



# California Regulatory Notice Register

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

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# PROPOSED ACTION ON REGULATIONS

## TITLE 2. OFFICE OF THE STATE PUBLIC DEFENDER

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

NOTICE IS HEREBY GIVEN that the **Office of the State Public Defender**, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on October 22, 2024 and closing on December 16, 2024. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include: (1) Updating the designated positions to include new positions and/or those that have changed since the last conflict-of-interest code, (2) Adding Category 4 disclosure. Employees in this category must report investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source is of the type to receive grants or other funding from or through the Agency, (3) Updating designated positions to include title changes. Each of the following positions is involved as a State employee, at other than a clerical type, in the function of negotiating or signing contracts awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiations, signing or making decisions on contracts executed pursuant to Section 10122 of Public Contract Code.

#### *Executive Office*

1. The State Public Defender is assigned to the new disclosure Category 4.
2. The Deputy Director of Indigent Defense Improvement has been renamed to Director of Indigent Defense Improvement is assigned to the new disclosure Category 4.

3. The Assistant Chief Counsel has been renamed to Attorney, Assistant Chief Counsel is assigned to the disclosure Category 1,3.
4. The Project and Policy Manager has been renamed to Staff Services Manager II (Managerial) — Executive Manager & Equal Employment Opportunity (EEO) Officer is assigned to the disclosure Category 1,3.
5. The addition of the Associate Governmental Program Analyst — Diversity, Equity, Inclusion, and Belonging (DEIB) Analyst is assigned to the disclosure Category 1.

#### *Administration*

1. The addition of the Staff Services Analyst — Fiscal Analyst and the Staff Services Analyst — Contracts and Procurement Analyst is assigned to the disclosure Category 1,3.
2. The Chief Administrator has been renamed and is included in Staff Services Manager (All Levels) is assigned to the disclosure Category 1,3.
3. The Chief, Fiscal & Business Services has been renamed and is included in Staff Services Manager (All Levels) is assigned to the disclosure Category 1,3.
4. The Staff Services Manager I (Oakland) has been renamed and is included in Staff Services Manager (All Levels) is assigned to the disclosure Category 1,3.
5. The deletion of the Office Technician (Sacramento) and (Oakland) positions that have no role in making financial decisions for the department has been removed from the conflict-of-interest code.
6. The Associate Governmental Program Analyst has been removed from the conflict-of-interest code.

#### *Appellate & Indigent Defense Movement*

1. The addition of the Staff Services Manager I — Research Unit Manager is assigned to the disclosure Category 1.
2. The Supervising Deputy State Public Defender, Senior Deputy State Public Defender, and Deputy State Public Defender has been renamed and is included in Attorneys (All Levels) is assigned to the disclosure Category 1.

#### *Information Technology*

1. The Information Technology Supervisor II has been renamed and is included in Information Technology (All Levels) is assigned to the disclosure Category 3.
2. The Information Technology Specialist has been renamed and is included in the Information Tech-

nology (All Levels) is assigned to the disclosure Category 3.

3. The Information Technology Associate has been renamed and is included in the Information Technology (All Levels) is assigned to the disclosure Category 3.

Information of the code amendment is available on the agency’s intranet site under Administration Memo 24–014.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than *December 16, 2024*, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than *December 2, 2024*.

The Office of the State Public Defender has determined that the proposed amendments:

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Lady Diana Gutierrez, Human Resources Analyst by telephone (916) 322–9325, or by email at [LadyDiana.Gutierrez@ospd.ca.gov](mailto:LadyDiana.Gutierrez@ospd.ca.gov).

## TITLE 4. DEPARTMENT OF CANNABIS CONTROL

**Subject Matter of Proposed Regulations:** Cultivation license changes pursuant to Business and Professions Code (BPC) section 26061.5.

**Section Affected:** Title 4, California Code of Regulations (CCR), sections 15020.1, 15020.2, and 15020.3.

**Notice is hereby given** that the Department of Cannabis Control (Department) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Department, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently relat-

ed to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for inspection and copying 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All the proposed text sections are proposed to be added to the California Code of Regulations (CCR), under Division 19 of Title 4.

## PUBLIC HEARING

The Department will hold a virtual public hearing at the following date and time listed below:

**Tuesday, December 17, 2024 10:00 a.m. to 1:00 p.m.**

Attendees may participate via WebEx online meeting platform or telephone conferencing. To participate via WebEx online meeting platform please email Randy Allen at [Randy.Allen@cannabis.ca.gov](mailto:Randy.Allen@cannabis.ca.gov) or (916) 465–9025 by 4:30 p.m. on Monday, December 16, 2024, to request a link to the meeting. The link to the meeting will also be posted on the Department’s website no later than 9:00 a.m. the day of the hearing.

As a reasonable accommodation, limited in-person seating may be available at the hearing in the Department Hearing Room, 2920 Kilgore Road, Rancho Cordova, CA 95670. Attendees must comply with all COVID–19 safety protocols. Please contact Randy Allen at [Randy.Allen@cannabis.ca.gov](mailto:Randy.Allen@cannabis.ca.gov) or (916) 465–9025 by 4:30 p.m. on Monday, December 16, 2024, 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 proceed on the date noted above until all testimony is submitted or 1:00 p.m., whichever is later. At the hearing, any person may present oral or written statements or arguments 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.

## WRITTEN COMMENT PERIOD

Any interested person, or the interested person’s authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Written comments, including those sent by mail or email to the addresses listed below **must be received by the Department at its office by December 17, 2024.**

Submit comments to:

Department of Cannabis Control  
Legal Affairs Division  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
Email: [publiccomment@cannabis.ca.gov](mailto:publiccomment@cannabis.ca.gov)

## AUTHORITY AND REFERENCE

BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal. These regulations will implement, make specific, or reference BPC section 26249.

## INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The purpose of these proposed regulations is to further clarify or make specific sections of Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) pertaining to cultivation license changes pursuant to Senate Bill 833 (Chapter 886, Statutes of 2023; BPC section 26249). The proposed regulations will implement the Department's responsibility to allow for certain cultivation license changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal. The proposed regulations will not only establish a regulatory process for licensees to request such changes, but will clarify what information shall accompany a request for changes to a cultivation license. Moreover, the proposed regulations will inform cultivation licensees of their duties and responsibilities if certain changes are granted by the Department.

### *Existing Law*

Pursuant to MAUCRSA, the Department regulates commercial cannabis license holders in California, including cultivators, retailers, manufacturers, distributors, testing laboratories, microbusinesses, and temporary cannabis events. BPC section 26050, subdivision (a) authorizes the Department to issue 15 different commercial cultivation licenses based on three factors: lighting type used by the cultivator; the size of the cultivation operation; the scope of cultivation activities. BPC section 26050, subdivision (c) further provides that a license issued by the Department shall be valid for no more than 12 months from the date it was issued or renewed. BPC section 26012 authorizes the Department to collect fees in connection with its regulation of such commercial cannabis activities. BPC section 26180 further establishes a scale of application, licensing, and renewal fees intended to cover the costs of administering the Medicinal and Adult-Use Can-

nabis Regulation and Safety Act (MAUCRSA, BPC §§ 26000 et seq.). BPC section 26249 requires the Department to develop and implement a program to provide waivers or deferrals of application fees, licensing fees, and renewal fees. Additionally, BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal.

The present emergency regulations established the framework for the Department's processing of certain cultivation license changes at renewal and were filed with the Office of Administrative Law (OAL) on February 29, 2024. The emergency regulations were approved on March 11, 2024, and filed the same day with the Secretary of State, making them effective immediately. Following the establishment of the Department's emergency regulations, on August 23, 2024, the Department filed an action with OAL to readopt the emergency regulations. The readoption action was approved by OAL on September 3, 2024, and filed with the Secretary State with an effective date of September 9, 2024.

### *Policy Statement*

This rulemaking action would make permanent provisions that enable the Department to comply with the requirements found in BPC section 26061.5. BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes to their licenses, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal. The rulemaking would provide an overview of the definitions that are applicable to the cultivation license change regulations. The proposed regulations would also provide an overview of what constitutes a complete request for cultivation license changes. The proposed regulations would clarify how license fees are calculated depending on the types of cultivation license changes that are requested. Finally, the proposed regulations would identify any requirements or conditions associated with requested cultivation license changes.

### *Regulation Objectives and Anticipated Benefits of the Proposed Regulations*

The broad objectives of these regulations are to further clarify or make specific sections of MAUCRSA pertaining to cultivation license changes pursuant to Senate Bill 833 (Chapter 886, Statutes of 2023). The proposed regulations will implement the Department's responsibility to allow for certain cultivation license changes required by MAUCRSA, while establishing a regulatory process for licensees to request such changes. Accordingly, the proposed regulations will clarify what information shall accompany a

request for changes to a cultivation license, and inform cultivation licensees of their duties and responsibilities if certain changes are granted by the Department.

Under MAUCRSA, there are 15 different cultivation types which are based on the lighting type utilized by the cultivator licensee, the cultivator licensee’s operation size, and the scope of the cultivator licensee’s cultivation activities. A variety of commercial cannabis market forces — including, but not limited to, market volatility, climate, drought, and oversupply — may persuade a cultivation licensee to reduce their operations and thus their cultivation crop yield. However, there has been no pathway for cultivation licensees to change their state license type to a smaller size or cease operations temporarily, without having to reapply for licensure and pay the application and licensing fees associated with submitting a new application for licensure.

Designed to assist cultivators, BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including: change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one–time change to a cultivation license’s date of renewal.

Allowing for cultivation license changes such as changes to the type of size of a cultivation license or placing the cultivation license in inactive status gives cultivator licensees more control over their operations. Processing these types of changes will eliminate the need for cultivation licensees to submit new applications for licensure if certain material changes are made to their cultivation licenses, thereby reducing administrative burdens on cultivation licensees and the Department. Moreover, cultivation licensees will be able to respond to commercial cannabis market fluctuations in a timely manner by adjusting their operations at the time of renewal, while maintaining state commercial cannabis licensure at reduced administrative and financial costs. Allowing such changes at renewal allows cultivators, who may otherwise drop out of the regulated commercial cannabis market due to unforeseen market forces, to retain licensure while operating at a reduced size or ceasing operations temporarily.

Allowing for a one–time change to a cultivation license’s date of renewal provides cultivation licensees more control as to when they submit their renewals and remit their annual licensing fees to the Department. BPC section 26050, subdivision (c) provides that a license issued by the Department shall be valid for up to 12 months from the date it was issued or renewed. The date of license issuance is dependent upon when the Department completes its review of an application for licensure, which could occur at any point during the calendar year. If the date of renewal falls prior to or during harvest, this can be administratively and financially burdensome for a cultivation licensee. This

is largely due to the cyclical nature of commercial cannabis cultivation; the time period leading up to harvest can be labor intensive and often cultivation licensees have less financial capital prior to selling their harvest. In contrast, a cultivation licensee may have more time to process administrative submittals and more financial capital available to pay annual license fees following a harvest. The ability to modify the date of expiration on a license will provide cultivation licensees the opportunity to plan their time and financial resources around the busy harvest season.

Under the proposed regulations, the Department would be able to approve certain changes to active cultivation licenses. The proposed regulations are necessary to provide clear guidance to licensed cultivators and will reduce the risk of confusion regarding how cultivation licensees may request certain changes to their licenses. The proposed regulation will also provide specific guidance regarding the Department’s process for calculating relevant fees. Providing clarity regarding how the Department will process such requests reduces the risk of confusion for licensed cultivators. Moreover, the proposed regulation will provide clarity regarding any duties or conditions if changes are granted by the Department, thereby reducing the risk of confusion for cultivator licensees who request changes to their license. The Department’s processing of these changes for cultivation licensees will not only further the stated intent of MAUCRSA by reducing barriers to maintaining licensure in the regulated commercial cannabis industry, but will aid the state in its goal of reducing the illegal cannabis market by keeping more people in the regulated marketplace.

#### *Section 15020.1. Cultivation License Limited Operations Status.*

BPC section 26061.5 requires the Department to allow cultivation licensees to place a cultivation license in inactive status. Accordingly, the proposed section would provide clarity regarding the Department’s process for evaluating cultivation licensee requests to be placed in Limited Operations Status. The proposed regulations would define the term “Limited Operations Status.” The proposed regulations would clarify prohibitions on cultivation licensees with a Limited Operations Status from maintaining mature plants. The proposed regulations would specify the contents of a request to be placed in Limited Operations Status. The proposed regulations would clarify that the Department will notify the cultivation licensee in writing regarding whether the requirements for the requested Limited Operations Status have been met. The proposed regulations will clarify the duration of the Limited Operations Status. The proposed regulations will clarify that processor licenses and nursery licenses are not eligible to request to be placed on Limited Operations Status. Finally, the proposed regulation will



clarify that cultivation licenses that are changed to a Reduced–Size Cultivation License pursuant to section 15020.2 shall not be placed in Limited Operations Status during the same license term.

*Section 15020.2. Cultivation License Reductions in Size.*

BPC section 26061.5 requires the Department to allow cultivation licensees to change the type of size of a cultivation license. Accordingly, the Department proposes adopting section 15020.2 to provide clarity regarding the Department’s process for evaluating cultivation licensee requests to be changed to a Reduced–Size Cultivation License. The proposed regulations would define the terms “Original Cultivation License” and “Reduced–Size Cultivation License.” The proposed regulations would specify the contents of a request to change to a Reduced–Size Cultivation License. The proposed regulations would clarify that the Department will notify the cultivation licensee in writing regarding whether the requirements for the requested change to a Reduced–Size Cultivation License have been met. The proposed regulations will clarify the duration of the Reduced–Size Cultivation License. The proposed regulation will clarify considerations for provisional licensees who wish to change to a Reduced–Size Cultivation License. The proposed regulations will clarify that processor licenses and nursery licenses are not eligible to request to be placed on Limited Operations Status. Finally, the proposed regulation will clarify that cultivation licenses that have been placed in Limited Operations Status pursuant to section 15020.1 shall not be changed to a Reduced–Size Cultivation License during the same license term.

*Section 15020.3. Modifying Cultivation License Renewal Date.*

BPC section 26061.5 requires the Department to allow cultivation licensees to make certain changes, including making a one–time change to a cultivation license’s date of renewal. Accordingly, the Department proposes adopting section 15020.3 to provide clarity regarding the Department’s process for evaluating cultivation licensee requests for a modified renewal date. The proposed regulations would define the terms “Modified License Term,” “Original Renewal Date,” and “Prorated Daily License Fee.” The proposed regulations would specify the contents of a request to modify a cultivation license’s date of renewal. The proposed regulations would clarify that the Department will notify the cultivation licensee in writing regarding whether the requirements for the requested Limited Operations Status have been met. The proposed regulation would clarify how to calculate the license fee that must be paid for the Modified License Term or the amount that will be refunded to the cultivation licensee by the Department. The proposed regulations will clarify when fees must be paid of the re-

questing cultivation licensee has received a fee deferral. The proposed regulations will clarify that cultivation licensees may request to be placed in Limited Operations Status or change to a Reduced–Size Cultivation License for the duration of the Modified License Term. Additionally, the proposed regulations would clarify that, consistent with BPC section 26061.5, a cultivation licensee may only modify the renewal date of a cultivation license one time.

***Incorporated by Reference***

There are no documents incorporated by reference.

***Evaluation of Inconsistency/Incompatibility with Existing State Regulations:***

As required by Government (Gov.) Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these proposed regulations and has determined that they are not inconsistent or incompatible with existing regulations.

***Evaluation of Inconsistency with Federal Regulation or Statute***

The United States Drug Enforcement Administration (DEA) under the Controlled Substances Act lists cannabis as a Schedule 1 Drug. This means that commercial cannabis activity is illegal under federal law. However, California, through the MAUCRSA and other laws, has decriminalized the cultivation, sale, and possession of cannabis goods for persons aged 21 or older and for medicinal patients.

***Plain English Requirement***

Department staff prepared these proposed regulations pursuant to the standard of clarity provided in Gov. Code section 11349 and the plain English requirements of Gov. Code sections 11342.580 and 11346.2, subsection (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

***Disclosures Regarding the Proposed Action***

The Department has made the following initial determinations:

Local mandate: There will be no local mandate.

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

Any other non–discretionary cost or savings imposed upon local agencies: None.

Cost or savings to any state agency: The Department’s staff workload associated with processing cultivation license changes under these regulations can be absorbed by existing staff. However, the reduced licensing fees associated with entering Limited Operations Status would result in an estimated net reduction in license fees by \$1,914,694.

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

Effect upon housing: The proposed regulations will have no fiscal or other effect upon housing in the state.

**Significant Statewide Adverse Economic Impact Directly Affecting Businesses:** The Department has determined there will not be a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**Small Business Determination:** The proposed regulations may affect small businesses. The proposed regulations would affect approximately 2,953 distinct cultivation businesses. Of these businesses, an unknown number are estimated to meet the criteria for being classified as a small business.

**Cost Impacts on a Representative Private Person or Business:** The proposed regulations would result in net annual cost savings for cultivation businesses from \$2,965 to \$19,875 per year.

## **Economic Impact and Fiscal Impacts**

### ***Business Impact***

The proposed regulation does not impose any new licensure eligibility or operational requirements. Rather, it provides an opportunity for active cultivator licensees to make certain changes to their cultivation licenses, which may result in a reduction in license fees or a one-time adjustment to the license renewal date. Requesting changes to an active cultivation license is voluntary and only requires submission of information to establish eligibility for the requested changes.

The Department initially implemented the cultivation license change program on March 11, 2024. Based on currently available information, the Department believes that there are approximately 2,953 distinct cultivation businesses, each of which may hold multiple licenses, that could be eligible to make changes under the proposed regulations. The businesses impacted by the regulation are cultivation licensees who wish to change the type of size of a cultivation license; place a cultivation license in inactive status; or make a one-time change to a cultivation license's date of renewal.

### ***Estimated Costs to Businesses***

The proposed regulations require cultivation licensees to complete and submit certain information prescribed by the Department to request changes to a cultivation license. Cultivation licensees who use the Limited Operations Status established by statute would be able to pay a reduced license fee at a minor administrative cost. However, cultivators will incur some administrative costs associated with the proposed regulations, including time spent reviewing the new regulations, deciding on what actions to take, and filing the necessary submittals associated with the Limited Operations Status, temporary license size change, and one-time license renewal date change. The total direct cost of administrative and consultant costs incurred

under the proposed regulations amounts to approximately \$1,722,669 per year.

### ***Estimated Benefits of Regulation***

The Department anticipates that the proposed regulations would allow cannabis cultivation licensees who use the Limited Operations Status established by statute to pay a reduced license fee. They also facilitate the statutory requirements to allow cultivators to change license sizes and to change the renewal date of licenses. Between the license fee savings for cultivation licensees entering Limited Operations Status, and the savings associated with renewal date changes, the proposed regulations would amount to direct economic benefits of approximately \$2,892,494.

The proposed regulations could also indirectly result in the expansion of cannabis cultivation businesses by allowing more businesses to stay in the market in the long run, which would facilitate the potential expansion of businesses when market conditions are favorable. The regulatory framework would allow for the retention of licensed cultivators in the licensed cannabis market, while discouraging transitions to the unlicensed market. Thus, the Department's ability to enable certain license changes under BPC section 26061.5 will further the stated intent of MAUCRSA by reducing barriers to maintaining licensure in the regulated commercial cannabis industry.

### ***Results of the Economic Impact Assessment***

The proposed regulations will not have a significant adverse economic impact on businesses.

The proposed regulations would result in a net decrease of 85.7 full-time equivalent (FTE) jobs. Notably, this net reduction is a short-term impact on employment resulting from cultivators no longer producing at a loss during years with poor market conditions. In the long run, more firms would stay in the licensed market and employ workers.

The proposed regulations would neither create nor eliminate businesses.

The proposed regulations would affect approximately 2,953 distinct businesses. These businesses are licensed cannabis cultivators, each of which may have multiple licenses. Of these businesses an unknown number are estimated to meet the criteria for being classified as a small business. The representative costs for a typical business to request cultivation license changes under the proposed regulations would equal \$750 to \$9,713 in the initial year, with annual ongoing costs of \$750 to \$7,813 per year. However, the proposed regulations allow cannabis cultivation licensees who use the limited operations status established by statute to pay a reduced license fee. They also facilitate statute allowing cultivators to change license sizes and to change the renewal date of licenses, amounting to total statewide benefits in approximately \$2,892 million per year.



The proposed regulations could indirectly result in the expansion of cannabis cultivation businesses by allowing more businesses to stay in the market in the long run, which would facilitate more potential expansion of businesses when market conditions are favorable.

The proposed regulations would not affect worker safety.

The proposed regulations would provide benefits to public health and safety by retaining cultivation businesses in the licensed cannabis market, and discouraging transitions to the unlicensed market.

### ***Fiscal Effect on State Government***

The primary fiscal impact of the proposed regulations to the Department is changes in Department revenue from license fees as a result of cultivators that obtain Limited Operations Status. The Department determined that the reduced licensing fees associated with entering Limited Operations Status would result in an estimated net reduction in license fees by \$1,914,694. This includes a reduction in fees due to cultivators that opt to use the Limited Operations Status instead of producing and paying their full license fee, and an increase in fees due to more cultivators staying in the licensed market in the long run. The Department's staff workload associated with processing cultivation license changes under these regulations can be absorbed by existing staff.

### **Consideration of Alternatives**

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

The first alternative considered was not adopting the regulations. This alternative was rejected because BPC section 26061.5 requires the Department to provide cultivation licensees an opportunity to make certain changes, including: changing the type of size of a cultivation license; placing a cultivation license in inactive status; or making a one-time change to the license's renewal date. If the Department does not adopt regulations, there will be no specific process for applicants and licensees to follow to make changes to their existing cultivation licenses.

The second alternative considered was to impose a larger fee to enter Limited Operations Status. This alternative was rejected because it would provide insufficient benefits to cultivators that elect to use the Limited Operations Status. The purpose of the Limited

Operations Status option is to allow cultivators to save costs during times with adverse market conditions. Reducing the fees paid by cultivators using the limited operations by only 50 percent would save cultivators substantially less than under the proposed regulations. While the fiscal impact of this alternative would be less of a reduction in gross revenue from license fee revenue for the Department, it would not encourage as much participation in using the Limited Operations Status.

The final alternative considered was to not impose a fee to enter Limited Operations Status. Although this alternative would maximize benefits for cultivators who wish to enter Limited Operations Status and maximize participation, this alternative was rejected because it would not cover any costs for the Department to conduct activities related to licensing and compliance, which would continue to be necessary for licenses in limited operations.

### **Contact Person**

Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne  
Department of Cannabis Control  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-465-9025  
[Regulations@cannabis.ca.gov](mailto:Regulations@cannabis.ca.gov)

The backup contact person for these inquiries is:

Nicole Niermeyer  
Department of Cannabis Control  
2920 Kilgore Road  
Rancho Cordova, CA 95670  
916-251-4535  
[Nicole.Niermeyer@cannabis.ca.gov](mailto:Nicole.Niermeyer@cannabis.ca.gov)

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

### **Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking File**

The Department will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting the contact person at the address, email or phone number listed above.

### 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 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 Department adopts the regulations, as revised. Please send requests for copies of any modified regulations to the attention of the contact person at the address, email, or phone number indicated above.

The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

### Availability of The Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the contact person at the above address, email, or phone number indicated above.

### Availability of Documents on the Internet

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Department’s website at: <https://cannabis.ca.gov/cannabis-laws/rulemaking/>.

## TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### CONSTRUCTION SAFETY ORDERS SECTION 1635

#### STEEL FRAMED BUILDINGS — FALL PROTECTION AROUND FLOOR OPENINGS AND USE OF CONE AND BAR BARRICADES (CBB)

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

### PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on **December 19, 2024** in the **American River Room** of the **Rancho Cordova City Hall, 2729 Prospect Park Drive Rancho Cordova, CA 95670**, as well as via the following:

- Video-conference at [www.webex.com](http://www.webex.com) (meeting ID 268 984 996)

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

At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

### WRITTEN COMMENT PERIOD

In addition to written or oral comments submitted at the public hearing, written comments may also be submitted to the Board’s office. The written comment period commences on **November 1, 2024**, and closes at 5:00 p.m. on **December 19, 2024**. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments can be submitted as follows:

By mail to Attention: Cone and Bar Rulemaking, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or By email sent to [oshsbulemaking@dir.ca.gov](mailto:oshsbulemaking@dir.ca.gov).

### AUTHORITY AND REFERENCE

Labor Code (LC) section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, LC section 142.3 requires the adoption of occupational safety and health standards that are at least as effective as federal occupational safety and health standards. These proposed regulations will implement, interpret and make specific LC section 142.3.

### INFORMATIVE DIGEST OF PROPOSED ACTION/ POLICY STATEMENT OVERVIEW

On January 17, 2019, the Board adopted a petition decision granting Petition 570 by Western Steel Council and District Council of Ironworkers (Petitioners). The decision directed Board staff to convene an advisory committee to consider the issues raised by the petition.

The Petitioners sought amendments in section 1710, Structural Steel Erection, relating to protections around floor openings and leading edges. The Petitioners proposed to add rules regarding the use of cones and bars as barricades for work involving openings, when work is considered as work in progress. This proposal is intended to address fall hazards due to openings in temporary floors, however, the rulemaking does not address one of the items in the petition, which is the tim-

ing of mid-rail installation in structural steel erection covered by title 8, section 1710.

The Board evaluated the proposed regulations pursuant to Government Code section 11346.5(a)(3)(D) and has determined that the regulations are not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

The proposal differs from the federal standard because the proposal specifically addresses openings where work is in progress.

### ***Anticipated Benefit***

The Federal Occupational Safety and Health Administration (federal OSHA) has long focused on the "Constructions Fatal Four," which are the leading causes of death in the construction industry. Falls are the number one cause of construction related fatalities followed by struck by an object, electrocutions and caught-between.<sup>1</sup>

The proposal will help reduce falls through floor openings in unfinished floors while work is in progress by clarifying what is considered a barricade. According to stakeholders, industry has been using the cone and bar barricades (CBB) along with other materials (such as rope, caution tape, piled materials) for years. The proposal eliminates the use of rope, caution tape and piled materials as a barricade.

The use of CBB as proposed is a safer option because of the rules that are being proposed regarding its use, such as standardizing its set-up, materials used and training. In addition, the cone and bar clearly communicates the presence of the opening and its use coupled with personal fall protection protects the worker inside the CBB.

The specific changes are as follows:

### ***Section 1635***

The Petitioners asked to include the use of CBBs in title 8, section 1710. The CBB system includes multiple interconnected traffic cones and retractable lightweight plastic bars set up and maintained at least 6 feet and no more than 10 feet from a floor opening for the purpose of warning employees of the opening, limit-

ing access to a nearby opening and demarcating areas where personal fall protection is required.

Although the Petitioners proposed amendments to section 1710 to address the hazards due to openings in temporary floors, section 1635 is the more appropriate section to amend. Section 1635 addresses hazards relating to temporary floors of buildings and hazards where construction is still in progress, which includes when the structure does not have a finished or permanent floor.

Subsection (c) applies to steel erection construction where work is in progress and requires floor openings to be uncovered. Currently, subsection (c)(2) permits the use of barricades to protect workers from a fall hazard created by floor openings. However, there are no specifications to describe an acceptable barricade.

The proposed amendments to section 1635 are as follows:

- Subsection (c) was amended to clarify that subsection (c) also applies to newly created floor openings and not just existing floor openings that were once covered. The effect of the proposed change will prevent a misinterpretation of the rules. On construction sites, there are existing deck openings and openings created due to a job change order, design change or to correct a mistake.
- Subsection (c)(2) was amended to delete "floor area adjacent to the" because this vague phrase has been replaced with more specific placement language via the proposed addition of the CBB system explained in subsection (c)(2)(B).

Subsection (c)(2) was also amended to require that openings only be barricaded by guardrails or CBB systems by adding "by guardrails, the cone and bar barricade (CBB) system or" after the phrase "The floor opening shall be barricaded." "Guardrails" was added as a type of permitted barricade for consistency with section 1632. Existing subsection (c)(2) requires floor openings be barricaded, but does not specify the type of materials that can be used to create a barricade. The effect of the proposal is to clarify that no other form or type of barricade is permitted other than guardrails and the CBB system.

The phrase "the floor opening shall" was deleted as a grammatical correction. The effect of this modification is to better describe the need to barricade or cover floor openings to protect workers from fall hazards due to floor openings in structural steel framed building construction.

A Note was added to subsection (c)(2) to direct the reader to the Appendix to section 1635 to illustrate and inform the reader what the CBB system looks like.

- Proposed new subsection (c)(2)(A) adds specifications on the materials for the CBB system.

<sup>1</sup> EHS Daily Advisor. OSHA's "Fatal Four" — Leading Causes of Fatalities in the Workplace. Updated June 3, 2019. <https://ehsdailyadvisor.blr.com/2019/05/oshas-fatal-four-leading-causes-of-fatalities-in-the-workplace/>

The effect is to inform the reader of the required materials.

- Proposed subsection (c)(2)(A)1. contains the specifications of the cones; color, height, weight and labeling requirements. The effect is to inform the employer of the type of cones required and how the cones must be labeled. These specifications are intended to increase visibility, which makes the employees more aware of their surroundings.
- Proposed subsection (c)(2)(A)2. requires the bar, plastic pipe or rigid material be of high visibility color in solid or pattern so that it will be more noticeable to employees working in the area. This is necessary because increased visibility makes the employees more aware of their surroundings and this awareness helps workers identify floor openings and the risk of falls.
- Proposed new subsection (c)(2)(B) contains rules regarding the installation and use of the CBB system. These proposed amendments are necessary to organize the rules regarding use. The materials and the rules listed under subsection (c)(2)(B) are what makes the CBB system effective to help prevent falls.
- Proposed subsection (c)(2)(B)1. requires the cones be firmly connected to each other by bar, plastic pipe or a similar substantial rigid connecting medium to cordon off the area of the fall hazard. If a portion of the CBB system is not interconnected, the disconnected section could be mistaken as an entry point. The effect of the interconnecting cones and bars is to create a physical barricade that clearly demarcates the area of restricted access.

The subsection also specifies the bar be placed 6 inches from the top of the cone, which determines the height of the bar from the floor. Floors in construction sites are uneven, making it necessary to measure from the top of the cone. The effect is to standardize the placement of the cones and height of bars to ensure that the CBB system will be used as intended.

- Proposed subsection (c)(2)(B)2. requires the cones and bars be set up prior to creating the opening and the CBB system to be maintained at least 6 feet from the opening until the task is completed or the opening is covered. The effect of setting up the CBB before creating the opening communicates to the employees the impending presence of a fall hazard as the opening is being created. It also limits access to the area prior to creating a fall hazard.
- Proposed subsection (c)(2)(B)3. requires the CBB system remain in position and maintain its integrity to form a functioning barricade. If the barricade material breaks, loses its form or gets

displaced, it is no longer an effective barricade. The effect of the requirement is to ensure a functioning barricade for the duration of its use.

- Proposed subsection (c)(2)(B)4. requires that employees setting up, walking inside or working inside the demarcated area use personal fall protection. The effect is to ensure the employees are protected from falls while creating the floor opening, removing the cover and lifting up or cutting the decking material. This requirement is consistent with section 1710(m)(2).
- Proposed subsection (c)(2)(B)5. requires that the barricade not be used for falling object protection and prohibits work directly below the floor opening barricaded by the CBB system. This requirement clarifies that the CBB system's purpose is not to prevent objects from falling into the opening and it would not be effective for falling object protection. The CBB system is used to barricade openings when work is in progress. Work near the floor opening has an inherent risk of items such as tools and building materials falling through the opening. Working below an opening where work is in progress presents a hazard to employees due to falling objects, debris and sparks from grinding or welding operations. The effect of the requirement is to prohibit work directly below an opening barricaded by a CBB system and prevent injuries due to falling objects.
- Proposed subsection (c)(2)(B)6. prohibits unauthorized employees from disturbing or entering the area demarcated by the CBB system. The success of the CBB system is dependent on employees respecting the barricade and the effect is to permit only workers who are authorized by the employer to enter the barricaded area.
- Proposed subsection (c)(2)(B)7 requires employers to train their employees on the proper set up and use of the CBB system. The effect is to ensure employees know what is required to keep themselves and their co-workers safe. This subsection also requires the employer to document the training consistent with existing requirements under sections 1509 and 3203(b). The effect is to enhance clarity and improve consistency with existing regulations.
- Subsection (c)(5) is amended to require the placement of the CBB system be verified by a qualified person prior to each shift and following strong wind conditions. The requirement provides the employer the opportunity to correct the placement of the barricade. The effect is to ensure the CBB system is properly set up and has not been displaced to protect workers from fall hazards.

### **Appendix to Section 1635**

The proposal adds a non-mandatory appendix, consisting of: Figure 1635.1. Cone and Bar Barricade (CBB System); Figure 1635-2. CBB System In-Use; and Notes to provide information regarding its use. The effect is to show what a CBB system looks like.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

***Mandate on Local Agencies or School Districts:*** None.

***Cost or Savings to State Agencies:*** None.

The proposal does not consider potential sales tax revenues. Cone and bar systems is being added as one of the ways to protect employees from falling through openings and leading edges; therefore, it would be speculative to consider potential sales tax revenues. Since an employer has the option to use plank and plywood or guardrails, there is no way to determine the number of instances where substitution will be made.

The proposal is not expected to increase the contracting cost for new construction or remodeling of existing buildings. According to stakeholders, industry has been using the CBB for years, so the cost for the CBB would have already been absorbed in prior contracts where CBB was used. So, there will likely be no incremental contracting cost due to purchasing of CBB materials.

According to stakeholders, industry has been using the CBB along with other materials (such as rope, caution tape, piled materials) as a barricade for about 10 years. Although the proposal eliminates the use of caution rope, caution tape, and piled material as barricade, the use of CBB as proposed is safer because of the rules that are being proposed regarding its use, such as standardizing its set-up, materials used and training. The cone and bar system clearly communicates the presence of the floor opening and its use coupled with personal fall protection protects the worker inside the CBB.

The use of CBB also decreases the use of plank and plywood. There is a potential for cost savings through the use of less plank and plywood. However, the exact amount of cost savings is uncertain as the use of CBB is an alternative to the use of plank and plywood for certain circumstances where work is still in progress. Additionally, it is not known how much less plank and plywood would be used if it was not used to cover an opening. The cost savings are dependent on how widespread CBB use becomes. The materials that make up a CBB system are more durable, lightweight and easier to install than plank and plywood, which would result in decreased cost in storage, transportation, labor and materials. Additionally, the amount of substitution is difficult to quantify as it varies per project and the

use of plank and plywood would not be entirely eliminated by the proposal.

Therefore the use of CBB will not have an incremental cost on contracts or to the specialized contractors because industry has been using the CBB as a barricade for years and any potential savings due to the decreased use of plank and plywood is unknown since the amount of substitution is difficult to quantify as it varies by project and it is not known how much less plank and plywood would be used if it was not used to cover an opening.

***Cost to Any Local Government 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 Impact on a Representative Private Person or Business:***

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

***Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Including the Ability of California Businesses to Compete:***

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses/individuals, including the ability of California businesses to compete with businesses in other states.

The proposal would affect 1,513 structural steel contractors, costing these specialized contractors approximately \$14.32 million in materials over the 10-year lifetime of the regulation. However, the exact amount of cost savings is uncertain as the use of CBB systems is one of the permissible means of protecting employees from falls through openings and it is not known how much less plank and plywood would be used if it was not used to cover an opening.

There is no additional cost for personal fall protection because iron workers are already equipped with full body harnesses and lanyards as required by section 1710. There is no additional cost for training because existing regulations like sections 1509, 1510 and 3203 require training and safety meetings. Furthermore, some employers already use CBB systems, but the rules regarding the use are not standardized.

General contractors of multi-story buildings with structural steel skeletons would be affected only to the extent that they need to be familiar with the proposed rules as the controlling employer of the jobsite who has the authority to stop unsafe work and require the structural steel contractor to correct the hazard.



However, the proposal is not expected to increase the contracting cost for new construction or remodeling of existing buildings since, according to stakeholders, industry has been using the CBB for years.

The proposal will not create, eliminate or expand jobs or businesses in California.

**Significant Effect on Housing Costs:** None.

#### SMALL BUSINESS DETERMINATION

The proposal will affect small businesses. The percentage of businesses with less than 100 employees — which are considered small businesses — is approximately 93% of all structural steel contractors.<sup>2</sup>

#### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulation will not have any effect on (1) the creation or elimination of California jobs; (2) the creation of new businesses or the elimination of existing California businesses or (3) the expansion of existing California businesses.

Employers are already required to cover, barricade or provide fall protection to address fall hazards due to floor openings in temporary floors. The proposal prescribes what is considered a barricade and standardizes the use of CBB systems by providing specifications and rules for use.

According to an email communication received from Western Steel Council in 2019, the cost per employer for CBB systems was approximately \$3,000, or equivalent to the purchase of 85 cones and 85 bars. Since then, the cost of cones and bars has increased, which amounts to \$4,984.58 per employer, including sales tax.

According to the California Contractor's State Licensing Board data, there are approximately 1,513 structural steel contractors (C–51 license).<sup>3</sup> When taking the number of contractors (1,513) multiplied by the cost of CBB system materials shown below (\$4,984.58) it equals approximately \$7.54 million. In addition, the annual ongoing replacement cost is approximately \$498.46 per business, representing 10% of the initial cost. Multiplied by 1,513 contractors, this yields \$6.79 million over the 10–year regulation's lifetime. Including the initial cost of \$7.54 million, the total statewide costs that businesses may occur to com-

ply with the regulations over its lifetime are approximately \$14.32 million.

#### Cost of Cones

Number = 85 28–inch cones (estimated as number of cones needed to cover roughly 2,000 square feet).

Cost per cone = \$26.30.<sup>4</sup>

Cost of 85 cones = \$2,235.50.

Total cost of cones with 10.75% tax rate = \$2,475.82.

#### Cost of Bars

Number = 85 (estimated as number of bars needed to cover roughly 2,000 square feet) Cost per bar = \$26.65.<sup>5</sup>

Cost of 85 bars = \$2,265.25.

Total cost of bars with 10.75% tax rate = \$2,508.76.

#### Initial Statewide Cost of CBB Systems

CBB system material cost with 10.75% tax rate = \$4,984.58. Number of structural steel contractors in California = 1,513 Total initial statewide cost of CBB systems = \$7,541,669.54.

#### Ongoing Cost of CBB Systems

Annual ongoing replacement CBB system material cost (10%) = \$498.46 Number of structural steel contractors in California = 1,513.

Annual statewide ongoing cost = \$754,169.98.

Total ongoing cost over 10–year lifetime (\$754,169.98 x 9 years) = \$6,787,529.82.

#### Total Cost of CBB Systems

Total initial statewide cost of CBB systems = \$7,541,669.54 Total ongoing cost over 10–year lifetime = \$6,787,529.82 **Grand total = \$14,329,199.36.**

There is no additional cost in personal fall protection because iron workers are already equipped with full body harnesses and lanyards as required by section 1710. There is no additional cost for training because sections 1509, 1510 and 3203 require training and safety meetings. Furthermore, some employers already use CBB systems, but the rules regarding their use are not standardized.

#### BENEFITS OF THE PROPOSED ACTION

The proposal will help prevent falls through floor openings in unfinished floors of buildings by clarifying what is considered a barricade. According to stakeholders, industry has been using the CBB along with other materials (such as rope, caution tape, piled materials) for years. The proposal eliminates the use of rope, caution tape and piled materials as a barricade. The use of CBB as proposed is a safer option

<sup>2</sup> United States Census Bureau. 2019 SUSB Annual Data Tables by Establishment Industry. U.S. & states, 6–digit NAICS. Released December 2023. <https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>.

<sup>3</sup> California Contractor's State License Board. Publica Data Portal, List of Contractors by Classification. Accessed March 15, 2024. <https://www.cslb.ca.gov/online-services/dataportal/>.

<sup>4</sup> Traffic Safety Store. 28" Traffic Cones. Accessed March 15, 2024. <https://www.trafficsafetystore.com/traffic-cones/orange-economy-28#C28HDS2X>.

<sup>5</sup> Traffic Safety Store. 6' to 10' Traffic Cone Bar by JBC Safety. Accessed March 15, 2024. <https://www.trafficsafetystore.com/traffic-cones/cone-bars-6-10#CB10OW>.



because of the rules that are being proposed regarding its use, such as standardizing its set-up, materials used and training. In addition, the cone and bar clearly communicates the presence of the opening and its use coupled with personal fall protection protects the worker inside the CBB.

The use of the CBB with personal fall protection is an alternative to the use of plank and plywood for certain circumstances where work is still in progress. For example, work where a cover is used would require repeat opening and covering throughout the day.

There is a potential for cost savings by using less plank and plywood. However, the exact amount of cost savings is uncertain, because the use of CBB is an alternative (not mandated) to plank and plywood in certain circumstances where work is still in progress. Additionally, it is not known how much the use of CBB will offset the amount of plank and plywood purchased. The cost savings are dependent on how widespread CBB use becomes. The materials that make up a CBB system are more durable, lightweight and easier to install than plank and plywood, which would result in decreased cost in storage, transportation, labor and materials. Additionally, the amount of substitution is difficult to quantify as it varies per project and the use of plank and plywood would not be entirely eliminated by the proposal.

The use of CBB will not have an incremental cost on contracts or to the specialized contractors because industry has been using the CBB as a barricade for years and any potential savings due to the decreased use of plank and plywood is unknown since the amount of substitution is difficult to quantify as it varies by project and it is not known how much less plank and plywood would be used if it was not used to cover an opening.

The proposed regulation ultimately protects the health and safety of California workers but does not offer a direct benefit to the state's environment.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 than the proposal described in this Notice.

The Board invites interested persons to present statements or arguments with respect to alternatives to

the proposed regulation at the scheduled public hearing or during the written comment period.

The advisory committee discussed the use of delineators (looper tubes) versus cones. During the advisory committee meetings, the advisory committee members stated that cones were more stable and heat resistant than delineators. The cost of a delineator with a 12-pound base is approximately \$23.30.<sup>6</sup> This alternative was rejected because in a high heat environment the delineators melt and fall over, making it an ineffective barricade.

## CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Ruth Ibarra, Staff Services Manager I or the back-up contact person, Amalia Neidhardt, Principal Safety Engineer at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process BY APPOINTMENT Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Appointments can be scheduled via email at [oshbrulemaking@dir.ca.gov](mailto:oshbrulemaking@dir.ca.gov) or by calling (916) 274-5721.

As of the date this Notice of Proposed Action is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, supporting documents, or other information upon which the rulemaking is based.

Copies may be obtained by contacting Autumn Gonzalez or Amalia Neidhardt at the address or telephone number listed above.

## AVAILABILITY OF 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 clear-

<sup>6</sup> Traffic Safety Store. 42" Looper Tube. Accessed March 15, 2024. <https://www.trafficsafetystore.com/delineator-tubes/looper-tube-42#TL42-3>.

ly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Autumn Gonzalez or Amalia Neidhardt at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Autumn Gonzalez or Amalia Neidhardt at the address or telephone number listed above or via the internet.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Board's website at <http://www.dir.ca.gov/oshsb/CBB.html>.

### **TITLE 16. BOARD OF BARBERING AND COSMETOLOGY**

#### **PRE-APPRENTICE TRAINING**

**NOTICE IS HEREBY GIVEN** that the Board of Barbering and Cosmetology (hereafter Board) is proposing to amend California Code of Regulations (CCR), Title 16, Division 9, Section 917 as described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

#### **PUBLIC HEARING**

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

#### **WRITTEN COMMENT PERIOD**

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the

addresses listed under "Contact Person" in this Notice, must be received by the Board at its office no later than **by Monday, December 16, 2024**, or must be received by the Board at the hearing, should one be scheduled.

#### **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by Section 7312 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section 7334, the Board is considering amending section 917 of title 16 of the CCR.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board of Barbering and Cosmetology (Board) licenses and regulates barbers, cosmetologists, manicurists, estheticians, hairstylists, electrologists, barber apprentices, cosmetology apprentices, electrology apprentices, and the establishments where they work in California, totaling over 58,000 establishments and over 581,000 individuals. In addition to licensing individuals and establishments, the Board shares joint oversight over apprenticeship program sponsors along with the Division of Apprenticeship Standards (DAS) and Local Education Agency (LEA) pursuant to Business and Professions Code section 7333. Program sponsors act as the school and point of contact for apprentices and provide related training classes for apprentices.

It is the Board's duty to enforce and administer the Barbering and Cosmetology Act (Chapter 10 (commencing with section 7300) of Division 3 of the Business and Professions Code (BPC)) (Act). The Board is authorized to make rules and regulations in aid or in furtherance of the Act in accordance with the Administrative Procedure Act. (BPC § 7312.)

Prior to 2022, the Act and the Board's accompanying regulation at CCR 917 provided that in addition to meeting other requirements, to become a licensed apprentice, applicants had to complete a minimum of 39 hours of pre-apprentice training in a facility approved by the Board prior to serving the general public. (BPC §§ 7334(c) and (d), as enacted by Stats. 2003, Chapter 788 (SB 362), and existing CCR section 917.)

In the Board's 2018 Sunset Review report, it was noted that problems existed for those attempting to obtain the required pre-apprentice training at schools and the Board proposed statutory changes to this current requirement to allow the Board the option to develop its own online training. Senate Bill 803 (SB 803 — (Chapter 648, Statutes of 2021)) was enacted in 2021 and made changes to BPC section 7334(c) in response to these concerns relevant to pre-apprentice training

for the barbering profession only. In 2023, Assembly Bill (AB) 2196 (Chapter 527, Statutes of 2022) was enacted, which among other things, amended BPC section 7334 and required that pre-apprentice training for *all* applicable apprenticeship programs (barbering, cosmetology, skin care, nail care, or electrology) be “administered by the board for the length of time established by the board” prior to serving the general public.

The Board’s current regulation at CCR 917 does not address the content of pre-apprentice training administered by the Board, how the Board would administer such training or the process and procedures an applicant for apprentice licensure would need to follow to show satisfactory completion of this requirement in accordance with BPC section 7334. This proposal would establish those standards. The Board is also proposing to amend CCR 917 to reduce the current thirty-nine hours of instruction in specified subjects to two hours. The current proposal would retain existing pre-apprentice training subject matter requirements but would further define the meaning of “basic patron protection and sanitation and disinfection procedures” training as specified in the proposal.

The proposed amendments and additions to Section 917 are to specify the minimum hours of pre-apprentice training, the timeframe in which the applicant for licensure as an apprentice shall complete the training, what topics the training will cover, how the applicant shall register and complete the training with the Board, how the Board will administer the training, and what the applicant will be provided with upon completion of the training program. The section is also being amended to make non-substantive, technical changes to adopt subdivision numbers to increase readability and make it easier for subdivisions to be referenced.

#### **Anticipated Benefits of Proposal**

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

The Board has determined that the regulatory proposal will explain how the Board will administer the required pre-apprentice training and what applicants for licensure as an apprentice can expect to receive from completing the online training course. This will help ensure that applicants for licensure as an apprentice intending to enroll in an apprenticeship program do not incur unnecessary costs and expenses charged by apprenticeship sponsors. This will also strengthen protection of public health and welfare and worker safety as the Board can ensure that applicants receive more effective training on the laws and regulations of the Board and basic patron protection and sanitation and disinfection procedures.

This regulatory proposal will benefit the health and welfare of California residents by ensuring that apprentice applicants receive instruction in the laws and regulations of the Board, basic patron protection and sanitation, and disinfection procedures. This would help ensure that individuals are knowledgeable and prepared for their work as a licensee for the protection of the public. This proposal also helps ensure that applicants and do not inadvertently incur unnecessary costs and expenses from sponsors charging for the pre-apprentice training.

This regulatory proposal strengthens worker safety because it provides applicants for licensure as apprentices with current information on sanitation and disinfection procedures as well as resources to other government agencies that may be beneficial to their safety when using hazardous chemicals, such as the California Division of Occupational Safety and Health.

This regulatory proposal does not affect the state’s environment because it does not involve the environment. The regulation only concerns pre-apprentice training and helping ensure that individuals are prepared prior to enrolling in an apprenticeship program.

#### **Evaluation of Consistency and Compatibility with Existing State Regulations**

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

#### **DISCLOSURES REGARDING THIS PROPOSED ACTION FISCAL IMPACT ESTIMATES**

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

The regulations result in one-time costs of approximately \$31,000 to develop and post the online training module on the Board’s website.

Additionally, the Board will be required to pay \$2 per individual to register and take the online training module. The Board estimates up to 2,300 individuals will register per year, which will result in ongoing costs of \$4,600 per year and up to \$46,000 over a ten-year period.

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

**Nondiscretionary Costs/Savings to Local Agencies:** None.

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

**Mandate Imposed on Local Agencies or School Districts:** None.

**Significant Effect on Housing Costs:** None.

## BUSINESS IMPACT ESTIMATES

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

This initial determination is based on the following facts:

The proposed online pre-apprentice training program is offered free of charge to applicants as the Board is not authorized to charge a fee for providing this training to applicants. The requirements that were removed from BPC section 7334 for applicants to take pre-apprenticeship training “in a facility approved by the board” and instead added a new requirement that an applicant take training administered by this Board was legislatively determined by AB 2196 with amendments to BPC section 7334.

The Board notes, applicants are currently required to pay up to \$2,500 per pre-apprenticeship training course, which results in annual costs to individuals (2,300) of approximately \$5.75 million per year with corresponding tuition fee revenues to training providers.

The Board further notes, any economic impacts, including costs (savings) or decreased revenues, are a result of current law and not this regulatory proposal.

This proposal also does not require any significant new expense or reporting, recordkeeping, or compliance measures on the part of businesses.

As a result, the regulations do not result in business impacts to the state. Any economic impacts, including costs, savings, or decreased revenues are a result of current law.

## Cost Impact on Representative Private Person or Business

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

As described under the “Business Impact Estimates” section of this Notice, the proposed online pre-apprentice training program is offered free of charge to applicants. The requirements that were removed from BPC section 7334 for applicants to take pre-apprenticeship training “in a facility approved by the board” and instead added a new requirement that an applicant take training administered by this Board was legislatively determined by AB 2196 with amendments to BPC section 7334.

The Board notes, applicants are currently required to pay up to \$2,500 per pre-apprenticeship training course, which results in annual costs to individ-

uals (2,300) of approximately \$5.75 million per year with corresponding tuition fee revenues to training providers.

The Board further notes, any economic impacts, including costs (savings) or decreased revenues, are a result of current law and not this regulatory proposal.

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

### Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have any impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state,
- 3) the expansion of businesses currently doing business within the state.

### Benefits of Regulation:

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

- Ensuring that apprentice applicants receive instruction in the laws and regulations of the Board, basic patron protection and sanitation, and disinfection procedures in the most effective manner possible. Knowledge of these topics will improve the health and welfare of consumers as this would help ensure that individuals are prepared for their work as a licensee.
- Helping ensure that apprentices do not inadvertently incur unnecessary costs and expenses from sponsors charging for the pre-apprentice training.
- Strengthening worker safety because it provides applicants for licensure as apprentices with current information on sanitation and disinfection procedures as well as resources to other government agencies that may be beneficial to their safety when handling hazardous chemicals, such as the California Division of Occupational Safety and Health.

This regulatory proposal does not affect the state’s environment because it does not involve the environment. The regulation only concerns pre-apprentice training and ensuring that individuals are prepared prior to enrolling in an apprenticeship program.

### Business Reporting Requirements

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

### Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. Although small

businesses owned by licensees of the Board may be impacted the Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

However, to the extent that a licensee owns a small business, the proposed online pre-apprentice training program is offered free of charge to applicants as the Board is not authorized to charge a fee for providing this training to applicants. The requirements that were removed from BPC section 7334 for applicants to take pre-apprenticeship training “in a facility approved by the board” and instead added a new requirement that an applicant take training administered by this Board was legislatively determined by AB 2196 with amendments to BPC section 7334.

The Board notes, applicants are currently required to pay up to \$2,500 per pre-apprenticeship training course, which results in annual costs to individuals (2,300) of approximately \$5.75 million per year with corresponding tuition fee revenues to training providers.

The Board further notes, any economic impacts, including costs (savings) or decreased revenues, are a result of current law and not this regulatory proposal.

### CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments to the Board in writing relevant to the above determinations at 1625 North Market Boulevard., Suite 202, Sacramento, California 95834 during the written comment period, or at the hearing if one is scheduled or requested.

### AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

for public inspection upon request to the contact persons named in this notice.

### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board, at 1625 North Market Boulevard, Suite 202, Sacramento, California 95834.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

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

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

### CONTACT PERSONS

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

Name: Jennifer Huetter  
 Address: 1625 North Market Boulevard, Suite 202  
 Sacramento, CA 95834  
 Telephone Number: (279) 278–5098  
 Fax Number: (916) 928–6810  
 E-Mail Address: [Jennifer.Huetter@dca.ca.gov](mailto:Jennifer.Huetter@dca.ca.gov)

The backup contact person is:



Name: Allison Lee  
Address: 1625 North Market Boulevard, Suite 202  
Sacramento, CA 95834  
Telephone Number: (279) 278–5107  
Fax Number: (916) 928–6810  
E–Mail Address: [Allison.Lee@dca.ca.gov](mailto:Allison.Lee@dca.ca.gov)

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board’s website at [http://www.barbercosmo.ca.gov/laws\\_regs/prop\\_regs.shtml](http://www.barbercosmo.ca.gov/laws_regs/prop_regs.shtml).

### TITLE 16. BOARD OF BEHAVIORAL SCIENCES

#### TELEHEALTH

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

#### PUBLIC HEARING

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

#### WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under **Contact Person** in this Notice, must be received by the Board at its office not later than **by Monday, December 16, 2024**, or must be received by the Board at the hearing, should one be scheduled.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any

interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 4980.60 and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC Sections 2290.5, 4980, 4989.50, 4996, 4999.30 and 4999.82 and Civil Code sections 56 et seq., the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board of Behavioral Sciences (Board) licenses and regulates Licensed Marriage and Family Therapists (LMFTs) (Bus. & Prof. Code (BPC), §§ 4980 et seq.), Licensed Educational Psychologists (LEPs) (BPC §§ 4989.10 et seq.), Licensed Clinical Social Workers (LCSWs) (BPC §§ 4991 et seq.), and Licensed Professional Clinical Counselors (LPCCs) (BPC §§ 4999.10 et seq.).

The Board also registers and regulates individuals gaining supervised experience toward meeting the requirements for licensure. This includes registered Associate Marriage and Family Therapists (AMFTs), Associate Professional Clinical Counselors (APCCs) and Associate Clinical Social Workers (ASWs), and applicants pending registration. While the Board does not register, nor does it directly regulate individuals enrolled in a degree program designed to lead an individual to licensure, the Board’s law for two of its professions does set forth certain provisions applicable to these students, and designates these individuals as “trainees” (Marriage and Family Therapist (MFT) Trainees and Professional Clinical Counselor Trainees).

BPC section 4990.16 mandates that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.



BPC section 4990.20 authorizes the Board in accordance with the Administrative Procedure Act (APA) (Government Code sections 11400 et seq.), to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of BPC Chapters 13, 13.5, 13.7, 14 and 16.

The Board’s current telehealth regulations were adopted in 2016. The practice of psychotherapy via telehealth continues to evolve, and the Board has received feedback from stakeholders that some provisions of the telehealth regulations need to be updated or clarified to avoid inconsistent compliance and enforcement of the requirements in CCR section 1815.5. This proposal would address these concerns by amending existing regulations as follows.

The proposal would be revised to more accurately reflect the status that an individual needs to hold (either as a trainee in accordance with BPC section 2290.5 or a licensee with a current and active license). In addition, existing regulation at subsection (d)(3) simply states that each time a licensee or registrant provides services via telehealth they shall utilize industry best practices for telehealth to ensure both client confidentiality and the security of the communication medium, without further specification. This proposal would address such ambiguity by removing references to “industry best practices” for ensuring the security, privacy and confidentiality of the communication medium. Instead, this proposal would specifically list those laws and regulations that a licensee or registrant would need to comply with to ensure that the technology, method and equipment used to provide services via telehealth comply with existing state and federal laws and regulations regarding privacy, confidentiality and security of information. The proposal would also make non-substantive changes that strike language duplicating statute in subsection (f) of CCR section 1815.5, and make other non-substantive changes.

Aside from non-substantive changes for easier comprehension and consistency of use, including the use of gender-neutral terms (removal of references to his/her and replacing them with “they” or “their”), and correction of punctuation and the addition of further legal citations in the Note section of the regulation, the proposed amendments include the following specific changes.

Existing Section 1815.5(a) specifies that in order to practice via telehealth with a client located in California, a “valid and current” California license or registration is required. This proposal would instead require the license to be “current and active” which is the specific license status that the Board requires to practice with all clients, including those seen via telehealth. In addition, this section does not currently ad-

dress MFT Trainees and Professional Clinical Counselor Trainees who are authorized to provide telehealth services under BPC section 2290.5. These individuals are not registered or licensed by the Board but are instead under the purview of their school while pursuing their qualifying degree. This proposal would add a reference to the statute at BPC section 2290.5 that allows trainees to provide services via telehealth despite not being licensed or registered with the Board.

Section 1815.5(d)(3) currently requires that each time a therapist provides services via telehealth, they must “utilize industry best practices for telehealth to ensure both client confidentiality and the security of the communication medium.” The proposal would instead require a licensee or registrant to ensure that the technology, method, and equipment used to provide services via telehealth comply with applicable state and federal laws and regulations and further specify the laws which contain the requirements for confidentiality, privacy and security; specifically, the Confidentiality of Medical Information Act (CMIA), the Health Insurance Portability and Accountability Act (HIPAA) and regulations promulgated under HIPAA by the U.S. Department of Health and Human Services.

The Board proposes to repeal subsection (f) of existing CCR 1815.5 as duplicative of existing law. “Failure to maintain confidentiality” is already listed as unprofessional conduct in statute for each of the Board’s license types (BPC sections 4982(m), 4989.54(q), 4992.3(n) and 4999.90(m)). In addition, BPC sections 4982(e), 4989.54(f), 4992.3(f) and 4999.90(e) state that unprofessional conduct includes “Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.” As a result, this proposal would repeal subsection (f) of section 1815.5, which specifies that “Failure to comply with these provisions shall be considered unprofessional conduct.”

## ANTICIPATED BENEFITS OF PROPOSAL

The objectives of the amendments and anticipated benefits in this regulatory proposal include the following:

- Increase clarity and conciseness in regulation by removing unnecessary language that duplicates statute; by clarifying the license status necessary to provide telehealth services; and resolve ambiguity in regulation regarding the meaning of industry best practices.
- Increase awareness of and compliance with telehealth-related confidentiality, privacy and security laws among Board licensees, which strengthens confidentiality and privacy for consumers of mental health services.

***Evaluation of Consistency and Compatibility with Existing State Regulations***

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

DISCLOSURES REGARDING  
THIS PROPOSED ACTION

***Fiscal Impact Estimates***

***Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:*** The proposed regulations do not result in a fiscal impact to the state. This proposal would merely provide clarity of existing law and strike regulations that duplicate existing statute. The Board does not anticipate additional workload or costs from the proposed regulations. Any workload or costs of implementation are a result of current law. There is no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency.

***Nondiscretionary Costs/Savings to Local Agencies:*** None.

***Local Mandate:*** None.

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

***Significant Effect on Housing Costs:*** None.

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

The Board indicates this regulation will not affect businesses. This proposal would only impact licensees or registrants who provide services via telehealth. However, the Board believes the impact to individual licensees or registrants would not be significant for the following reasons:

- Striking regulations that duplicate statute has no adverse economic effect because the statutory provisions will continue to be in effect.
- Adding references to the CMIA and HIPAA has no adverse economic effect because these laws already apply to Board licensees and registrants providing services under telehealth pursuant to these state and federal laws.

The rulemaking file includes the facts, documents, and other evidence which supports this determination.

***Cost Impact on Representative Private Person or Business:*** The Board is not aware of any cost im-

pacts that are representative private person or business would necessarily incur in reasonable compliance with the proposed action for the reasons set forth above in the “Business Impact Estimates” section.

***Effect on Small Business:*** The Board has determined that the proposed regulations will not have an impact on small businesses. This is because striking language duplicated in statute has no effect on small businesses as described in the “Business Impact Estimate” section above. In addition, the CMIA and HIPAA already apply to Board licensees.

RESULTS OF ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS

***Impact on Jobs / Businesses:*** The Board has determined that the proposed regulatory action would not have a significant statewide adverse economic on the following:

- 1) The creation or elimination of jobs within the state,
- 2) The creation of new businesses or the elimination of existing businesses within the state, or,
- 3) The expansion of businesses currently doing business within the state.

This proposal would not have any of the above–referenced impacts as explained in the “Business Impact Estimates” section of this notice.

***Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:*** The Board has determined that this regulatory proposal will benefit the health and welfare of California residents, as it may increase awareness of the telehealth requirements of CMIA and HIPAA among Board licensees and increase compliance, which strengthens confidentiality and privacy for consumers of mental health services by potentially leading to fewer violations of client confidentiality.

The proposal will have no effect on worker safety or the State’s environment because it does not relate to worker safety or the environment.

***Business Reporting Requirements:*** This proposed regulation does not require businesses to file a report with the Board.

CONSIDERATION OF ALTERNATIVES

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

vate persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the board in writing relevant to the above determinations at 1625 North Market Blvd, Suite S200, Sacramento CA 95834 during the written comment period, or at the hearing if one is scheduled or requested.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND RULEMAKING FILE

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

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person listed below, or by accessing the Board's website at [https://www.bbs.ca.gov/about/law\\_reg.html](https://www.bbs.ca.gov/about/law_reg.html).

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

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

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

#### CONTACT PERSON

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

Name: Christy Berger  
Address: Board of Behavioral Sciences  
1625 North Market Boulevard, Suite S200  
Sacramento CA 95834  
Telephone: 916–574–7995  
Fax: 916–574–8625  
Email: [BBS.Rulemaking@dca.ca.gov](mailto:BBS.Rulemaking@dca.ca.gov)

The backup contact person is:

Name: Rosanne Helms  
Address: Board of Behavioral Sciences  
1625 North Market Boulevard, Suite S200  
Sacramento CA 95834  
Telephone: 916–574–7939  
Fax: 916–574–8625  
Email: [Rosanne.Helms@dca.ca.gov](mailto:Rosanne.Helms@dca.ca.gov)

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at: [https://www.bbs.ca.gov/about/law\\_reg.html](https://www.bbs.ca.gov/about/law_reg.html).

### TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

#### OMNIBUS CLEAN UP OF RELATED REGULATIONS

**NOTICE IS HEREBY GIVEN** that the Bureau of Automotive Repair (“Bureau” or “BAR”) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

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

#### WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be **received by the Bureau at its office no later than Monday, December 16, 2024**, or must be received by the Bureau at the hearing, should one be scheduled.

## AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 9882, 9884, 9884.4, 9884.7, 9884.9, 9884.19, 9887.1, and 9888.5 of the Business and Professions Code (BPC) and sections 44002 and 40034 of the Health and Safety Code (HSC), the Bureau is considering the following change to the California Code of Regulations (CCR): amending sections 3303, 3312.1, 3312.1.1, 3340.10, 3351, 3351.1, and 3395.8 of Title 16, Division 33, Chapter 1 of the CCR.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Consumer Affairs (DCA), Bureau of Automotive Repair is the state agency charged with licensing automotive repair dealers (ARDs), smog check stations, STAR stations, brake and lamp adjusting stations, and their respective inspectors, repair technicians, and adjusters. The mission of both DCA and the Bureau, and therefore the main purpose of any regulatory proposal, is consumer protection, which includes ensuring “all Californians are informed, empowered, and protected.” (DCA, About Us <[https://www.dca.ca.gov/about\\_us/index.shtml](https://www.dca.ca.gov/about_us/index.shtml)> [as of Aug. 31, 2023])

In 2021, the Legislature passed Assembly Bill 471 (“AB 471”; Low, Chapter 372, Statutes of 2021), which modified the BPC (adding new sections, and amending or repealing existing sections), requiring the Bureau to develop regulations implementing a new vehicle safety systems inspection program. This new program “promote[s] the safe and uniform installation, maintenance, and servicing of vehicle safety systems and components.” (BPC section 9888.5.) The program includes inspection criteria and standards for specific vehicle safety systems and components, and the issuance of vehicle safety systems inspection licenses to stations and technicians to conduct inspections of, and repair, vehicle safety systems. Additionally, AB 471 modified BPC section 9888.5(d) to include that these vehicle safety systems inspection licenses replace licenses issued pursuant to existing provisions — governing the licensure of brake and lamp adjusting stations and adjusters — that the bill repealed on the effective date of the new regulations. Modifications to the current regulations are necessary to comply with the requirements of AB 471 and the BPC.

In 2023, the Legislature passed Assembly Bill 1263 (“AB 1263”; Berman, Chapter 681, Statutes of 2023), which set provisions that allow to Bureau to sunset the outdated brake and lamp programs within six months of the new regulations’ effective date. As a result of these provisions, several effected sections regarding current brake and lamp regulations will be-

come inoperative six months after the Vehicle Safety Systems Inspection Program regulations take effect. However, within those sunseting sections exist certain definitions that will still be applicable to the program and therefore need to be added back into regulations. Additionally, several sections that reference these definition sections will need to be amended to cross-reference the new sections where these definitions will be located.

Also, with updates to automotive repair dealer and vehicle safety system applications, it has become necessary to codify a definition for Responsible Managing Employee (RME), a term which has longstanding and critical use within the Bureau and across the industry.

Lastly, references to now–obsolete Health and Safety Code sections are being removed from regulation text.

## Anticipated Benefits of Proposal

By implementing these regulatory changes, the Bureau will reinstate definitions that are in CCR sections that will become inoperative six months after the effective date of the Vehicle Safety Systems Inspection program regulations, adding the definitions into existing and current regulation sections in order to provide definitions for terms used throughout BAR’s regulations. The Bureau will also add another definition for a term used in applications, and update cross-references (including removing references to outdated Health and Safety Code sections).

## Evaluation of Consistency and Compatibility with Existing State Regulations

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

## INCORPORATION BY REFERENCE

None.

## DISCLOSURES REGARDING THIS PROPOSED ACTION

## FISCAL IMPACT ESTIMATES

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

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

The amendments are intended to re–implement and clarify existing provisions related to the Vehicle Safety Systems Inspection Program, as specified.

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

**Nondiscretionary Costs/Savings to Local Agencies:** None.

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

**Mandate Imposed on Local Agencies or School Districts:** None

**Significant Effect on Housing Costs:** None.

## BUSINESS IMPACT ESTIMATES

The Bureau has determined this regulatory proposal would have no significant statewide adverse economic impact directly affecting businesses, including small businesses and the ability of California businesses to compete with businesses in other states.

### Cost Impact on Representative Private Person or Business

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

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Bureau has determined this regulatory proposal would have no significant statewide adverse economic impact directly affecting businesses, including small businesses and the ability of California businesses to compete with businesses in other states.

### Impact on Jobs/Businesses

This regulatory proposal will not create or eliminate jobs within the State of California because it reinstates definitions, adds another definition, and updates cross–references.

This regulatory proposal will not create new business or eliminate existing businesses within the State of California because it reinstates definitions, adds another definition, and updates cross–references.

This regulatory proposal will not affect the expansion of businesses currently doing business within the State of California because it reinstates definitions, adds another definition, and updates cross–references.

### Benefits of Regulation

This regulatory proposal does not affect the health and welfare of California residents, worker safety, or the state’s environment as this proposal is not related to any of those issues.

By implementing these regulatory changes, the Bureau will reinstate definitions that are in CCR sections that will become inoperative six months after the effective date of the Vehicle Safety Systems Inspection program regulations, putting them into existing and

current regulation sections in order to provide definitions for terms used throughout BAR’s regulations. The Bureau will also add another definition for a term used in applications, and update cross–references (including removing references to outdated Health and Safety Code sections).

### Business Reporting Requirements

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

### Effect on Small Business

The Bureau has determined this regulatory proposal would have no effect on small businesses. This proposal simply reinstates definitions into current definitions CCR from sections that will become inoperative upon the effective date of the Vehicle Safety Systems Inspection Program regulations, adds another definition for a term used in applications, and update cross–references (including removing references to outdated Health and Safety Code sections).

## CONSIDERATION OF ALTERNATIVES

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

Any interested person may submit comments — relevant to the above determinations — in writing to the Bureau at 10949 North Mather Boulevard, Rancho Cordova, CA 95670 during the written comment period, or at the hearing if one is scheduled or requested.

## AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be ob-

tained upon request from the Bureau at 10949 North Mather Boulevard, Rancho Cordova, CA 95670.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

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

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

#### CONTACT PERSONS

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

Name: Kayla Shelton

Address: Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670

Telephone Number: 279–260–2392

E–Mail Address: [kayla.shelton@dca.ca.gov](mailto:kayla.shelton@dca.ca.gov)

The backup contact person is:

Name: Bill Thomas

Address: Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670

Telephone Number: 279–260–2403

E–Mail Address: [bill.thomas@dca.ca.gov](mailto:bill.thomas@dca.ca.gov)

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons, when completed, and modified text, if any, can be accessed through the Bureau’s website at <https://bar.ca.gov/regulatory-actions>.

### TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

#### READINESS MONITOR LIMITS

**NOTICE IS HEREBY GIVEN** that the Bureau of Automotive Repair (Bureau) is proposing to take the rulemaking action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

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

#### WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under “Contact Person” in this Notice, must be received by the Bureau at its office by **Monday, December 16, 2024**, or must be received by the Bureau at the hearing, should one be scheduled.

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) section 9882 and Health and Safety Code (HSC) sections 44001.5, 44002, 44003, 44013, and 44036, and to implement, interpret, and make specific BPC sections 9884.8 and 9884.9 and HSC sections 39032.5, 44002, 44003, 44005, 44010, 44011, 44013, 44014, 44015, 44032, 44033, 44036, 44037.1 and 44062.1, the Bureau is proposing to adopt the following changes to California Code of Regulations Title 16, Division 33, Chapter 1, Article 5.5.



## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Consumer Affairs, Bureau of Automotive Repair (BAR or Bureau) is the state agency charged with implementation and administration of the Smog Check Program. The Smog Check Program is designed to reduce air pollution from mobile vehicles, by requiring these vehicles to meet specific emission inspection standards.

As part of the Smog Check Program, the Bureau accesses the On-Board Diagnostic system (OBD–II) on vehicles that are so equipped. This system monitors the performance of the vehicle’s emission controls to determine when a potential issue exists and alerts the motorist when repairs are needed. If the OBD–II system detects a problem with the vehicle, that will cause the vehicle to fail its Smog Check inspection.

Before the OBD–II system can make that determination, however, it must run a series of self-checks. If the self-checks are not-complete, the computer cannot render a decision as to whether the vehicle is functioning properly. This is where readiness monitors factor in. A readiness monitor for a particular emissions control system is set once the tests necessary to evaluate that system have been run. Since some readiness monitors take longer to set than others, and the amount of time required varies between vehicles, there were concerns at both the Air Resources Board and the Environmental Protection Agency that some vehicles may be incapable of setting all of the monitors within a reasonable amount of time after a vehicle is repaired. This could place undue hardship on motorists with vehicles that were slow to set the required monitors necessary to pass a Smog Check inspection, thus preventing the vehicle from being registered on time. For this reason, not all readiness monitors were required to be set in order to pass a Smog Check inspection. Current regulations allow some unset monitors, broadly applied, to provide dispensation for such vehicles.

The problem with this allowance is that air quality is degraded when vehicles are held to looser standards. If a monitor is allowed not to run during a Smog Check inspection, vehicle issues usually detected by that monitor will go undetected, and therefore unrepaired. As vehicles continue to run and these issues go unrepaired, air quality will decrease.

To address the air quality degradation issue while improving compliance with the Smog Check Program emissions goal — improving air quality — the Bureau proposes amending section 3340.42.2 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations to require all OBD–II readiness monitors to be run to completion in order for a vehicle to pass a Smog Check inspection. In cases where spe-

cific vehicles do require special dispensation from this requirement due to problems unique to the vehicle, the Bureau, under consultation with the Air Resources Board, can provide such dispensation without the across-the-board leniency that subverts the broader goal of improving (or, at the very least, not decreasing) air quality.

Amended section 3340.42.2 will prevent a vehicle from passing an OBD–II inspection if the vehicle’s OBD–II system reports not-complete readiness status for gasoline-powered vehicles model-years 1996 and newer and diesel-powered vehicles model-years 1998 and newer. The regulation amendments will also remove outdated subdivisions.

## ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents and the state’s environment.

The amendments to section 3340.42.2 will prevent a vehicle from passing an OBD–II inspection if, among other things, the vehicle’s OBD–II system reports not-complete readiness status for gasoline-powered vehicles model-years 1996 and newer and diesel-powered vehicles model-years 1998 and newer. Allowing a vehicle to pass with not-complete readiness monitors can lead to increased pollution. This proposal will contribute to pollution reduction because it will reduce the number of polluting cars on California roads and highways, which will benefit the state’s environment and the health and welfare of California residents.

This regulatory proposal does not affect worker safety.

### *Evaluation of Consistency and Compatibility with Existing State Regulations*

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

## DISCLOSURES REGARDING THE PROPOSED ACTION

### FISCAL IMPACT ESTIMATES

The Bureau has made the following determinations:

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

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

The Bureau anticipates the implementation, administration, and enforcement of the proposed regulatory changes will have no fiscal impact.

There is no fiscal impact to the State in the form of federal funding or any cost or savings to any state agency. This proposal will prevent vehicles from passing smog checks with not-complete readiness monitors, which will help reduce pollution. The Bureau does not anticipate additional workload or costs resulting from the proposed regulations.

**Nondiscretionary Costs/Savings to Local Agencies:** None.

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

**Mandate Imposed on Local Agencies or School Districts:** None.

**Significant Effect on Housing Costs:** None.

**BUSINESS IMPACT ESTIMATES:**

BAR made the initial determination that the proposed regulations will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other States. This proposal is designed to fail an OBD–II equipped vehicle if it reports not-complete readiness status. If the vehicle fails the inspection, it can be repaired and subsequently pass the inspection.

*Cost Impact on Representative Private Person or Business:*

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

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

BAR has determined that this regulatory proposal will not:

- (1) create jobs within California;
- (2) eliminate jobs within California;
- (3) create new businesses within California;
- (4) eliminate existing businesses within California; and,
- (5) expand businesses currently doing business in the State of California.

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents and the state’s environment.

The amendments to section 3340.42.2 will prevent a vehicle from passing an OBD–II inspection if, among other things, the vehicle’s OBD–II system reports not-complete readiness status for gasoline-powered vehicles model-years 1996 and newer and diesel-powered vehicles model-years 1998 and newer. Allowing a vehicle to pass with not-complete readiness monitors can lead to increased pollution. This proposal will contribute to pollution reduction because it will reduce the number of polluting cars on California roads and highways, which will benefit the state’s environment and the health and welfare of all California residents.

This regulatory proposal does not affect worker safety.

**Business Reporting Requirements**

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

**EFFECT ON SMALL BUSINESS**

The Bureau has determined that the proposed regulations will not affect small businesses. Although small businesses owned by licensees of the Bureau may be impacted the Bureau does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

**CONSIDERATION OF ALTERNATIVES**

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

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 10949 North Mather Boulevard, Rancho Cordova, California 95670 during the written comment period, or at the hearing if one is scheduled or requested.

## AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau of Automotive Repair, 10949 North Mather Boulevard, Rancho Cordova, California 95670.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

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

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

## CONTACT PERSON

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

Holly Helsing  
Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670  
Telephone: (916) 403-8600  
Email: [Holly.Helsing@dca.ca.gov](mailto:Holly.Helsing@dca.ca.gov)

The backup contact person is:

Kayla Shelton  
Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670  
Telephone: (916) 403-8600  
Email: [Kayla.Shelton@dca.ca.gov](mailto:Kayla.Shelton@dca.ca.gov)

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the [Board/Bureau/Commission/Committee's] website at [https://www.bar.ca.gov/About\\_BAR/Regulatory\\_Actions.aspx](https://www.bar.ca.gov/About_BAR/Regulatory_Actions.aspx).

## TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

### TEAR DOWN DISCLOSURE REQUIREMENTS FOR AUTOMOTIVE REPAIR DEALERS

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

## PUBLIC HEARING

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

## WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the

addresses listed under “Contact Person” in this Notice, must be received by the Bureau at its office no later than **by Monday, December 16, 2024**, or must be received by the Bureau at the hearing, should one be scheduled.

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 9882 and 9884.9 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 9884.8, 9884.9, 9889.50, 9889.52, the Bureau is considering amending section 3303 of Title 16, Division 33, Chapter 1, Article 1 of the California Code of Regulations (CCR) and sections 3352 and 3353 of Title 16, Division 33, Chapter 1, Article 7 of the CCR.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1971, the Legislature adopted the Automotive Repair Act (Business and Professions Code (BPC) § 9880 et seq.) to protect consumers from fraud and ensure their ability to make informed choices in automotive repair transactions. The Act established the Bureau of Automotive Repair within the California Department of Consumer Affairs (DCA) to interpret and enforce its requirements. A critical means by which the Bureau protects consumers seeking automotive repairs is its oversight of the documents and disclosures provided to consumers before, during, and after a repair transaction performed by a licensed automotive repair dealer.

Existing law authorizes the Bureau to adopt regulations pursuant to BPC section 9882. BPC section 9884.9 provides estimate requirements to be disclosed to consumers by automotive repair dealers prior to beginning work.

The goal of existing law and this regulatory proposal is to foster transparency by automotive repair dealers, having them provide clear estimates of work for consumers and requiring consumer authorization prior to beginning the work.

This regulatory proposal will clarify terms and definitions regarding estimate requirements related to the repair of a vehicle and payment by third-party payors. The regulatory proposal will clarify tear down estimate requirements and estimates involving an insurance claim or third-party payor.

This regulatory proposal will require estimates to include the costs and associated information related to a vehicle tear down when tear down is needed in order to perform a repair.

Another goal of the regulatory proposal is to foster transparency by automotive repair dealers by requiring

them to inform consumers of the portion of payment insurance companies or third-party payors are responsible for regarding the repair of a vehicle. Requiring automotive repair dealers to clearly communicate the total cost of the repair, the portion of payment the third-party payer will provide, and any remaining costs to the consumer to complete the work will prevent payment surprises to the consumer.

The Bureau proposes to amend existing section 3303 of Article 1 of Chapter 1 of Division 33 of Title 16 of the CCR and sections 3352 and 3353 of Article 7 of Chapter 1 of Division 33 of Title 16 of the CCR as follows:

- Make grammatical edits to existing text
- Add new definitions
- Add clarifying language to existing definitions
- Clarify estimate requirements relating to vehicle tear downs
- Require the disclosure of the estimated payment that will be provided by a third-party payor on the estimate

#### ANTICIPATED BENEFITS TO THE PROPOSED REGULATION

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

Providing additional and updated definitions will increase clarity for the industry regarding automotive repair dealers’ responsibilities when providing repair estimates to customers. The proposed changes will clarify the responsibilities of the automotive repair dealer when they provide the customer with a repair estimate prior to obtaining authorization to perform any repairs. In turn, this will increase clarity the customer has regarding the payment amount they will be responsible for after any payment provided by a third-party payor. The proposed regulations amend and add language in order to increase transparency on the repair estimate provided to the customer, enhancing public protection, which benefits California residents.

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

#### EVALUATION OF CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

DISCLOSURES REGARDING THIS  
PROPOSED ACTION

FISCAL IMPACT ESTIMATES

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

The regulations do not result in a fiscal impact to the state. This proposal is intended to clarify cost estimate and disclosure requirements pertaining to tear downs, as specified. Any workload and costs of implementation are a result of current law.

There is no fiscal impact to the state in the form of federal funding or any cost or savings to any state agency.

**Nondiscretionary Costs/Savings to Local Agencies:** None.

**Mandate Imposed on Local Agencies or School Districts:** None.

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

**Significant Effect on Housing Costs:** None.

BUSINESS IMPACT ESTIMATES

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

There are no new reporting or recordkeeping requirements mandated, nor are there any performance standards imposed, technologies or equipment specified, or specific actions or procedures prescribed beyond what is currently required.

The proposed action merely clarifies existing statutory requirements and the provisions of current regulation. In addition, the proposed action will recognize a current industry standard of practice adhered to by almost all automotive repair dealers. Therefore, the proposed action will not require the industry to do anything differently than they do now, and there will be no impact from the changes to current regulation.

**Cost Impact on Representative Private Person or Business:**

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

RESULTS OF ECONOMIC IMPACT  
ASSESSMENT/ANALYSIS

This Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposal will only require automotive repair dealers to provide additional information on the work order repair estimates provided to customers.
- It will not create new businesses or eliminate existing businesses within the State of California because the proposal will only require automotive repair dealers to provide additional information on the work order repair estimates provided to customers.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal will only require automotive repair dealers to provide additional information on the work order repair estimates provided to customers.
- This regulatory proposal benefits the health and welfare of California residents because it increases transparency regarding payment responsibility, requiring automotive repair dealers to include more repair estimate information pertaining to the work to be done, and any payment portion provided by an insurer or third-party payor.
- This regulatory proposal does not affect worker safety because it does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it does not involve the environment.

**Business Reporting Requirements**

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

**Effect on Small Business**

The Bureau has determined that the proposed regulations may affect small businesses. However, the Bureau does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

CONSIDERATION OF ALTERNATIVES

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

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments — relevant to the above determinations — in writing to the Bureau at 10949 North Mather Boulevard, Rancho Cordova, CA 95670 during the written comment period, or at the hearing if one is scheduled or requested.

#### AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

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

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau at 10949 North Mather Boulevard, Rancho Cordova, California 95670.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

All the information upon which the proposed regulations are based is contained in the rulemaking file

which is available for public inspection by contacting the person named below.

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

#### CONTACT PERSONS

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

Name: Kayla Shelton  
Address: Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670  
Telephone Number: (916) 403–0307  
E-Mail Address: [kayla.shelton@dca.ca.gov](mailto:kayla.shelton@dca.ca.gov)

The backup contact person is:

Name: Bill Thomas  
Address: Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670  
Telephone Number: (916) 403–8187  
E-Mail Address: [bill.thomas@dca.ca.gov](mailto:bill.thomas@dca.ca.gov)

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Bureau website at <https://bar.ca.gov/regulatory-actions>.

### TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

#### SAFER CONSUMER PRODUCTS REGULATIONS — LISTING NAIL PRODUCTS CONTAINING METHYL METHACRYLATE (MMA) AS A PRIORITY PRODUCT

DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
REFERENCE NUMBER: R-2023–03R

**NOTICE IS HEREBY GIVEN** that the Department of Toxic Substances Control (DTSC) proposes to amend the California Code of Regulations, title 22, division 4.5, chapter 55, section 69511, and adopt



section 69511.9. This proposed amendment pertains to identification of a Priority Product under the Safer Consumer Products (SCP) regulations, approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on August 28, 2013 (effective date: 10/01/2013; OAL Regulatory Action Number: Z–2012–07170–04).

#### COMMENT PERIOD

A public comment period for the rulemaking has been established commencing on November 1, 2024, and closing on December 16, 2024.

Statements, arguments, or contentions regarding the rulemaking and/or supporting documents must be submitted in writing (electronically or in hard copy) or presented orally or in writing at a public hearing, if a hearing is requested, for them to be considered by DTSC before it adopts, amends these regulations. Only comments received at the DTSC office or post-marked on or before that date will be considered.

Written comments may be submitted electronically through the SCP Information Management System, CalSAFER at: <https://calsafer.dtsc.ca.gov/>. While DTSC prefers comments to be submitted through the CalSAFER system, interested persons may also submit their comments in an email to: [SaferConsumerProducts@dtsc.ca.gov](mailto:SaferConsumerProducts@dtsc.ca.gov) or through the DTSC regulations email address at [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov). Please include the DTSC reference number for this regulation in the subject of your message. Direct hard-copy written comments to the Office of Legislation and Regulatory Review, as specified below.

A public hearing has not been scheduled for this rulemaking. However, DTSC will conduct a hearing if a written request for a public hearing is received from any interested person, or their duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8. Submit a written request for a public hearing in an email to [SaferConsumerProducts@dtsc.ca.gov](mailto:SaferConsumerProducts@dtsc.ca.gov) or to the Office of Legislation and Regulatory Review, as specified below.

#### Notice Pertaining to Accessibility and Reasonable Accommodation

All documents related to these regulations can be made available in alternate format (i.e., Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability-related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact the office below. Note: the range of assistive

series available may be limited if requests are made less than 10 business days prior to the end of the comment period.

Office of Legislation and Regulatory Review  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812–0806  
Fax Number: (916) 324–1808

TTY/TDD/Speech-to-Speech users may dial 7–1–1 for the California Relay Service.

#### AUTHORITY & REFERENCE

This regulation is being adopted under the following authorities: Health and Safety Code (HSC) sections 25252, 25253, 58012 (added by Gov. Reorg. Plan Number 1, § 146, effective July 17, 1991).

This regulation implements, interprets, or makes specific the following statutes: HSC sections 25252 and 25253.

#### INFORMATIVE DIGEST

##### Policy Statement Overview

DTSC proposes to add nail products containing methyl methacrylate (MMA) — including nail coatings and artificial nails — as a Priority Product to the Priority Products List. This listing would apply to any nail product containing MMA as an added ingredient, a residual, or a contaminant. DTSC proposes to set an Alternatives Analysis Threshold (AAT) of 1,000 parts per million (ppm) for nail products containing MMA based on the following:

- DTSC’s goal in listing this Priority Product is to reduce the potential for nail salon workers and nail product consumers to be exposed to, and harmed by, MMA that is intentionally added in nail products as an ingredient.
- Data received in 2020 from nail product manufacturers and other entities indicate that MMA is found in nail products both as a contaminant or a residual and as an added ingredient.
- DTSC recently conducted analytical laboratory testing of 156 nail products and detected MMA in 16 nail coatings and 13 acrylic nail products at concentrations ranging from 26.2 ppm to 8,760 ppm, indicating that MMA is in some products as an added ingredient and others as a contaminant or a residual.
- Studies showed that nail coatings and artificial nails containing other methacrylates such as ethyl methacrylate (EMA), polymethyl methacrylate (PMMA), or polyethyl methacrylate (PEMA) may contain MMA as a contaminant.

- During a pre-regulatory public comment period in 2020, industry stakeholders indicated that MMA can be found as a contaminant of EMA in EMA-containing nail products.
- DTSC’s analytical laboratory tested nail products and detected MMA concentrations that were orders of magnitude lower than EMA concentrations. This may indicate that MMA is present as a residual of EMA in those products. In other nail products, MMA was measured without the detection of EMA, which may indicate that MMA may be present as an intentionally added ingredient in those products. Therefore, DTSC proposes to set an AAT for MMA at 1,000 parts per million (ppm) in nail coatings and artificial nails.

DTSC proposes to allow manufacturers of the Priority Product the option of demonstrating that their products qualify for the AAT Notification by providing testing data from ingredient suppliers. During adoption of the SCP framework regulations in 2012, DTSC stated, in responses to public comments related to the AAT, that it would not accept supplier declarations or certification of material content as a demonstration of a Priority Product meeting the AAT. However, DTSC has determined that it is appropriate to allow manufacturers, in this instance, to use information from suppliers if the manufacturer determines and certifies that the supplier meets specified reporting and analytical requirements to measure the concentration of MMA in the supplied ingredients. DTSC believes it is appropriate to allow manufacturers to use information from suppliers for MMA in nail products due to MMA’s likely presence in nail product supply chain ingredients at low concentration levels.

Manufacturers who assert that they are exempt from AA requirements may submit certificates of analyses from ingredient suppliers along with calculations of the concentration of MMA in the formulated Priority Product or they may submit laboratory testing results that demonstrate the concentration of MMA in the Priority Product. The manufacturer must ensure the information submitted meets the laboratory criteria listed in the proposed regulatory text for measuring MMA in each Priority Product and the data submittal requirements. The specific quality control requirements and documentation must be submitted with an AAT Notification as indicated in the proposed regulatory text.

### **Background and Effect of the Proposed Regulatory Action**

Following extensive review of the scientific literature and analysis of the known hazard traits of MMA, DTSC determined there is potential for workers and consumers to be exposed to MMA in nail products. This exposure contributes to or causes significant

or widespread adverse impacts including dermatotoxicity, respiratory toxicity, reproductive and developmental toxicity, neurotoxicity, and ocular toxicity. Both professional and retail nail products, including cured UV gels, were shown to contain residual and unreacted MMA. In addition, the U.S. Food and Drug Administration (FDA) removed nail products that contain 100 percent MMA from the market in the early 1970s. In 2015, California’s Board of Barbering and Cosmetology (BBC) prohibited the use of MMA-containing nail products with any MMA concentration in licensed hair and nail salons and cosmetology schools. Despite these regulatory actions, MMA continues to be detected in indoor air in nail salons, sometimes above occupational exposure limits.

Further, in 2020, DTSC requested information on various nail products from product manufacturers, importers, assemblers, retailers, distributors, and trade associations via an information call-in. MMA was reported in five nail products, including two acrylic liquid monomers — where it is used as a binder/adhesive — at concentrations ranging from 75 up to 100 percent, and in two acrylic powders — where it is present as a residual—and one nail polish (its function not reported) with concentrations reported up to 0.1 percent. DTSC received only partial product data in response to its information call-in. Therefore, product counts are considered estimates rather than exact number of products.

In addition, DTSC conducted an analytical laboratory testing of 156 retail and professional-use nail products found MMA in eight acrylic liquid monomers, five acrylic powders, seven solvent-based nail coatings (including nail polish, top coat, multi-functional top coat and base coat, and airbrush top coat), and nine UV gel nail coatings (including UV gel nail polish and hard gel). The samples had MMA concentrations ranging from 25.6 ppm to 8,760 ppm. DTSC based this determination on an evaluation of an abundance of publicly available, reliable scientific information pertinent to the regulatory criteria.

### **Benefits of the Proposed Regulatory Action**

A primary goal of the SCP regulations is to prevent or reduce potential adverse health and environmental impacts to the State of California. By listing nail products containing MMA as a Priority Product, DTSC requires manufacturers selling these products into California to evaluate whether MMA is necessary in nail products or whether there are functionally safer alternatives that would reduce exposure to MMA during manufacturing, use, or disposal of nail products containing MMA. Reduction of MMA in consumer products and the environment would result in safer homes, offices, schools, and workplaces. Reducing exposure to MMA could reduce dermal toxicity, including dam-

age to the skin and nails, and damage to the respiratory tract in the general population of California.

DTSC cannot pre-determine the alternatives that each manufacturer will propose; therefore, it is impossible to accurately predict or quantify the full range of potential benefits associated with their development. DTSC's process encourages the use of alternatives of least concern and prefers those that provide the greatest level of inherent protection. In general, economic benefits to California workers and business owners may include expanded employment opportunities in the fields of consulting, worker and consumer education, and marketing. Additional benefits may accrue because of increased research and product development collaboration between manufacturers and California-based research entities. Institutional and corporate financial support of chemical and material science programs focused on developing safer alternatives to MMA could advance the field. These research initiatives could provide manufacturers with employees that are highly skilled in the research and design of products for newly emerging global markets.

#### **Evaluation of Inconsistency/Incompatibility with Other State Regulations**

After conducting an evaluation, DTSC has identified other state agencies that deal with MMA (see below). However, DTSC is the only agency that regulates products added to the Priority Products List. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

#### **Existing Laws and Regulations**

The SCP regulations established a unique approach to regulating Chemicals of Concern in consumer products that grants DTSC authority to take actions to protect people and the environment when such actions are outside the scope of other regulatory programs. There are no equivalent federal or state regulations that require product manufacturers to determine if the chemical in their product is necessary and whether there is a safer alternative, with the goal of protecting consumers from adverse effects associated with a product throughout its lifetime.

#### **Related State Laws and Regulations**

Nail products, as a cosmetic, are regulated by the U.S. Food and Drug Administration (FDA), and MMA is regulated by the FDA, the U.S. Environmental Protection Agency (EPA), the California Division of Occupational Safety and Health (Cal/OSHA), California Board of Barbering and Cosmetology (BBC), and California Air Resources Board (CARB). The proposed regulation does not duplicate or conflict with any of these regulations.

#### *U.S. Food and Drug Administration*

The U.S. Food and Drug Administration (FDA) is authorized by the Federal Food, Drug, and Cosmet-

ic Act (FDCA) to oversee the safety of food, drugs, and cosmetics. However, The FDCA does not authorize the FDA to require safety testing of cosmetics, and there is no approval process for cosmetics products prior to sale in the U.S. (except for color additives). However, the FDA can and does inspect cosmetics manufacturing facilities to ensure that cosmetics are not adulterated.

While cosmetic product manufacturers are legally responsible for ensuring the safety of their products, neither the FDCA nor FDA regulations require specific tests to demonstrate the safety of individual products or ingredients. However, the FDA can pursue enforcement action against products on the market that it determines are not in compliance with the FDCA or the Fair Packaging and Labeling Act (FPLA), or against firms or individuals who violate these laws. As noted earlier, the FDA took action to ban sale of nail products containing 100 percent MMA in the early 1970s, after receiving multiple complaints of injury resulting from their use.

#### *Federal Food, Drug, and Cosmetic Act*

The FDCA defines cosmetics as “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body ... for cleansing, beautifying, promoting attractiveness, or altering the appearance.” As noted above, the FDA does not preapprove cosmetic products. However, cosmetic products must be properly labeled and safe for consumers under labeled or typical conditions of use. The FDCA prohibits the marketing of adulterated or misbranded cosmetics in interstate commerce, and the FDA can remove cosmetics from the market that contain a “poisonous or deleterious substance which may render it injurious to users” or that are mislabeled. The Modernization of Cosmetics Regulation Act (MoCRA) of 2022 builds on the original act and provides new authority to the FDA to access and copy records, including safety data records, when reasonable conditions are met. MoCRA also establishes new requirements for adverse event reporting. A responsible person must report serious adverse events associated with the use of cosmetics products to the FDA within 15 days. A responsible person is defined as the manufacturer, packer, or distributor of a cosmetic product whose name appears on the label of a product.

#### *Fair Packaging and Labeling Act*

The Fair Packaging and Labeling Act (FPLA) requires each package of household consumer products (including cosmetic products) to bear a label that includes a statement identifying the commodity (detergent, sponge, etc.); the name and place of business of the manufacturer, packer, or distributor; and the net quantity of contents in terms of weight, measure, or count (in both metric and English units). The FPLA is designed to facilitate value comparisons and to pre-

vent unfair or deceptive packaging and labeling of many household consumer commodities.

The specific labeling requirements for cosmetic products are detailed in Title 21 of the Code of Federal Regulations, parts 701 and 740. Cosmetic products produced or distributed for retail sale to consumers for their personal care are required to bear an ingredient declaration. Cosmetic products that are not typically distributed for retail sale (e.g., nail products used by professionals on customers at their workplaces) are exempt from this requirement, provided they are not sold directly to consumers. Cosmetic product labels are required to bear a warning statement, whenever necessary to alert users about a health hazard that may be associated with the product.

#### *California Professional Cosmetics Labeling Law*

The California Professional Cosmetics Labeling Law requires that all professional cosmetic products manufactured on or after July 1, 2020, and sold in California, must meet all labeling requirements for any other cosmetic pursuant to the federal Food, Drug, and Cosmetic Act and the federal Fair Packaging and Labeling Act.

#### *U.S. Environmental Protection Agency*

Methyl methacrylate is listed under the Toxic Substances Control Act (TSCA) of 1976, which was enacted by Congress to test, regulate, and screen all chemicals produced in or imported into the U.S. TSCA requires any chemical that reaches the consumer marketplace to be tested for possible toxic effect prior to commercial manufacture. Under Section 8, TSCA requires reporting and recordkeeping by persons who manufacture, import, process, and/or distribute chemical substances in commerce. Under Section 8(e), any person who manufactures (which includes importing), processes, or distributes in commerce a chemical substance or mixture, and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment, should immediately inform EPA, except in situations where EPA has been adequately informed of such information.

MMA is listed as a hazardous air pollutant under the Clean Air Act. MMA is listed as an organic hazardous air pollutant under 40 C.F.R. Federal Code of Regulations section 63 (2006) subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

#### *California Division of Occupational Safety and Health*

MMA is listed as a hazardous substance by the California Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA. Pursuant to Cal/OSHA's hazard communication regulations, employers must "... provide information to their employees

about the hazardous chemicals to which they may be exposed, by means of a hazard communication program, labels and other forms of warning, Safety Data Sheets, and information and training."

MMA is listed as an airborne contaminant. Cal/OSHA has set exposure limits to protect workers who are occupationally exposed to MMA. The permissible exposure limit (PEL) for gas or vapor is 50 ppm (205 mg/m<sup>3</sup>) of air by volume at 25 °C and 760 mm Hg pressure. The short-term exposure limit (STEL) for gas or vapor is 100 ppm (410 mg/m<sup>3</sup>) of air by volume at 25 °C and 760 mm Hg pressure.

#### *California Board of Barbering and Cosmetology*

The California Board of Barbering and Cosmetology (BBC) protects the public health, safety, and welfare by regulating the practices of the beauty industry (e.g., professional barbers, cosmetologists, estheticians, manicurists, and tanning salon workers). BBC qualifies and licenses individuals and businesses, establishes and enforces administrative rules and laws, and provides information for the public to make informed decisions. BBC has notified licensees and consumers that use of MMA is prohibited in BBC licensed establishments.

This regulation does not prevent the sale of retail nail products containing MMA in California, nor does it apply to professional nail products that contain MMA as a residual or a contaminant, unless its presence specified on the product label.

#### *California Air Resources Board*

MMA is designated by the California Air Resources Board (CARB) to be a toxic air contaminant pursuant to Health and Safety Code Section 39657 (17 CCR § 93001).

#### **Comparable Federal Regulation or Statute**

These regulations are not based on, identical to, or in conflict with any federal regulations.

### OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

#### **California Environmental Quality Act (CEQA)**

DTSC has determined that this rulemaking would be exempt from CEQA (Public Resources Code Section 21000, et seq.) under the "feasibility or planning study" and "data collection" exemptions outlined in California Code of Regulations, title 14, section 15262 and 15306, respectively. The project would also be exempt under the common-sense exemption. (Cal. Code Regs., title 14, § 15061, subdivision (b)(3).) A draft Notice of Exemption (NOE) is available for review during the public comment period upon request and will be filed with the State Clearinghouse if the regulation is finalized.

### California Environmental Policy Council Review

Under the provisions of Health and Safety Code section 25252.5, the California Environmental Policy Council (CEPC) reviewed the framework SCP regulations prior to their adoption in October 2013 (the CEPC Resolution may be viewed at: <http://www.calepa.ca.gov/cepc/>). Under HSC Section 25252.5(f), the CEPC determined that the proposed regulations would not have any significant adverse impact on public health or the environment and could be adopted by DTSC without undergoing a multimedia life cycle evaluation.

DTSC determined that further review by the CEPC is not warranted for this rulemaking because the requirements of HSC section 25252.5 apply only to the creation of the SCP program and not regulations that may be required to implement this program.

### Peer Review

DTSC requested and obtained an external scientific peer review of the scientific basis of the proposed regulation pursuant to Health and Safety Code section 57004. The result of the external scientific peer review is posted to DTSC's rulemaking website at: <https://dtsc.ca.gov/regs/>.

### DISCLOSURES REGARDING THE PROPOSED ACTION/ECONOMIC AND FISCAL IMPACT ASSESSMENT

DTSC has determined that the proposed regulations will impose costs or savings on a state agency but will not impose a cost to a local agency or school district that is required to be reimbursed pursuant to part 7 of division 4, commencing with section 17500, of the Government Code, or other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state. DTSC has determined that the proposed regulations will not result in any changes to federal funds that the state of California receives.

**Costs or Savings to Any State Agency:** DTSC will absorb additional costs associated with reviewing Notifications, Abridged AA Reports, or two-stage Alternatives Analysis (AA) Reports submitted by manufacturers of nail products containing MMA because DTSC has been budgeted to review AAs and other related documents associated with Priority Products. DTSC estimates that the total fiscal costs to state government for reviewing all Notifications, Abridged AA Reports, and two-stage AA reports submitted by manufacturers will range from \$1,150,188 to \$4,158,324. DTSC has been budgeted to review AAs and other related documents associated with Priority Products.

**Local Agencies:** None.

**School Districts:** None.

**Federal Funding to the State:** None.

**Local Mandate:** None.

**Types of Businesses Affected:** Manufacturers of nail products containing MMA have the principal duty to comply with the notification and reporting requirements.

**Projected Reporting, Recordkeeping, or other Compliance Requirements:** In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), DTSC found that the reporting requirements of the proposed regulatory action, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State of California. The specific reporting requirements and forms are:

- Priority Product Notification [section 69503.7]
- Removal/Replacement Notifications:
  - Chemical of Concern Removal Intent Notification [section 69505.2]
  - Chemical of Concern Removal Confirmation Notification [section 69505.2]
  - Product Removal Intent Notification [section 69505.2]
  - Product Removal Confirmation Notification [section 69505.2]
  - Product–Chemical Replacement Intent Notification [section 69505.2]
  - Product–Chemical Replacement Confirmation Notification [section 69505.2]
  - Product Cease Ordering Notification [section 69501.2(b)(2)(B)]
- AA Notifications and Reports:
  - AA Threshold Notification (AATN) [section 69505.3]
  - AA Extension [section 69505.1(c)]
  - Preliminary AA Report [section 69505.4(a)(2), section 69505.5, section 69505.1(b)(2)(A), section 69505.7]
  - Final AA Report [section 69505.4(a)(3), section 69505.6, section 69505.1(b)(2)(B), section 69505.7]
  - Abridged AA Report [section 69505.4(b)]
  - Alternate AA Work Plan [section 69505.4(c)]
  - Previously completed AA [section 69505.4(d)]

The reports and forms that a manufacturer must submit depend on several factors including the Priority Products produced, the availability of viable alternatives, and business decisions made by the manufacturer. The reporting requirements applicable to responsible entities may be fulfilled by a consortium, trade association, public–private partnership, or other entity acting on behalf of, or in lieu of, one or more manufacturer. This does not apply to the Priority Product Notification or Alternatives Analysis Threshold Noti-



fication requirements as they must be submitted by a manufacturer.

**Cost Impacts on Representative Private Persons or Businesses:** DTSC relied on a variety of sources to estimate the number of California–based manufacturers of nail products containing MMA potentially impacted by this proposed regulation. DTSC searched lists of manufacturers provided in Data Axle Reference Solutions and U.S. Census Bureau County Business Patterns for manufacturers of nail products containing MMA. DTSC then searched manufacturers’ websites and safety data sheets (SDS) to refine the list of companies manufacturing these products.

Based on the data collected from these sources, DTSC estimates there are 13 manufacturers of nail products containing MMA that would be potentially affected by this regulation. DTSC estimates that costs could range from \$133,000 to \$360,000 for individual manufacturers to fulfill the SCP regulatory requirements to submit a Priority Product Notification and complete an AA report. Costs could range from \$1,783 to \$2,743 to develop and respond to questions regarding an individual AAT Notification.

**Effect on Housing Costs:** None.

**Effect on Small Businesses:** DTSC made an initial determination that the adoption of this regulation may affect small businesses. DTSC estimates that 10 of the 13 potentially impacted manufacturers are small businesses. Costs to submit Priority Product Notifications and AA Reports are expected to be the same for all impacted businesses. Moreover, DTSC estimates that it will take each manufacturer a maximum of 16 hours at \$71/hour to complete a Priority Product Notification, or a total of \$1,136. DTSC estimates that the cost to each manufacturer for the Priority Product Notification, AA report, and responding to DTSC’s AA report review will be \$133,000 to \$216,000 for an Abridged AA, and \$164,000 to \$360,000 for a two–stage AA. These are one–time notification and reporting requirements that manufacturers are expected to complete within one year of adoption of the proposed regulation; therefore, there are no ongoing costs.

**Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:** None.

**Creation of New Businesses or Elimination of Existing Businesses:** DTSC determined that it is unlikely that this proposal will eliminate or create businesses in manufacturing of nail products. It is possible that this proposal could create an unknown number of businesses to assist manufacturers of nail products containing MMA in meeting regulatory obligations including consulting services, chemical and material science research services, and product development support.

**Expansion of Businesses Currently doing Business:** DTSC determined that it is possible that this proposal could result in the expansion of businesses currently doing business within the state, particularly those engaged in regulatory consulting services, chemical and material science research and support, product research and design and marketing.

**Creation of New Jobs or Elimination of Existing Jobs:** The proposed regulations may result in expanded employment opportunities with an unknown number of public or private sector jobs in consulting services, product research and design, chemical and material science research and support and marketing.

**Benefits of the Regulation on the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** DTSC made an initial determination that the adoption of this regulation may positively affect the health and welfare of California residents and worker safety. A reduction in exposure to MMA could benefit the health of California’s residents. The development of safer alternatives benefits California workers, consumers, and employers.

DTSC cannot predetermine the alternatives that each manufacturer will propose; therefore, it is impossible to accurately predict or quantify the full range of potential benefits associated with their development. DTSC’s process encourages the use of alternatives of least concern and prefers those that provide the greatest level of inherent protection. Additional benefits may accrue because of increased research and product development collaboration between manufacturers and California–based research facilities. Institutional and corporate financial support of chemical and material science programs focused on developing safer nail products could advance the field. These research initiatives could provide manufacturers with employees that are highly skilled in the research and design of products for newly emerging global markets.

## CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC 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. DTSC’s consideration of alternatives is available in the Initial Statement of Reasons included as part of this proposed regulation.

AVAILABILITY OF TEXT OF  
PROPOSED REGULATIONS, INITIAL  
STATEMENT OF REASONS, AND OTHER  
RULEMAKING DOCUMENTS

Copies of the Notice of Proposed Action, Initial Statement of Reasons, all the information upon which this proposal is based, and the express terms of the proposed regulation (also known as the proposed regulatory text) are posted to DTSC’s Internet website at <https://dtsc.ca.gov/regs/>.

The Rulemaking File is available for public inspection by contacting the Contact Persons named below.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial, sufficiently related changes are made to the regulatory text, the modified full text (with the changes clearly indicated) will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend a public hearing, if a hearing is requested, or provide written comments on this specific regulation will be sent a copy of the modified text if substantial, sufficiently related changes are made.

Once DTSC finalizes the regulatory text, DTSC will prepare a Final Statement of Reasons that updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials. A copy of the Final Statement of Reasons will also be posted on DTSC’s Internet site at <https://dtsc.ca.gov/regs/>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulation, CEQA documents, or CalSAFER may be directed to Nicole Macatrao of DTSC at [nicole.macatrao@dtsc.ca.gov](mailto:nicole.macatrao@dtsc.ca.gov), or, if unavailable, David Rist of DTSC at [david.rist@dtsc.ca.gov](mailto:david.rist@dtsc.ca.gov). Inquiries may also be directed to the listed Contact Persons at the number listed above. However, such oral inquiries are not part of the rulemaking record.

ALL OTHER QUESTIONS/COMMENTS/  
INQUIRIES/UPDATES

Please direct all written comments, procedural inquiries, and requests for documents by mail, email, or fax to the Office of Legislation and Regulatory Review, as specified above. To be included in this regulation package’s mailing list and to receive updates of this rulemaking, please visit <https://dtsc.ca.gov/dtsc-e-lists/> and subscribe to the applicable E–List or email: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

GENERAL PUBLIC INTEREST

HORSE RACING BOARD

NOTICE OF CORRECTION

In the October 25, 2024 California Regulatory Notice Register (Notice Register 2024, Number 43–Z), the California Horse Racing Board published its Notice of Proposed Rulemaking Action concerning Confidentiality of Applications and Rulings by the Stewards (OAL Notice File # Z2024–1015–01).

The contact information in that published Notice is incorrect. The correct contact information is as follows:

Name, phone number, and email address under “Written Comment Period”:

Rick Pimentel, Regulations Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 274–6043  
Email: [repimentel@chrb.ca.gov](mailto:repimentel@chrb.ca.gov)

Name, phone number, and email address under “Contact Persons”:

Rick Pimentel, Regulations Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 274–6043  
Email: [repimentel@chrb.ca.gov](mailto:repimentel@chrb.ca.gov)

If the person named above is not available, interested parties may contact:

Sandra Shinn, Manager  
Regulations and Industry Applications Unit  
Telephone: (916) 869–3255  
Email: [skshinn@chrb.ca.gov](mailto:skshinn@chrb.ca.gov)

Name under “Availability of Initial Statement of Reasons and Test of Proposed Regulation”:

Rick Pimentel

Name under “Availability of Modified Text”:

Rick Pimentel

Name under “Availability of Final Statement of Reasons”:

Rick Pimentel

If you have any questions, please contact:

Sandra Shinn, Manager

Regulations and Industry Applications Unit  
Telephone: (916) 869–3255  
Email: [skshinn@chrb.ca.gov](mailto:skshinn@chrb.ca.gov)

## **DEPARTMENT OF REAL ESTATE**

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

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

#### **PUBLIC HEARING ANNOUNCEMENT**

Sections 10226 and 11011 of the Code require, among other things, that at least one regulation hearing be held each calendar year to determine if fees lower than those authorized under Section 10226.5 (b) of the Code should be prescribed. The hearing referred to below shall serve as the regulation hearing for the purpose of satisfying the requirement of Sections 10226(a) and 11011(a) of the Code. DRE may present, at this hearing, relevant data compiled by the DRE, and other sources, if appropriate, that have been used or which may be used in making the determination if fees should be lower. There is no proposal to adopt, amend and/or repeal any sections of the California Code of Regulations (CCR) at this time. However, DRE is developing a proposal following the statutory adjustment of fees pursuant to SB 164 (Committee on State Budget and Fiscal Review, Chapter 41, Statutes of 2024) (“SB 164”) that may be published for public comment before this hearing is scheduled. The Commissioner wishes to consider all comments, objections and recommendations regarding such fees.

Pursuant to recent amendments to Sections 10226(a) and 11011(a), on November 22, 2024, DRE will post on its website a report on the financial status of the department, including the revenues, expenditures, and reserves as of the end of the 2023–24 fiscal year.

DRE will hold a public hearing starting at 10:00 a.m., on Tuesday, December 17, 2024, at the DRE’s Sacramento Office, located at 651 Bannon Street, Sacramento, California. The hearing room is wheelchair accessible. As in the report posted to the website in November, DRE will report on the financial status of the department, including the revenues, expenditures,

and reserves as of the end of the 2023–24 fiscal year. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

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

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to DRE’s fee structure. The written comment period closes on December 17, 2024. All written comments must be received by 5:00 p.m. on that date at DRE’s Sacramento Office as follows:

Daniel E. Kehew, Real Estate Counsel  
California Department of Real Estate  
651 Bannon Street, Suite 507  
Sacramento, CA 95811  
Email: [DRE.RegComments@dre.ca.gov](mailto:DRE.RegComments@dre.ca.gov)  
Telephone: (916) 737–4391

Backup contact person for this proposed action is James B. Damrell at (916) 737–4386.

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

1. Every person who has filed a Request for Notice of Regulatory Action with DRE.
2. The Secretary of the Business, Consumer Services and Housing Agency.
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be affected by any fee adjustment. DRE has no way of knowing which licensees are small businesses.
4. The California Association of Realtors (a real estate licensee trade organization) and the California Building Industry Association (a home builders trade organization).
5. A substantial number of land developers. Not small businesses by definition, they may, nevertheless, be affected by any fee adjustment.

## DEPARTMENT OF TOXIC SUBSTANCES CONTROL

### NOTICE OF PUBLIC COMMENT PERIOD FOR PROPOSED SETTLEMENT AGREEMENT IN THE MATTER OF 1300–1310 OLD BAYSHORE ROAD

**Public Comment Period will begin October 30, 2024 to December 3, 2024**

The Department of Toxic Substances Control (DTSC) invites the public to review and comment on a proposed settlement agreement entered with Maxim I Properties (Maxim) and Moyer Products, Inc. (Moyer). This settlement agreement provides funds for implementation of corrective action to address the release of hazardous substances at the property at 1300–1310 Old Bayshore Road, San Jose, California 95112 (Site).

The proposed settlement agreement commits Moyer to pay, by and through its insurer(s) the total sum of \$1,700,000 to a Qualified Settlement Fund to which DTSC shall have sole right and authority. Maxim may apply to DTSC for reimbursement of prior costs Maxim incurred related to corrective action at the Site up to \$380,000. In exchange, DTSC shall provide Maxim and Moyer releases of liability and covenants not to sue.

DTSC will consider written public comments on the proposed Settlement Agreement that are **postmarked or emailed by December 3, 2024**. DTSC may modify or withdraw its consent to the settlement agreement if it receives comments that disclose facts or considerations that indicate the settlement agreement is inappropriate, improper, or inadequate. Comments should be addressed to Gavin McCreary, DTSC Project Manager at 8800 Cal Center Drive, Sacramento, California 95826 or [Gavin.McCreary@dtsc.ca.gov](mailto:Gavin.McCreary@dtsc.ca.gov).

**Learn more about the project:** Find the proposed Settlement Agreement is available for review at: [https://www.envirostor.dtsc.ca.gov/screens/ssdtscreview.asp?global\\_id=80001847&table\\_name=REGULATORY\\_ACTION&mycmd=ssdtscreview&document\\_id=60580039&rid=AAA7qvAACAAPy%2FcaAL](https://www.envirostor.dtsc.ca.gov/screens/ssdtscreview.asp?global_id=80001847&table_name=REGULATORY_ACTION&mycmd=ssdtscreview&document_id=60580039&rid=AAA7qvAACAAPy%2FcaAL)

#### Contacts:

##### Project Manager

Gavin McCreary  
Project Manager  
[Gavin.McCreary@dtsc.ca.gov](mailto:Gavin.McCreary@dtsc.ca.gov)  
916–255–3710

##### Public Outreach

Tammy Pickens

Public Participation Specialist  
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916–255–3594

**About us:** DTSC protects California’s people, communities, and environment from toxic substances, to enhance economic vitality by restoring contaminated land, and to compel manufacturers to make safer consumer products.

## DECISION NOT TO PROCEED

### FISH AND GAME COMMISSION

#### NOTICE OF DECISION NOT TO PROCEED

**Pursuant to government code 11347, notice is hereby given** that the California Fish and Game Commission decided not to proceed with the amendment of sections 5.79, 5.80, 27.90, and 29.72, Title 14, California Code of Regulations, regarding White Sturgeon Fishing, Notice File Number Z–2024–0517–02, which was published May 31, 2024 in California Notice Register 2024, Number 22–Z, pages 701–703.

Any interested person with questions concerning this rulemaking should contact Jenn Bacon by calling (916) 653–4899, or by email at [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov).

The Commission will also publish this Notice of Decision Not to Proceed on its website.

## 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.

Department of Public Health  
File # 2024–0911–01  
PNS Sickle Cell Anemia Screening

Pursuant to Health and Safety Code section 124977, this File and Print by the Department of Public Health certifies the underlying emergency file and print regulations amending the sections related to the Prenatal Screening (PNS) Program, including definitions, laboratories and analytical methods, clinician require-

ments, program participation fees, and requirements for approval. This action is exempt from review by the Office of Administrative law pursuant to Health and Safety Code section 124977(d).

Title 17  
Filed 10/17/2024  
Effective 10/17/2024  
Agency Contact: Michael Boutros (916) 949–3514

**Bureau for Private Postsecondary Education**

File # 2024–1003–03

**Delete Repealed Statute Reference and Update Authority and Reference**

In these changes without regulatory affect, the Bureau for Private Postsecondary Education (Bureau) amends Title 5, California Code of Regulations, Sections 71395, 76000 and 76020 to delete reference to section 94874.1 of the California Education Code, which has been repealed, and to delete and update outdated citations to 94803.

Title 05  
Amend: 71395, 76000, 76020  
Filed 10/21/2024  
Agency Contact:  
Parker Strohmeyer (279) 666–5844

**Department of Corrections and Rehabilitation**

File # 2024–0917–02

**Non–Substantive Changes — Community Based Programs**

This rulemaking action seeks to make non–substantive changes to sections 3078.3; 3078.4; 3078.8; 3078.9; 2078.10; 3078.11; 3078.12; and 3078.12. Specifically, the changes update proper terminology, and reflect the current revision dates for forms incorporated by reference within those sections.

Title 15  
Amend: 3078.3, 3078.4, 3078.7, 3078.8, 3078.9, 3078.10, 3078.11, 3078.12, 3078.13  
Filed 10/16/2024  
Agency Contact: Alison Colavita (916) 322–8344

**Department of Developmental Services**

File # 2024–0913–03

**Section 100 — Repeal Family Cost Participation per WIC 4783 repeal**

This action makes changes without regulatory effect that repeal regulations for the Family Cost Participation Program in accordance with the repeal of section 4783 of the Welfare and Institutions Code (WIC) enacted by Assembly Bill 162 (Stats. 2024, chapter 47).

Title 17  
Repeal: 50243, 50245, 50247, 50249, 50251, 50253, 50255, 50257, 50259, 50261, 50262, 50263, 50265, 50267

Filed 10/22/2024  
Agency Contact: Cristina Tsuji (916) 651–0363

**Department of Fish and Wildlife**

File # 2024–0930–01

**Fees for Lake and Streambed Alteration Agreements**

As changes without regulatory effect, the Department of Fish and Wildlife (the “Department”) is amending fees for lake and streambed alteration agreements. Annual changes to the fees are required by Fish & Game Code § 1609 by applying the index to determine an increase or decrease in the fees as specified in Fish & Game Code § 713. The amended fees will become effective on January 1, 2025.

Title 14  
Amend: 699.5  
Filed 10/16/2024  
Agency Contact: Angela Baker (916) 207–6718

**Department of Health Care Access and Information**

File # 2024–0910–04

**Repeal of Health Professions Education Foundation Regulations**

In this non–substantive action, the Department of Health Care Access and Information repeals Title 22, Division 7, Chapter 14 of the California Code of Regulations due to the Health Professionals Education Foundation program’s statutory repeal.

Title 22  
Repeal: 97700.1, 97700.2, 97700.3, 97700.4, 97700.5, 97700.6, 97700.7, 97700.8, 97700.13, 97700.15, 97700.17, 97700.18, 97700.19, 97700.20, 97700.21, 97700.23, 97700.25, 97700.26, 97700.27, 97700.29, 97700.31, 97700.32, 97700.33, 97700.35, 97700.41, 97700.43, 97700.45, 97700.47, 97700.49, 97700.51, 97700.53, 97700.55, 97700.57, 97700.59, 97700.61, 97700.63, 97700.65, 97720, 97722, 97724, 97726, 97730, 97731, 97732, 97734, 97735, 97737, 97740, 97743, 97745, 97747, 97750, 97752, 97755, 97757, 97760

Filed 10/21/2024  
Agency Contact:  
Michelle Church–Reeves (916) 326–3617

**Fish and Game Commission**

File # 2024–0917–01

**Listing of Endangered and Threatened Species**

These changes without regulatory effect amend the Fish and Game Commission’s (FGC’s) regulation and related form for petitioning to list or delist a species

of plant or animal as threatened or endangered. These changes include, among other things, amendments to conform FGC’s regulations to amended Fish and Game Code section 2075.5.

Title 14  
Amend: 670.1  
Filed 10/23/2024  
Agency Contact: Jennifer Bacon (916) 653–4899

Board of Optometry  
File # 2024–0911–05  
Home Residence Permits

This regular rulemaking action by the California State Board of Optometry adopts a new regulation providing the requirements to apply for a home residence permit and the disclosure requirements for providing such services. This action also amends existing regulation to include the applicable fees for application, renewal, and delinquency of a home residence permit.

Title 16  
Adopt: 1507.5  
Amend: 1524  
Filed 10/21/2024  
Effective 10/21/2024  
Agency Contact: Gregory Pruden (916) 574–7808

California Architects Board  
File # 2024–0906–01  
Filing of Applications

In this regular rulemaking, the California Architects Board is amending regulations pertaining to requirements for licensure, including filing applications for eligibility and licensure.

Title 16  
Amend: 109  
Filed 10/17/2024  
Effective 01/01/2025  
Agency Contact: Timothy Rodda (279) 895–1246

California Architects Board  
File # 2024–0911–04  
Experience Evaluation

This action clarifies the ways to meet the experience requirement for an architect license in California.

Title 16  
Amend: 117  
Filed 10/23/2024  
Effective 01/01/2025  
Agency Contact: Timothy Rodda (279) 895–1246

Cemetery and Funeral Bureau  
File # 2024–0905–02  
Crematory: Change in Ownership

This rulemaking action by the Cemetery and Funeral Bureau amends regulations relating to the applications for and assignment of a crematory license.

Title 16  
Adopt: 2326.01  
Amend: 2326  
Filed 10/16/2024  
Effective 01/01/2025  
Agency Contact:  
Carolina Sammons (916) 574–7876

Department of Food and Agriculture  
File # 2024–0918–02  
Fruit Fly Interior Quarantine

This action by the California Department of Food and Agriculture (“Department”) amends existing quarantine language in eight sections of interior plant quarantine regulations. The amendments prevent future detections of a single fruit fly of a species specified in each of the sections within a quarantine area from triggering an expansion of a quarantine or being automatically considered a satellite infestation, and further align with current United States Department of Agriculture guidelines (“USDA”).

Title 03  
Amend: 3406, 3417, 3423, 3424, 3441, 3442, 3444, 3445  
Filed 10/23/2024  
Effective 01/01/2025  
Agency Contact: Rachel Avila (916) 698–2947

Department of Social Services  
File # 2024–0906–02  
Dementia Care in RCFEs and Miscellaneous Regulation Changes

This rulemaking action by the Department of Social Services amends regulations implementing the Residential Care Facilities for the Elderly (RCFE) Act (Health & Safety Code, section 1569 et seq.) to make changes relating to dementia care.

Title 22, MPP  
Amend: 87101, 87208, 87219, 87303, 87307, 87309, 87455, 87457, 87458, 87463, 87507, 87606, 87705, 87706  
Repeal: 87707  
Filed 10/17/2024  
Effective 01/01/2025  
Agency Contact: Everardo Vaca (916) 657–2363



Education Audit Appeals Panel

File # 2024–0913–01

Supplement to Audits of K–12 LEAs — FY 2023–24

This rulemaking action amends section 19810 of the Title 5 of the California Code of Regulations to incorporate by reference the March 1, 2024, Supplement to the 2023–24 Guide for Annual Audits of K–12 Local Education Agencies (LEAs) and State Compliance Reporting.

Title 05

Amend: 19810

Filed 10/23/2024

Effective 10/23/2024

Agency Contact: Timothy E. Morgan

(916) 445–7745

Board of Psychology

File # 2024–1002–03

Inactive Status of Psychological Associate  
Registration

This rulemaking action submitted by the Board of Psychology adopts a regulation that creates an inactive status for psychological associate registration and implements processes for both placing the registration on inactive status and for reactivation.

Title 16

Adopt: 1391.13, 1391.14

Filed 10/21/2024

Effective 01/01/2025

Agency Contact: Troy Polk (916) 574–8154

Structural Pest Control Board

File # 2024–0910–05

Pesticide Application Notice Requirements

This action by the Structural Pest Control Board amends pesticide application notice requirements to update and incorporate by reference Form 43M–48 (Rev. 10/22), delete the former version of the form currently printed in the California Code of Regulations, and further specify pre– and post–application notice requirements.

Title 16

Adopt: 1970.1, 1970.42, 1970.43

Amend: 1970.4

Filed 10/22/2024

Effective 01/01/2025

Agency Contact: Sophia Azar (279) 236–2502

**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](https://oal.ca.gov).