cause by the AD. (See proposed 9792.7(h)(3)(A).)

The proposed regulations would require a UR plan who has been issued a Findings and Notice of Action for suspension or revocation to issue a copy of such Findings and Notice of Action to all organizations for which it performs UR. (See proposed 9792.7(h)(3)(B).

The proposed regulations would allow a UR plan that has been issued a Findings and Notice of Action to request a re–evaluation of the probation, suspension, or revocation notice within 14 days of its issuance by submitting to the AD, under penalty of perjury, a written explanation accompanied by documentary evidence supportive of the request for re–evaluation. (See proposed 9792.7(i)(1).)

The proposed regulations would require the AD to issue, within 45 days of the request for re–evaluation, a Decision and Order affirming, modifying, or rescinding the Notice of Action, which must include an explanation of the AD's decision. The proposal would allow the AD to extend the time for issuing a Decision and Order for a period of 30 days and, at any time during re–evaluation, the AD could require the organization to submit additional documentation or information. (See proposed 9792.7(i)(2).)

As an alternative to requesting re–evaluation, the proposed regulations would allow a UR plan that has been issued a Findings and Notice of Action to appeal such notice to the Workers' Compensation Appeals Board by filing a petition within 20 days of the issuance of the notice under California Code of Regulations, title 8, section 10560. The regulations would require that the petition be concurrently served on the AD. (See proposed 9792.7(j).)

The proposed regulations would clarify that the rules pertaining to probation, suspension, and revocation would not prevent the possibility of applicable penalties under regulation section 9792.12 (pertaining to UR investigations). (See proposed 9792.7(k).)

The proposed regulations would require the AD to post on the DWC's website a list of all entities who have filed a complete UR plan and indicate their evolving statuses, which could include, but are not limited to, approved, denied, inactive, probation, suspended, or revoked. The proposal would authorize the AD to mark as inactive a utilization review plan entity that has not conducted UR under its own name for a period of 12 consecutive months following the last UR activity performed under its own name. (See proposed 9792.7(l).)

Existing law requires a UR plan to file a material modification of its UR plan within 30 days of the material modification, which is defined to be any change to the UR standards as specified in section 9792.7. The current definition of a "material modification" of a UR plan is whenever there is a change to UR standards as specified in section 9792.7.

The proposed regulations shall require that a filing of a material modification includes a statement certifying that the UR plan, as modified, continues to be in compliance with the rules governing UR. (See proposed 9792.7(c)(4).) The regulations shall also amend the definition of a material modification of a UR plan to include (in addition to changes to a UR plan's standards under section 9792.7) changes to its medical director, address, company name, or corporate structure. (See proposed 9792.6.1(n).)

URAC Accreditation:

Existing law requires every utilization review process that modifies or denies requests for authorization of medical treatment to retain active accreditation by an independent, non–profit organization to certify that the UR process meets specified criteria aligned with industry best practices. Unless and until the AD designates another, URAC is statutorily designated as the accrediting organization.

- The proposed regulations define URAC by its physical address, or as designated on its website (see 9792.6.1(x)); and specifies that the type of URAC accreditation required for approval by the DWC of a UR plan that modifies or denies treatment requests is the Workers' Compensation Utilization Management (WCUM) accreditation. (See 9792.7(a)(6)(A).)
- The proposed regulations expressly exempt a public sector internal UR plan that modifies or denies treatment requests from URAC accreditation if it provides in its plan submission a statement under penalty of perjury by the plan's medical director that the plan meets or exceeds the standards established by URAC's WCUM accreditation program. (See 9792.7(a)(6)(B).)

UR Investigations — Process

Existing law authorizes the Administrative Director ("AD") to investigate utilization review (UR) processes of UR organizations and/or claims administrators and assess administrative penalties for failure to comply with applicable rules.

- The proposal would clarify that the AD's authority to investigate UR processes would include not only entities who perform the full scope of the UR process, but also those that perform only

a part of the UR process. (See proposed section 9792.11(a).)

Existing law establishes UR investigations as being either Routine or Target. A Routine Investigation must be performed at least once every 5 years and includes a review of a random sample of requests for authorization (RFAs) received by the investigation subject during the three most recent full calendar months preceding the date of the start of the investigation; and may also include any credible complaints received by the AD. Target Investigations may be either a Return Target or Special Target Investigation. A Return Target Investigation occurs 18 months following the Routine Investigation that resulted in a performance rating of less than eighty–five percent. A Special Target Investigation may be conducted at any time based on credible information indicating the possible existence of a violation of UR rules.

Violations uncovered in a Routine or Return Target Investigation are associated with either "mandatory" or "additional" penalties. The performance rating, which is calculated based on a review of the randomly selected requests, is associated with "additional" penalties. These additional penalties are waived if the performance score meets or exceeds 85%. Waiver does not apply to mandatory penalties.

An investigation subject who does not receive a passing performance rating (i.e., a performance rating below 85%) may also obtain waiver of the additional penalty amounts under an abatement process though abatement is not available for the purpose of changing the performance rating. Abatement requires the investigation subject to submit in writing to the AD, written evidence, tendered with a declaration made under penalty of perjury, that explains or demonstrates how the violation(s) have been abated; grant the AD re–entry for a Return Target Investigation to verify compliance with the abatement measures; and agree to reinstatement of the previously waived penalty amounts at a multiplied rate if the violative condition(s) are not abated within the specified time period or if the abatement measures are not consistent with specified abatement terms. The abatement process requires the AD to conduct a Return Target Investigation in 18 months following the Routine Investigation. A Return Target Investigation is allowed for up to four times, with each subsequent investigation resulting in a higher multiplication of the penalty amounts if the abatement terms are not successfully met.

In addition to waiver and the abatement process, existing law also allows the AD discretion to mitigate UR investigation penalty amounts based on specified penalty adjustment factors. These include the medical consequences or gravity of the violations; documented good faith efforts of compliance by the claims administrator or UR organization; the history of previous penalties; the frequency of violations discovered pursuant to the investigation; and extraordinary circumstances when strict application of the mitigation guidelines would be clearly inequitable.

- The proposal would reorganize subdivisions within existing section 9792.11 so as to group together rules addressing the authority of the AD, the scope of UR investigations, and procedural rules of a general nature. (See proposed sections 9792.11(b), (c), (d), (e), and (f).) Some subdivisions were reorganized based on where they would make the most sense considering the investigation type, sequence, or process. (See proposed section 9792.11(h); and proposed section 9792.11(t).)
- The proposal would also combine text which separately addressed investigations for UR organizations versus claims administrators such that the focus would be on the type of investigation (routine or target) rather than the type of entity being investigated. This is not a substantive change. (See proposed section 9792.11(g).)
- The proposal would delete the assignment of a performance rating and all associated regulations, including the waiver and abatement process (and thereby the need for a Return Target Investigation and, thus, the need to differentiate between that and a Special Return Target). (See strikeout of applicable text in existing section 9792.11(c).) Instead, investigations would be simply either Routine or Target and would result in the assessment of penalties pursuant to violations uncovered in the investigation. Violations would be assessed based on a schedule of penalties categorized by the following subjects: violations related to UR plan requirements, violations related to UR plan operations, and violations relating to the UR investigation procedure and other miscellaneous provisions.
- The proposal would grow the population of files subject to investigation for UR organizations or claims administrators who process a greater number of requests for authorization in the specified three–month calendar period. Beginning with an organization that reviews 242 to 269 requests in the specified three month period, the sample file population subject to investigation would grow from 48 to 50 files; and, for organizations that process the largest number of authorization requests, i.e., reviews 531 or more files in the specified three month period, the sample file population would grow from 59 to 70 files. (Proposed section 9792.11(i).)

Additionally, the proposal would authorize the AD to request additional files where the files initially se-

lected are incomplete or otherwise invalid. (See proposed section 9792.11(j).) For investigation subjects who perform modifications and denials of requests for treatment, the proposed regulations would also require 40% of the selection of investigation files (or as close to 40% as possible), to be comprised of files that modified or denied completed or accepted requests for authorization. In order to meet this goal, the proposal would authorize the AD to expand the scope of files subject to investigation to reach beyond the specified 3–month calendar period, up to a total of 6 months. (See proposed section 9792.11(n).)

- With respect to mitigation, the proposal would clarify that mitigation is appropriate for consideration prior to the issuance of the final investigation report. (See proposed section 9792.13(a).)

Existing law requires the AD to initiate an investigation by issuing a Notice of Utilization Review Investigation ("NURI") to the investigation subject (unless the AD determines that advance notice will render the investigation less useful). The NURI requires the subject to provide data including a list of every RFA received by the investigation subject during the specified three month period and, for each RFA, include a number of data elements, including whether the UR determination approved, denied, or modified the request; or whether the request was withdrawn.

- With respect to a UR determination that denied a request, the proposal would require identification of the type of denial, i.e., whether it was due to a finding of no medical necessity or due to the requirement that additional information, tests, or consultation were required. (See proposed section 9792.11(k)(1).)

Existing statutory law requires all UR plan processes that modify or deny treatment requests to obtain and maintain accreditation with an independent, non–profit organization to ensure these types of UR plan processes are following industry best practices. Until and unless the AD names another accrediting organization, the legislature has designated URAC as the accrediting organization.

- The proposal would require a UR investigation subject to include in its NURI response a copy of the most recent accreditation document issued by URAC (or other named accrediting organization) which verifies that the UR plan organization meets the legislative accreditation requirement. (See proposed section 9792.11(k)(5).)

Existing law authorizes the AD to request any additional information during the UR investigation process including whether UR services are provided externally, the names of the UR organizations, the name and address of the employer, and the name and address of the insurer.

- The proposal would additionally authorize the AD to request documents relevant to the UR plans' accreditation including but not limited to copies of audit or investigation reports, files, or documents generated between the plan and the accrediting organization. (See proposed section 9792.11(l).)

Existing law requires UR investigation subjects to provide required information within 14 calendar days of receipt of the NURI.

- The proposal would require that additional documentation requested by the AD from a UR investigation subject be provided within 5 business days unless an extension is granted in writing. (See proposed section 9792.11(m).)

Existing law requires a preliminary investigation report to be provided to the investigation subject following review of selected UR investigation files. The preliminary report consists of the preliminary notice of UR penalty assessments, the performance rating, and may include further requests for additional documentation or compliance. If needed, a conference to discuss the preliminary investigation report may be scheduled within 21 days of the issuance of the report.

- The proposal would add a requirement that the AD include in the preliminary report a notice of intent to place the UR plan on probation or withdraw approval of the plan, and the reasons therefore, where the investigation has uncovered the existence of a systemic problem in the operations, procedures, or policies of a UR plan organization. The proposal would delete the requirement that the subject's performance rating be included in the preliminary report since it is being eliminated from the UR investigation process. (See proposed section 9792.11(v).)

Existing law requires the AD to issue an Order to Show Cause Re: Assessment of Administrative Penalty ("OSC") when the AD has found that an entity has failed to meet any of the requirements of the law pertaining to UR. The order must be in writing and must include notice of the administrative penalty, a final investigation report to include the penalties assessed, and the performance rating. The OSC may also include, if necessary, one or more requests for documentation or compliance.

- The proposal would strike the necessity to include a performance rating as part of the OSC and add the requirement that, if applicable, a notice of the AD's intent to place the subject on probation or to withdraw approval of the UR plan be included. (See proposed section 9792.15(b)(2).)

Existing law requires an investigated UR organization, within a specified time, to serve a notice, including a copy of the final investigation report, the mea-

sures implemented to correct such conditions, and the website address for the Division where the summary of violations is posted, to any employer, Third Party Administrator (TPA), or insurer for whom the UR organization performs UR; and on any self–insured employer or insurer if the investigation subject is a claims administrator. If a hearing was conducted as a result of an appeal, the notice should contain the Final Determination in lieu of the final investigation report. Documentation of compliance must be served on the AD within 30 calendar days from the date the notice was served. The AD is required to post on the DWC website a summary of violations for each UR investigation after the time to file an answer to the Order to Show Cause Re: Assessment of Administrative Penalties has elapsed and no answer has been filed or after any and all appeals have become final.

- The proposal would, for investigation subjects whose investigations resulted in the UR plan being placed on probation, require that the notice include a copy of the final investigation report, a statement indicating that the UR plan has been placed on probation by the Division, and the website address for the Division where the summary of violations and probationary status is posted. (See proposed section 9792.11(v)(1)(B).) For investigation subjects whose investigations resulted in a withdrawal of approval of its UR plan, the notice would include a copy of the final investigation report, a statement that the UR plan's approval has been withdrawn by the Division, and the website address for the Division where the summary of violations and withdrawn status is posted. (See proposed section 9792.11(v)(1)(C).)
- The proposal would require the AD, where an investigation subject has been placed on probation, to commence another investigation of that UR plan in 180 to 360 days from the issuance of the previous final report or, if applicable, Final Determination. This return investigation would be conducted in the same manner as required for routine investigations. (See proposed section 9792.11(z).)
- The proposal would limit the amount of times a UR plan entity could be placed on probation to once per investigation. See proposed section 9792.11(aa).)

UR Investigations — Penalties

Existing law at section 9792.12 sets forth penalties that may be assessed during a UR plan investigation under section 9792.11. Penalties are either (a) Mandatory UR Administrative penalties, (b) Additional UR Penalties, or (c) IMR–related UR penalties.

- The proposal would comprehensively reorganize the penalty schedule to reflect, under subdivision (a), violations relating to UR plan requirements; under subdivision (b), violations relating to UR plan operations; under subdivision (c), violations relating to investigation procedures and miscellaneous violations; under subdivision (d), IMR administrative penalties; and, under subdivision (e), violations for any other act or failure not expressly identified.

Changes under subdivision (a) (for violations relating to UR plan requirements):

As aforementioned, existing law requires every claims administrator to establish and maintain a UR process to be set forth in a UR plan. A claims administrator or an external UR organization contracted by the claims administrator to perform UR must file its UR plan, consisting of the policies and procedures and a description of the UR process, with the AD. A claims administrator who contracts with an external UR organization may, in lieu of its own plan, file a letter with the AD identifying its contracted UR organization with whom it contracts for UR services so long as that entity has filed its own complete plan with the AD.

- The proposal would add a penalty of $30,000 under subdivision (a) for the failure to obtain approval of a UR plan that modifies or denies treatment requests from the AD prior to operation. (See proposed section 9792.12(a)(4).)

As aforementioned, existing law requires every utilization review process that modifies or denies requests for authorization of medical treatment to retain active accreditation by an independent, non–profit organization to certify that the UR process meets specified criteria aligned with industry best practices. Unless and until the AD designates another, URAC is statutorily designated as the accrediting organization.

- The proposal would add a penalty of $10,000 under subdivision (a) for failure to obtain or maintain URAC accreditation as required prior to commencing or continuing to function as a UR plan. (See proposed section 9792.12(a)(6).)

Existing law prohibits an employer, or any entity conducting UR on behalf of the employer from offering any financial incentive or consideration to a physician based on the number of modifications or denials made by the physician.

- The proposal would add a penalty of $25,000 under subdivision (a) for failure to comply with laws prohibiting financial incentives or consideration to physicians conducting UR. (See proposed section 9792.12(a)(8).)

Existing law requires a utilization review organization to retain files and other records, whether electronic or paper, that pertain to the UR process for at least 3 years following either: (1) the most recent UR decision for each injured employee, or (2) the date on which any

appeal from the assessment of penalties for violations of Labor Code section 4610 or sections 9792.6 through 9792.12 is final, whichever date is later.

- The proposal would add a penalty of $20,000 under subdivision (a) for failure to retain records as required by law. (See proposed section 9792.12(a)(9).)

Changes under subdivision (b) (for violations relating to UR plan operations):

Under existing law, only a licensed physician may modify or deny requests for medical treatment.

- The proposal would clarify that only a physician reviewer may modify or deny a request for treatment whether it be based on an assessment of medical necessity, or the non–receipt of requested information, test, or examination without which a determination of medical necessity cannot be made. Additionally, only a physician reviewer may deny a request that would otherwise be exempt from UR under Labor Code section 4610(k) when the requesting physician has expressly and unequivocally stated or opined that there has been a change in the injured worker's condition such as to warrant the repeat request. (See proposed section 9792.12(b)(1).)
- The proposal adds a penalty of $25,000 for each of these types of violations.

Existing law exempts from prospective UR certain treatment rendered within 30 days from the date of injury if specified conditions are met ("30–day exemption").

- The proposal would add a penalty of $3,000 for requiring prospective UR for each medical treatment that was appropriately exempt under the 30–day exemption. (See proposed section 9792.12(b)(5).)

Existing law assigns a separate penalty for failure to respond to a complete DWC Form RFA or other request for authorization accepted by the claims administrator for non–expedited concurrent review, non–expedited prospective review, and retrospective review.

- The proposal would combine these violations under one subdivision. The proposal would also increase these penalties from $2,000 to $3,000 in the case of a non–expedited concurrent review; from $1,000 to $2,500 in the case of a non–expedited prospective review; and from $500 to $750 in the case of retrospective review. (See proposed section 9792.12(b)(6).)

Existing law imposes a penalty of $1,000 for the failure of a non–physician reviewer who approves an amended request to document such request as a result of a physician who has voluntarily withdrawn the request in order to submit an amended request.

- The proposal would delete this provision. (See strike through of section 9792.12(a)(8).)

Existing law imposes a penalty for the failure to timely make a decision to approve, modify, or deny a valid request for authorization of treatment at a non–expedited concurrent or prospective level; and/or to timely communicate that decision as required by law.

- The proposal would increase the penalty associated with this violation from a flat amount of $100 to $250 per day up to a maximum of $5,000 after which the violation could be deemed a failure to respond at all to a complete or accepted request for authorization and the penalty associated with that failure would attach, as applicable. (See proposed section 9792.12(b)(7).)

Existing law imposes a penalty for the failure to timely make and communicate a decision in response to a request for expedited review as required by law.

- The proposal would increase the penalty associated with this violation from a flat amount of $15,000 to $250 for each hour the response is untimely up to a maximum of $18,000. (See proposed section 9792.12(b)(8).)

Existing law imposes penalties for the failure to timely make and communicate a decision in response to a retrospective request for treatment as required by law.

- The proposal would increase the penalty associated with this violation from a flat amount of $100 or $50 (depending on whether the decision is to modify or deny, or approve, respectively) to $150 per day up to a maximum of $3,000 after which the violation could be deemed a failure to respond at all to a complete or accepted retrospective request for authorization and the additional penalty associated with that failure would attach, as applicable. (See proposed section 9792.12(b)(9).)

Existing law imposes penalties for the failure to follow time, content, and manner rules pertaining to written communication that must issue when, after receipt of a valid RFA, additional information, tests or examinations, or consultations are required in order to make a determination of medical necessity of the requested treatment.

- The proposal would increase the penalties associated with this violation from a flat amount of $50 or $100 to $250 per day up to a maximum of $5,000 after which the violation could be deemed a failure to respond at all to a complete or accepted request for authorization and the additional penalty associated with that failure would attach, as applicable. (See proposed section 9792.12(b)(10).)

Existing law imposes a penalty of $50 for the failure to document the reason for denying treatment on the basis of lack of reasonable and necessary information.

- The proposal would increase this penalty from $50 to $200. (See proposed section 9792.12(b)(11).)

Existing law imposes a penalty of $100 for the failure to document efforts to obtain information from the requesting party prior to issuing a denial of a request for authorization on the basis of lack of reasonable and necessary information.

- The proposal increases this penalty from $100 to $200. (See proposed section 9792.12(b)(12).)

Existing law imposes a penalty of $100 for failing to include all of the content requirements in a UR decision as prescribed by law that modifies or denies treatment.

- The proposal would increase this penalty from $100 to $300 for each failure. (See proposed section 9792.12(b)(13).)

Existing law requires each employer, either directly or through its insurer or an entity with which an employer or insurer contracts for UR services, to submit a description of the UR process that modifies or denies RFAs and the written policies and procedures to the AD for approval.

- The proposal would add a penalty of $5,000 for the failure of a UR plan to operate its plan in accordance with the plan filed and, if applicable, approved with the AD. (See proposed section 9792.12(b)(14).)

Changes under subdivision (c) (for violations relating to UR investigation procedures and miscellaneous violations):

Existing law authorizes the AD to investigate UR processes of UR organizations and/or claims administrators and assess administrative penalties for failure to comply with applicable rules. During an investigation, the AD may request additional records or files needed for completing a UR investigation.

- The proposal would add a penalty for the failure to timely provide a complete copy of any document, file, or record whether electronic or paper, that was requested by the AD pursuant to a UR investigation. The penalty amount would be $500 for each day the failure is ongoing up to a maximum of $10,000 unless a greater penalty is warranted as specified. (See proposed section 9792.12(c)(1).)
- The proposal would add a penalty for providing a backdated, altered, or fraudulent document to the AD, or intentionally withholding a document, which would have the effect of avoiding UR–related liability or the assessment of an administrative penalty under this section. The penalty amount would be $500 for each backdated, altered, or withheld document unless a greater penalty is warranted (under proposed subdivision (e)), such as where the violation impedes the ability of the AD to conduct a full investigation of the issue. (See proposed section 9792.12(c)(2).)

Existing law imposes a penalty of $500 for the failure to timely comply with any and each compliance requirement listed in a Final Report, if no timely answer was filed, or any compliance requirement listed in the Determination and Order after any and all appeals have become final.

- The proposal would clarify that the penalty amount attaches to each failure to comply as specified, and would also increase the penalty amount from a flat $500 to $500 each day the failure is ongoing up to a maximum of $20,000 unless a greater penalty is warranted under proposed subdivision (e) of this section. (See proposed section 9792.12(c)(3).)

Existing law imposes a penalty of $500 for the failure of an investigation subject to issue a notice of the final investigation report (or final determination if there was a hearing), of the measures implemented to abate identified violations, and the website address for the Division where the performance rating and summary of violations is posted. The notice must meet specified time and manner requirements and be issued to contracted parties for whom the investigation subject performs UR.

- The proposal would increase this penalty amount from a flat $500 to $500 each day the failure is ongoing up to a maximum of $20,000 unless a greater penalty is warranted under proposed subdivision (e) of this section. (See proposed section 9792.12(c)(4).)

Existing law imposes a penalty of $100 for the failure to disclose or otherwise make available the utilization review criteria or guidelines upon request by a member of the public.

- The proposal would increase this penalty amount from a flat $100 to $200. (See proposed section 9792.12(c)(5).)

Existing law imposes a penalty of $100 for the failure to disclose or otherwise make available the approved utilization review process descriptions and accompanying written policies and procedures.

- The proposal would increase this penalty amount from a flat $100 to $200. (See proposed section 9792.12(c)(6).)

Changes under subdivision (d) (for violations relating to UR investigation procedures and miscellaneous violations):

Existing law imposes a penalty of $500 for each day a response is untimely up to a maximum of $5,000 after the AD has requested for information necessary to make a determination of IMR eligibility.

- The proposal would increase the maximum penalty amount associated with this violation

from $5,000 to $7,500. (See proposed section 9792.12(d)(5).)

Existing law imposes a penalty of $500 for each day a response is untimely up to a maximum of $5,000 after the AD has requested for records or additional information necessary to make a determination of medical necessity of disputed treatment.

- The proposal would increase the maximum penalty amount associated with this violation from $5,000 to $7,500. (See proposed section 9792.12(d)(6).)

Existing law imposes a penalty of $1,000 for each day a claims administrator fails to timely authorize services found to be medically necessary by IMR up to a maximum of $5,000.

- The proposal would increase the maximum penalty amount associated with this violation from $5,000 to $10,000. (See proposed section 9792.12(d)(7).)

Existing law imposes a penalty of $1,000 for each day a claims administrator fails to timely reimburse for services found to be medically necessary by IMR up to a maximum of $5,000.

- The proposal would increase the maximum penalty amount associated with this violation from $5,000 to $10,000. (See proposed section 9792.12(d)(8).)

Addition of penalty under subdivision (e):

Existing law authorizes the AD to investigate UR processes of UR organizations and/or claims administrators and assess administrative penalties for failure to comply with applicable rules.

- The proposal would add a catch–all penalty provision for violations that are not expressly included in the penalty schedule. The penalty amount of up to $50,000 would be determined after consideration of the gravity of the violation; the characteristics or similarity of the violation to other violations listed in this penalty schedule; the history of previous violations; the frequency of violations uncovered during the investigation; the good faith behavior of the investigation subject; and other cause as determined by the AD. The penalty could also include suspension or revocation of the UR plan. (See proposed section 9792.12(e)(1).) Additionally, the aforementioned factors could substantiate the imposition of an additional penalty where a violation, expressly listed or not, impedes the ability of the DWC to conduct a full investigation of any complaint or issue. (See proposed section 9792.12(e)(2).)

Miscellaneous changes

Under existing law (Labor Code section 4610(k)), a UR decision to modify or deny a treatment recommendation remains effective for 12 months from the date of the decision without further action by the employer with regard to a further recommendation by the same physician (or another physician within the requesting physician's practice group) for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the UR decision. In practice, this rule excuses a claims administrator from having to perform UR on a repeated request for treatment that was modified or denied within the prior 12 months if it is from the same physician (or from the physician's practice group), unless the request is supported by a documented change in facts that is material to the basis of the prior UR decision.

- The proposal would require claims administrators to respond to a request that falls under Labor Code section 4610(k) in accordance with rules set forth under deferral (i.e., proposed section 9792.9.2).

- The proposal would require UR, however, for a repeat request that would otherwise fall under Labor Code section 4610(k) if the requesting physician expressly and unequivocally states or opines that there has been a material change in the injured worker's condition that supports the repeated request. Additionally, the proposal would require a physician reviewer to perform such review and comply with the requirements associated with a typical medical necessity UR.

Under existing law, when a claims administrator receives a complete request for authorization of treatment (RFA) from a treating physician, a claims administrator must respond in the manner, time, and form prescribed by regulations. Existing law defines a complete request for authorization as being one that identifies the employee and provider, specifically identifies the recommended treatments, is signed by the treating physician, and is accompanied by documentation substantiating the need for the requested treatment. Existing law allows a claims administrator who receives an incomplete RFA to have the option of either processing the request as if it were complete (and thereby subject to compliance with UR timeframes) or marking the request as incomplete and returning it to the physician with an explanation for the return within 5 business days from receipt. If a request for authorization of treatment was not submitted on the DWC Form RFA, existing law allowed a claims administrator to accept such request for the purpose of UR if (1) "Request for Authorization" was clearly written at the top of the first page, (2) all requested items or services were listed on the first page, and (3) the request was accompanied by documentation substantiating the need for the requested treatments.

- The proposed regulations tweak the definition of a complete request for authorization to require the use of the new PR–1 form (or a narrative report if specified formatting is followed) and to require that the documents substantiating the request for treatment be issued or created no earlier than 30 days before the date the treatment request is submitted. The proposal also clarifies that electronic submission of a request for treatment must be through the use of a secure encrypted email system. (See proposed section 9792.6.1(u).) The proposed regulations further explain that acceptance of an incomplete RFA means that a claims administrator (or its contracted utilization review organization) may be subject to investigation and/or assessment of penalties attached to such file (proposed section 9792.9.1(b)), and that a request for authorization may be made by either a primary or secondary physician. (Proposed section 9785(h).)

Existing law includes many levels of review in the UR context. A non–physician reviewer (e.g., nurse) may approve treatment requests but only physician reviewers may modify or deny treatment requests (which includes the decision that additional information is required before determining the medical necessity of requested treatment). When additional information is required prior to determining medical necessity, it may necessitate an additional consultation by an expert reviewer whose specialty makes the reviewer particularly suited to evaluate the issue.

- The proposed regulations would make amendments to clarify the roles of these different reviewers. It would clarify that an expert reviewer is a qualified reviewer, as specified, whose consultation for a specialized review has been requested by the claims administrator or UR organization, necessitating an extension of time, prior to the determination of medical necessity. It would clarify that a reviewer, synonymous with physician reviewer, is a qualified reviewer, as specified, who assists the claims administrator or utilization review organization to determine medical necessity of requested treatment, and, therefore, may modify or deny a treatment request. It would clarify that a non–physician reviewer is a person designated by the claims administrator or utilization review organization to assist in determining the medical necessity of the requested treatment but who cannot modify or deny a treatment request. (See proposed section 9792.6.1(k) and (w).)

Existing law requires that physician reviewers apply criteria consistent with the medical treatment utilization schedule (MTUS) to determine medical necessity of requested treatment.

- The proposed regulations would expressly indicate that, notwithstanding the instruction to determine issues of medical necessity under the MTUS, a claims administrator may still authorize treatment beyond what is covered in the MTUS or as supported by the best available medical evidence to account for circumstances that may warrant an exception. (See proposed section 9792.8.)

Existing law requires a retrospective UR decision to be made within 30 days of receipt of the RFA and medical information reasonably necessary to make a determination.

- The proposed regulations would require a retrospective UR decision to be made within 30 days of receipt of the RFA *or* information pertaining to rendered medical treatment that is reasonably necessary to make a determination. (See draft 9792.9.3(d).)

Existing law requires decisions approving a request for authorization (RFA) to specify the date the RFA was first received, the treatment requested, the treatment approved, and the date of the approval decision.

- The proposed regulations would account for acceptance of an RFA to include the situation in which an incomplete RFA is accepted as complete by the claims administrator; and, if an additional exam or consultation had been required, to include the date the request for such exam or consultation was made and the date of receipt of such results. (See proposed section 9792.9.4(a).)

Existing law requires a physician to include words such as "Do Not Substitute" or "Dispense as Written" on a prescription for a brand name drug if it is more costly than its generic equivalent where the specific brand (as opposed to its generic substitute) is being requested; and to document the medical necessity for the brand.

- The proposed regulations would require UR approvals of prescriptions for a brand name drug where the prescription does not include words such as "Do Not Substitute" or "Dispense as Written" to indicate "generic substitute authorized" or words to that effect and meaning on the approval. (See proposed section 9792.9.4(a)(2).)

Existing law defines "OTC Monograph" to mean a monograph established by the FDA setting forth acceptable ingredients, doses, formulations, and labeling for a class of OTC drugs.

- The proposed regulation would clarify that the acronym, OTC, stands for over–the–counter. (See proposed section 9792.27.1(r).)

Existing law requires a written UR decision that modifies or denies treatment requests to meet specific content requirements. It must include the date the

RFA was first received; the date the UR decision was made; a description of the treatment requested; a list of medical records reviewed; a description of the treatment which was approved, if any; an explanation of the reasons for the decision; a description of the medical criteria or guidelines used to reach the decision; a statement advising the employee of the right to appeal via Independent Medical Review ("IMR"); a filled–in application form for IMR and an addressed envelope; specific mandatory language informing the employee of their rights; details about the claims administrator's internal UR appeals process, if applicable; and the name, specialty, and United States telephone number of the physician or expert reviewer, and the time during which the reviewer can be telephoned.

- The proposed regulations would expand the UR modification or denial decision content elements to include, if applicable, the information, exam, or consultation that was required prior to the UR modification or denial decision; the date these requests were made; and the dates when the pertinent information or results of the exam or consultation were first received. (Proposed 9792.9.5(e)(2).) If the UR modification or denial was due to a lack of information submitted by the requesting physician, the proposed regulations would additionally require identification of the missing information and a statement that the requested treatment would be reconsidered upon receipt of a new RFA containing the missing information, exam or test, or specialized consultation. In the event that the requesting physician opined that prerequisite criteria should be overlooked, the proposed regulations would require the UR reviewing physician to provide an explanation as to why the requesting physician's explanation is insufficient. (Proposed 9792.9.5(e)(7).)
- The proposed regulations would also require the UR decision modifying or denying requested treatment to identify the entity accredited by URAC and approved by the Division of Workers' Compensation who is responsible for the UR modification or denial decision. (Proposed 9792.9.5(e)(9).)
- The proposed regulations would also require the UR decision modifying or denying requested treatment to indicate the applicable timeframe (10 days for formulary disputes or 30 days for non–formulary disputes) for submitting an appeal via IMR on the last page of the IMR application form. (Proposed 9792.9.5(e)(11).)

Existing law allows for an extension of time for a UR decision under the following circumstances: the claims administrator or UR reviewer is not in receipt of all the information reasonably necessary to reach a decision; an additional examination or test that is reasonable and consistent with professional standards of medical practice is required in order to reach a determination of medical necessity; or the physician reviewer requires a specialized consultation and review with or by another expert. If an additional examination or test, or consultation with an expert is required, existing law requires the claims administrator or reviewer to provide notice in writing to the requesting physician, the employee, and the employee's attorney of that need and of the anticipated date on which a decision will be rendered.

- The proposed regulations would delete the requirement that a UR reviewer notify the requesting physician, the employee, and the employee's attorney, of the anticipated date of the UR decision (after receipt of the missing exam, test, or consultation). (Proposed at regulation 9792.9.6(b)(2).)

Anticipated Benefits of the Proposed Regulations:

The proposal would benefit injured workers by cementing the requirements under SB 1160 for expeditious delivery of reasonable medical treatment without administrative delay when it is most necessary, in the first month following an injury; and by hastening the delivery of necessary medications. Additionally, a new physician reporting form, which centralizes all of a claimant's information, will aid in the efficient reporting of an injured worker's medical status and the process of requesting necessary medical treatment with the benefit of reducing administrative confusion and delays in treatment.

Regulatory oversight provisions reinforcing and adding to the requirements for accreditation with a nationally recognized accreditation company and approval of UR plans by the Administrative Director, and a much needed update to the UR investigations' process and penalties will further ensure that UR operations are complying with the law and are operating in accordance with industry best practices.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

After conducting a search for other regulations on this matter, the Division found that these are the only regulations concerning utilization review changes under SB 1160 and AB 1124. Therefore, the Administrative Director has determined that the proposed regulations are not inconsistent or incompatible with existing regulations.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: Cost impacts include a likelihood of reduced revenue for UR organizations and/or their vendors who generate income based on a price–per–review arrangement. Assuming that at least some of the treatment covered under the 30–day exemption to prospective UR will not be forwarded for UR, some loss of revenue is expected. However, based on consensus suggesting that a large percentage of requests received within the first 30 days of the date of injury is authorized, the revenue loss will likely be immaterial.
- Significant, statewide adverse economic impact directly affecting businesses (including the ability of California businesses to compete with businesses in other states) and individuals: This regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/ Assessment:

Creation or Elimination of Jobs Within the State of California:

The Administrative Director estimates that there will be minimal impact on job creation or elimination within the state since any such impacts would have occurred upon the effective date of the legislation requiring URAC accreditation on July 1, 2018.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California:

The Administrative Director has determined that the proposed regulations will not create or eliminate businesses within the State of California. Any such impacts would have occurred upon the effective date of the legislation requiring URAC accreditation on July 1, 2018. Any additional costs and benefits are expected to be borne by existing businesses and the regulations will not create or eliminate businesses.

Expansion of Businesses Currently Doing Business within the State of California:

The proposal is unlikely to cause the expansion of businesses currently doing business within the State of California. Any acquisition by larger UR organizations of smaller operations, who may not have been able to bear the cost of accreditation, have already taken place due to the effect of the legislation in July of 2018.

Benefits of the Proposed Action

The proposed regulations will benefit the health and welfare of California residents and worker safety. The proposed regulations will be beneficial by clarifying any residual uncertainties pertaining to the laws passed under SB 1160, which were established to eliminate delays and denials of necessary medical treatment and ensure the operation of utilization review ("UR") systems in accordance with industry best practices.

Injured workers will benefit from regulations cementing the requirement for expeditious delivery of reasonable medical treatment without administrative delay when it is most necessary, in the first month following an injury; and by hastening the delivery of necessary medications. Additionally, a new physician reporting form, which centralizes all of a claimant's information, will aid in the efficient reporting of an injured worker's medical status and the requesting of medical treatment necessary to reduce administrative confusion or delays in treatment.

Regulatory oversight provisions requiring accreditation with a nationally recognized accreditation company, the grant of authority to the Administrative Director to approve of some UR plans, and an update to the UR investigations' process and penalties will further ensure that UR operations are complying with the law and are operating in accordance with industry best practices.

The proposed regulations are not expected to affect the state's environment.

Small Business Determination:

The Administrative Director has determined that the proposed regulation affects small businesses. The small businesses that will be impacted by the regulation are primarily physicians and physician practices. A few UR organizations may also be impacted.

CONSULTATION WITH THE PUBLIC PER GOVERNMENT CODE §11346.45

To comply with the public consultation requirements of Government Code section 11346.45, the Administrative Director has done the following:

- Conducted an online Public Forum entitled: "DWC Forums — Utilization Review Regulations" from December 13, 2018 through January 15, 2019. Posted documents for public comment included the following:
  - Draft Text of UR Regulations

- Draft PR–1 Form
- Draft IMR Application Form
- Draft UR–01 Form

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director'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.

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulations at this time. Interested persons are invited to present reasonable alternatives to the proposed regulations during the written comment period, or at the public hearing.

CONTACT PERSONS

Inquiries concerning the proposed rulemaking action may be directed to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
Email: mgray@dir.ca.gov
Telephone: (510) 286–7100

The backup contact person for these inquiries is:

River Sung
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
Email: rsung@dir.ca.gov
Telephone: (510) 286–7100

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file, to the contact person at the above address. Requests to be added to the mailing list for rulemaking notices may also be directed to the contact person.

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

The entire rulemaking file shall be available throughout the rulemaking process from the contact person named in this notice. Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

As of the date this Notice is published in the Notice Register, the rulemaking file consists of the Notice, the proposed text of the regulations, the Initial Statement of Reasons, the Fiscal and Economic Impact Statement (Form STD 399), a new form PR–1, a new form UR–01, and an updated IMR Application form.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Administrative Director may adopt the proposed regulations substantially as described in this notice. If the Administrative Director makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted. The Notice of Modification of Proposed Rulemaking will be sent to persons who have submitted written comments to the agency during the comment period or at the public hearing, to persons who testified at the public hearing, and to persons who have requested notification of modifications to the proposal. Please send requests for copies of any modified regulations to the contact person at the address indicated above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the proposed text of the regulation, may be accessed from the Division's website at www.dir.ca.gov. To access them, click on the "Laws and regulations" link, then the "Proposed Regulations" link and scroll down the list of rulemaking proceedings to find the "Utilization Review" rulemaking link.

AUTOMATIC MAILING

A copy of this Notice will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in California Code of Regulations, title 8, sections 9767.6 through 9792.27.17. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

TITLE 9. DEPARTMENT OF REHABILITATION

PRE–EMPLOYMENT
TRANSITION SERVICES

The Department of Rehabilitation (hereinafter "Department" or "DOR") proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a virtual public hearing on this proposed action starting at 10:00 a.m. on July 23, 2024, via Zoom Meeting. At the meeting, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The DOR respectfully requests that any person who makes oral comments also submit their comments in writing.

Zoom meeting: https://dor–ca–gov.zoom.us/j/87910369600?pwd=7eHYzGe4rMR8VAH5ASRQGKCxAkJB5c.1

Join Zoom Meeting

One tap mobile: US: *+14086380968,,87910369600#,,,,*33621351#* or *+16699006833,,87910369600#,,,,*33621351#*
Meeting URL: https://dor–ca.gov.zoom.us/j/87910369600?pwd=7eHYzGe4rMR8VAH5ASRQGKCxA kJB5c.1
Meeting ID: 879 1036 9600
Passcode: G#e7bx&r

Join by Telephone

For higher quality, dial a number based on your current location.

Dial: +1 408 638 0968 US (San Jose)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
Meeting ID: 879 1036 9600
Passcode: 33621351

Closed captioning will be available within the Zoom meeting application. The Department is providing American Sign Language interpreters for this event. The interpreters will be available within the Zoom meeting application.

As a reasonable accommodation, limited in person seating may be available at the hearing in the Department's conference room, 721 Capitol Mall, Sacramento, California, 95814. Please email Legal@dor.ca.gov or call (916) 558–5825 by 2:00 p.m. on July 16, 2024, at least 7 days before the hearing, if an accommodation is necessary.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will continue on the date noted above until all testimony is submitted, or until 11:00 a.m., whichever is later. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email to Legal@dor.ca.gov.

WRITTEN COMMENT PERIOD

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

Department of Rehabilitation
Office of Legal Affairs and Regulations
Attention: Michele Welz, Regulations Analyst
721 Capitol Mall
Sacramento, California 95814

Comments may also be submitted electronically by email to Legal@dor.ca.gov or by facsimile to (916) 558–5806. The written comment period closes at 5:00 p.m. on July 23, 2024. The Department will consider only comments received at the Department by that

time. When commenting, please indicate the proposed rulemaking action to which your comment refers, for example, "Student Services."

AUTHORITY

Sections 19006 and 19016 of the Welfare and Institutions Code (Welf. and Inst. Code) authorizes the Department to adopt these proposed regulations.

REFERENCE

The proposed regulations implement, interpret, and make specific sections 19011, 19012, 19013, and 19100 of the Welfare and Institutions Code; sections 1798.14 and 1798.30 Civil Code, and section 56026 of the Education Code; as well as sections 705, 722, 723 and 733 of title 29 of the United States Code, sections 1396 et seq. of title 42 of the United States Code; parts 361.38, 361.42, 361.46, 361.47, 361.48, 361.52, 361.53, 361.54 and 361.57 of title 34 of the Code of Federal Regulations; and part 35.104 of title 28 of the Code of Federal Regulations.

INFORMATIVE DIGEST

Summary of Existing Laws and Effect of the Proposed Action

This rulemaking action adds a new chapter to title 9 of the California Code of Regulations to include all changes made to federal law and regulations mandated by the 2014 amendment to the Rehabilitation Act of 1973 (29 U.S.C. section 701 et seq.) specific to pre–employment transition services.

The Rehabilitation Act of 1973, as amended, (29 U.S.C. section 701 et seq.) and implementing federal regulations (34 C.F.R. section 361 et seq.) govern the state's vocational rehabilitation program for individuals with disabilities, which is administered by the Department, as the designated state unit in California. (29 U.S.C. section 721(a)(20), 34 C.F.R. section 361(c)(12) and (13), Welf. and Inst. Code, section 19005.1.) As such, the Department is obligated to adopt policies and procedures consistent with the federal laws and regulations governing the vocational rehabilitation program. (29 U.S.C. section 721, 34 C.F.R. section 361.4, Welf. and Inst. Code, sections 19011 and 19012.)

In 2014, at the federal level, the Workforce Innovation Opportunity Act (Pub. L. Number 113–128 (July 22,2014)), referred to as the WIOA, was passed, making widespread changes to the service delivery method and types of vocational rehabilitation services mandated in the Rehabilitation Act of 1973 (29 U.S.C. section 701 et seq.). In 2016, the federal implementing regulations were amended by the United States Department of Education. Consequently, the state adopted the amendments made to the Rehabilitation Act of 1973 by the WIOA in Welfare and Institutions Code section 19011. The Department is adopting rules to govern the provision of pre–employment transition services.

The WIOA presented the addition of pre–employment transition services to be provided to students with disabilities statewide, including students who had not yet applied for, or been determined eligible for vocational rehabilitation services (hereinafter "potentially eligible"). The proposed regulations provide guidance for stakeholders and the public on services being offered to potentially eligible students. The proposed regulations will establish the documents that must be provided and information that must be included in the individual applications. It will also address requirements and expectations of the individual and the Department in the planning, coordination, and closure processes for the provision of pre–employment transition services.

When a state agency's proposed regulation is identical to a previously adopted or amended federal regulation, Government Code section 11346.2(c) allows the agency to make a statement to that effect and to cite where an explanation of the federal regulation can be found to satisfy the Administrative Procedures Act requirements for rulemaking. Explanations of the changes made can be found in United States Department of Education, Rehabilitation Services Administration's description of the final federal regulations implementing the WIOA released in the Federal Register (Vol. 81, Number 161, 55682–55683, August 19, 2016) available at: https://www.federalregister.gov/documents/2016/08/19/2016–15980/state–vocational–rehabilitation–services–program–state–supported–employment–services–program

Objective and Anticipated Benefits of the Proposed Regulation

The broad objective of this regulation is to make the state regulations consistent with current federal law and regulations. This proposed regulatory action will provide staff, applicants, consumers, and other members of the public with a single, comprehensive source of the policies and procedures that are specific to pre–employment transition services and consistent with federal law and regulation. More specifically, the proposed regulations will establish processes that allow eligible students with disabilities and potentially eligible students with disabilities to receive pre–employment transition vocational rehabilitation services from the Department.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review

for other regulations that would relate to or effect the state vocational rehabilitation system, the Department has concluded that these regulations are consistent with any other state regulations that concern California's vocational rehabilitation program.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

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

Significant effect on housing costs: None.

Small Business Determination: The proposed regulations will not affect small businesses because the proposed regulations are identical to the federal regulations already in effect.

Results of the Economic Impact Analysis and Assessment

The Department concludes that it is unlikely that the proposal will (1) eliminate any jobs, (2) create any jobs, (3) create any new businesses, (4) eliminate any existing businesses, and (5) result in the expansion of businesses currently doing business within the state. The Department bases the assessment on the fact that the rulemaking is duplicating and adopting federal regulations that have been in effect since 2016 and have had no detrimental or markedly beneficial economic impact since that time.

Benefits of the Proposed Action: The proposed regulations will benefit the health and welfare of California residents by making the state regulations consistent with federal laws and regulations on the topic which expand the vocational services under federal and state law to students as they transition from high school.

The proposed regulations are not expected to affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Rehabilitation
Office of Legal Affairs and Regulations
Attention: Michele Welz, Regulations Analyst
721 Capitol Mall
Sacramento, California 95814
Telephone: (916) 558–5825
Email: Legal@dor.ca.gov

The backup contact person for these inquiries is:

Daisy Hughes, Attorney IV
Department of Rehabilitation
Office of Legal Affairs and Regulations
721 Capitol Mall
Sacramento, California 95814
Phone: (916) 558–5825
Email: Legal@dor.ca.gov

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

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, Proposed Text of the Regulations, and Initial Statement of Reasons. Please direct requests for copies to the contact person(s) listed above. Please contact Legal@dor.ca.gov or (916) 558–5825 if you wish to make an appointment to review the rulemaking file in person. The documents identified above in the rulemaking file are also on the Department's website at www.dor.ca.gov/Home/ProposedRulemakingandRegs. The Department will have the entire rulemaking file available for inspection

and copying throughout the rulemaking process at its office at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Michele Welz at the address or email indicated above. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they were made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Michele Welz at the address or email above.

REASONABLE ACCOMMODATION STATEMENT

The Department shall provide, upon request, a narrative description of the proposed changes included in the proposed action, in the manner provided by Government Code section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law. Providing the description of proposed changes may require extending the period of public comment for the proposed action for the requesting party.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Proposed Text of the Regulations, and the Initial Statement of Reasons are available on the Department's website at www.dor.ca.gov/Home/ProposedRulemakingandRegs.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

DROUGHT MORTALITY AND FOREST FIRE PREVENTION EXEMPTION AMENDMENTS, 2024

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on July 24, 2024, at its regularly scheduled meeting commencing at 9:00 a.m., in one of the conference rooms on the second floor, RM 1–302, of the Natural Resources Building, 715 P Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to Government Code (GOV) § 11125.1(b), writings that are public records pursuant to GOV § 11125.1(a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

Attendees may also participate via the online meeting platform or telephone conferencing. To participate via the online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on July 23, 2024, to request a link to the meeting. A link to the meeting will also be posted under the "Webinar Information" heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on July 24, 2024.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board

requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attention: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
715 P Street
Sacramento, CA 95814

Written comments may also be delivered via email at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE
(pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)

Authority cited: Sections 4551, 4551.5, 4553, 4584, 4584.1, 4604, 4611 and 4628, Public Resources Code (PRC). Reference: Sections 4512, 4513, 4527, 4527.5, 4584, 4584, 4597, 4628 and 21083.2(b)(3), Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW
(pursuant to § GOV 11346.5(a)(3)(A)–(D))

Pursuant to the Z'berg–Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to "…adopt district forest practice rules… to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources…" and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board "…apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease…."

Catastrophic wildfire in California is a significant threat to life, public health, infrastructure, private property, and natural resources. This threat has grown in recent years and is likely to continue due to factors such as widespread and unprecedented tree mortality, extensive loading of fuels within the wildland, continued population growth, changing land use patterns, drought, and shifts in climatic conditions. Limiting the impacts of wildfires via reducing high fuel loads and dead and downed fuels in Timberland has become an important focus of the management of Timberland (Agee and Skinner 2005).

When the legislature authorized the Board to adopt the exemptions known as the Forest Fire Prevention Exemption and Small Timberland Landowner Exemption under AB 2420 in 2004, the post–harvest canopy closure requirements were required to "comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended." PRC § 4584(j)(1)(G) and (k)(5)(A). The referenced regulation is the "Fuel Hazard Reduction Emergency Rule," the only regulation that the Board approved on June 10, 2004, which adopted standards under 14 CCR § 1052.4 for post–harvest canopy closure. These regulations have been amended to make specific reference to the above exemptions but are still described under the Emergency Notice Timber Operations section. AB 522 (2022) extended the expiration date for the Forest Fire Prevention Exemption to January 1, 2026. On February 19th, 2024, the Small Timberland Owner Exemption expired.

In the 2023 Report to the Board of Forestry and Fire Protection on Newly Effective Forest Practice Rules and Suggested Rule Modification for Consideration the Department raised the issue of lack of acreage limitations for the Drought Mortality Exemption 14 CCR § 1038(d). The Drought Mortality Exemption is designed to remove specific stands of trees that are dying as a result of prolonged drought. The Department noted that a few landowners were filing Drought Mortality Exemption notices over significant acreage, creating exemption notices that couldn't be effectively inspected. The Department also noted that larger exemption notices were associated with less specific identification of stands impacted by drought, and that mapping accuracy was significantly lower. The Department shared a the low, high, and average acreage of existing Drought Mortality Exemption Notices, both under the current 14 CCR § 1038(d) and under the original 14 CCR § 1038(k): the average acreage

was less than 500 acres, and the highest acreages were over 10,000 acres.

In response to the 2023 Call for Regulatory Review, Sierra Pacific Industries submitted a comment on their use of the Forest Fire Prevention Exemption to provide fuel breaks and other fuel reduction activities. They noted that while the exemption was an essential tool for forest management, several aspects of the rule limited its efficacy. Board staff reviewed the statements and found that many were based in statute, but that one, canopy closure requirements, was based in regulation. The issue with canopy closure requirements had also been identified in the Forest Fire Prevention Exemption Monitoring Report (CAL FIRE 2022): particularly in younger, even–aged stands, meeting optimal conditions for fuel reduction was limited by high canopy closure requirements. "Older, more developed stands may benefit from denser canopies to limit overhead incoming light when surface and ladder fuels are reduced adequately, while younger stands ("plantations") may benefit from increased tree spacing to reduce horizontal continuity as the stand matures." The report also notes "Small, young, forest stands likely will always have less closure/cover when spaced at a level close to a more mature and 'fire resilient' stand, while currently acceptable (under the FPRs) closure/cover values in these stands would result in denser, possibly fire–prone stands."

The problems that this proposed rulemaking aims to address are as follows: 1.) that there is no limitation on the size of Drought Mortality Exemptions, allowing a fraction of submissions to be ten times or more larger than the average acreage, limiting the efficacy of inspections and often resulting in less precise mapping of the drought–killed trees; 2.) that the Small Timberland Owner Exemption has expired and is no longer usable but is still extant in the Rules; 3.) that the high canopy closure requirements in the Forest Fire Prevention Exemption limit fuel reduction efforts; and 4.) that the rules do not identify the expiration date for the Forest Fire Prevention Exemption.

The purpose of the proposed action is to 1.) provide an acreage limitation for the Drought Mortality Exemption; 2.) remove the Small Timberland Owner Exemption from the Rules, 3.) update the canopy closure requirements for the Forest Fire Prevention Exemption (and place those requirements within 14 CCR § 1038.3 with all other existing Forest Fire Prevention Exemption regulations instead of within 14 CCR § 1052.4); and 4.) provide the accurate expiration date for the Forest Fire Prevention Exemption.

The effect of the proposed action will be to allow accurate evaluation of compliance with the operational provisions of the Rules on all Drought Mortality Exemption notices; improve the accuracy of the rules with regards to expired regulations and future expiration dates of existing exemptions, and allow more fuel reduction in dense, even–aged stands of trees.

The benefit of the proposed action will be better compliance with the operational provisions of the Rules, leading to better environmental outcomes, provide additional provisions to aid in fuel reduction activities, and to improve the usability and clarity of the Rules.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations.

Otherwise, Board staff evaluated the balance of existing State regulations related to measures concerning conversion of timberland within State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: Chapter 8, Part 2, Division 4, Public Resources Code.

Regulations to which the proposed action was compared: Article 4, Subchapters 1, 4, 5, 6, and 7 Chapter 4, Division 1.5, Title 14, California Code of Regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations concerning conversion of timberland. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS
(pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE
(pursuant to GOV § 11346.5(a)(5))

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT
(pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non–discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the conduct of timber operations and will not result in any direct or indirect costs or savings to any state agency.

HOUSING COSTS
(pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE
(pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS
(pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating forest practice in California that the Board brings to bear on regulatory development.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)–(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). These measures may benefit environmental quality throughout the state through improved clarity regarding conditions and limitations related to Timber Operations which are intended to prevent environmental impact. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS
(pursuant to GOV § 11346.5(a)(9))

Persons or businesses who own more than 500 acres of timberland with significant loss of timber to drought mortality may be affected by this rulemaking by the need to file additional Drought Mortality Exemptions. The impacts of this regulation on these people or businesses is estimated to be between $350–$1,300 in added payments to a Registered Professional Forester. These applicants make up less than 10% of the filings for Drought Mortality Exemptions from 2015–2023.

BUSINESS REPORT
(pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS
(defined in GOV § 11342.610)

The proposed regulation may affect small business, though small businesses, within the meaning of GOV § 11342.610, are not expected to be significantly affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

(1) Is legally required to comply with the regulation;

(2) Is not legally required to enforce the regulation;

(3) Does not derive a benefit from the enforcement of the regulation;

(4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

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

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attention: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460
Telephone: (916) 619–9795

The designated backup person in the event Ms. Van Susteren is not available is Andrew Lawhorn, Forestry Assistant II for the Board of Forestry and Fire Protection. Mr. Lawhorn may be contacted at the above address or phone.

AVAILABILITY STATEMENTS
(pursuant to GOV § 11346.5(a)(16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKE THROUGH~~ to indicate a deletion.

2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.

3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).

4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at: https://bof.fire.ca.gov/regulations/proposed–rule–packages/.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

LESS THAN 3–ACRE CONVERSION EXEMPTION AMENDMENTS, 2024

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on July 24, 2024, at its regularly scheduled meeting commencing at 9:00 a.m., in a conference room on the second floor, RM 2–302, of the Natural Resources Building, 715 P Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to Government Code (GOV) § 11125.1(b), writings that are public records pursuant to GOV § 11125.1(a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

Attendees may also participate via the online meeting platform or telephone conferencing. To participate via the online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on July 23, 2024, to request a link to the meeting. A link to the meeting will also be posted under the "Webinar Information" heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on July 24, 2024.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attention: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
715 P Street
Sacramento, CA 95814

Written comments may also be delivered via email at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE
(pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)

Authority cited: Sections 4551, 4553, 4584, 4584.1, 4604, 4611 and 4628, Public Resources Code (PRC). Reference: Sections 4512, 4513, 4584, 4597, 4628 and 21083.2(b)(3), Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW
(pursuant to GOV 11346.5(a)(3)(A)–(D))

Pursuant to the Z'berg–Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. (Act) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to "…adopt district forest practice rules… to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources…" and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

PRC § 4551.5 requires that the rules and regulations adopted by the Board apply to the conduct of Timber Operations, which is defined within PRC § 4527(a)(1) as "the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and

beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging." The term "commercial purposes," as used within PRC § 4527 is defined by reference to an illustrative, non–exhaustive list of activities within PRC § 4527(a)(2) that include "(A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects."

Additionally, the Act defines "Timberland" within PRC § 4526 as "land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees."

The Act recognizes that the "forest resources and timberlands of the state are among the most valuable of the natural resources of the state," and that "it is the policy of this state to encourage prudent and responsible forest resource management…" (PRC § 4512). The act also recognizes that some landowners who own timberland and forest resources may wish to utilize their land for purposes other than the growing, harvesting, and management of timber. To accommodate these activities, the Act contains provisions for the conversion of timberland through several mechanisms including Article 9 of the Act, and PRC § 4584(g).

PRC § 4584 authorizes the Board to adopt regulations to provide an exemption, from all or portions of the Act, to a person engaging in certain forest management activities specified by the statute.

PRC § 4584(g) allows the Board to adopt regulations exempting an individual from all or portions of the Act when the landowner is engaged in "[t]he one–time conversion of less than 3–acres to a nontimber use," can demonstrate a bona fide intent to convert the land use, and has met certain other criteria. The Board has interpreted and implemented these statutory provisions through the adoption of 14 CCR § 1104.1(a). These regulations were adopted by the Board, pursuant to its statutory authority, to provide landowners relief from certain onerous or burdensome portions of the Forest Practice Rules (FPRs), including Plan preparation and conversion permit requirements, while maintaining environmental quality by requiring Timber Operations to comply with all other applicable provision of the Act and existing regulations.

Since their initial adoption as part of the Forest Practice Rules (Rules) in 1974, the less than 3–acre Conversion Exemption regulations of 14 CCR § 1104.1(a) have been widely utilized by landowners seeking to accomplish various conversion goals, from the construction of residences to improving rangeland resources, and the Department of Forestry and Fire Protection (Department) has received over 15,000 applications statewide to date. The widespread use of the regulations has brought to light various misapplications and other shortcomings which have been addressed through statutory and regulatory amendments to clarify and make specific the process while maintaining the Less than 3–acre Conversion Exemption as a functional tool for forest land management.

In 2018, the legislature passed, and the Governor approved, Senate Bill (SB) 901 (Chapter 626), which broadly reorganized the statutory structure of authorization for many of the authorized regulatory exemptions from the Act provided for in PRC § 4584. Acting in response to these changes, the Board broadly restructured the regulatory exemptions provided by most of PRC § 4584 within 14 CCR §§ 1038, 1038.1, 1038.2, 1038.3, and 1038.4 to address the changes stemming from SB 901 but did not revise those exemptions adopted within 1104.1 which were authorized by PRC § 4854.

In 2023, Governor Newsom signed AB 1526, which amended PRC § 4584(g)(2)(A)(iv) to allow the Board to adopt a waiver of the one–time limitation on less than 3–acre conversion if the one–time limitation would impose an undue hardship.

The problems are that, though the provisions exempting Less than 3–acre Conversion activities have long existed within regulation, their implementation (both by the regulated public and the Department which administers them) has been inconsistent and the regulations themselves require clarification of several features. The current regulations lack clarity; for example, applicants are instructed to obtain a county use permit or provide evidence that no permit is required but are not provided with an avenue to certify their contact person at the relevant county if the county lacks an authorized designee.

Additionally, current less than 3–acre conversion exemption regulations do not address the general requirements for other exemptions (as described under § 1038 et seq.) as relates to environmental and safety protections such as surface fuel treatment, watercourse and lake protections, and erosion control. These regulations do not provide a minimally burdensome ministerial permitting process for conversion activities that may impact natural resources and communities.

Under current regulations, work under the less than 3–acre conversion permit is limited to a single conversion event per contiguous land ownership. This leads to circumstances where landowners must determine the full extent of long–term property development within Timberland during a single permit application, often resulting in immediate removal of all commercial trees within the 3–acre potential developed area or the full extent of their property, whichever is smaller. There is no current option in the rules that allows landowners to retain timberland until development is desired, maximizing the number of acres of timberland lost under this permit process. Landowners who do not predict all of the circumstances for future development of their property, including landowners who become disabled and need to install additional facilities for access to their homes, landowners who need to widen driveways and install turnouts to comply with fire safety requirements, and landowners who wish to build additions, Accessory Dwelling Units (ADUs), gardens, or install fire–safe landscaping features, are either faced with requirements to remove any number of trees that are commercial species using both a Timberland Conversion Permit and a Timber Harvest Plan — the functional equivalent of an Environmental Impact Report — to refrain from property development, or to pursue these developments without appropriate permits.

Some aspects of the current less than 3–acre conversion permit application process require clarity to streamline submission, notification, and review. There is no current requirement for the notification of trustee agencies about potential impacts to natural resources, and mapping instructions do not include requirements to denote the location of areas with potential outsized impact including watercourses and unstable areas.

Furthermore, the applicability of the term "Timberland Conversion" as defined within 14 CCR § 1100(g) to less than 3–acre conversion exemptions on Timber Production Zone (TPZ) land is ambiguous, as the existing regulation states that the existing definition is not applicable to those activities pursuant to 14 CCR § 1104.1.

The purpose of the proposed action is to: 1) revise the regulatory spatial and temporal limitations of the existing less than 3–acre conversion exemption within 1104.1 to provide additional clarity; 2) improve the clarity and efficiency of the regulations related to the regulatory exemptions authorized by PRC § 4584(g) to make them consistent with the regulatory revisions to exemptions following the passage of SB 901 and general purpose of the Act to provide adequate resource protection while maintaining a minimally burdensome ministerial permitting process for those activities; 3) adopt the waiver of the one–time conversion permitted by the passage of AB 1526; 4) establish an option for the waiver of the contiguous land ownership limitation for less than 3–acre conversion exemptions, 5) clarify some aspects of the less than 3–acre exemption submission, notification, and review process; and 6) improve the overall clarity of the regulations and to ensure consistency with the purposes of the Act, particularly those purposes related to resource protection.

The effect of the proposed action is to: 1) provide clarity to applicants on how to complete less than 3–acre conversion exemptions; 2) revise the structure and content of the entirety of 14 CCR § 1104.1 to clarify submission, notification, and operational requirements and limitations for all permitted activities to promote consistency with the statutory changes within SB 901 and elsewhere in the regulations in 14 CCR § 1038 et seq.; 3) provide for waivers of the one–time limitation and contiguous land ownership limitation to use of the less than 3–acre conversion exemption under circumstances that would provide undue hardship to the applicant, while also limiting serial conversion and the loss of timberland, and identify circumstances under which the Department may determine that circumstances qualify as "undue hardship"; 4) update requirements for notification and review processes for relevant agencies for this exemption; and 5) clarify the definition of Timberland Conversion for activities conducted under statutory exemption within PRC § 4584(g) on TPZ lands.

The benefit of the proposed action is the maintenance of a comprehensive regulatory scheme which allows for the clear and consistent application and enforcement of the Forest Practice Rules related to less than 3–acre conversion exemptions. These measures may benefit environmental quality throughout the state through improved clarity regarding prohibitions and limitations related to Timber Operations which are intended to prevent environmental impact and improving mapping and notification requirements. Additionally, the improvement of notification processes will benefit the efficiency of the Department's inspections and enforcement of exemption operations. Further, waiver of the one–time limitation benefits landowners by allowing them to stagger development over time in response to evolving circumstances, up to the existing aggregate maximum of 3–acres, which also has the incidental benefit of retaining Timberland until the landowner is prepared to proceed with minor developments to their parcel. Finally, waiver of the contiguous land ownership limitation benefits holders of large contiguous ownerships by allowing them, to undertake additional less than 3–acre conversion exemptions on additional properties in the same manner as owners of individual parcels, under appropriate circumstances of undue hardship while protecting against risk of serial conversion.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D).** State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations.

Otherwise, Board staff evaluated the balance of existing State regulations related to measures concerning conversion of timberland within State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: Chapter 8, Part 2, Division 4, Public Resources Code.

Regulations to which the proposed action was compared: Article 4, Subchapters 1, 4, 5, 6, and 7 Chapter 4, Division 1.5, Title 14, California Code of Regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations concerning conversion of timberland. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS
(pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE
(pursuant to GOV § 11346.5(a)(5))

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT
(pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non–discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the conduct of timber operations and will not result in any direct or indirect costs or savings to any state agency.

HOUSING COSTS
(pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE
(pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS
(pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating forest practice in California that the Board brings to bear on regulatory development.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)–(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). These measures may benefit environmental quality throughout the state through improved clarity regarding conditions and limitations related to Timber Operations which are intended to prevent environmental impact. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV § 11342.610)

The proposed regulation may affect small business, though small businesses, within the meaning of GOV § 11342.610, are not expected to be significantly affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

(1) Is legally required to comply with the regulation;

(2) Is not legally required to enforce the regulation;

(3) Does not derive a benefit from the enforcement of the regulation;

(4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

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

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attention: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460
Telephone: (916) 619–9795

The designated backup person in the event Ms. Van Susteren is not available is Andrew Lawhorn, Forestry Assistant II for the Board of Forestry and Fire Protection. Mr. Lawhorn may be contacted at the above address or phone.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKE THROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.

3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at: https://bof.fire.ca.gov/regulations/proposed–rule–packages/.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CESA CONSISTENCY DETERMINATION
REQUEST FOR
TENMILE CREEK STREAM BANK
EROSION PREVENTION AND RIPARIAN
RESTORATION PROJECT
2080–2024–011–01
LAYTONVILLE, MENDOCINO COUNTY

The California Department of Fish and Wildlife (CDFW) received a notice on May 23, 2024, that The Eel River Recovery Project proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves construction of fish habitat and stream bank erosion control structures at four locations in the Tenmile Creek watershed in northern Mendocino County. Proposed activities will include, but are not limited to, installing bank erosion prevention structures along stream banks consisting of vegetated boulder wing deflectors interbedded with locally sourced gravel and living willow material. Boulders, logs, and aggregate will be moved and placed using a front load hauler and excavator. Himalayan blackberry will be removed and replaced with native vegetation. The proposed project will occur at three individual sites in the Tenmile Creek watershed, including adjacent riparian areas and downstream of construction sites where impacts to water quality may occur. The three sites include Cahto Hogan (39.676888, –123.486770), Cahto Mueller (39.68280, –123.485987), and Streeter Black Oak Ranch (39.744701, –123.529798).

The National Marine Fisheries Service (NMFS) issued a federal biological opinion (BO)(Service Ref. Number WCRO–2024–00795) in a memorandum to the National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) and the U.S. Army Corps of Engineers on May 16, 2024, which considered the effects of the proposed project on state and federally threatened Southern Oregon/Northern California coast (SONNC) coho salmon evolutionarily significant unit (*Oncorhynchus kisutch*) and federally threatened Northern California steelhead distinct population segment (*Oncorhynchus mykiss irideus*). The summer–run ecotype of this species is also state endangered.

Pursuant to California Fish and Game Code section 2080.1, Eel River Recovery Project is requesting a determination that the Incidental Take Statement (ITS) and its associated BO are consistent with CESA for purposes of the proposed project. If CDFW determines the ITS and associated BO are consistent with CESA for the proposed project, Eel River Recovery Project will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION
NUMBER 2080R–2024–007–03

Project: **Lagunitas Creek Watershed Enhancement Project — Phase 1**

Location: Marin County

Applicant: Marin Municipal Water District

Background

Marin Municipal Water District (Applicant) proposes to restore habitat along and within Lagunitas Creek to improve spawning and juvenile rearing habitat for coho salmon through the addition of large wood, boulders, and gravel. The Lagunitas Creek Watershed Enhancement Project — Phase 1 (Restoration Project) is located within Lagunitas Creek, in the County of Marin, State of California, Assessor's Parcel Numbers 170–120–17, 166–080–09, 166–080–03, and 166–080–02. The upstream end of the Project area is located at latitude 38.004569, longitude –122.708818. The downstream end of the Project area is located approximately 3.2 miles downstream at latitude 38.016429, longitude –122.722774.

Approximately 156 pieces of large wood will be added as part of a series of riffle–pool–wood structures at eight separate sites along the creek, with each site ranging from 190 to 640 feet in length. Each structure will be installed in a configuration that increases trapping, sorting, and storage of gravel. Additionally, across the eight sites a total of 5,900 tons of gravel will be added into the creek, suitable in size for central California coast (CCC) coho salmon (*Oncorhynchus kisutch*) spawning and will address a bedload deficit caused by upstream impoundments. The addition of large wood and gravel to the stream will increase the quantity and quality of CCC coho salmon spawning and rearing habitat.

Access to the site will be from existing roads and trails with the exception of the construction of five temporary access paths through riparian habitat and tributaries to Lagunitas Creek. The stream will be partially dewatered. However, due to difficulties with site access and full dewatering of the stream, for certain Restoration Project activities identified in the document titled *Lagunitas Creek Watershed Enhancement Project Description*, prepared by Environmental Science Associates, dated October 2023, equipment will be used for in–water work. A total of 20 trees have been identified for removal as part of the Restoration Project. Tree species identified for removal include bigleaf maple (*Acer macrophyllum*), California buckeye (*Aesculus californica*), Douglas fir (*Pseudotsuga menziesii*), canyon live oak (*Quercus chrysolepis*), and California bay laurel (*Umbellularia californica*). Post–construction, the streambed will be revegetated with transplanted native species, which may include willows, sedges, and herbaceous plant species that will be planted near the water's edge and may fill in gaps and augment existing habitat. Additionally, all other disturbed areas will be covered with a native duff layer to enhance natural revegetation.

The Restoration Project has received two separate federal take authorizations pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) as described below.

National Marine Fisheries Service (NMFS) Covered Species: CCC Coho Salmon

The Restoration Project activities described above are expected to take[1] CCC coho salmon where those activities take place within Lagunitas Creek. In particular, CCC coho salmon could be taken as a result of fish relocation efforts or lethally taken by partial dewatering of the stream, the placement of large wood and boulders in the stream, and the use of heavy equipment in the stream. CCC coho salmon is designated as an endangered species pursuant to the federal ESA and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish and 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 Restoration Project site and there is occupied habitat for CCC coho salmon within the Restoration Project site. Because of the proximity of the nearest documented CCC coho salmon, dispersal patterns of CCC coho salmon, and the presence of suitable habitat for CCC coho salmon within the Restoration Project site, NMFS determined that CCC coho salmon is reasonably certain to occur within the Restoration Project site and that Restoration Project activities are expected to result in take of CCC coho salmon.

NMFS anticipates that no more than three percent of the CCC coho salmon individuals that are captured will be killed or injured as a result of implementing the proposed Restoration Project and expects higher numbers of CCC coho salmon to occur within the Restoration Project Site after the Restoration Project is complete.

The intent of the Restoration Project is to enhance in–stream habitat complexity through the installation

[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").

of large wood and boulders and gravel augmentation. The Restoration Project will result in improved adult spawning and juvenile rearing habitat for CCC coho salmon. The Restoration Project will result in more large wood used as habitat by CCC coho salmon; improve the trapping, sorting, and storage of gravel in–stream; and add enough gravel of suitable sizes for CCC coho salmon spawning to overcome a bedload deficit of approximately 1,700 tons per year caused by upstream impoundments. NMFS has determined that the long–term effects of Restoration Project actions will be beneficial to CCC coho salmon and are expected to result in increased usage of the area by CCC coho salmon.

Because the Restoration Project is expected to result in take of a species designated as endangered under the federal ESA, the Central Coastal California Office of the National Oceanic and Atmospheric Administration Restoration Center (CCC NOAA RC) and the U.S. Army Corps of Engineers, San Francisco District Regulatory Division (SF Corps) consulted with NMFS pursuant to section 7 of the federal ESA. On June 14, 2016, NMFS issued a programmatic biological opinion (2016 PBO), entitled *Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Program* for restoration projects within the NOAA Restoration Center's Central Coastal California Office jurisdictional area in California (NMFS Consultation Number: WCRO–2015–3755) to the CCC NOAA RC and the SF Corps for eligible restoration projects. On August 3, 2022, NMFS issued an addendum to the 2016 PBO. The 2016 PBO and the addendum are hereinafter referred to collectively as the NMFS PBO. The NMFS PBO describes eligible restoration projects and requires all project applicants operating under the NMFS PBO to comply with terms of the NMFS PBO and its incidental take statement (NMFS ITS). The Applicant submitted a project–specific application dated October 13, 2023, to the CCC NOAA RC for the Restoration Project, a copy of which is attached hereto and incorporated herein as Exhibit 1. The CCC NOAA RC issued a project–specific approval to the Applicant for the Restoration Project on March 2, 2024, a copy of which is attached hereto and incorporated herein as Exhibit 2. The CCC NOAA RC's project–specific approval for the Restoration Project requires the Applicant to comply with the terms of the NMFS ITS, along with the accompanying NMFS PBO, project–specific application, and project–specific approval, when carrying out the Restoration Project.

United States Fish and Wildlife Service (USFWS) Covered Species: California Freshwater Shrimp

The Restoration Project activities described above are expected to take California freshwater shrimp (CFS) (*Syncaris pacifica*) where those activities take place within Lagunitas Creek. In particular, CFS could be taken as a result of relocation efforts; partial dewatering of the stream; removal of overhanging vegetation; the placement of large wood and boulders in the stream; increased instream sediment loads, turbidity, and siltation; and the use of heavy equipment in the stream. CFS is designated as an endangered species pursuant to the federal ESA and an endangered species pursuant to CESA.

CFS individuals are documented as present 0.5 miles downstream from the Restoration Project site and there is suitable habitat for CFS within the Restoration Project site. Because of the proximity of the nearest documented CFS, dispersal patterns of CFS, and the presence of suitable habitat for CFS within the Restoration Project site, USFWS determined that CFS could occur within the Restoration Project site and that Restoration Project activities could result in take of CFS. USFWS anticipates that no more than three percent of captured and relocated individuals of CFS will be killed as a result of implementing the proposed Restoration Project and expects higher numbers of CFS to occur within the Restoration Project Site after the Restoration Project is complete.

The intent of the Restoration Project is to enhance in–stream habitat complexity through the installation of large wood and boulders and augment gravel. The installed large wood will benefit CFS by slowing stream velocity and creating complex habitat elements, as well as promoting the formation of pools. USFWS has determined that the long–term effects of Restoration Project actions will be beneficial to CFS and are expected to result in increased usage of the area by CSF.

Because the Restoration Project is expected to result in take of a species designated as endangered under the federal ESA, the USFWS Region 8, US Army Corps of Engineers Los Angeles, Sacramento, and San Francisco Districts (LA and SF Corps), and National Oceanic and Atmospheric Administration Restoration Center, California (CA NOAA RC) consulted with the USFWS pursuant to section 7 of the federal ESA. On August 31, 2022, the USFWS issued a programmatic biological opinion for eligible restoration projects, entitled *Programmatic Biological and Conference Opinion California Statewide Programmatic Restoration Effort* (Service file Number 2022–0005149–S7) (USFWS PBO), on the Statewide Programmatic Biological Assessment for Restoration: Multi–Agency Implementation of Aquatic, Riparian, Floodplain and Wetland Restoration Projects to Benefit Fish and Wildlife in California (USFWS PBA). The USFWS PBA was developed by the USFWS, the LA and SF Corps, and the CA NOAA RC. The USFWS PBO describes eligible restoration projects, requires

all project applicants operating under the USFWS PBO to comply with terms of the USFWS PBO and its incidental take statement (USFWS ITS), and incorporates additional measures. The USFWS PBO requires the project proponent to request and receive project–specific approval through execution of an ESA Section 7(a)(2) Review Form. The Applicant submitted an ESA Section 7(a)(2) Review Form for the Restoration Project, and USFWS gave its project–specific approval for the Restoration Project by signing that ESA Section 7(a)(2) Review Form on April 18, 2024 (Approved ESA Section 7(a)(2) Review Form). A copy of the Approved ESA Section 7(a)(2) Review Form is attached hereto and incorporated herein as Exhibit 3.

On April 18, 2024, the Director of the Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting two determinations pursuant to Fish and Game Code section 2080.1: first, that the NMFS ITS, along with the accompanying NMFS PBO, project–specific application, and project–specific approval for the Restoration Project, is consistent with CESA for purposes of the Restoration Project and CCC coho salmon; and second, that the USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form for the Restoration Project, is consistent with CESA for purposes of the Restoration Project and CFS. (Cal. Regulatory Notice Register 2024, Number 18–Z, page 523.)

Determination on NMFS PBO and NMFS ITS

Upon evaluation of the Restoration Project, CDFW has determined that the NMFS ITS, along with the accompanying NMFS PBO, project–specific application, and project–specific approval, is consistent with CESA as to the Restoration Project and CCC coho salmon because the measures contained in the NMFS ITS, along with the accompanying NMFS PBO, project–specific application, and project–specific approval, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (a) and (c), for authorizing take of CESA–listed species. Specifically, CDFW finds that: (1) take of CCC coho salmon will be for management purposes; (2) the measures required are roughly proportional in extent to any impact on CCC coho salmon that is caused by the Restoration Project; (3) the measures required maintain the Applicant's project purpose to the greatest extent possible; and (4) the Restoration Project will not jeopardize the continued existence of CCC coho salmon.

Avoidance, Minimization, and Mitigation Measures. The avoidance, minimization, and mitigation measures in the NMFS ITS and NMFS PBO include, but are not limited to, the following:

1) The general construction season shall be from June 15 to October 31. Restoration, construction, and CCC coho salmon relocation and dewatering activities within any wetted or flowing stream channel shall occur only within this period. If precipitation sufficient to produce runoff is forecast to occur while construction is underway, work will cease, and erosion control measures will be put in place sufficient to prevent significant sediment runoff from occurring. Exceptions regarding the construction season will be considered on a case–by–case basis only if justified and if measurable precipitation sufficient to produce runoff is not forecast to occur during any of the above activities, and if approved by the CCC NOAA RC, SF Corps, and NMFS.
2) Dewatering activities that are located in aquatic habitat shall be isolated and all the flowing water upstream shall be temporarily diverted around the work site to maintain downstream flows during construction. Prior to dewatering, the Applicant shall determine the best means to bypass flow through the work area to minimize disturbance to the channel and avoid direct mortality of CCC coho salmon. CCC coho salmon will be excluded from reentering the work area by blocking the stream channel above and below the work area with fine–meshed net or screens. Mesh will be no greater than 1/8–inch diameter. Upstream and downstream screens must be checked daily (prior to, during, and after instream activities) and cleaned of debris to permit free flow of water. Block nets shall be placed and maintained throughout the construction period at the upper and lower extent of the areas where fish will be removed.
3) A Qualified Fisheries Biologist shall perform all seining, electrofishing, and fish relocation activities. The Qualified Fisheries Biologist shall capture and relocate salmonids prior to construction of the water diversion structures (e.g., cofferdams). The Qualified Fisheries Biologist shall note the number of CCC coho salmon observed in the affected area, the number of CCC coho salmon relocated, and the date and time of collection and relocation. The Qualified Fisheries Biologist shall have a minimum of three years of field experience in the identification and capture of salmonids, including juvenile salmonids.
4) All electrofishing will be conducted according to NMFS' Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act (NMFS 2000).
5) Effective erosion control measures shall be in place at all times during construction. Construction shall not begin until all temporary control devices (straw bales with sterile, weed free straw, silt fences, etc.) are in place downslope or down-

stream of the Restoration Project site within the riparian area.

Monitoring and Reporting Measures. The monitoring and reporting measures in the NMFS ITS and NMFS PBO include, but are not limited to, the following:

> Following construction, the Applicant must submit a Post–Construction Implementation Report (Report) to NMFS and the SF Corps. The Report shall include Restoration Project as–built plans and photo documentation of Restoration Project implementation taken before, during, and after construction, utilizing CDFW photo monitoring protocols. For fish relocation activities, the Report should include: all fisheries data collected by a Qualified Fisheries Biologist, including the number of any CCC coho salmon killed or injured during the proposed action; the number and size (in millimeters) of any CCC coho salmon captured and removed; and any unforeseen effects of the proposed action on CCC coho salmon.

Although not a condition of the NMFS PBO, CDFW requests a copy of the Report. CDFW requests that the Report include numbers of CCC salmon relocated and the dates construction occurred.

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

CDFW's determination that the NMFS ITS, along with the accompanying NMFS PBO, project–specific application, and project–specific approval, is consistent with CESA is limited to CCC coho salmon and the Restoration Project.

Determination on USFWS PBO and USFWS ITS

Upon evaluation of the Restoration Project, CDFW has determined that the USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form, is consistent with CESA as to the Restoration Project and CFS because the measures contained in the USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (a) and (c), for authorizing take of CESA–listed species. Specifically, CDFW finds that: (1) take of CFS will be for management purposes; (2) the measures required are roughly proportional in extent to any impact on CFS that is caused by the Restoration Project; (3) the measures required maintain the Applicant's project purpose to the greatest extent possible; and (4) the Restoration Project will not jeopardize the continued existence of CFS.

Avoidance, Minimization, and Mitigation Measures. The avoidance, minimization, and mitigation measures in the USFWS ITS and USFWS PBO include, but are not limited to, the following:

1) A Qualified Biologist will conduct surveys of suitable habitat in the Restoration Project area for presence of CFS in the work area 24 hours prior to any vegetative clearing work, dewatering, or ground–disturbing activities. The Qualified Biologist will determine whether a visual survey of habitat is adequate to confirm the need for CFS capture and relocation, or whether aquatic sampling is needed, and will implement the survey accordingly.
2) No work is permitted during wet weather or where saturated ground conditions exist; if a 60 percent chance of 0.5 inch of rain, or more, within a 24–hour period is forecast, then operations will cease until 24 hours after rain has ceased.
3) New access routes requiring tree removal and grading will be limited to the extent practicable. Where available, access to the work area will use existing ingress or egress points, or work will be performed from the top of the stream banks.

   If CFS must be temporarily excluded from portions of the Restoration Project area during in–water work, a project–specific capture and relocation plan shall be submitted to USFWS for review and approval.
4) The Applicant will minimize the potential for CFS to be entrained during dewatering activities. Pump intakes will be placed away from complex vegetated banks that may contain habitat for CFS. Screens will be used during dewatering, in accordance with measure IWW–6 from the USFWS PBO, and following CDFW (2001) and NMFS (1997) criteria for fry–sized salmonids (e.g., approach velocity will not exceed 0.33 foot per second in streams).
5) Disturbance to low–velocity pool and run habitats occupied by CFS, including all areas with undercut banks or vegetation overhanging into the water, will be avoided to the extent practicable. Disturbance and removal of aquatic vegeta-

tion will be minimized to the extent practicable. There will be no net loss of large woody debris in the active (wetted) channels. Trees may be removed for access routes for construction equipment. If trees need to be removed from other portions of the Restoration Project site, willows greater than 3 inches in diameter at breast height will be left in place as is practicable, and the canopy cover provided by hardwoods or conifers will not be reduced unless necessary for access or other unforeseen circumstance. To the extent practicable when vegetation removal is required, willow crowns and roots will be left in place to allow for post–construction resprouting and reestablishment. Downed trees, stumps, and other habitat features and refuges in aquatic habitats will remain undisturbed as much as possible.

6) The stream bank will be planted with species that will enhance the year–round habitat value of the stream edge by providing adequate shelter, stability, complexity, and food production potential for CFS

Monitoring and Reporting Measures. The monitoring and reporting measures in the USFWS ITS and USFWS PBO include, but are not limited to, the following:

1) Where appropriate and based on Project–specific requirements, a Qualified Biologist will perform site clearance at the beginning of each day and will monitor construction activities throughout the day in, or immediately adjacent to, sensitive resources and/or CFS habitat (including critical habitat as applicable), as necessary. The Qualified Biologist will confirm that all applicable protection measures are implemented during Restoration Project construction. The Qualified Biologist will have the authority to stop any work if they determine that any permit requirement is not fully implemented or if it is necessary to protect CFS, consistent with the information provided in a signed ESA Section 7(a)(2) Review Form by the USFWS Field Office to cover the proposed Restoration Project by the USFWS PBO. The Qualified Biologist will prepare and maintain a biological monitoring log of construction site conditions and observations, which will be kept on file.

2) All revegetated areas will be maintained and monitored for a minimum of two years after restoring duff is complete, or until success criteria are met, to ensure that the revegetation effort is successful. The standard for success is compared to an intact, local reference site. The Applicant will prepare a summary report of the monitoring results and recommendations at the conclusion of each monitoring year.

3) Capture, handling, and monitoring of CFS will be conducted by a Qualified Biologist, with assistance as necessary from another Qualified Biologist, to safely and effectively complete the task. The Qualified Biologist will take the lead on all capture, handling, and monitoring and will at all times be present and in direct supervision of any supporting Qualified Biologist. The Qualified Biologist will report the number of captures, releases, injuries, and mortalities to the USFWS within 30 days of Restoration Project completion.

Although not a condition of the USFWS PBO, CDFW requests a copy of the monitoring reports. CDFW requests that the reports include numbers of Covered Species relocated, dates construction occurred and the success of revegetation and restoration.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Restoration Project for take of CFS, provided the Applicant implements the Restoration Project as described in the USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form, including adherence to all measures contained therein. If there are any substantive changes to the Restoration Project, including changes to the measures, or if USFWS amends or replaces the USFWS ITS, accompanying USFWS PBO, or Approved ESA Section 7(a)(2) Review Form, the Applicant shall be required to obtain a new consistency determination or a CESA take permit for the Restoration Project from CDFW. (See generally Fish and Game Code, §§ 2080.1, 2081, subdivisions (a) and (c).)

In making this determination, CDFW acknowledges that the USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form, authorizes federal ESA take of northern spotted owl (*Strix occidentalis caurina*) in the form of harm or harassment that could occur as a result of the Restoration Project but concludes that mortality or injury to northern spotted owl individuals is unlikely. Northern spotted owl is a species designated as threatened under the federal ESA, and threatened under CESA (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(5)(G).). This species is known to occur within the Restoration Project area. The USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form, requires the Applicant to implement various avoidance and minimization measures for northern spotted owl. In its April 18, 2024, letter to CDFW, the Applicant stated that it is not seeking CESA take coverage for northern spotted owl for the Restoration Project and that the Applicant intends to implement conservation measures pursuant to its federal ESA take coverage for the Restoration Project to avoid incidental CESA take of northern spotted owl.

CDFW's determination that the USFWS ITS, along with the accompanying USFWS PBO and Approved ESA Section 7(a)(2) Review Form, is consistent with CESA is limited to CFS and the Restoration Project.

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NUMBER 1653–2024–136–001–R1

Project: French Creek 2024 River Kilometer 3.2–3.3 Restoration Project

Location: Siskiyou County

Applicant: Betsy Stapleton, Scott River Watershed Council

Background

Project Location: The French Creek 2024, River Kilometer (RKM) 3.2–3.3 Restoration Project (Project) is located on French Creek, a major tributary to the Scott River, approximately 2.1 miles upstream of the confluence with the Scott River, at a property owned by the Nature Conservancy. French Creek supports populations of coho salmon (*Oncorhynchus kisutch*).

Project Description: Scott River Watershed Council (Applicant) proposes to enhance or restore habitat within French Creek to provide a net conservation benefit for coho salmon.

This Project will improve coho salmon spawning and rearing habitat in French Creek, a key tributary of the Scott River by placing in–stream wood structure in the form of engineered log jams (ELJs), and instream spawning gravel with associated riparian vegetation planting. Currently French Creek is characterized by poor spawning substrate and a scarcity of large wood. This Project will continue to expand on previous restoration activities of improved coho salmon spawning and rearing habitat that have occurred upstream and downstream of the Project area.

The Project includes the installation of three ELJs in a 200–foot reach of French Creek. The exact locations of the ELJs are to–be–determined and will be field fit based on stream and habitat conditions. The ELJs will range in size from six to 11 logs with root wads attached. Logs will be buried into the banks and/or anchored against existing trees and will include vertical piles driven into the channel and banks and boulder ballast for stabilization. Following construction, native willow species will be planted in and around the log jams. The constructed ELJs will be semi porous with multiple flow pathways freely allowing adult and juvenile fish passage.

Under existing conditions in French Creek, reeds occur at the margins of the stream with minimal amounts of spawning gravel and are subject to potential dewatering under drought conditions. Spawning gravel augmentation will be performed along the same 200–foot reach of French Creek as the ELJs and will have an area of 200 feet by 20 feet (4,000 square feet) with an average depth of 0.3 to 0.5 feet. Equipment may include excavators, dump trucks, backhoes/bulldozer, pickup trucks, trailers, and hand tools. All heavy equipment will operate from the stream bank and will not enter the wetted channel.

Significant future phases are not anticipated for the Project, however potential adaptive management activities such as; moving logs that may become displaced from the ELJs, adjusting the height of the ELJs, adding additional logs to the ELJs, pounding additional stabilizing piles, supplementing additional spawning gravel, constructing overflow channels, additional riparian planting, invasive weed control, and other similar activities may occur.

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

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) rock boulders, (2) logs (some with rootwads), (3) spawning gravels, and (4) wooden posts.

Project Timeframes: Start date: June 2024

Completion date: June 2029

Work window: September 1st–November 15th

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and improve fish spawning and rearing habitat, the North Coast Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) Waste Discharge Identification (WDID) Number 1A24028WNSI, Electronic Content Management Identification (ECM) PIN Number CW–894121 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Coho salmon.

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

Filled or Excavated Area: Temporary area impacted: 5 acres maximum

Length temporarily impacted: 420 linear feet

Permanent area impacted: 0.5 acres

Length permanently impacted: 0 linear feet

Discharge Volume: 150 tons of rock–boulders, 100 tons of logs (some with rootwads), 150 tons of spawning gravels, and 150 tons of wooden post piles.

Project Location: Latitude 41.399039N. and Longitude –122.86821W.

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

Noticing: on April 30, 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 30, 2024, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Regulatory Notice File Number Z–2024–0430–03) on May 10, 2024. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI. The specific avoidance and minimization requirements are found in the addendum titled: French Creek2024RKM3.2–3.3RestorationProject.doc in the section titled, Best Management Practices and Resource Protection Measures (beginning on page 14), of the addendum.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI, *titled: FrenchCreek2024RKM3.2–3.3RestorationProject.doc in the section titled, Monitoring Plan and Reporting (beginning on page 13), of the addendum.*

Notice of Completion

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

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

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

Project Authorization

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

If there are any substantive changes to the Project or if the Water Board amends or replaces the NOA, the Applicant shall be required to obtain a new consisten-

cy determination from CDFW. (See generally Fish and Game Code, § 1654, subdivision (c).)

Exhibits:

Exhibit 1 — Project-Specific Application from the National Marine Fisheries Service

Exhibit 2 — Project-Specific Application and Approval from the United States Fish and Wildlife Service

Exhibit 3 — USFWS ESA Section 7(a)(2) Review Form

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080–2024–006–05

Project: Zaca Station to Orcutt Drainage Rehabilitation Project

Location: Santa Barbara County

Applicant: California Department of Transportation

Background

The California Department of Transportation (Applicant; Caltrans) proposes to restore 12 culverts, improve lighting at two locations, and update three transportation management systems located on State Route 101 (SR 101) between postmile (PM) 65.0, approximately 1.8 miles north of the intersection of State Route 101 and State Route 154 near the City of Los Alamos, to PM 84.1, approximately 0.2 miles south of the Santa Maria Way undercrossing in the City of Orcutt (Figure 1). The Zaca Station to Orcutt Drainage Rehabilitation Project (Project) includes the following components.

Drainage Culverts

Caltrans proposes to replace or modify 12 drainage culverts, six of which are within the dispersal distance of a known breeding pond for California tiger salamander and will be subject temporary ground disturbing activities of potential habitat. These culverts include location 1 (postmile (PM) 65.3), location 3 (PM 66.69), location 4 (PM 66.8), location 8 (PM 77.03), location 9 (PM 79.08), and location 11 (PM 80.34).

Wildlife Ramp

Caltrans will construct a wildlife access ramp at location 9 (PM 79.08) to assist California tiger salamander through the currently impassable culvert.

Lighting

Caltrans will replace three light poles, install six new light poles, and replace or install underground conduits for the light poles at location 15 (PM 70.7/70.8 and 70.92/71.18) located within dispersal distance of a known breeding pond for California tiger salamander. At location 16 (PM 72.72/72.92), Caltrans will install two new light poles at the offramp, but it is not within dispersal distance of a known breeding pool for California tiger salamander.

For a copy of the Project Location Map, please contact CESA@wildlife.ca.gov

The Project activities described above are expected to incidentally take[1] California tiger salamander (*Ambystoma californiense*) of the Santa Barbara County Distinct Population Segment, where those activities take place within postmiles 65.0 to 84.1. In particular, California tiger salamander could be incidentally taken as a result of crushing during grading and grubbing, poisoning from release of construction contaminants, and entrainment in construction pits and trenches. California tiger salamander is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

California tiger salamander breeding ponds are within dispersal distance of eight of the Project site locations. There is suitable California tiger salamander habitat within and adjacent to the eight site locations. However, much of it has been degraded and fragmented by agricultural conversion and SR 101. Because of the proximity to the nearest documented California tiger salamander breeding pond, dispersal patterns of California tiger salamander, and the presence of suitable habitat within the Project site, the United States Fish and Wildlife Service (Service) determined that California tiger salamander are reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of California tiger salamander.

According to the Service, the Project will result in the temporary loss of 1.52 acres of upland and dispersal California tiger salamander habitat. Construction of the Project will also result in the permanent loss of 0.04 acres of upland California tiger salamander habitat.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, Caltrans consulted with the Service as required by the ESA. On March 29, 2024, the Service issued

[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").

a biological opinion (file Number 2022–0029640–S7–001) (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 May 1, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from Caltrans, 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 California tiger salamander. (Cal. Regulatory Notice Register 2024, Number 20–Z, page 662.)

Determination

CDFW has determined that the ITS, along with its accompanying BO, is consistent with CESA as to the Project and California tiger salamander because the mitigation measures contained in the ITS and accompanying BO, 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 California tiger salamander will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITS and accompanying BO, 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 California tiger salamander. The mitigation measures in the ITS and accompanying BO include and include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

1) Caltrans will designate suitable habitat for California tiger salamander as Special Protection Areas (SPA) in project plans and specifications.
2) Caltrans will implement the following site restrictions to avoid or minimize effects on California tiger salamander and its habitat:
    a. A speed limit of 15 miles per hour (mph) in the project footprint in unpaved areas will be enforced to reduce dust and excessive soil disturbance.
    b. Except when necessary for driver or pedestrian safety, temporary artificial lighting at a project site will be prohibited during the hours of darkness.
    c. Routes and boundaries of roadwork will be clearly marked prior to initiating construction or grading.
    d. Any borrow material will be certified to be non–toxic and weed free.
    e. No pets will be allowed anywhere in the action area during construction.
    f. Caltrans will obtain approval of biologist(s) and monitor(s) prior to Project–related activities that may result in impacts to California tiger salamander from the Service and CDFW (Approved Biologist and Monitor). The Approved Biologist(s) will serve as a representative responsible for communications with state and federal authorities and hold all applicable permits, including an active Scientific Collecting Permit from CDFW that specifically names California tiger salamander surveys as an authorized activity. Any proposed biologists that do not have the required permits and experience will work under the direct supervision of an Approved Biologist who has the required experience. These individuals will be referred to as Monitors. The Approved Biologist or Monitor will be present to conduct surveys prior to and monitor all initial ground or vegetation disturbing activities in areas of potential California tiger salamander habitat to help minimize or avoid impacts. Monitors will oversee project activities after initial ground disturbing activities have been completed, provided the Approved Biologist is readily available should the need arise to relocate a California tiger salamander.
3) Caltrans will submit a relocation plan to the Service and CDFW for approval prior to construction. Approved Biologist(s) who handle California tiger salamander will ensure that their activities do no transmit diseases or pathogens harmful to amphibians, such as chytrid fungus (*Batrachochytrium dendrobatidis*), by following the fieldwork code of practice developed by the Declining Amphibians Task Force.
4) The Approved Biologist(s) will conduct clearance surveys at the beginning of each day and regularly throughout the workday when initial ground disturbing activities that may result in take of California tiger salamander are occurring. The survey will consist of walking the project limits and the area within the project site to determine possible presence of California tiger salamander. The Approved Biologist will investigate all areas that could be used by California tiger salamander for feeding, breeding, sheltering, movement, and other essential behaviors, such as small woody debris, refuse, burrows, etc. If any life stages of California tiger salamander are found and relocation is possible, only the Approved Biologist(s) are authorized to capture and handle California tiger

salamander. In general, activities to be performed by the Approved Biologist(s) are limited once the area of interest is cleared of California tiger salamander and all initial ground disturbance has occurred. After initial ground disturbing activities are completed, the Approved Biologist(s) will periodically (minimum twice per week) visit the site throughout the construction period. During periods of heavy fog/dew, the Approved Biologist(s) will conduct daily clearance surveys to ensure that no California tiger salamander have migrated into the work area. No construction work will be initiated until the Approved Biologist(s) determines that the work area is clear of California tiger salamander.

5) Before any work activities begin, Approved Biologist(s) will conduct a training program for all persons employed or otherwise working on the project site prior to performing any work on–site. Interpretation for non–English speaking workers will be provided. All construction personnel will be provided a fact sheet conveying this information. Upon completion of the program, employees will sign a form stating they attended the program and understand all protection measures. Caltrans will provide the Service and CDFW reasonable access to work areas to verify compliance with all outlined mitigation measures and environmental training. The training will include, at a minimum:
   a. A discussion of the biology of California tiger salamander.
   b. Overview of the habitat within the action area.
   c. Explanation of the covered status and protection under state and federal laws.
   d. Avoidance and minimization measures to be implemented to reduce take of California tiger salamander.
   e. Communication and work stoppage procedures in case a California tiger salamander is observed within the action area.
   f. Explanation of the importance of the environmentally sensitive areas and wildlife exclusion fencing.
6) Caltrans will limit all project–related vehicle and pedestrian access to established roads and staging areas. Caltrans will locate staging areas within previously disturbed areas, clearly delineate them, and they will contain all project–related parking and storage needs.
7) During project activities, Caltrans will properly contain all trash that may attract predators. Caltrans will remove and dispose trash from the work site weekly. Following construction, Caltrans will remove all trash and construction debris from work areas. No hazardous materials will be stored or handled within the Project area. All construction related vegetative debris (e.g., larger brush, tree limbs, tree trunks) will be stored inside a designated stockpile and hauled offsite for disposal weekly.
8) If work will occur during the rainy season (typically October 31, or the first measurable rain over 1 inch — May 31) temporary exclusion fencing will be installed at postmiles 65.30 (location 1), 66.69 (location 3), 66.8 (location 4), 74.32 (location 6), 75.92 (location 7), 77.03 (location 8), 79.08 (location 9), and 80.34 (location 11) to protect California tiger salamander habitat as well as to prevent individuals from dispersing into work areas. Caltrans will submit the design for fencing to the Service and CDFW for approval no less than 30 days prior to commencing the work. During dry conditions, contractors will bury fencing 6 inches into the ground and extended 3 feet above the ground. Caltrans will not use plastic monofilament netting, to avoid potential entanglement of California tiger salamander. Caltrans will continue to maintain the barrier throughout construction. The Approved Biologist(s) will conduct pre–ground disturbance surveys in conjunction with exclusion fence installation. The Approved Biologist(s) or Monitor will inspect the area, ensure it is in working condition, and ensure that workers avoid entering designated habitat.
9) Work within the potential California tiger salamander habitat that is outside of exclusion fencing will not occur when there is over a 70 percent chance of greater than 0.1–inch precipitation (high rainfall) during a 24–hour period. Caltrans will consult the National Weather Service 24–hour forecast daily. If any precipitation equal to or above the threshold occurs, the Approved Biologist(s) will inspect the Project area and all equipment/materials for presence of California tiger salamander prior to construction activities resuming. Construction may continue 24 hours after the rain ceases if no precipitation is forecasted within 24–hours and the Approved Biologist(s) has cleared the area. In the event of an unpredicted rainfall event of 0.1 inch or greater, Caltrans will suspend all work activities. Caltrans may move equipment to a designated staging area until work within California tiger salamanders' potential habitat can resume.
10) Caltrans will restrict all night work to traffic handling (e.g., traffic channelizers) to within the paved travel way.

11) Caltrans will design new and replacement lights to avoid and minimize an increase in illumination into natural habitat areas by using shields, bulbs that produce light at or under 2700 kelvins, or other design modifications.

12) Caltrans will cover all steep–walled holes or trenches more than 6 inches deep with plywood or similar materials at the close of each working day or place one or more escape ramps to prevent animals from becoming inadvertently entrapped during construction. The Approved Biologist(s) will inspect all holes and trenches at the beginning of each workday and before any open features are backfilled. All replacement pipes, culverts, or similar structures stored in the action area overnight will be inspected before they are subsequently moved, capped, and/or buried.

13) Caltrans will install erosion control materials adjacent to riparian features following the recommendations of the Approved Biologist(s). Caltrans will not use any materials potentially harmful to California tiger salamander. Areas of soil stockpiles will be located over 60 feet from all riparian and pond habitat. Caltrans will cover soil stockpiles one day prior to any rain event (precipitation 0.1 inches or greater) to prevent soil erosion. To prevent California tiger salamander from becoming entangled, trapped, or injured, erosion control materials that use plastic or synthetic monofilament netting will not be used within the Project area. This includes products that use photodegradable or biodegradable synthetic netting, which can take several months to decompose. Acceptable materials include natural fibers such as jute, coconut, twine, or other similar fibers. Following site restoration, erosion control materials, such as straw wattles, will not block movement of California tiger salamander.

14) Caltrans will avoid rodent burrows to the maximum extent possible. For rodent burrows that cannot be avoided, Caltrans will conduct burrow surveys and relocation to minimize mortality or injury to California tiger salamander at postmiles 65.30 (location 1), 66.69 (location 3), 66.8 (location 4), 74.32 (location 6), 75.92 (location 7), 77.03 (location 8), 79.08 (location 9), and 80.34 (location 11), between 12 to 30 days prior to beginning ground disturbing activities. All potential refuge features within 1.3 mile of a known or potential breeding pond, including small mammal burrows, in areas subject to ground disturbance will be gently excavated (per Trenham and Shaffer, 2005). Gentle excavation will be conducted by the Approved Biologist(s) or Monitor(s) working in the presence of the Approved Biologist(s). The Approved Biologist(s) will be allowed sufficient time to excavate burrows and to relocate California tiger salamander to a suitable relocation site.

    a. Should any California tiger salamanders be unearthed during burrow excavation, the Approved Biologist(s) will be given discretion as to what extent and where additional burrow excavation efforts should be directed.

    b. Rodent burrows not subject to ground disturbing activities (e.g., grading, disking, excavating, etc.) should be protected using steel plates or plywood to avoid collapsing the burrows. Plates and plywood should only be used on burrows that may be run over by equipment. Plates and plywood will not be left in place for when a rain event (0.1 inched or greater) is forecasted within 24 hours or if work is scheduled to cease for 3 consecutive days during the rainy season.

15) If any California tiger salamander are detected in the work area and an Approved Biologist(s) is not onsite, work activities within 50 feet of the individual that may result in the harm, injury, or death to the animal will cease immediately and the onsite project manager or resident engineer and Approved Biologist(s) will be contacted. The Approved Biologist(s) will determine if the individual should be captured and relocated, or if it can be left alone and monitored without harming or injuring the animal. All Project personnel will be notified of the finding and at no time will work occur within 50 feet of a California tiger salamander without an Approved Biologist(s) present.

16) Prior to the onset of work, Caltrans will have a plan in place for prompt and effective response to any spills. All workers will be informed of the importance of preventing spills and of the appropriate measures to implement if a spill occurs. Caltrans will develop and implement storm–water pollution prevention plans and erosion control Best Management Practices (BMP)s to minimize any wind– or water–related erosion. These provisions will be included in construction contracts for measures to protect sensitive areas and prevent and minimize stormwater and non–storm–water discharges. Protective measures will include, at a minimum:

    a. No discharge of pollutants from vehicles and equipment cleaning is allowed into any storm drains or watercourses.

    b. Vehicle and equipment fueling, and maintenance operations must be at least 60 feet away from aquatic or riparian habitat and

not in a location where a spill may drain directly toward aquatic habitat, except at established commercial gas stations or at an established vehicle maintenance facility. The Monitor will implement the spill response plan to ensure contamination of aquatic or riparian habitat does not occur during such operations.

c. Concrete wastes will be collected in washouts and water from curing operations is to be collected and disposed of properly. Neither will be allowed into watercourses.

d. Spill containment kits will be maintained onsite at all times during construction operations and/or staging or fueling of equipment.

e. Dust control will be implemented and may include the use of water trucks and non–toxic tackifiers (binding agents) to control dust in excavation and fill areas, rocking temporary access road entrances and exits, and covering of temporary stockpiles when weather conditions require it.

f. Graded areas will be protected from erosion using a combination of silt fences, fiber rolls, etc. along toes of slopes or along edges of designated staging areas, and erosion control netting (such as jute or coir) as appropriate on sloped areas.

g. Permanent erosion control measures such as bio–filtration strips and swales to receive storm water discharges from paved roads or other impervious surfaces will be incorporated.

h. All grindings and asphaltic–concrete waste will be stored within previously disturbed areas absent of habitat and at a minimum of 60 feet from any aquatic habitat, culvert, or drainage feature.

17) Caltrans will not apply insecticides or herbicides at the project site during construction where there is the potential for these chemical agents to enter creeks, streams, waterbodies, or uplands that contain habitat for California tiger salamander. Additionally, no rodenticides will be used at the project site during construction or long–term operational maintenance in areas that support suitable upland habitat for California tiger salamander.

18) The Approved Biologist(s) will ensure that the spread or introduction of invasive non–native plant species, via introduction by arriving vehicles, equipment, imported gravel, and other materials, will be avoided. Invasive non–native plants in the action area will be removed and properly disposed of in a manner that will not promote their spread. Areas subject to invasive non–native weed removal or disturbance will be replanted with an appropriate mix of fast–growing native species. Invasive non–native plant species include those identified in the California Invasive Plant Council's (Cal–IPC) Inventory Database, accessible at: www.calipc.org/ip/inventory/index.php.

19) Approved Biologist(s) will permanently remove from within the action area, any individuals of non–native species, such as bullfrogs (*Rana catesbeiana*), crayfish, and centrarchid fishes. These are expected to occur most likely near or around pond features. Caltrans is responsible for ensuring that these activities comply with the California Fish and Game Code.

20) Caltrans will not convert California tiger salamander seasonal breeding aquatic habitat to perennial aquatic breeding habitat. Creating new perennial water bodies in the vicinity of California tiger salamander populations where the ponds could be colonized by predators will also be avoided. Larval mosquito abatement efforts will be avoided in occupied breeding aquatic habitat.

21) Caltrans will return habitat contours to their original configuration at the end of project activities in all areas that have been temporarily disturbed by activities associated with the project, unless Caltrans and the Service determine that it is not feasible, or modification of original contours will benefit California tiger salamander.

22) Caltrans will prevent pathogen contamination in revegetation and restoration using practices published by the Working Group for Phytophthora in Native Habitats.

23) To mitigate for impacts, Caltrans will purchase 2 credits or use 2 previously purchased "advance mitigation" credits from the CDFW and Service–approved La Purisima Conservation Bank located in Santa Barbara County at least 60 days prior to the onset of ground disturbing activities.

Monitoring and Reporting Measures

1) If at any time California tiger salamander is discovered, the onsite Caltrans project manager or resident engineer and Approved Biologist(s) will be notified immediately. Any work activities that could potentially harm California tiger salamander will be stopped until the Approved Biologist(s) arrives to relocate California tiger salamander to the pre–approved location. The Approved Biologist(s) will implement the species observation and handling protocol. The Approved Biologist(s) will record any project related non–compliance with measures outlined in the ITS and accompanying BO and will notify the Service and CDFW in writing within 24 hours.

2) Pursuant to 50 CFR 402.14(i)(3), Caltrans must report the progress of the action and its impact on California tiger salamander to the Service and CDFW, as specified in the ITS.

3) Caltrans must provide a monthly written report to the Service and CDFW that summarizes activities and monitoring conducted pursuant to the ITS and accompanying BO for California tiger salamander.

4) Caltrans must provide a written end of Project report to the Service within 90 days of completing project activities for the California tiger salamander.

5) Caltrans must submit all observations of California tiger salamander into the California Natural Diversity Database (CNDDB) within 90 days of the observation.

Security

As set forth in Avoidance, Minimization and Monitoring Measure number 24 above, prior to the onset of ground disturbing activities, Caltrans will purchase two credits or use two previously purchased "advanced mitigation" credits from the La Purisima Conservation Bank. Because mitigation credits will be purchased/used before activities that could take California tiger salamander commence, a security is not required.

Conclusion

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of California tiger salamander, 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. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the ITS and accompanying BO, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish and Game Code, §§ 2080.1, 2081, subdivisions (b) and (c)).

CDFW's determination that the USFWS ITS and accompanying BO are consistent with CESA is limited to California tiger salamander.

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.

Occupational Safety and Health Standards Board

File # 2024–0517–02

Occupational Exposures to Respirable Crystalline Silica

This emergency rulemaking action by the California Occupational Safety and Health Standards Board readopts, with changes, regulations previously amended in OAL Matter Number 2023–1219–05E relating to occupational exposure to respirable crystalline silica.

Title 08
Amend: 5204
Filed 05/28/2024
Effective 06/27/2024
Agency Contact:
Autumn Gonzalez (916) 274–5721

Department of Insurance

File # 2024–0419–03

CAARP Plan of Operations

This action amends CA 24–01 Introduction, definition of "Forward," and sections 20, 29, and 47, CA 24–02 section 44, and CA 24–03 sections 1 and 27 of the California Automobile Assigned Risk Plan (CAARP) Plan of Operations, which is incorporated by reference in Title 10, section 2498.4.9 of the California Code of Regulations. This action is exempt from the Administrative Procedure Act pursuant to Insurance Code section 11620(c).

Title 10
Amend: 2498.4.9
Filed 05/28/2024
Effective 05/28/2024
Agency Contact: Michael Riordan (415) 538–4226

Department of Resources Recycling and Recovery
File # 2024–0424–02
Covered Electronic Waste Recovery and Recycling Payment Rates

This action amends the payment rates for recovering and recycling covered electronic waste and is submitted to OAL for filing and printing only as exempt from the Administrative Procedure Act pursuant to the exemption for regulations that establish or fix rates (Government Code section 11340.9(g)).

Title 14
Amend: 18660.24, 18660.25, 18660.33, 18660.34
Filed 05/22/2024
Effective 07/01/2024
Agency Contact: Kris Chisholm (916) 322–2404

Department of Food and Agriculture
File # 2024–0411–01
Chestnut Bark Disease

In this regulatory action, the Department of Food and Agriculture is updating outdated scientific names for several species mentioned in its Chestnut Blight (originally called Chestnut Bark Disease) regulations.

Title 03
Amend: 3251
Filed 05/23/2024
Agency Contact: Rachel Avila (916) 698–2947

Department of Justice
File # 2024–0416–01
Research Center Name Change

This action without regulatory effect amends several regulations within title 11 of the California Code of Regulations to revise existing references to the Department of Justice (DOJ) Research Center to reflect its renaming from DOJ Research Center to DOJ Research Services.

Title 11
Amend: 756.2, 820, 828.4, 828.5, 828.6, 962, 964, 966, 967, 968, 999.228
Filed 05/29/2024
Agency Contact: Marlon Martinez (213) 269–6437

Emergency Medical Services Authority
File # 2024–0415–03
Address Change

As a change without regulatory effect, the Emergency Medical Services Authority is adding the missing ZIP Code to their mailing address in the Audit Renewal Paramedic License Application, Form #AR–01.

Title 22
Amend: 100164, 100167
Filed 05/22/2024
Agency Contact:
Ryan McElhinney (916) 969–8826

Board of Accountancy
File # 2024–0415–02
Professional Ethics Exam and Continuing Education

This regular rulemaking action by the California Board of Accountancy adopts section 10.1 and amends sections 10 and 87.1 of Title 16 of the California Code of Regulations regarding the Professional Ethics Examination for Certified Public Accountants and continuing education requirements.

Title 16
Adopt: 10.1
Amend: 10, 87.1
Filed 05/28/2024
Effective 07/01/2024
Agency Contact: Diana Godines (279) 226–4599

Bureau of Automotive Repair
File # 2024–0415–01
Updated Smog Check Equipment and Station Requirements

This action by the Bureau of Automotive Repair updates the California Vehicle Inspection System Data Acquisition Device Specification, which is incorporated by reference, from the existing 2012 version to the last amended October 2023 version.

Title 16
Amend: 3340.17
Filed 05/28/2024
Effective 07/01/2024
Agency Contact: Holly Helsing (916) 403–8600

California Gambling Control Commission
File # 2024–0412–02
Update to Annual Fees

In this regular rulemaking, the California Gambling Control Commission (the "Commission" or "CGCC") is amending the annual fee amounts for Third–Party Proposition Player Services ("TPPPS") business licensees and cardroom business licensees.

Title 04
Amend: 12252, 12252.2, 12368, 12368.2
Filed 05/22/2024
Effective 07/01/2024
Agency Contact: Josh Rosenstein (916) 274–5823

California Student Aid Commission

File # 2024–0410–01

Public Interest Attorney Loan Repayment (PIALR) Program

This action proposes to adopt application requirements, application evaluation guidelines, and employment verification requirements for the Public Interest Attorney Loan Repayment Program.

Title 05
Adopt: 30928, 30929, 30930, 30931, Appendix A
Filed 05/22/2024
Effective 07/01/2024
Agency Contact:
Synequeen Alasa–as (916) 464–6411

Dental Hygiene Board of California

File # 2024–0418–03

Faculty to Student Ratio

This action amends section 1105 by establishing a faculty to student ratio in regulation in order to maintain the current faculty to student ratio.

Title 16
Amend: 1105
Filed 05/29/2024
Effective 07/01/2024
Agency Contact:
Adina Pineschi–Petty (916) 576–5002

Fish and Game Commission

File # 2024–0416–03

Exotic Game Mammals and Wild Pig Validation

In this rulemaking action, the Fish and Game Commission (FGC) regulates the take of exotic game mammals.

Title 14
Adopt: 375, 376, 377, 378, 379
Amend: 250, 251.5, 252, 257.5, 258, 350, 352, 353, 401, 465.5, 679, 708.13
Filed 05/29/2024
Effective 07/01/2024
Agency Contact: David Haug (916) 902–9286

California Tahoe Conservancy

File # 2024–0419–02

Use of Conservancy Land

This action by the California Tahoe Conservancy (Conservancy) amends and adopts regulations relating to the use Conservancy lands, including temporary closures, vehicle parking, recreation, and damage to trees or vegetation.

Title 14
Adopt: 12030, 12131, 12132, 12133
Amend: 12052
Filed 05/29/2024
Effective 07/01/2024
Agency Contact: Casey Strong (530) 307–8006

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.