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PROPOSED ACTION ON REGULATIONS

GENERAL PUBLIC INTEREST

(Continued on next page)

Time-Dated Material

SUMMARY OF REGULATORY ACTIONS

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

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PROPOSED ACTION ON REGULATIONS

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

COST RECOVERY FEES FOR EXTRAORDINARY ACCREDITATION ACTIVITIES

The Commission on Teacher Credentialing (Commission) proposes to take the regulatory action described below after considering all comments, objections, and recommendations regarding the proposed action. A copy of the proposed regulations is included with the new proposed text shown in underline.

The Commission has not scheduled a public hearing on this proposed action. However, the Commission 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 before the close of the comment period.

Summary of the Effect of the Proposed Action

The proposed action would amend the California Code of Regulations, Title 5, section 80692.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by email relevant to the proposed action. The written comment period closes on January 6, 2025. Comments must be received by that time or may be submitted at the public hearing, should one be requested. Interested parties may write to the Commission on Teacher Credentialing, Attention Lynette Roby, 1900 Capitol Avenue, Sacramento, California 95811; or submit an email to Lynette.roby@ctc.ca.gov or chickey@ctc.ca.gov.

Any written comments received by the closing of the public comment period will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

AUTHORITY AND REFERENCE

The Commission's authority to establish program standards is established in subsection (b)(1)(C) and (d) of Education Code section 44225. Specifically, section (b)(2) of Education Code 44225 states that "The commission may establish standards and requirements for preliminary and professional credentials of each type." Additionally, Education Code section 44374.5 authorizes the Commission to develop and implement a cost recovery plan for extraordinary accreditation activities. Cost Recovery fees are assessed for activities beyond regular accreditation cycle activities and include such activities as initial institutional approval, initial program approval, revisits, and focused site visits.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

The Commission adopted regulations related to Cost Recovery fees for extraordinary accreditation activities at the September 27, 2013, meeting following the addition of Education Code section 44374.5, which authorized the Commission to develop and implement a cost recovery plan for extraordinary accreditation activities. Emergency regulations were approved by Office of Administrative Law in October 2013 and in 2014 the regulations became permanent.

Objectives and Anticipated Benefits of the Proposed Regulations

The Commission adopted regulations for the authorization and credential requirements for the PK–3 Early Childhood Education (ECE) Specialist Instruction credential at its August 2022 meeting and adopted the program standards and teaching performance expectations for this credential at its October 2022 meeting. At its December 2022 meeting, the Commission adopted the full set of regulations for the credential with minor revisions and directed staff to move forward with the rulemaking process. The final regulations were approved by the Office of Administrative Law and the regulations became effective as of April 1, 2024.

Concurrently, on December 8, 2022, the Commission adopted amendments to Cost Recovery for Program Approval and Accreditation regulations, sections 80692(a)(2)(A), 80692(a)(2)(B), and 80692(a)(2)(C), 80692(a)(2)(D) and 80692(a)(2)(E), to replace the number of educator preparation program standards as the basis for each fee category with lists of preparation programs included in each fee category. The final revisions and amendments to Title 5 of the California Code of Regulations (CCR) related to Cost Recovery were approved by the Office of Administrative Law and filed with the Secretary of State on June 5, 2024. This regulatory action became effective as of October 1, 2024.

The PK–3 ECE Specialist Instruction Credential was approved while the Cost Recovery regulations were still being reviewed by OAL. Since the Cost Recovery regulations were subsequently approved, it is

now necessary to update them to reflect the approval of the PK–3 ECE Specialist Instruction Credential. This rulemaking action proposes updates to the adopted language in sections 80692 of Title 5 of the California Code of Regulations (CCR) related to Cost Recovery fees, specifically amending Section 80692(a)(1)(B) and Section 80692(a)(1)(E) to reflect the PK-3 ECE Specialist Instruction Credential, amending language for clarity in Section 80692(a)(1)(E), amending language in Section 80692(a)(1)(C) to reflect the PK-3 ECE Specialist Instruction Credential and deleting text in 80692(a)(1)(C)(7) since it is a duplication of text found in 80692(a)(1)(D)(2).

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Commission has determined that the proposed regulation amendments are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Commission has concluded that these are the only regulations that concern Cost Recovery fees assessed for extraordinary accreditation activities.

DISCLOSURES REGARDING THE PROPOSED ACTIONS/FISCAL IMPACT

The Commission has made the following initial determinations.

LOCAL MANDATE

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with section 17500) of the Government Code. Local education agencies may choose to sponsor educator preparation programs utilizing the proposed regulations; however, no mandate exists requiring local agencies or school districts to have educator preparation programs and, therefore, no reimbursement in accordance with Part 7 (commencing with section 17500) of the government code is required.

FISCAL IMPACT

Costs to any local agency or school districts requiring reimbursement pursuant to Government Code section 17500 et seq.

These proposed regulations will not impose a cost to local agencies or school districts requiring reimbursement in accordance with Part 7 (commencing with section 17500) of the Government Code as sponsoring an educator preparation program which is aligned to the proposed regulations and is not required by law.

Cost or savings to any state agency.

None. This will not create a cost or savings to any state agency. Cost Recovery fee regulations apply to currently approved educator preparation institutions or to institutions seeking approval to offer a teacher preparation program.

Other non–discretionary costs or savings imposed upon local agencies.

None. Sponsoring an educator preparation program is not a required by law.

Cost or savings in federal funding to the state.

None. Sponsoring an educator preparation program which is aligned to the proposed regulations is not required by law and would not impact federal funding to the state.

Housing Costs

No effect on housing costs. These regulations only pertain to currently approved educator preparation programs, to institutions seeking approval to offer a teacher preparation program, and to institutions expanding their business into education preparation in California.

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

The Commission has concluded there is no significant adverse impact on business.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code section 11346.3(b), the Commission has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs within California

These amendments will not create or eliminate jobs in California. The proposed amendments pertain to Cost Recovery fees assessed of educator preparation programs for extraordinary accreditation activities.

Creation of New Businesses or Elimination of Existing Business within California

These amendments will not create or eliminate existing businesses in California. The proposed amendments pertain to Cost Recovery fees assessed of educator preparation programs for extraordinary accreditation activities.

Expansion of Businesses Currently Doing Business within the California

These amendments will not cause the expansion or elimination of existing businesses in California.

The proposed amendments pertain to Cost Recovery fees assessed of educator preparation programs for extraordinary accreditation activities.

Benefits of the Regulations

The Commission anticipates that the proposed amendments will continue to benefit the health and welfare of California residents by providing clarity and consistency for educator preparation programs and their constituents when determining the Cost Recovery fees to be assessed for extraordinary accreditation activities. Cost recovery fees support the Commission's accreditation system which ensures high quality educator preparation programs for California's public schools.

The Commission does not anticipate that these regulations will result in a direct benefit to worker safety or the state's environment.

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

BUSINESS REPORT

This proposal does not require a report to be made.

EFFECT ON SMALL BUSINESS

The proposed regulations will not affect small business. The proposed regulations apply only to educational institutions electing to offer or offering Commission–approved and accredited educator preparation programs. Educational institutions are California State Universities, Universities of California, private four–year colleges and universities, or local education agencies, none of which meet the definition for small business as defined in government code 11342.610. The vast majority of Commission approved program sponsors are nonprofit educational institutions. Very few institutions of higher education approved by the Commission at this time are for–profit businesses. Because offering an educator preparation program is voluntary, any institution must evaluate whether they have sufficient resources to offer a high–quality preparation program in accordance with the state adopted standards, state statute, and regulations such as the Cost Recovery fee regulations.

ALTERNATIVES STATEMENT

The Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost–effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearing.

CONTACT PERSON/FURTHER INFORMATION

General or substantive inquiries concerning the proposed action may be directed to Lynette Roby by telephone at 916–324–3668, or by email to Lynette.roby@ctc.ca.gov *or to Cheryl Hickey by telephone at (916) 322–0695 or email at* chickey@ctc.ca.gov. Additionally, inquiries may be made by mail at Commission on Teacher Credentialing: Attention: Regulations, 1900 Capitol Avenue, Sacramento, CA 95811. General question inquiries may also be directed to the addresses mentioned above. Upon request, a copy of the express terms of the proposed action and a copy of the Initial Statement of Reasons will be made available. This information is also available on the Commission's website at http://www.ctc.ca.gov/notices/rulemaking.html. In addition, all the information on which this proposal is based is available for inspection and copying.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of the Notice of Proposed Rulemaking, the proposed text of regulations, the Initial Statement of Reasons, and an economic impact assessment/analysis contained in the Initial Statement of Reasons. Copies may be obtained by contacting Lynette Roby at the addresses or telephone number provided above.

MODIFICATION OF PROPOSED ACTION

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non–substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, following the conclusion of the public hearing. Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Lynette Roby at Lynette.roby@ctc.ca.gov or chickey@ctc.ca.gov.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations can be accessed through the Commission's website at http://www.ctc.ca.gov/notices/rulemaking.html.

TITLE 11. PRIVACY PROTECTION AGENCY

CALIFORNIA CONSUMER PRIVACY ACT REGULATIONS

Subject Matter of Proposed Regulations: Updates to existing California Consumer Privacy Act (CCPA) regulations; Cybersecurity Audits; Risk Assessments; Automated Decisionmaking Technology, and Insurance Companies. (CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations)

Sections Affected: California Code of Regulations (CCR), Title 11, sections 7001, 7002, 7003, 7004, 7010, 7011, 7012, 7013, 7014, 7015, 7020, 7021, 7022, 7023, 7024, 7025, 7026, 7027, 7028, 7050, 7051, 7053, 7060, 7062, 7063, 7070, 7080, 7102, 7120, 7121, 7123, 7124, 7150, 7151, 7152, 7153, 7154, 7155, 7156, 7157, 7200, 7201, 7220, 7221, 7222, 7270, 7271, 7300, and 7302.

The California Privacy Protection Agency (Agency) proposes to amend and adopt the proposed regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Agency will hold a public hearing to provide all interested persons an opportunity to present oral or written statements or arguments with respect to the proposed regulations:

Date: Tuesday, January 14, 2025
Time: 2:00–6:00 p.m. Pacific Time
Location:

Cannabis Control Appeals Panel Hearing Room
400 R Street, Suite 330
Sacramento, CA 95811

To join this hearing by virtually by online video platform:

https://cppa–ca–gov.zoom.us/j/81402254127

Or Telephone:

USA (216) 706–7005 US Toll
USA (866) 434–5269 US Toll–free
Conference code: 682962

Please contact Candice Sanders at regulations@cppa.ca.gov or (916) 642–7558 by 4:30 p.m. on Friday, January 10, 2025, if reasonable accommodations are necessary.

At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The Agency requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at, or immediately following, the hearing via email to regulations@cppa.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes on January 14, 2025, at 6:00 p.m. Pacific Time. Only written comments received by that time will be considered. Within your comment, please indicate the proposed rulemaking action to which your comment refers to at the top of the page: CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations.

Please submit written comments to:

EMAIL: regulations@cppa.ca.gov

Please include "Public Comment on CCPA Updates, Cyber, Risk, ADMT, and Insurance Regulations" in the subject line.

MAIL:

California Privacy Protection Agency
Attention: Legal Division — Regulations Public Comment
2101 Arena Boulevard
Sacramento, CA 95834

Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and will be posted on our public website: https://cppa.ca.gov/regulations/ccpa_updates.html.

AUTHORITY AND REFERENCE

Authority: Section 1798.185, Civil Code.

Reference: Sections 1798.81.5, 1798.100, 1798.105, 1798.106, 1798.106, 1798.110, 1798.115, 1798.120, 1798.121, 1798.125, 1798.130, 1798.135, 1798.140, 1798.145, 1798.150, 1798.155, 1798.175, 1798.185, 1798.199.35, 1798.199.40, 1798.199.45, 1798.199.50, and 1798.199.65, Civil Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

The California Consumer Privacy Act (CCPA) was enacted in 2018 and became effective in 2020. It granted consumers new privacy rights and imposed obligations on businesses that collect personal information about consumers. The CCPA provided consumers with the rights to know about personal information collected by businesses, delete personal information, opt out of the sale of personal information, and be protected from discrimination in service and price when exercising privacy rights. In 2020, the Consumer Privacy Rights Act (CPRA) amended the CCPA, creating the Agency and granting consumers additional rights, such as the rights to correct, limit the use and disclosure of sensitive personal information, and opt–out of the sharing of their personal information. In addition, the CPRA created or amended certain requirements for businesses, such as those relating to the processing of consumers' personal information, disclosures to consumers, and methods for submitting CCPA requests.

Although the Attorney General initially had rulemaking authority to implement the CCPA, that authority transferred to the Agency in 2022. Subsequently, the Agency engaged in rulemaking to amend the regulations previously adopted by the Attorney General, operationalize the CPRA amendments to the CCPA, and provide additional clarity and specificity to implement the law. In March 2023, the Agency's first formal rulemaking process concluded, and its regulations became effective.

In September 2024, the Governor signed into law three bills that amend the CCPA and become effective January 1, 2025. AB 1008 (2023–2024) amends the definition of personal information to clarify that it includes physical, digital, and abstract digital formats, including metadata or artificial intelligence ("AI") systems capable of outputting personal information. SB 1223 (2023–2024) expands the definition of sensitive personal information to include "neural data." Therefore, when the CCPA and existing and proposed regulations reference personal information or sensitive personal information, those references are intended to encompass the definitions of those terms contained in these bills as the proposed regulations would be adopted after January 1, 2025.

AB 1824 requires businesses to which personal information is transferred as an asset during certain transactions, such as a merger or acquisition, to honor consumers' opt–out of sale/sharing preferences. The CCPA's requirements for the right to opt–out of sale/sharing, including in the existing or proposed regulations, also apply to businesses to which personal information is transferred.

EFFECT OF THE PROPOSED RULEMAKING:

The proposed regulations include updates to existing Agency regulations, as well as the addition of regulations related to cybersecurity audits, risk assessments, automated decisionmaking technology (ADMT), and insurance requirements. The updates to existing regulations modify the regulations to be consistent with current law, refine the existing regulations based on the Agency's experience and available information since the time these regulations were adopted, and make changes without regulatory effect. The Agency has identified that there is a need to provide clarity to the regulated industry about the interplay between insurance laws and the CCPA; thus, the Agency has included regulations related to insurance requirements. Finally, the Agency is statutorily mandated to adopt regulations to implement and clarify requirements related to cybersecurity audits, risk assessments, and ADMT. The proposed regulations seek to fulfill that mandate.

Article 1. General Provisions.

Article 1 of the Agency's regulations contain general provisions including definitions, restrictions on collection and use of personal information, disclosures and communications with consumers, and requirements for methods of submitting CCPA requests and obtaining consumer consent. The proposed regulations would amend section 7001 to define the following terms: "artificial intelligence," "automated decisionmaking technology" and "ADMT," "behavioral advertising," "cybersecurity audit," "cybersecurity program," "deepfake," "information system," "multi–factor authentication," "penetration testing," "performance at work," "performance in an educational program," "physical or biological identification or profiling," "privileged account," "profiling," "publicly accessible place," "request to access ADMT," "request to appeal ADMT," "request to opt–out of ADMT," "right to access ADMT," "right to opt–out of ADMT," "systematic observation," "train automated decisionmaking technology or artificial intelligence," and "zero trust architecture." The proposed regulations

would also amend the definitions of "nonbusiness," "request to know," "sensitive personal information," and "verify."

The proposed regulations would amend section 7002 to clarify that a business must allow a consumer to withdraw consent to collecting and processing personal information, unless an exception applies, and require that businesses comply with all of the requirements within that section for additional collection or processing of personal information.

The proposed regulations would also amend the requirements of section 7003 regarding the appearance of privacy related links on a business website. The proposed regulations would further require mobile applications to include a conspicuous link within the application itself.

Additionally, the proposed regulations would amend section 7004 to clarify that businesses must incorporate the principles listed in the section in designing and implementing their methods for submitting CCPA requests and for obtaining consumer consent. The proposed regulations would revise and add to the examples provided in the section, replace permissive language with mandatory language for requirements, and address how requests for consent must appear. The proposed regulations would prohibit businesses from using misleading statements or omissions, affirmative misstatements, or deceptive language in obtaining consent, as well as categorize choices that are driven by a false sense of urgency as misleading. The proposed regulations would establish that a consumer's silence or failure to act affirmatively does not constitute consent. The proposed regulations would further clarify that methods must be tested to ensure that they are functional and do not undermine the consumer's choice to submit the request. The proposed regulations further clarify that this principle also applies to methods for providing and withdrawing consent and reminds businesses that individuals handling phone calls from consumers submitting CCPA requests must have the knowledge and ability to process those requests. The proposed regulations clarify the illustrative examples in subsection (a) were a non–exhaustive list and that a user interface that has the effect of subverting or impairing consumer choice is a dark pattern.

Article 2. Required Disclosures to Consumers.

Article 2 contains required disclosures to consumers. The proposed regulations would amend section 7010 to require a business that uses ADMT to provide consumers with a Pre–use Notice, which must include a link through which consumers can opt–out of the business's use of ADMT. The proposed regulations clarify exceptions to the requirement to provide an opt–out link to consumers.

The proposed regulations would amend section 7011 to require mobile applications to include a link to the privacy policy. Businesses would also be required to describe categories of sources and categories of third parties in a manner that provides consumers a meaningful understanding of those things. The proposed regulations would clarify that disclosures for a business purpose are to service providers and contractors, not third parties. The proposed regulations also clarify that businesses must include an explanation of consumers' right to opt–out of ADMT and an explanation of the right to access ADMT, if it is using ADMT. The proposed regulations clarify that consumers have a right against retaliation when exercising their privacy rights, and that this right also applies when they are acting as an applicant to an educational program, a job applicant, or a student. The proposed regulations would also require the business to provide a general description of the process it uses to verify a consumer's "request to access ADMT."

The proposed regulations would amend section 7013 to provide more examples of the requirement that the Notice of Right to Opt–Out of Sale/Sharing be provided in the same manner in which the business collects the personal information that it sells or shares.

The proposed regulations would amend section 7014 to further implement Civil Code section 1798.135, subdivision (a)(2), by requiring the notice of the consumer's right to limit the use of sensitive personal information be provided in the same manner in which the business collects the sensitive personal information, and provides examples. The proposed regulations would also amend section 7015 to allow for the adjustment of color to ensure that the opt–out icon is conspicuous and easy to read.

Article 3. Business Practices for Handling Consumer Requests.

Article 3 contains requirements for how consumer requests must be handled by businesses. The proposed regulations would amend section 7020 to require businesses to provide a means by which the consumer can request that the business, in response to a request to know, provide personal information collected prior to the 12–month period preceding the business's receipt of the request. The proposed regulations would also amend section 7021 to make requests to access ADMT and to appeal ADMT subject to the timelines contained in the section.

Additionally, the proposed regulations would amend section 7022 by clarifying what a business must do in response to a request to delete. This includes that businesses, service providers, and contractors are to implement measures to ensure that information subject to a request to delete remains deleted, deidentified, or aggregated. The proposed regulations would also explain that whether a business, service provider, or con-

tractor has implemented these measures factors into whether they have complied with the consumer's request to delete, and that they should consider and address how previously deleted information may be recollected. The proposed regulations would also require a business that denies a request to delete in whole or in part to inform the consumer that they can file a complaint with the Agency and the Attorney General's office.

The proposed regulations would also amend section 7023 to clarify that businesses, service providers, and contractors are to implement measures to ensure that information subject to a request to correct remains corrected and that a business is obligated to correct information stored in a backup or archived system only if that system comes into active use. The proposed regulations would require businesses that deny a consumer's request to correct to inform the consumer that, upon the consumer's request, it will note both internally and to any person to whom it discloses the personal information that the accuracy of the personal information is contested by the consumer. The proposed regulations would require a business to make a written statement the consumer submits available to any person to whom it discloses the personal information subject to the request to correct health information. Additionally, businesses would be required to provide the name of the source from which it received alleged inaccurate information, or inform the source that the information provided was incorrect and must be corrected. The proposed regulations require businesses to confirm certain information they maintain is the same as what the consumer has provided and clarifies that failing to address the possibility that corrected information may be overridden by inaccurate information factors into whether the business, service provider, or contractor has adequately complied with a consumer's request to correct. The proposed regulations also clarify that complaints may be filed with the Agency or Attorney General's office.

The proposed regulations would amend section 7024 to require businesses to provide a way for consumers to confirm that certain sensitive personal information the business maintains is what the consumer believes it should be and that when a business denies a request to know in whole or in part, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General's office. The proposed regulations would more precisely explain a business's disclosure obligations under Civil Code sections 1798.110 and 1798.115 and clarify that businesses must identify categories of service providers and contractors in a manner that provides consumers a meaningful understanding of the categories listed.

The proposed regulations would amend section 7025 to require businesses to display the consumer's choice as it relates to the sale/sharing of their personal information; the business must display whether it has processed the consumer's opt–out preference signal as a valid request to opt–out of sale/sharing on its website. Exemplar language for how a business can communicate this information to the consumer is included in the proposed regulations.

The proposed regulations would amend section 7026 to require that a business that denies a request to opt–out of sale/sharing to inform the consumer that they can file a complaint with the Agency and the Attorney General's office. Illustrative examples to explain the timing requirements for requests to opt–out of sale/sharing have been included. The proposed regulations would require businesses to provide a means by which the consumer can confirm that their request to opt–out of sale/sharing has been processed and provide exemplar language for how a business can communicate this information to the consumer.

The proposed regulations would amend section 7027 to include the requirement that when a business denies a request to limit, it must also inform the consumer that they can file a complaint with the Agency and the Attorney General's office. "Shared" has been replaced with "made available" to be more precise and additional examples have been included. The proposed regulations would also require businesses to provide a means by which the consumer can confirm that their request to limit has been processed.

The proposed regulations would amend section 7028 to extend the procedures for requests to opt–in to include requests to opt–in to the sharing of personal information and requests to opt–in to the use and disclosure of sensitive personal information. The proposed regulations address situations where consumers initiate transactions with businesses after making a request to limit when those transactions may require that the business disclose or use the consumer's sensitive personal information in a manner inconsistent with the request to limit, allowing a business to obtain the consumer's consent to use or disclose the information for that purpose even if it is within 12 months of the consumer's request. The proposed regulations would also clarify that section 7004 applies to obtaining the consumer's consent.

Article 4. Service Providers, Contractors, and Third Parties.

Article 4 of the proposed regulations contains the requirements related to service providers, contractors, and third parties. The proposed regulations would amend section 7050 to clarify that the purposes for which a service provider or contractor retains, uses, or discloses personal information must be reasonably necessary and proportionate to serve the purposes listed in the regulation and provides an example. The proposed regulations would also require that service pro-

viders and contractors cooperate with businesses for those businesses' cybersecurity audits and risk assessments with respect to the personal information that the service provider or contractor has collected pursuant to their written contract with the business. The proposed regulations would explain that cooperating with a business's completion of its cybersecurity audit includes making available to the business's auditor all relevant information that the auditor requests and not misrepresenting any fact that the auditor deems relevant to the audit. The proposed regulations would also explain that cooperating with a business that is conducting a risk assessment includes making available to the business all facts necessary to conduct the risk assessment and not misrepresenting any fact necessary to conduct the risk assessment.

The proposed regulations would amend section 7051 by including additional examples of requirements that a business may include in its contracts with service providers or contractors.

Article 5. Verification of Requests.

Article 5 contains the responsibilities of businesses to verify that the person making the request is also the subject of the information impacted by the request. The proposed regulations would amend section 7060 to include requests to access and to opt–out of ADMT. The proposed regulations would clarify that businesses must first consider how they can verify a consumer's identity using personal information that they already maintain about the consumer before asking the consumer to provide additional information. The proposed regulations would make certain requirements mandatory when verifying requests and require a business that compensates the consumer for the cost of the notarization to provide the consumer with instructions on how they will be reimbursed prior to the consumer's submission of the notarization. The proposed regulations would also extend the requirement to implement "reasonable security measures" to information about a business's use of ADMT with respect to a consumer. The proposed regulations would clarify that a business must not use personal information that is the subject of a request to correct to verify the consumer.

The proposed regulations would amend section 7062 to include "request to access ADMT."

The proposed regulations would also amend section 7063 to clarify that businesses shall not require consumers to resubmit their request in their individual capacity.

Article 6. Special Rules Regarding Consumers Less Than 16 Years of Age.

The proposed regulations would modify the title of the article to use the term "less than" instead of "under" to be consistent with the content within the article.

Article 7. Non–Discrimination.

The proposed regulations would amend section 7080 to include requests to access and to opt–out of ADMT.

Article 8. Training and Record–Keeping.

The proposed regulations would amend section 7102 to require the compilation and disclosure of metrics for requests to access and to opt–out of ADMT that the business received, complied with in whole or in part, and denied.

Article 9. Cybersecurity Audits.

Article 9 of the proposed regulations would be a new article containing the requirements for cybersecurity audits. The proposed regulations would add section 7120 that explains which businesses' processing presents significant risk to consumers' security. The proposed regulations would clarify that a business that "meets the threshold set forth in Civil Code section 1798.140, subdivision (d)(1)(C), in the preceding calendar year" is a business whose processing of consumers' personal information presents significant risk to consumers' security. The proposed regulations would identify a business that meets the annual gross revenue threshold set forth in Civil Code section 1798.140, subdivision (d)(1)(A), and one of two processing thresholds in the preceding calendar year as presenting significant risk to consumers' security. The proposed regulations would clarify that the two processing thresholds are met if the business processed either (1) the personal information of 250,000 or more consumers or households, or (2) the sensitive personal information of 50,000 or more consumers.

The proposed regulations would add section 7121, which provides a business with 24 months from the effective date of the proposed regulations to complete its first cybersecurity audit and subsequently requires one every calendar year, with no gap in the months covered by successive cybersecurity audits.

The proposed regulations would add section 7122, which contains the requirements for thorough and independent cybersecurity audits. The proposed regulations would require use of a qualified, objective, independent auditor who uses procedures and standards generally accepted in the profession of auditing; and provide guidance as to what auditor objectivity and independence mean, and how businesses must preserve auditor independence. For example, the proposed regulations would clarify that the auditor must exercise impartial judgment, be free to make decisions and assessments without influence by the business, and not participate in the very business activities that the auditor may assess in the current or subsequent cybersecurity audits. If the auditor is internal, the proposed regulations would require that they report directly to, and have their performance–evaluation and compen-

sation determined by, the business's board, governing body, or the business's highest–ranking executive who does not have direct responsibility for the cybersecurity program. The proposed regulations would require a business to make all information available to the auditor that the auditor requests as relevant, make good–faith efforts to disclose to the auditor all facts relevant to the cybersecurity audit, and not misrepresent any fact relevant to the cybersecurity audit. The proposed regulations would specify that the audit must articulate its scope and criteria; identify the specific evidence examined to make decisions and assessments; explain why the scope, criteria, and evidence are appropriate; explain why the specific evidence examined is sufficient to justify the auditor's findings; not rely primarily on assertions or attestations but rather on specific evidence that the auditor deemed appropriate; assess, document, and summarize each applicable component of the business's cybersecurity program; identify gaps or weaknesses in the business's cybersecurity program; and address the status of any gaps or weaknesses identified in any prior cybersecurity audit, and any corrections or amendments to any prior cybersecurity audit. The proposed regulations would also require the audit to include the auditor's name, affiliation, and relevant qualifications; as well a signed statement by each auditor certifying that they completed an independent review, exercised objective and impartial judgment, and did not rely primarily on assertions or attestations by the business's management. The proposed regulations would require the audit to be reported to the business's board, governing body, or highest–ranking executive responsible for its cybersecurity program and to contain a signed statement by that person certifying that the business did not influence, and made no attempt to influence, the auditor's decisions or assessments, as well as that they have reviewed, and understand the findings of, the cybersecurity audit. The auditor would be required to retain all documents relevant to each cybersecurity audit for a minimum of five (5) years.

The proposed regulations would add section 7123, which contains what the cybersecurity audit must cover. The proposed regulations would require the audit to identify, assess, and document how the business's cybersecurity program (that is appropriate to the business's size, complexity, and the nature and scope of its processing activities) protects personal information from unauthorized actions; and identify, assess, and document 18 components of the business's cybersecurity program, as applicable, or explain why a component is not necessary and how the safeguards the business has in place provide at least equivalent security.

The components include: (1) authentication, including multi–factor authentication and strong unique passwords or passphrases; (2) encryption of personal information, at rest and in transit; (3) zero trust architecture; (4) account management and access controls, including restricting access to personal information and functions to what is necessary for that person to perform their duties; the number of privileged accounts and their functions, using a privileged–access management solution; the creation of new accounts and ensuring that their access and privileges are limited; and restricting and monitoring physical access to personal information; (5) inventory and management of personal information and the business's information system, including inventories, classification, and tagging of personal information; hardware and software inventories and the use of allowlisting; hardware and software approval processes and preventing the connection of unauthorized hardware and devices to the business's information system; (6) secure configuration of hardware and software, including software updates and upgrades; securing on–premises and cloud–based environments; masking sensitive and other personal information as appropriate by default in applications; security patch management; and change management; (7) internal and external vulnerability scans, penetration testing, and vulnerability disclosure and reporting; (8) audit–log management, including the centralized storage, retention, and monitoring of logs; (9) network monitoring and defenses, including the deployment of bot–detection and intrusion–detection and intrusion–prevention systems, and data–loss–prevention systems; (10) antivirus and anti-malware protections; (11) segmentation of an information system; (12) limitation and control of ports, services, and protocols; (13) cybersecurity awareness, education, and training, including training for each employee, independent contractor, and any other personnel to whom the business provides access to its information system; and how the business maintains current knowledge of changing cybersecurity threats and countermeasures; (14) secure development and coding best practices, including code–reviews and testing; (15) oversight of service providers, contractors, and third parties; (16) retention schedules and proper disposal of personal information no longer required to be retained by (a) shredding, (b) erasing, or (c) otherwise modifying the personal information to make it unreadable or undecipherable through any means; (17) how the business manages its responses to security incidents; and (18) the business's business–continuity and disaster–recovery plans, including data–recovery capabilities and backups.

The proposed regulations also would require the audit to describe how the business implements and enforces compliance with the applicable components, how effective the business's cybersecurity program components are at protecting consumers' personal information, the status of any gaps or weaknesses of the

applicable components, and the business's plan to address them. The proposed regulations would require the audit to include the titles of individuals responsible for the business's cybersecurity program; and the date that the program and any evaluations of it were presented to the business's board, governing body, or to the business's highest–ranking executive responsible for the program. The audit would also be required to include a sample copy or a description of any required notification to a consumer or any agency with jurisdiction over privacy laws or other data processing authority, as well as dates and details of the activity that gave rise to the required notifications and any related remediation measures taken by the business. The proposed regulations would also clarify that if a business has engaged in a cybersecurity audit, assessment, or evaluation that meets all of the requirements of Article 9, the business is not required to complete a duplicative cybersecurity audit, but must explain how what it has already done meets all of the regulatory requirements, and supplement it with additional information if it does not meet all such requirements.

The proposed regulations would add section 7124, which provides for businesses required to complete a cybersecurity audit to submit to the Agency every calendar year a written certification that the business completed the cybersecurity audit. The certification would be submitted to the Agency through https://cppa.ca.gov/, identify the 12 months that the audit covers, be signed by a member of the business's board, governing body, or highest–ranking executive with authority to certify on behalf of the business and who is responsible for oversight of the business's cybersecurity–audit compliance, and include a statement certifying that the signer, identified by name and title, has reviewed and understands the findings of the cybersecurity audit.

Article 10. Risk Assessments.

Article 10 would be a new article containing the requirements for risk assessments. The proposed regulations would add section 7150 to address when a business must conduct a risk assessment, which is when their processing of consumers' personal information presents significant risk to consumers' privacy. The proposed regulations would require a risk assessment when a business sells or shares personal information; or processes sensitive personal information, except for when a business processes sensitive personal information solely and specifically for administering compensation payments, determining and storing employment authorization, administering employment benefits, or for wage reporting as required by law. A risk assessment would also be required when a business uses ADMT for a significant decision concerning a consumer or for extensive profiling. For this purpose, "significant decision" would mean a decision that results in access to, or the provision or denial of financial or lending services; housing; insurance; education enrollment or opportunity; criminal justice; employment or independent contracting opportunities or compensation; healthcare services; or essential goods or services. The proposed regulations would clarify that "education enrollment or opportunity" includes admission or acceptance into academic or vocational programs, educational credentials, and suspension and expulsion; and that "employment or independent contracting opportunities or compensation" includes hiring, allocation/assignment of work and compensation, promotion; and demotion, suspension, and termination. The proposed regulations would also explain that "significant decisions" include only decisions using information that is not subject to relevant data–level exceptions in the CCPA. The proposed regulations would define "extensive profiling" to include profiling consumers in work and educational contexts, in public, or for behavioral advertising. The proposed regulations would further identify processing of personal information to train ADMT or AI that is capable of being used for a significant decision, to establish individual identity, for physical or biological identification or profiling, for the generation of a deepfake, or for the operation of generative models, as a significant risk to consumers' privacy requiring a risk assessment. Illustrative examples of when a business must conduct a risk assessment are also included.

The proposed regulations would add section 7151, which requires businesses to ensure that relevant individuals at the business prepare, contribute to, or review the risk assessment, based upon their involvement in the processing activity. "Relevant" individuals are those whose job duties pertain to the processing activity, and examples of these types of individuals are included. The proposed regulations would require relevant individuals to make good–faith efforts to disclose all facts necessary to conduct the risk assessment and not misrepresent any facts. The proposed regulations would clarify that a risk assessment may involve external parties to identify, assess, and mitigate privacy risks, and include examples of the types of external parties that may be involved in the risk–assessment process.

The proposed regulations would add section 7152, which contains the requirements for the risk assessment and clarifies that the purpose of a risk assessment is to determine whether the risks to consumers' privacy outweigh the benefits for a given processing activity. It also explains how a business must conduct a risk assessment. Businesses would be required to identify why they will be processing consumers' personal information and would be prohibited from identifying this purpose in generic terms. The proposed regulations would also require businesses to identi-

fy the categories of personal information to be processed, whether they include sensitive personal information, and the minimum personal information necessary to achieve the purpose of the processing. The proposed regulations would also require a business to identify its actions to maintain data quality for certain uses of ADMT or AI, and the proposed regulations would provide a definition of "quality of personal information," which includes completeness, representativeness, timeliness, validity, accuracy, consistency, and reliability of sources. Examples are included of the types of actions a business may take, such as identifying the source of the personal information and whether that source is reliable; identifying how the personal information is relevant to the task being automated and how it is expected to be useful for the development, testing, and operation of the ADMT or AI; identifying whether the personal information contains sufficient breadth to address the range of real–world inputs the ADMT or AI may encounter; and identifying how errors from data entry, machine processing, or other sources are measured and limited. The proposed regulations would also require a business to identify the operational elements of the processing activity: the planned method of processing and the sources of personal information; the length of, and criteria for, retention; the relationship between the consumer and the business; the approximate number of consumers whose personal information the business seeks to process; relevant disclosures made to the consumer, how they were made, and relevant actions to make the disclosures specific, explicit, prominent, and clear to the consumer; names or categories of relevant entities in the processing activity, the purpose for disclosing personal information to them, and actions taken to make the consumer aware of these entities' involvement; and the technology to be used, including the logic of the relevant ADMT, its output, and how the business will use that output.

The proposed regulations would require a business to specifically identify the benefits to the business, the consumer, other stakeholders, and the public from the processing of the personal information. It provides an example of what would not meet the specificity requirement. The proposed regulations would require a business that profits monetarily from the activity to identify this benefit and, when possible, estimate the expected profit, while clarifying that benefits cannot be stated in a generalized manner. The business would also be required to specifically identify the negative impacts to consumers' privacy associated with the processing, including the sources and causes of these negative impacts and any criteria used to make these determinations. Different types of negative impacts to consumers' privacy that the business may consider are included. The proposed regulations would require a business to identify the safeguards it plans to implement to address the negative impacts, and would include different safeguards that a business may consider.

The proposed regulations would require businesses to identify, for certain uses of ADMT, whether they evaluated the ADMT to ensure it works as intended and does not discriminate based upon protected classes. The proposed regulations would also require the business to identify the policies, procedures, and training the business has implemented or plans to implement to ensure the ADMT works as intended and does not discriminate. The proposed regulations would clarify that when a business has obtained the ADMT from another person, it must identify whether it reviewed that person's evaluation of the ADMT, including any requirements or limitations relevant to the business's proposed use, as well as any accuracy and nondiscrimination safeguards the business implemented or plans to implement. Examples are included.

The proposed regulations would also require a business to identify whether it will initiate the processing activity that triggered the risk assessment. The proposed regulations would require businesses to identify who contributed to the risk assessment, when it was reviewed and approved and by whom, the individual who decides whether the business will initiate the processing activity; and if a business presents the risk assessment for review to its board of directors, governing body, or highest–ranking executive responsible for oversight of risk–assessment compliance, then the business must include the date of that review.

The proposed regulations would add section 7153, which requires businesses that make ADMT or AI available to other businesses to provide all necessary facts to those recipient–businesses to conduct their own risk assessments and provide a plain language explanation of any relevant requirements or limitations associated with the permitted uses of that technology. The proposed regulations would limit this requirement to ADMT or AI trained using personal information. The proposed regulations would add section 7154, which prohibits businesses from processing personal information for specified processing activities if the risks to consumers' privacy outweigh the benefits to the consumer, the business, other stakeholders, and the public from the processing.

The proposed regulations would add section 7155, which addresses the timing requirements for risk assessments. The proposed regulations would require businesses to conduct and document their risk assessments before initiating any of the activities triggering a risk assessment, and would require them to review their risk assessments at least once every three years for accuracy and update them as needed. The proposed regulations would also require businesses to

immediately update their risk assessments whenever there is a material change to the processing activity. The proposed regulations clarify that a change is material when it diminishes the benefits of the activity, creates new negative impacts or increases their likelihood or magnitude, or diminishes the effectiveness of safeguards. The proposed regulations include examples. The proposed regulations require businesses to retain their risk assessments for as long as the activity continues, or for five years after completion of the risk assessment, whichever is later. Businesses would be required to conduct a risk assessment for any processing activity triggering a risk assessment that is ongoing after the effective date of these proposed regulations within 24 months of the effective date of these proposed regulations.

The proposed regulations would add section 7156, which explains that a business may conduct a single risk assessment for a comparable set of processing activities. It defines "comparable set of processing activities" as a set of similar processing activities that present similar risks to consumers' privacy and provides an example. Businesses that conduct and document a risk assessment to comply with another law or regulation would not be required to conduct a duplicative risk assessment. If that risk assessment does not meet all of the risk–assessment requirements of Article 10, a business must supplement the risk assessment with any required information to meet all of the requirements of these proposed regulations.

The proposed regulations would add section 7157, which establishes when a business must submit risk–assessment materials to the Agency. The proposed regulations would require businesses to submit their first risk–assessment materials to the Agency within 24 months of the effective date of these proposed regulations and subsequently, every calendar year with no gap in the months covered by successive submissions. The proposed regulations would address which risk–assessment materials must be submitted to the Agency. This includes a written certification that the business has conducted its risk assessments as set forth in Article 10, a certification from the highest–ranking executive who is responsible for oversight of the business's risk–assessment compliance, that specifies: (1) which months the business is certifying compliance for, and the number of risk assessments that were conducted and documented during that time; (2) an attestation that the designated executive has reviewed, understood, and approved the risk assessments; (3) an attestation that the business initiated any of the activities set forth in subsection 7150(b) only after conducting and documenting a risk assessment; and (4) the designated executive's name, title, signature, and date of certification. The proposed regulations would require a business to submit an abridged form of its new or updated risk assessments to the Agency in the business's annual submissions, which includes: (1) identification of which activity in triggered the risk assessment; (2) a plain language explanation of the purpose for processing consumers' personal information; (3) the categories of personal information processed, and whether they include sensitive personal information; and (4) a plain language explanation of the safeguards that the business has implemented or plans to implement for that activity, unless providing the information would compromise security, fraud prevention, or safety. The proposed regulations would allow the business the option to include in its submission to the Agency a hyperlink to a public webpage that contains its unabridged risk assessment. The proposed regulations would not require businesses to submit a risk assessment if they do not initiate the processing activity subject to that risk assessment or to submit an updated abridged risk assessment if there is no change to a previously submitted abridged risk assessment. The proposed regulations would require businesses to submit risk–assessment materials through the Agency's website at https://cppa.ca.gov/ and to provide their unabridged risk assessments within 10 business days of a request from the Agency or the Attorney General.

Article 11. Automated Decisionmaking Technology.

Article 11 would be a new article containing the requirements for businesses' use of automated decisionmaking technology. The proposed regulations would add section 7200, which requires businesses to comply with the requirements for ADMT when they use it for: (1) a significant decision concerning a consumer; (2) extensive profiling of a consumer; or (3) training uses of ADMT. For this purpose, "significant decision" would mean a decision that results in access to, or the provision or denial of financial or lending services; housing; insurance; education enrollment or opportunity; criminal justice; employment or independent contracting opportunities or compensation; healthcare services; or essential goods or services. The proposed regulations would clarify that "education enrollment or opportunity" includes admission or acceptance into academic or vocational programs, educational credentials, and suspension and expulsion; and that "employment or independent contracting opportunities or compensation" includes hiring, allocation/assignment of work and compensation, promotion; and demotion, suspension, and termination. The proposed regulations would also explain that "significant decisions" include only decisions using information that is not subject to relevant data–level exceptions in the CCPA. The proposed regulations would define "extensive profiling" to include profiling consumers in work and educational contexts, in public, or for behavioral advertising. The proposed regulations

would further identify training uses of ADMT as processing of personal information to train ADMT or AI that is capable of being used for a significant decision, to establish individual identity, for physical or biological identification or profiling, or for the generation of a deepfake.

The proposed regulations would add section 7201, which requires a business that uses physical or biological identification or profiling for a significant decision concerning a consumer, or for extensive profiling of a consumer, to conduct an evaluation of the physical or biological identification or profiling to ensure that it works as intended for the business's proposed use and does not discriminate based upon protected classes. If the business obtained the technology from another person, the business must review that person's evaluation, including any relevant requirements or limitations, but the business is not required to conduct its own evaluation of the ADMT. The proposed regulations would also require a business to implement policies, procedures, and training to ensure that the physical or biological identification or profiling works as intended for the business's proposed use and does not discriminate.

The proposed regulations would add section 7220, which clarifies that a business using ADMT must provide a Pre–use Notice to consumers that informs consumers about the business's use of ADMT and the consumers' rights to opt–out of, and to access information about, the business's use of ADMT. The proposed regulations would also require that the Pre–use Notice be easy–to–read and understandable to consumers, available in readable formats and necessary languages, reasonably accessible to consumers with disabilities, presented prominently and conspicuously before using ADMT, and presented in the manner in which the business primarily interacts with the consumer. The Pre–Use Notice must include: in plain non–generic language, the business's purpose for using the ADMT; the specific uses for which the ADMT is capable of being used and the categories of personal information that the business plans to process for training uses; a description of consumer's the right to opt–out of ADMT and how to submit their opt–out request, subject to any relevant exception to providing the opt–out right; if the business is relying upon the human appeal exception, how consumers may submit their appeal; a description of the consumer's right to access ADMT and how to submit their access request; that the business cannot retaliate against consumers for exercising their CCPA rights; and a plain language explanation of how the ADMT works, including (1) the logic of the ADMT and key parameters that affect its output and (2) the intended output of the ADMT and how the business plans to use it, as well as the role of any human involvement. It also provides illustrative examples. The proposed regulations would clarify that a business relying upon the security, fraud prevention, and safety exception is not required to include information that would compromise the business's ability to protect itself and consumers from: (1) security incidents that compromise personal information; (2) malicious, deceptive, fraudulent, or illegal actions; and (3) threats to consumers' physical safety. The proposed regulations would also clarify that certain components of the Pre–use Notice requirements do not apply to a business's use of ADMT solely for training uses. The proposed regulations further clarify that a business may consolidate its Pre–use Notices in different ways, provided that the consolidated notices include the information required by Article 11 for each of the business's proposed uses.

The proposed regulations would add section 7221, which explains that a business must provide consumers with the ability to opt–out of the business's use of ADMT if the ADMT is used for a significant decision, extensive profiling, or training uses of ADMT. The proposed regulations would identify exceptions to the consumer's right to opt–out of ADMT, including when it is used solely for security, fraud prevention, and safety; or in situations where consumers are provided with the ability to appeal a significant decision to a qualified human reviewer who has the authority to overturn that decision. To qualify for the latter exception, the proposed regulations would require that a human reviewer consider relevant information provided by a consumer; and that the business provide a method of appeal that is easy to execute, require minimal steps, and comply with section 7004; and that the business respond to requests to appeal within specified timelines. The proposed regulations would also provide that a business does not need to provide an opt–out of ADMT when it uses ADMT for admission, acceptance, or hiring decisions; for allocation or assignment of work and compensation decisions; or for work or educational profiling, provided that the business's use of the ADMT is necessary for these respective purposes, that the business has evaluated its use of ADMT to ensure it works as intended for the business's proposed use and does not discriminate, and that the business has implemented accuracy and nondiscrimination safeguards. The proposed regulations would also clarify that these exceptions do not apply to profiling for behavioral advertising or to training uses of ADMT.

The proposed regulations require that businesses provide two or more methods for submitting opt–out of ADMT requests, with at least one method reflecting the manner in which the business primarily interacts with the consumer. The proposed regulations also require businesses to provide an opt–out link titled "Opt–out of Automated Decisionmaking Technology"

in the Pre–use Notice if the business interacts with consumers online. Illustrative examples are provided of other acceptable opt–out methods. The proposed regulations clarify that a cookie banner or similar notification about cookies does not necessarily comply with the requirements for website methods of submission; to comply, it must notify the consumer about the right to opt–out of ADMT in specific terms. The proposed regulations would clarify that methods for submitting requests to opt–out of ADMT must be easy to execute, require minimal steps, and comply with section 7004; may not require a consumer to create an account or provide additional information beyond what is necessary to direct the business to opt–out the consumer; and prohibits requiring a verifiable consumer request but permits a business to ask for information necessary to complete the request. The proposed regulations would allow a business to deny a request that it has a good–faith, reasonable, and documented belief is fraudulent, if it informs the requestor that it will not comply with the request and provides an explanation of why it believes the request is fraudulent. Consumers would be entitled to a means to confirm that their opt–out of ADMT request has been processed. The proposed regulations would permit a business to provide consumers with the choice of allowing specific uses of ADMT, so long as the business also offers a single option to opt–out of all ADMT subject to the proposed regulations. The proposed regulations would permit a consumer to submit requests using an authorized agent if the consumer provides signed permission to the agent. They would also allow a business to deny an authorized agent's request if the agent does not provide the signed permission to the business. Businesses would be required to wait at least 12 months before asking consumers that opted out of ADMT to consent to their use of that ADMT and prohibited from retaliating against consumers who exercised their right to opt–out of ADMT.

The proposed regulations would require that when a consumer has opted out of ADMT before the business initiated the processing, the business must not initiate processing of the consumer's personal information using that ADMT. If a consumer submitted an opt–out of ADMT request after the business initiated the processing, the business would be required to cease processing the consumer's personal information using that ADMT as soon as possible, and no later than 15 business days after receiving the request. The proposed regulations would also prohibit the business from using or retaining any personal information previously processed by that ADMT and would require the business to notify all other persons to whom it disclosed information using that ADMT that the consumer has opted out and instruct them to comply with the opt–out within the same time frame.

The proposed regulations would add section 7222, which requires businesses to provide consumers with the ability to access information about the business's use of ADMT for significant decisions and extensive profiling, but does not require businesses using ADMT solely for training to provide a response to a consumer's request to access ADMT. The proposed regulations would clarify that businesses must provide a plain language explanation of the specific purpose for which the business used ADMT with respect to the consumer, and that this explanation must not describe the purpose in general terms. In addition, the business must provide a plain language explanation of the output of the ADMT with respect to the consumer. If the business has multiple outputs with respect to the consumer, the business would have the option to provide a simple and easy–to–use method for consumers to access those outputs. The proposed regulations would require a business to provide a plain language explanation of how the business used the output with respect to the consumer. For significant decisions, the proposed regulations would require the business to include the role the output played in the business's significant decision and the role of any human involvement, and how the business plans to use the output to make a decision. The proposed regulations would require that a business using ADMT for extensive profiling explain the role the output played in the evaluation that the business made with respect to the consumer; and if the business plans to use the output to evaluate the consumer, how the business plans to use the output to evaluate the consumer.

The proposed regulations would require the business to provide a plain language explanation of how the ADMT worked with respect to the consumer, including how the logic, including its assumptions and limitations, was applied to the consumer, and the key parameters that affected the ADMT and how they were applied to the consumer. Businesses would also be allowed to provide the range of possible outputs or aggregate output statistics, and an example of how to do so is provided. A business relying upon the security, fraud prevention, and safety exception is not required to provide information that would compromise its use of ADMT for security, fraud prevention, or safety purposes. The proposed regulations would also require that a business provide a plain language explanation to consumers that the business is prohibited from retaliating against consumers for exercising their CCPA rights, instructions for how the consumer can exercise their other CCPA rights, and any links to online request forms or portals for making such requests. The proposed regulations would also specify that the business cannot link the consumer to another section of the policy or to a place that requires the consumer to scroll through other information. The proposed reg-

ulations would require that methods to submit request to access ADMT are easy to use and do not use dark patterns. Businesses would be allowed to use existing methods to submit requests to know, delete, or correct for requests to access ADMT.

The proposed regulations would require verification of the identity of the person making the request to access ADMT, and if a business cannot verify their identity, the business must inform the requestor that it cannot verify their identity. If a business denies a verified access request because of a conflict with other laws or an exception to the CCPA, the business would be required to inform the requestor and explain the basis of the denial, unless prohibited from doing so by law. If the request is denied only in part, the business would be required to disclose the other information sought by the consumer. The proposed regulations would require that businesses use reasonable security when transmitting the requested information to the consumer. Business would be allowed to maintain password–protected accounts with consumers to comply with a request to access ADMT by utilizing a secure self–service portal for consumers to access, view, and receive a portable copy of the requested information. The proposed regulations would require that the portal fully disclose the requested information that the consumer is entitled to receive about the business's use of ADMT with respect to them under the CCPA and these proposed regulations, utilize reasonable data security controls, and comply with the verification requirements.

The proposed regulations would require that service providers or contractors provide assistance to businesses in responding to verifiable consumer requests to access ADMT, including by providing personal information in their possession or enabling the business to access that information. The proposed regulations would clarify that businesses that use ADMT more than four times within a 12–month period with respect to a consumer may provide aggregate–level responses to a consumer's request to access ADMT and explain how information required in response to a request to access ADMT can be aggregated. The proposed regulations prohibit businesses from retaliating against a consumer for exercising their right to access ADMT.

The proposed regulations would require a business that uses ADMT to make an adverse significant decision concerning a consumer to provide the consumer with notice of their right to access ADMT as soon as feasibly possible and no later than 15 business days from the date of the adverse significant decision. An adverse significant decision would be a significant decision that resulted in a consumer being denied an educational credential; having their compensation decreased; being suspended, demoted, terminated, or expelled; or that resulted in a consumer being denied financial or lending services, housing, insurance, criminal justice, healthcare services, or essential goods or services. The proposed regulations provide that a business must include in that notice: that the business used ADMT to make a significant decision with respect to the consumer; that the business is prohibited from retaliating against consumers for exercising their CCPA rights; that the consumer has a right to access ADMT and how the consumer can exercise their access right; and, if applicable, that the consumer can appeal the decision and how they can submit their appeal and any supporting documentation. The proposed regulations would allow businesses to provide this notice to consumers with their notification of the adverse significant decision and provide an example. The proposed regulations would clarify that a business may provide this additional notice contemporaneously, to address instances where the business does not want to consolidate notices.

Article 12. Insurance Companies.

Article 12 would be a new article that contains requirements for insurance companies.

The proposed regulations would add section 7270, which defines the term "insurance company," pursuant to the California Insurance Code.

The proposed regulations would add section 7271 to clarify that insurance companies meeting the definition of "businesses" under the CCPA shall comply with the CCPA regarding any personal information collected, used, processed, or retained that is not subject to the California Insurance Code. The proposed regulations would acknowledge that the CCPA and Insurance Code may overlap in their jurisdiction and delineate the boundary between the two legal frameworks. By clarifying the circumstances under which the CCPA applies, the proposed regulations would allow insurance companies to evaluate how the CCPA would apply in situations where the Insurance Code does not apply. Illustrative examples are included.

Article 13. Investigations and Enforcement.

The proposed regulations would amend section 7300 by revising subsection (a) to replace "may" with "must" to clarify how consumers are to submit sworn complaints to the Agency.

The proposed regulations would amend 7302 to clarify that the Agency will provide the alleged violator with notice of the probable cause proceeding, and that a probable cause proceeding can be conducted in whole or in part by telephone or videoconference unless the alleged violator requests an in–person or public proceeding. An alleged violator would be able to request that the proceeding be in–person while also being closed to the public. Also, the proposed regulations clarify the proceedings may be held in whole or in part by telephone or videoconference. The proposed

regulations would replace "participate or appear at" with "attend" and delete subsection (e).

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulations provide a number of significant benefits to Californians, including both monetary and nonmonetary benefits.

The Agency's economic analysis revealed an anticipated decrease in monetary losses from the proposed regulations. Specifically, the Agency anticipates a reduction in cybercrimes — conservatively estimated to be approximately $1.5 billion in the first year of the proposed regulations' implementation and $66.3 billion in 2036. However, the primary benefits of the proposed regulations are not immediately calculable into dollars and cents, due to factors such as the abstract nature of privacy benefits, data and measurement limitations, variations in the privacy protections that businesses provide and in how they respond to regulations, and the fact that benefits can be long–term and take time to accrue to businesses, consumers, and society.

Despite the inability to translate the primary benefits of the proposed regulations into a monetary figure, they have widespread and profound societal benefits that further the purposes of the CCPA and honor the long history of privacy rights and business innovation in California. These important benefits include increased transparency and consumer control over personal information; reduced incidences of unauthorized actions related to personal information and harm to consumers; promotion of fairness and social equity; efficiencies, operational improvements, and competitive advantage for businesses; and the creation of new jobs and innovation.

COMPARABLE FEDERAL REGULATIONS

There are no existing federal regulations or statutes comparable to these proposed regulations.

DETERMINATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

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

Forms or Documents Incorporated by Reference: None.

Other Statutory Requirements: None.

DISCLOSURES REGARDING THE PROPOSED ACTION

Agency's Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The Agency estimates that the proposed regulations will result in a one–time fiscal cost of $44,625 and ongoing fiscal costs of $129,035.

These costs result from the new workload for staff at the Agency and Department of Justice (DOJ). That workload includes (1) one–time staff work to build the frameworks necessary to receive required documents from more than 52,000 businesses and letters of complaint from an uncertain number of consumers; and (2) ongoing staff workload to review submitted documents and respond to submittals on a case–by–case basis.

The Agency's Information Technology Division will need to develop a web portal to accept the documents referenced above. Total one–time fiscal impact for creating this mechanism is estimated at $44,625. The ongoing fiscal costs of analyst and attorney staff to process this workload is estimated at $129,035.

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

Other non–discretionary costs or savings imposed on local agencies: None. Local governments are not subject to the proposed regulations because they do not meet the CCPA's definition of "business."

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

Cost impacts on representative private person or business: The compliance costs associated with the regulations will vary considerably depending on the type and size of business, the maturity of the business's privacy compliance system, the number of California consumers it services, and how it uses personal information. For a small business, initial costs are estimated at $7,045 to $92,896, with ongoing annual costs of $19,317. For a larger business, initial costs are estimated at $7,045 to $122,666, with ongoing costs of $26,015 annually. The Agency found no cost impact on consumers.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete:

The Agency has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Agency has considered proposed alternatives that would lessen any adverse economic impact on

business and invites the public to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
2. Consolidation or simplification of compliance and reporting requirements for businesses;
3. The use of performance standards rather than prescriptive standards; and
4. Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses that would be affected are businesses that that exceed $27,950,000.00 in revenue in the preceding calendar year; buy, sell, or share the personal information of 100,000 or more consumers or households per year; or receive 50% or more of their annual revenue from selling or sharing personal information. The proposed regulations may also affect service providers, contractors, and third parties that engage with businesses.

The projected reporting requirements include preparation and submission of a certification of completion of a cybersecurity audit, a certification of conduct of a risk assessment, and a risk assessment in abridged form.

To the extent that the proposed regulations restrict business activity of California businesses covered by the CCPA, the proposed regulations will impact the businesses' individual competitiveness against out–of–state competitors.

The Agency does not possess sufficiently detailed enterprise–level data to predict these competitive adjustments at the microeconomic level. However, its analysis — which focuses on supply, demand, and related estimates for the 2–digit NAICS sectors, mainly 51–Information and 52–Finance — indicates that California itself will not face significant percentage firm revenue and employment declines, which are generally in the low single–digit percentages of a more rapidly growing baseline trend (for example, a decrease of 0.47% in California supply and a decrease of 0.78% in investment, both relative to baseline in 2027).

With respect to out–of–state competition, as demand falls less than supply in a given year, some business will be diverted across California's border to available alternatives in other jurisdictions. However, the net slowing of growth for commerce remains modest. Relative impacts (as a percentage of revenue) for the sector are more substantial than in comparison to the statewide economy, but they remain modest. For example, while the Agency estimates that there will be some sectoral diversion of business across California's border to available alternatives in other jurisdictions in 2027, it estimates that there will be an influx of business into California by 2031 and that the influx will increase substantially through 2036.

There are two basic structural adjustments in response to the proposed regulations. First, covered sectors will have to adjust to compliance costs, incurring higher labor costs in the short term and impinging on profit, investment, and capital in the medium term. The other salient impact comes from the demand side of the economy, as reductions in losses related to cybercrimes involving personal information leads to increases in real income for individuals and enterprises. These savings will be recycled through demand, stimulating the economy through traditional multiplier linkages. In California, 70% of aggregate demand comes from households and 70% of household consumption goes to services. In other words, 49% of the incremental benefits from reduced cybercrime losses will be channeled to demand for labor–intensive services, far outweighing the job losses due to compliance costs in more capital–intensive compliant sectors. Financial benefits eventually strongly overtake costs of the proposed regulations over the decade considered, but expenditure shifting to more labor–intensive activities makes these regulations even more pro–employment.

RESULTS OF THE STANDARDIZED REGULATORY IMPACT ASSESSMENT

In the first 12 months following full implementation of the proposed regulation, the Agency estimates a direct impact of $3.5 billion in costs on the 52,326 businesses covered by the CCPA and affected by the proposed regulations, and $1.5 billion in quantified benefits. These direct costs and benefits may result in additional indirect and induced economic impacts. The total statewide costs of the proposed regulations are estimated to be $9.725 billion over the first 10 years following implementation. The quantified benefits are estimated to rise to $66.3 billion by 2036.

(1) The Agency anticipates the elimination of 98,000 jobs in the first 12 months following full implementation, followed by the addition of 233,000 jobs by 2036.

(2) The Agency does not anticipate that the proposed regulations would lead to the elimination of existing businesses. The proposed regulations are unlikely to eliminate existing businesses in California due to the threshold criteria for coverage and the size and type of businesses impacted. There is a possibility of some industry restructuring that could include a degree of consolidation of businesses that provide personal–information management services, but the Agency lacks information to assess the likelihood or potential for such a consolidation

The Agency anticipates that the proposed regulations would lead to the creation of new businesses. The proposed regulations are likely to create new businesses in California because of a significant increase in demand for labor with technical expertise in cybersecurity audits, risk assessment, automated decision–making technology, and consumer personal information privacy. The proposed regulations may create new businesses or new business lines that will help businesses, service providers, contractors, and third parties to comply with their obligations; and help consumers to understand and exercise their rights related to privacy.

(3) The Agency anticipates that the proposed regulations would put California businesses at a competitive disadvantage compared to businesses in other states during the first 12 months following full implementation of the proposed regulations. However, the Agency anticipates that the proposed regulations would put California businesses at a competitive advantage by 2031 and that that advantage would continue to increase through 2036.

(4) The Agency anticipates a decrease in investment in the state of $31 billion in the first 12 months following full implementation, followed by an increase in investment in the state of $261 billion by 2036.

(5) The Agency anticipates that the proposal would result in incentives for innovation in products, materials, or processes. Where existing practices are subject to restrictions, it is reasonable to expect firms will innovate and invest in product differentiation.

(6) The Agency anticipates the following benefits from the proposed action: The proposed regulations will enhance protection of consumer's personal information and increase the ability of individuals to exercise their privacy rights. Requirements to certify completion of risk assessments and cybersecurity audits will lead to reduced risks of cybercrimes against California businesses and individuals. Avoiding cybercrimes that involve consumers' personal information provides many types of benefits aside from financial measures as they include improvements to the health, safety, welfare, and quality of life for Californians.

Evaluating the cybersecurity risks with consumers' personal information and the effectiveness of cybersecurity systems set up to combat these risks helps inform firms about how to enhance the safety of consumers' information and privacy. The cybersecurity improvements that California businesses make help alleviate the social and psychological costs that cybersecurity threats impose on California consumers. Effective cybersecurity programs also lower the costs that cybercrimes create. The reduced costs of production and business activity can lower the price of goods and services that consumers pay. This lower cost of consumption together with more cybersecurity and privacy–protective business practices leads to improvements of consumer welfare.

In addition, the assessment of risks related to how businesses manage and protect personal information can lead to actions that help reduce those risks and improve safety within the workplace. Workers can focus their time and efforts on safety and efficiency, as they face less burden in protecting consumer personal information, especially when businesses develop cybersecurity systems that mitigate risks and damages of cybercrimes.

Proposed requirements for training and uses of ADMTs will also provide benefits to businesses and individuals. Businesses that are required to evaluate their use of ADMTs will help ensure that the intended outcomes of those technologies are achieved, help improve efficiencies in the use of those ADMTs, and avoid a wide range of adverse outcomes associated with any of the unintended consequences of ADMTs implemented without such evaluations. The unintended consequences can include things like discrimination in both the hiring of employees and the provision of goods or services to consumers. Avoiding these adverse outcomes provides benefits in the workplace and to the health, safety, and welfare of California residents.

Business report requirement: The proposed regulations would require businesses that meet certain thresholds to submit reports to the Agency. If a business meets certain thresholds, it may be required to submit a certification of completion of its cybersecurity audit or a certification of conduct of its risk assessment and risk assessment in abridged form.

The Agency finds it is necessary for the health, safety or welfare of the people of this state that the reports be created and submitted by businesses. The certification of completion of a business's cybersecurity audit — together with Article 9's substantive requirements — is necessary to protect consumers' welfare. Specifically, it provides an assurance of, and accountability for, the thoroughness and independence of the business's audit, which will further protect consumers' personal information. Similarly, the certification of conduct of a business's risk assessment, and the submission of risk assessments in abridged form, are similarly necessary to protect consumers' welfare. In addition to fulfilling the CCPA's statutory mandate that risk assessments be submitted to the Agency on a regular basis, the certification of conduct of a business's

risk assessment and the submission of risk assessments in abridged form provide assurances of, and accountability for, the business's risk assessments, which will further protect consumers' privacy.

Small business determination: The Agency has determined that the proposed action affects 6,915 to 27,659 small businesses.

SUMMARY OF DEPARTMENT OF FINANCE COMMENTS REGARDING THE STANDARDIZED REGULATORY IMPACT ANALYSIS AND AGENCY RESPONSES

The Department of Finance provided comments on the Standardized Regulatory Impact Analysis ("SRIA") that addressed four issues relevant to the macroeconomic assessment and specifically requested additional clarification in those areas. Below is the Department of Finance's feedback, followed by Agency responses.

1. The SRIA should clearly identify the state revenue baseline used. The SRIA projects state tax revenue impacts to range from a decline of about $3 billion (or –0.13 percent, as stated in the SRIA) to an increase of $6 billion (0.3 percent) over the implementation period. However, these percentage estimates understate the projected state revenue impact, as $6 billion accounts for roughly 2 percent to 3 percent of the state's revenues, while the percentages estimated in the SRIA, imply a state revenue baseline of roughly $2 trillion.

   Response: Table 5.1 in Section 5.3 has been corrected — the BEAR Model results remain unchanged, but this table was constructed with incorrect baseline data for State and Federal revenues, which led to miscalculations of level and percent changes. These numbers have been revised in the table and reported in the text (e.g., in the paragraph preceding Table 5.1).
2. The SRIA is currently lacking critical disclosures and justification regarding impacts to the state's economy and budget including the following: 1) The estimated impact on Gross State Product (GSP) ranges from a decline of nearly $30 billion to an increase of $280 billion across the implementation period. Moreover, the ratio of GSP to state tax revenues averaged about 16– to–1 from 2017 to 2023, however, the projected ratio in the SRIA ranges from about 10–to–1 through 2031 before increasing significantly to 46–to–1 by 2036. The SRIA should further explain and justify the substantial change in the ratio of GSP to state revenues and why it is projected to rise significantly over the implementation period.

   Response: See response to item 1 above. These figures are now in agreement with DOF's notes related to baseline tax revenues and share of GSP. These modifications do not significantly alter the conclusions of the SRIA.
3. The SRIA describes the initial negative impact of the regulations on state investment as "small," at –5.5 percent of total state investment in 2027. Investment in all sectors (including those not directly affected by the regulation) across the state is subsequently projected to increase by $257 billion, or nearly 36 percent, by the end of the implementation period in 2036. The SRIA should explain why investment is assumed be this significantly impacted, both initially and cumulatively over the ten–year window.

   Response: The estimates of Direct Costs and Benefits exhibit a strong reversing trend from net cost to net benefit across the decade considered. Costs and benefits are structurally quite different and generally accrue to different stakeholders. While costs are incurred by the California businesses impacted by the proposed regulations, as set forth in Section 2, benefits are much more general and have been allocated across all sectors of the economy in proportion to value added. Other rules for targeting benefits could yield different microeconomic impacts, but there are no reliable predictions of the detailed incidence of cybercrime damages over the next decade, let alone patterns of cybercrimes averted by the proposed regulations. The main growth (investment, employment, etc.) drivers for these results are macroeconomic, however, driven by the aggregate savings–investment constraint applied to baseline labor and capital allocation patterns.

   We estimate that California businesses, as set forth in Section 2, incur costs, including increased labor costs and reduced profits and statewide saving. Impacted businesses increase spending on skilled labor, but the economy as a whole experiences lower aggregate savings, which with the BEAR Model's saving–investment balance necessarily reduces net investment.

   Benefits are modeled as accruing across the entire economy (not only to impacted businesses) and represent savings from reductions in the subset of cybercrimes identified in Section 3. In the absence of detailed information about exact patterns of future cybercrime, these savings are allocated across all sectors in proportion to their value–added. In fact we do not know exactly who will experience the savings from reduced cyber-

crimes, but the cumulative savings are substantial (averaging $18.6B in annual avoided losses over the decade evaluated) and will support higher economywide investment levels through the same aggregate saving–investment balance. This leads to incremental and compounded average investment growth of about 3.1% annually and 34% over a decade. Admittedly, we optimistically assume the savings are reinvested in California, but this improvement in the investment climate is fully consistent with the intention of the proposed regulations to further protect consumers' privacy (including by protecting their personal information) and facilitate responsible innovation.

Note that this explanation has been added to Section 4.3 of the SRIA.

4. The SRIA projects employment to decline by up to 126,000 in 2030 before increasing by 241,000 by the end of the implementation period in 2036. As the proposed regulation is expected to disproportionately impact higher earners across the state in the information and professional, scientific, and technical services industries, which together account for about 10 percent of the state's total employment, the SRIA should discuss the disparate employment impacts by industry to the extent possible.

Response: The disparate employment impacts by industry are described in Section 4.4 and 4.7 of the SRIA. Note that only the direct cost impacts will be concentrated in the "information and professional, scientific, and technical services" sectors and occupations. Most economywide effects, including direct benefits and all indirect and induced impacts will be dispersed across most economic activities and occupation categories (see response to Item 3 above). Even for the impacted businesses, there will be tradeoffs for skilled workers, between those hired to support compliance and those let go because of increased costs, and we lack prior information to predict this at the enterprise level.

For this reason, most occupations follow the aggregate adjustment process. The current version of the BEAR Model does detail 22 Standard Occupational Classification (SOC) 2–digit occupations and 60 sectors, but our fairly general assumptions about net benefit allocation do not shed much light on these detailed compositional effects.

Note that minor text changes have been made to Section 4.4 and a revised Table 4–3 has been added to Section 4.7 of the SRIA.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Agency must determine that no reasonable alternative considered by the Agency or that has otherwise been identified and brought to the attention of the Agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost–effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Agency invites interested parties to submit alternatives with respect to the proposed regulations. The Agency's own alternatives to the proposed regulations are described in the Initial Statement of Reasons on pages 121–122.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Candice Sanders
California Privacy Protection Agency, Legal Division
2101 Arena Boulevard
Sacramento, CA 95834
(916) 642–7558
regulations@cppa.ca.gov

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Rianna Grenda
California Privacy Protection Agency, Legal Division
2101 Arena Boulevard
Sacramento, CA 95834
(279) 400–3449
Rianna.Grenda@cppa.ca.gov

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

The Agency will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the "express terms" of the regulations), the Initial Statement of Reasons, and any information upon which the proposed

rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency's website at https://cppa.ca.gov/regulations/ccpa_updates.html. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Agency's website at https://cppa.ca.gov/regulations/ccpa_updates.html. Please refer to the contact information listed above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Agency's website at https://cppa.ca.gov/regulations/ccpa_updates.html.

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

WATERCOURSE CROSSINGS AND EMERGENCY NOTICE WATERCOURSE CROSSING REQUIREMENTS, 2025

NATURE OF PROCEEDING

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

PUBLIC HEARING

The Board will hold a public hearing on January 22, 2025, at its regularly scheduled meeting commencing at 9:00 a.m., in room 2–201 of the Natural Resources Building, 715 P Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to Government Code (GOV) § 11125.1(b), writings that are public records pursuant to GOV § 11125.1(a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

Attendees may also participate via the online meeting platform or telephone conferencing. To participate via the online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on January 21, 2025, to request a link to the meeting. A link to the meeting will also be posted under the "Webinar Information" heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m. on January 22, 2025.

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

Written comments shall be submitted to the following address:

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

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

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

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

PublicComments@BOF.ca.gov

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

Authority cited: Sections 4551, 4551.5, 4552, 4553, 4562.7 and 21000(g), Public Resources Code.

Reference: Sections 751, 4512, 4513, 4551, 4551.5, 4562.5, 4562.7, 4592, 4597, 4750, 4750.3, 4750.4, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code. 33 USC 1288(b); 40 CFR 130.2(g); and *Natural Resources Defense Council, Inc. v. Arcata Natl. Corp.* (1976) 59 Cal.App.3d 959, 131 Cal. Rptr. 172.

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

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

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

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

During the 2023 call for Regulatory Review the California State Water Resources Control Boards raised an issue about the lack of clarity in the phrase "approved watercourse crossings" as used in §§ 916.9(s) and 916.9(t) [936.9(s) and 936.9(t), 956.9(s) and 956.9(t)]. The Water Boards noted that this phrase, as applied to Timber Operations in Watercourse and Lake Protection Zones (WLPZ) in notices of exemption, lacked clarity as to the definition of "approved". The rule applies to watersheds that contain habitat for anadromous salmonids; when written, the "work in approved watercourse crossings" option was intended to provide an option for state and federal wildlife resource agencies to allow specific watercourse crossings to limit impacts on threatened and endangered salmonid species. The concern raised by the Water Boards that there was no requirement under these rules for consultation with the Water Board for compliance with section 401 of the Clean Water Act or Water Code §13260 et. seq., creating the potential for a lower standard of review in those watercourses that are endangered fish habitat.

In forests, watercourse crossings are the most significant source of human–caused sediment delivery to waters. Deposition of sediment in waters can result in negative impacts to aquatic ecosystems and habitat for listed (and unlisted) wildlife species. Implementation of rules for road and watercourse crossing construction under the Forest Practice Rules [Logging Roads, Landings, and Logging Road Watercourse Crossings (14 CCR §§ 923, 943, 963 et seq.)] has decreased observed sediment deposition from logging road crossings by 50–88% from historic observations that predate the current Forest Practice Rules.[1]

Fish and Game Code § 1602 requires entities that will be taking actions which "substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake" notify the California Department of Fish and Wildlife (CDFW) of specific information pertaining to these actions. If CDFW determines that those actions will not substantially adversely affect an existing fish or wildlife resource, no agreement is required. If CDFW determines there is a potential for substantially adverse effects, that department will issue an agreement to the entity that will undertake the action; the agreement will include reasonable measures necessary to protect the relevant resource(s). The current Forest Practice Rules state that

[1] Cafferata, P. H., Coe, D. B., & Harris, R. R. (2007). Water resource issues and solutions for forest roads in California. *Hydrological Science and Technology, 23*(1/4), 39.

watercourse crossings must be "approved as part of the Fish and Game Code process", but some of these crossings may not require approval after review is completed by CDFW.

Certain circumstances qualify as "Emergency Conditions" under 14 CCR § 1052.1, including land with trees that are dead or dying as a result of insects, disease, wind, drought, or fire, as well as land with fuel hazard conditions that range from "high" to "extreme". Under these circumstances, landowners can submit a notice of emergency timber operations, which waives certain requirements for the preparation of timber harvest plans. Historically, the Rules have required that these emergency notice timber operations comply with only the operational provisions of 14 CCR §§ 923, 943, 963 et seq. (Logging Roads, Landings, and Logging Road Watercourse Crossings). However, the increasing prevalence of very large fires and large scale tree mortality events due to insects, disease, and drought has led many experts to posit that the US has entered an era of "mega–fires" or "mega–disturbances"[2]. As the area affected by large–scale tree mortality events increases, so to do the number of acres harvested under these permits[3]. In recent years the expanded area harvested under emergency notice timber operations has created challenges for inter–agency assessment of watercourse impacts. Full compliance with mapping and notification requirements pertaining to watercourse crossings under 14 CCR § 923, § 943, § 963 et seq. has become necessary within notices of emergency.

The purpose of the proposed action is to confirm that current regulatory requirements limiting construction or reconstruction of watercourse crossings under notices of exemption apply in watersheds with listed anadromous salmonids. It also brings the mapping requirements for watercourse crossings under emergency notice timber operations within watersheds with listed anadromous salmonids into compliance with changes made to §1052 below. It updates requirements for compliance with FGC § 1600 et seq. to reflect circumstances where only notification of CDFW is required. Finally, it addresses several issues that have arisen during emergency notice timber operations: adding mapping requirements for tractor road crossings and logging road watercourse crossings; requiring notification of CDFW and certification of compliance with FGC § 1600 et seq. requirements; providing a pathway to update initial emergency notice submissions with new watercourse crossings that require construction or reconstruction; and explicitly states that the construction or reconstruction or watercourse crossings under emergency notices comply with the Road Rules covering Watercourse Crossings under § 923.9, §943.9, §963.9 et seq.

The effect of the proposed action is to provide additional information that facilitates oversight from review team agencies on potential impacts from watercourse crossing construction and reconstruction under emergency notices. An additional effect is the alignment of watercourse notification requirements between different agencies and a resolution of conflicts within the Forest Practice Rules.

The benefit of the proposed action is to provide additional certainty of regulatory compliance during the widespread tree mortality events that define emergency conditions, particularly after wildfire, watercourses are at higher risk of erosion. The proposed action ensures compliance with existing requirements of the Forest Practice Rules and with the permit processes of other state agencies after such events. An additional benefit is that the proposed action increases the clarity and removes conflicts within the Forest Practice Rules.

There is no comparable Federal regulation or statute.

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

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

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

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

MANDATED BY FEDERAL LAW OR REGULATIONS

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

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

There are no comparable Federal regulations concerning conversion of timberland. No existing Federal

[2] Steel, Z. L., Jones, G. M., Collins, B. M., Green, R., Koltunov, A., Purcell, K. L., … & Thompson, C. (2023). Megadisturbances cause rapid decline of mature conifer forest habitat in California. *Ecological Applications,* 33(2), e2763.

[3] Board of Forestry and Fire Protection 2023 Annual Report.

regulations meeting the same purpose as the proposed action were identified.

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

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

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

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

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

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

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

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

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

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

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

The proposed action will not significantly affect housing costs.

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

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

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

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

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

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

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

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

Persons or businesses who are operating under an Emergency Notice for timber operations may be affected by this rulemaking by the need to meet additional notification requirements for watercourse crossing construction or reconstruction. The impacts of this regulation on these people or businesses is estimated to be between $1960 and $3640 per Emergency Notice. Over the last ten years, there have been between 81 and 452 Emergency Notices filed per year.

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

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS
(defined in GOV 11342.610)

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

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

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

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

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

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

ALTERNATIVES INFORMATION

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

CONTACT PERSON

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

Board of Forestry and Fire Protection
Attention: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460
Telephone: (916) 653–8007

The designated backup person in the event Ms. Van Susteren is not available is Daniel Craig, Regulations Program Manager for the Board of Forestry and Fire Protection. Mr. Craig may be contacted at the above address or phone.

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

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

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

INTERNET ACCESS

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

TITLE 16. OSTEOPATHIC MEDICAL BOARD

CONTINUING MEDICAL EDUCATION AND AUDITS AND CITE AND FINES

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or email to the addresses listed under "Contact Person" in this Notice, **must be received by the Board at its office no later than by Monday, January 6, 2025,** or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Osteopathic Medical Act, Section 1, and Sections 125.9, 2018, 2190.5, 2454.5, 2456.1 and 3600–1, Business and Professions Code (BPC), and to implement, interpret or make specific sections 124, 125.9, 148, 704, 803.1, 2064.5, 2190.5, 2452, 2456.1, and 2454.5 of the BPC, Section 56.36 of the Civil Code, and Section 12419.2 of the Government Code, the Board is considering changes to Division 16 of Title 16 of the California Code of Regulations (CCR) sections in Sections 1635, 1636, 1638,1641, 1659.30, 1659.31, 1659.32, 1659.33, 1659.34 and 1659.35, and repeal of Sections 1639 and 1640 as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The goal and objective of the proposed regulations is to update and streamline the Board's renewal process, continuing medical education requirements (CME) and the Board's citation and fine program processes while continuing to ensure licensees' competency and protection of public safety. The Board's highest priority is to protect consumers through its licensing, regulatory and disciplinary oversight of the osteopathic medical profession. The Board is authorized by the Osteopathic Act (Initiative Measure, Section 1) and statute to establish necessary rules and regulations for the enforcement of the Osteopathic Act and the Medical Practice Act as it applies to osteopathic physicians ("physicians") and postgraduate training licensees in accordance with Business and Professions Code (BPC) section 2450 for the laws relating to the practice of medicine. (Bus. and Prof. Code (BPC), § 2018).

CME and Audit Issues

The Osteopathic Initiative Act provides that "the law governing licentiates of the Osteopathic Medical Board of California is found in the Osteopathic Act and in Chapter 5 of Division 2,1 relating to medicine." (See Business and Professions Code (BPC) section 3600.) BPC section 2452 provides, in part: "This chapter applies to the Osteopathic Medical Board of California so far as consistent with the Osteopathic Act." Provisions relating to CME for all physicians and surgeons are contained in Article 10 (commencing with Section 2190) of the Medical Practice Act (Chapter 5 of Division 2 of the BPC), which contains provisions mandating certain CME standards as well as authorizing the Board to consider other forms of dedicated CME.

Existing law at BPC section 2454.5, which was first enacted in 1989, requires the Board to adopt and administer standards relative to continuing education ("CE" or "CME"). Those mandates include requiring each physician to demonstrate satisfaction of CE at intervals of not less than one year and nor more than two years and require each physician to complete a minimum of 50 hours of American Osteopathic Association (AOA) education during each two–year cycle, of which 20 hours must be completed in AOA Category 1 and the remaining 30 hours in either AOA or American Medical Association (AMA) accredited CE.

Existing Board regulations in Article 9 (commencing with CCR section 1635 adopted in 1987) specify that physicians must complete 150 hours within a three–year period to satisfy the CME requirement and further defines the content of the 150–hour requirement as including a minimum of 60 hours of CME in Category 1–A or 1–B defined by the American Osteopathic Association (AOA). Further, regulations at CCR sections 1638, 1639 and 1640 set forth requirements for physicians to provide copies of specified progress reports with their renewal application (a copy of their Individual Activity Report, completion certificates or other reports from any program approved by the Board). Existing regulations do not authorize the Board to issue citations in lieu of disciplinary action for noncompliance with CME requirements.

The primary purpose of these proposed regulations is to change the CME reporting requirements to update current regulations consistent with changes in law, add new program recommended procedures for approving CME and any applicable exemptions, and add new options for enforcement of CME requirements, including: authorizing a certification process of reporting CME compliance as part of renewal in lieu of providing documentary evidence of completion, waiver or exemption for renewal, repealing CME requirements for receiving education from Board–approved providers as specified that are superseded by BPC section 2454.5, creating new records documentation and recordkeeping requirements, and new sanctions for noncompliance with CME requirements.

This proposed rulemaking also updates the Board's regulations consistent with the provisions of Business and Professions Code section 2454.5 that authorizes changing the CME reporting cycle from three (3) years to no more than two (2) years, decreases the number of CMEs from 100 hours to 50 hours, and adds new mandatory CME course work or exemptions standards (as specified) that must be completed for every renewal.

The overarching policy change is to shift from a manual review by staff of every CME document prior to each licensee's renewal to an automated process that involves licensees certifying compliance with CME requirements and being able to renew without submitting further documentation; while staff follows up with audits of CMEs certifications after the renewal to verify compliance. If the audit determines that the licensee did not comply with CME requirements, this proposal would authorize the Board to issue a citation, fine and/or abatement order and that requires completion of the deficient CMEs as a condition of renewal.

Other CME Issues Addressed

Since 2018, there have been several significant statutory changes to CME requirements for renewals. In 2017, BPC 2454.5 was amended to change the CME cycle from a three year cycle to a two year cycle, to eliminate the even and odd year issuance of initial licenses and align the CME cycle with the renewal cycle by SB 798, chap.775, statutes of 2017 effective January 1, 2018.

The Board requested in 2021 that that the Legislature change the number of required CMEs from 100 to 50 with 20 CMEs required to be American Osteopathic Association (AOA) and the remaining 30 CMEs can be either AOA or American Medical Association (AMA) approved, which was approved and signed into law effective January 1, 2022 (SB 806, Stats. 2021, ch. 649). In response to the opioid crisis, the Legislature added a mandatory CME course requirement on risks of addiction associated with the use of Schedule II drugs to be completed each renewal cycle, effective January 1, 2019 (SB 1109, Stats. 2018, ch. 693). All of these changes were enacted at BPC section 2454.5.

In 2022, the Board requested the Legislature eliminate the prorated initial license fee and birth month renewal cycle for initial licenses at BPC section 2456.1, which was approved and signed into law effective January 1, 2023 under SB 1443 (Stats. 2022, ch. 625). In addition, other statutorily mandated provisions have been enacted since the Board first adopted its CME regulations at BPC sections 2190.1, 2190.15, 2190.3, and 2190.6; those statutes require dedicated CME in specified content areas and authorize exemptions from required CMEs, as applicable. As a result of these many statutory changes, additional revisions to the regulatory sections related to CMEs needed to be updated in order to comply with the various statutory changes that have occurred since the Board last updated its CME regulations.

As a result of the foregoing, this proposed language contains significant revisions to the initial four regulatory sections 1635, 1636, 1641 and 1646 of Title 16 of the California Code of Regulations (CCR) and additional proposed amendments and repeal of specific sections. The Board is also proposing clarifying amendments to CCR sections 1638 and repeal of Title 16, CCR sections 1639 and 1640, which involve outdated CME program approval requirements for licensees and CME providers. This proposal is intended to capture, in one convenient location, all CME standards, waivers, exemptions and requirements for CME consistent with current Board practice.

Citation and Fine Issues Addressed

The Board's cite and fine regulatory CCR sections 1659.30,1659.31, 1659.32, 1659.33, 1659.34, and 1659.35 are outdated and need updating. Existing law at BPC section 125.9 authorizes the Board to establish, by regulation, a system for the issuance to a licensee of a citation where the licensee is in violation of the applicable licensing act or any regulation adopted by

the Board. Section 125.9(c) also authorizes the Board, in its discretion, to limit citations to only particular violations of the applicable licensing act or regulations. Existing regulations at CCR section 1659.31 reflect Board policy at the time to issue citations and fines for only particular violations of laws or regulations. This proposal would, instead, allow the Board to cite and fine for violation of any laws or regulations under the Board's jurisdiction, including violations of the Osteopathic Act (as established as an Initiative Measure), the Medical Practice Act, the Confidentiality of Medical Information Act, any Board regulation in Division 16, or any other statute or regulation upon which the Board may base a disciplinary action.

In addition, this proposal would implement Board recommended process improvements that should be made to increase the effectiveness of the administration of the Board's citation and fine program and make other grammatical, syntax or technical changes at CCR sections 1659.30, 1659.32, 1659.33, 1659.34 and 1659.35.

In compliance with Assembly Concurrent Resolution Number 260 of 2018, the Board is also updating it regulatory language to comply with this resolution that state agencies should use gender neutral pronouns and avoid the use of gendered pronouns throughout this proposal. Specific changes that would be addressed by this proposal include the following.

CME and Audit

Amend Section 1635. This section specifies the CME requirements for continued licensure. As amended it updates and repeals existing CME requirements to make conforming changes consistent with revisions to the Board's CME authority contained in BPC section 2545.5 and lists all requirements, waivers and exemptions for completing CME as a condition of renewal in one location. This subsection is also amended to require licensees to provide "satisfactory documentation" of their CME completion or any applicable exemption to the Board as specified in the proposed documentation requirements of Title 16, CCR section 1636. The proposal would also specify available exemptions from specified CME requirements and the minimum standards for course content for including requirements for cultural and linguistic competency, implicit bias, limitations on the number of qualifying hours for courses described in BPC section 2190.15 (e.g., practice management type courses), dedicated CME requirements for general internists or family physicians who have a patient population of which over 25 percent are 65 years of age or older, the one–time pain management course required by BPC section 2190.5 at new subsection (e)(1), the course in risks of addiction associated with the use of Schedule II drugs as required by BPC section 2454.5 at new subsection (e)(2)) and related exemptions from those requirements, as specified.

Amend Section 1636. The primary purpose of amendments to this section is to replace current reporting requirements that mandate submission of paper copies of Individual Activity Reports, certificates of CME completion, or progress reports from approved CME providers with a requirement for submission of a written statement, signed and dated by the licensee, providing personally identifying information and certifying under penalty of perjury disclosures provided regarding CME compliance, waiver or exemption, as appliable, during the relevant CME reporting period.

This proposal would also authorize the Board to conduct random audits of licensed osteopathic physicians and surgeon to verify CME compliance. In addition, this proposal requires, within 65 days of the date of the Board's written request to document their compliance with specified CME requirements, respond to any Board inquiry regarding compliance and/or provide records retained demonstrating compliance with CME requirements as specified.

This section also lists the required and satisfactory documentation demonstrating compliance with CME and sets the retention period for six years from the completion date of the courses or conditions claimed as credit towards satisfaction of, or exemption from, the CME requirements.

Revisions made to CCR sections 1638, 1639, and 1640 are necessary to update the sections to comply with revisions to Business and Professions Code (BPC) section 2454.5 and to comply with currently proposed changes to CME requirements and documentation and audit requirements being added to CCR sections 1635 and 1636.

Amend Section 1638. Existing CCR section 1638 (a) provides that licensees with an inactive status are exempt from the CME requirement for renewing their license as an inactive status. Existing CCR section 1638 (b) sets forth the CME requirements for licensees wanting to change their status from inactive to active. This proposal will repeal the words "have completed a minimum of 20 hours Category 1–A as defined by the American Osteopathic Association (AOA) during the 12–month immediately preceding the licensee's application for restoration" and instead replace it with a new requirement that licensees comply with the requirements for restoring an inactive certificate to an active status according to new requirements in CCR Section 1646. Existing CCR section 1638 (c) refers to the CME requirements listed in 1635 (e) which would be repealed under this proposal and would no longer contain the CME categories that are currently referenced. For this reason, it is obsolete and is proposed to be deleted.

Repeal Section 1639. CCR section 1639 defines CME programs approved for CME credit. However, as a result of statutory changes to BPC section 2545.5 and proposed revisions to CCR 1635, this section is obsolete and conflicts with both the statute and regulatory section related to CME requirements now proposed. Since BPC section 2454.5 lists the CME requirements including categories of CME required to be mandated by the Board, there is no longer a need to have a regulatory section specify the CME programs that are approved for credit. For these reasons, the entire section of CCR section 1639 is being proposed to be repealed.

Repeal Section 1640. CCR section 1640 provides the Board with the authority to approve CME programs and CME providers and specifies the criteria for both. The Board proposes to repeal this section as it is no longer needed in light of enactment of changes to BPC section 2454.5, which sets the requirements for licensees to take approved CME accredited programs provided by the AOA and the AMA. It is also being eliminated to avoid any confusion that the Board has separate criteria for CME providers, programs, and CME because it effectively does not.

Amend Section 1641. This section is updated consistent with recent statutory changes to remove references to the outdated 150–hour CME requirements or a "prorated share" and correct references to the outdated three–year CME requirement period, which is now a two–year requirement. This proposal adds the words "or provide satisfactory documentation of CME completion as provided in Section 1636" to this section, thus prohibiting renewal if satisfactory documentation is not provided as specified in CCR Section 1636.

Currently, misrepresenting compliance with CME and failure to comply CME requirements constitutes unprofessional conduct and grounds for disciplinary action. This proposal would make it unprofessional conduct and grounds for disciplinary action for any osteopathic physician and surgeon to fail to provide accurate or complete information in response to a Board inquiry. This proposal also makes it grounds "for a citation and fine" for a licensee to: (1) misrepresent compliance with the provisions of this article, (2) fail to provide accurate or complete information in response to a Board inquiry, or (3) fail to comply with the provisions of this article.

This proposal repeals in its entirety as unnecessary existing subsection (c), as the current proposal moves the requirement to retain CME compliance documentation to CCR section 1636 and replaces the current four–year retention requirement with a six–year retention requirement that would be contained in CCR section 1636.

Amend 1646. In subsection (b), the proposal would delete references to requirements for completing "Category 1–A" as a condition of restoring an inactive certificate to active status by striking the "–A" consistent with current requirements for the Board to accept all Category 1 CME as specified in BPC section 2454.5. The Board would also strike the reference to "preceding" from the requirements for completion and instead propose requirements that would add to the current requirement to complete 20 hours of AOA CME that it be completed during the 12–month period immediately preceding the licensee's completed application for restoration, submit a completed application for restoration, and pay the fee set forth in Section 1690 of this Division and the Controlled Substance Utilization Review and Evaluation System (CURES) fee currently required by BPC Section 208. A new definition would be added for a "completed application for restoration" as specified. The Board also proposes to repeal existing subsection (d), which refers to "CME categories are defined by Section 1635(e)" and renumber existing subsection (e) to (d) accordingly.

Cite and Fine Program Amendments

Amend 1659.30. This section is updated to authorize the Executive Director to further delegate to "their designee" the same authority exercised by them under this section. Proposed amendments at subsection (b) also adds new authority for the Executive Director or their designee to issue citations containing "both" "administrative" fines and orders of abatement The postgraduate training licensee is added to the list of those individuals upon whom a citation and fine and/or order of abatement may be issued.

Proposed amendments to subsection (c) in this section would add new authority to serve citations on licensees by regular mail at their last known address in accordance with Business and Professions Code section 124, which permits a board in this Department to give written notice to licensees of any order by regular mail addressed to the last known address of the licensee or by personal service, at the option of the board.

Amend 1659.31. This section revises the title, adds authority for the Executive Director to delegate their authority to a designee, clarifies fine amounts, and repeals and adds factors for determining fine amounts, as specified. Existing text at subsection (a) limits, in accordance with BPC section 125.9(c)(2), the issuance of citations with orders or abatement and the assessment of administrative fines to only particular violations of the Board's applicable licensing laws and regulations. This proposal would revise and add language that consolidates existing licensing act and regulations citation authority into broader categories that cover all provisions under the jurisdiction of the Board including violations of the Osteopathic Act (as established as an Initiative Measure), the Medical Practice Act, the Confidentiality of Medical Information Act, or any

other statute or regulation upon which the Board may base a disciplinary action.

To implement that policy change, this proposed rulemaking will renumber the paragraphs within this subsection (renumbered as (a)(1))) and delete existing subsection (a), paragraphs (23)–(51) and (54)–(56), as the citable code sections referenced in those subdivisions are contained in the Medical Practice Act, or the Board's regulations and would therefore be covered by proposed paragraphs (Y), (Z), (AA), and (BB). To add authority to cite and fine for violations of the Confidentiality of Medical Information Act, the Board proposes to add a new reference to Civil Code section 56.10 authority at proposed subsection (a)(1), paragraph (X) and a new paragraph requiring consideration of new and different factors required to be considered in assessing the amount of an administrative fine for those confidentiality violations as required by Civil Code section 56.36(d). The Board also proposes to repeal or revise existing provisions of law listed in this section that have been repealed by law or otherwise covered by other sections proposed to be added to this section.

Amend 1659.32 Compliance with Abatement Orders. This section updates the Executive Director's authority to further delegate to "their designee" the same authority to issue orders of abatement as provided under this section and replace a reference to gendered pronouns with "their."

Amend 1659.33 Citations for Unlicensed Practice. This proposal would add new subsection numbering (a)–(d) for each existing paragraph for better organization of concepts in this section. It would add a new requirement to subsection (a)(as renumbered) to update the Executive Director's authority to further delegate to "their designee" the same authority to issue citations, fines and orders of abatement to unlicensed persons as provided under this section. This proposal also adds "postgraduate licensee" to the other license classification requiring a license to practice, which would specify the other category of activity and unlicensed practice for which the Board may take action. This proposal repeals language to accurately reflect the array of statutes that specify what constitutes unlicensed practice.

This proposal would add a new subsection (b)(1) that would set forth the Notice requirements according to standards set by State Administrative Manual (SAM) section 8293.1 for cited persons who may be subjected to collection of an unpaid fine and the requirements for Notice that the Board must meet before sending any unpaid fine to the Franchise Tax Board in accordance with the FTB's Interagency Intercept Program, as specified.

This proposal adds the remedy for unpaid fines for the Board at newly proposed subsection (b)(2) by way of referral to the Franchise Tax Board's (FTB) tax refund intercept program in accordance with Government Code section 12419.2, and the 6–month timeframe for when referral would occur after the effective date of the final citation order once notice has been provided to a cited person in accordance with subsection (b)(1). This proposal would provide a definition for the word "final" in newly proposed subsection (d) to help specify the point in time when the Board may refer a case due to nonpayment of the fine associated with the citation for unlicensed practice.

Amend 1659.34 Contest of Citations. Except for changes to correct gendered pronouns, this section remains unchanged.

Amend 1659.35 Public Disclosure: Records Retention. Existing regulation requires the Board to purge citations that have been resolved 10 years from the date of "resolution." The only change to this section is to replace the word "resolution" with "issuance" to eliminate the vagueness as to the date when public records can be purged. The new text sets the date of issuance as the date the clock begins of the 10–year purging timeframe and makes it easier to track and implement for staff and for cited persons to understand.

ANTICIPATED BENEFITS OF PROPOSAL

CME and Audits Benefits

The renewal process will be streamlined and reduce delays from staff having to review CME course completion documentation at the time of renewal. The time–consuming review of CMEs documentation demonstrating compliance will be completed after renewal in a more reasonable time frame for Board staff without the negative impact on licensees and patient care. Licensees will benefit from the streamlined process that allows them to certify compliance and renew without further delay while providing the Board with the authority to randomly audit to confirm compliance. The elimination of reviewing CMEs completion documentation at renewal time will eliminate processing delays, and practice suspension or interruptions in patient care. The additional authority to randomly audit licensees, who will be subject to possible citation and fine for violations, helps enhance public protection as anyone who fails the audit will not be eligible for their next renewal until they have completed their missing CME. Completion of required number of CMEs as a condition for renewal remains unchanged.

Cite and Fine Benefits

This proposed rulemaking will further consumer protection by updating the Board's cite and fine regulations to clarify that the Board may issue a citation to a licensee (osteopathic physician or postgraduate training licensee), which may contain a fine and/or order of abatement for a violation of any provision in

the Osteopathic Act, Medical Practice Act, any regulation adopted by the Board, and any other statute or regulation upon which the Board may base a disciplinary action, in addition to certain specified statutes and regulations. These amendments will help keep the list of citable offenses current, as statutes and regulations are added, repealed, and modified. In addition, the Board will be updating its unlicensed activity citations to ensure greater compliance with the laws under the Board's jurisdiction and the enforcement of provisions prohibiting the unlicensed practice of medicine.

Updating the cite and fine regulations will enhance public protection by authorizing additional enforcement tools that allow the Board to take action for violations that do not rise to the level of warranting discipline but do raise issues that should be brought to the licensee's attention for correction.

EVALUATION OF CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing this regulatory proposal, the Board 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 THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the state: This proposal is intended to streamline the Board's licensing renewal process, while ensuring licensees comply with CME requirements. According to the Board, staff is currently unable to process renewal applications in a timely manner and Board management is required to assist with the CME verification workload.

Current Process: The Board currently processes approximately 6,800 license renewal applications per year and verifies every renewing licensee has fulfilled the CME requirements prior to approval. The CME verification process typically takes 40 minutes per application, which results approximately 4,500 hours (2.6 positions) of annual workload.

However, the Board only has 2.0 staff allocated for this workload. As a result, renewal application approvals may be delayed, and Board management must assist with this workload.

Proposed Process: This proposal will allow the Board to streamline the renewal license approval process, while also ensuring CME compliance by creating a robust CME audit and enforcement process. In the event a licensee fails a CME audit, the Board will be authorized to issue a citation and fine, *with an average estimated fine amount of $1,500 per citation.*

The Board estimates the new CME review and auditing process, including the issuance of a citation and fine will reduce total workload to approximately 3,300 hours (1.9 positions). As a result, the Board will be able to process renewal applications with existing staffing (2.0 positions) in a timely manner and Board management will be able to focus their efforts on other high priority areas.

Under this proposal, Board staff will verify each renewing licensee (6,800) has certified CME compliance prior to license renewal approval. Staff will then audit approximately 10 percent (680) of renewal applications for CME compliance and estimates up to 10 percent (68) of these audits will reveal non–compliance and result in a citation and fine.

The Board projects up to 20 individuals issued a citation and fine will request an informal conference, of which 2 individuals may seek a formal appeal.

The Board estimates total workload and costs ranging from approximately $357,700 to $466,700 per year and up to $4.1 million over a ten–year period.

Additionally, the Board estimates up to 68 individuals may be issued a citation, which with an estimated average fine amount of $1,500 fine per year would result in annual revenues of $102,000 and up to $1.02 million over a ten–year period.

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

Nondiscretionary Cost/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 regulation's narrow scope and impact is the reason the Board has determined that this regulation will have no significant statewide adverse impact to businesses in the state. For those individuals impacted, this regulation modifies an existing reporting requirement making it less onerous and makes compliance more convenient to licensees. This regulatory change also protects public safety and prevents delays in pro-

cessing licensing renewals that can result in interruptions in patient care.

This regulation only impacts approximately 13,600 osteopathic physicians and surgeons that represent a small percentage of the California population and businesses.

Cost Impact on Representative Private Person or Business

The Board estimates up to 68 individuals may be issued a citation, which with an estimated average fine amount of $1,500 fine per year would result in annual costs of $102,000 and up to $1.02 million over a ten–year period.

The Board notes, licensees may avoid any fines levied by complying with the Board's CME requirements authorized under current law and regulations.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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.

- **Analysis of creation/elimination of jobs:** This proposal will not create or eliminate any jobs within California. This regulatory proposal simply changes existing disclosure requirements for osteopathic physicians and surgeons, as specified. Additionally, only osteopathic physicians and surgeons are impacted by this change.
- **Analysis of creation/elimination of businesses:** This proposal will not create or eliminate any businesses in California because it ensures licensees comply with CME requirements, as specified.
- **Analysis of expansion of business:** This proposal will not expand any businesses in California because it ensures licensees comply with CME requirements, as specified.

BENEFITS OF THE REGULATION

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

CME and Audits Benefits

The renewal process will be streamlined and reduce delays from staff having to review CME course completion documentation at the time of renewal. The time–consuming review of CMEs documentation demonstrating compliance will be completed after renewal in a more reasonable time frame for Board staff without the negative impact on licensees and patient care. Licensees will benefit from the streamlined process that allows them to certify compliance and renew without further delay while providing the Board with the authority to randomly audit to confirm compliance. The elimination of reviewing CMEs completion documentation at renewal time will eliminate processing delays, and practice suspension or interruptions in patient care. The additional authority to randomly audit licensees, who will be subject to possible citation and fine for violations, helps enhance public protection as anyone who fails the audit will not be eligible for their next renewal until they have completed their missing CME. Completion of required number of CMEs as a condition for renewal remains unchanged.

Cite and Fine Benefits

This proposed rulemaking will further consumer protection by updating the Board's cite and fine regulations to clarify that the Board may issue a citation to a licensee (osteopathic physician or postgraduate training licensee), which may contain a fine and/or order of abatement for a violation of any provision in the Osteopathic Act, Medical Practice Act, any regulation adopted by the Board, and any other statute or regulation upon which the Board may base a disciplinary action, in addition to certain specified statutes and regulations. These amendments will help keep the list of citable offenses current, as statutes and regulations are added, repealed, and modified.

Updating the cite and fine regulations will enhance public protection by authorizing additional enforcement tools that allow the Board to take action for violations that do not rise to the level of warranting discipline but do raise issues that should be brought to the licensee's attention for correction. In addition, the Board will be updating its unlicensed activity citations processes to ensure greater compliance with the laws under the Board's jurisdiction and the enforcement of provisions prohibiting the unlicensed practice of medicine.

The proposal will have no effect on worker safety or the State's environment as it is unrelated to, and therefore does not affect, those issues.

BUSINESS REPORTING REQUIREMENTS

This regulatory action does not require businesses to file a report.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would have no significant impact on small businesses as it impacts individuals. For those impacted, this regulation modifies an existing disclosure requirement making it less onerous and makes compliance more convenient to licensees. This regulatory change also protects public safety and prevents delays in processing licensing renewals that can result in interruptions in patient care.

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 1300 National Drive, Suite 150, 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 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 information upon which the proposal is based, may be obtained upon request from the Board by directing the inquiry to address and the attention of the Contact Person listed below or by accessing the Board's website at: https://www.ombc.ca.gov/laws_regulations/pending_regulations.shtml

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

Terri Thorfinnson, Program Services Manager
1300 National Drive, Suite 150
Sacramento, CA 95834
(916)928–8390 Office
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Email: Terri.Thorfinnson@dca.ca.gov

The back–up contact person is:

Erika Calderon, Executive Director
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Website Access: Materials regarding this proposal can be found on the Board's website at https://www.ombc.ca.gov/laws_regulations/pending_regulations.shtml

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

PROPOSED ADOPTION OF NEW CHAPTER 5.6, EMERGENCY TELEPHONE USERS SURCHARGE ACT OPERATIVE ON AND AFTER JANUARY 1, 2020, AND AMENDMENTS TO CHAPTER 5.7, PREPAID MOBILE TELEPHONY SERVICES, AND PROPOSED REPEAL OF CHAPTER 5.5, EMERGENCY TELEPHONE USERS SURCHARGE LAW

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority in Revenue and Taxation Code (RTC) section 41128, proposes to adopt new chapter 5.6 (commencing with section (Regulation or Reg.) 2435) in division 2 of title 18 of the California Code of Regulations (CCR) (chapter 5.6) to provide new Emergency Telephone Users Surcharge (ETUS) Act regulations to implement the ETUS Act (RTC, § 41001 et seq.) as amended by Senate Bill Number (SB) 96 (Stats. 2019, ch.54) and Assembly Bill Number (AB) 988 (Stats. 2022, ch.747). The Department is also proposing to repeal chapter 5.5 (commencing with Reg. 2401), Emergency Telephone Users Surcharge Law, in division 2 of title 18 of the CCR (chapter 5.5), which contains the old ETUS Act regulations, because it's no longer necessary to continue to publish the old ETUS Act regulations in the CCR. Additionally, the Department, pursuant to the authority in RTC section 42103, proposes amendments to chapter 5.7 (commencing with Reg. 2460), Prepaid Mobile Telephony Services (MTS), of division 2 of title 18 of the CCR (chapter 5.7) to clarify how the Local Prepaid MTS Collection Act (RTC, § 42100 et seq.) applies after the Prepaid MTS Surcharge Collection Act (RTC, § 42001 et seq.) was repealed on January 1, 2020, and after the Local Prepaid MTS Collection Act (RTC, § 42100 et seq.) was amended by SB 344 (Stats. 2019, ch.642) and SB 1441 (Stats. 2020, ch.179.)

AUTHORITY

Regulations 2401, 2403, 2405, 2406, 2413, 2421, 2422, 2425, 2431, 2432, 2433, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446: RTC section 41128

Regulation 2425: RTC section 41060 and 41128

Regulations 2460, 2461, and 2462: RTC section 42103

REFERENCE

Regulation 2401: RTC sections 41007, 41011, 41015, 41016, 41021, and 42004

Regulation 2403: RTC sections 41011 and 41021

Regulation 2405: RTC section 41021

Regulation 2406: RTC sections 41021 and 41023

Regulation 2413: RTC sections 41003–41019, 41020–41049, 41052–41053, 41073–41095, and 41129

Regulation 2421: RTC section 41040

Regulation 2422: RTC sections 41024, 41033, 41051, 41052, 41052.1, 41053 and 42010

Regulation 2425: RTC sections 41060 and 41062

Regulation 2431: RTC section 41056

Regulation 2432: RTC section 41098

Regulation 2433: RTC section 41099 and Family Code sections 297, 297.5 and 308

Regulation 2435: RTC sections 41020 and 41028

Regulation 2436: RTC sections 41003, 41004, 41005, 41006, 41007, 41007.1, 41007.2, 41007.3, 41007.5, 41009, 41013, 41020, 41028, 41040, 42101, and 42103.2

Regulation 2437: RTC sections 41007.2, 41007.3, 41016.5, 41020, 41021, 41022, 41023, 41024, 41028, 41040, and 41052

Regulation 2438: RTC sections 41003, 41006, 41009, 41027, and 41046

Regulation 2439: RTC section 41028

Regulation 2440: RTC sections 6452, 6455, 41022, 41024, 41028, 41051, 41052, 41052.1, 41053, 41053.1, and 41055

Regulation 2441: RTC section 41028

Regulation 2442: RTC sections 6479.3, 6479.5, 41028, 41060, and 41062

Regulation 2443: RTC sections 41056, 41073, 41129, and 41130

Regulation 2444: RTC section 41098

Regulation 2445: RTC section 41099

Regulation 2446: RTC sections 41023, 41028, 41101, 41101.1, 41101.2, and 41101.3

Regulation 2460: RTC sections 41040, 42101, 42101.5, 42101.6, 42101.8, 42101.9, 42102, 42102.5, 42103, and 42103.2

Regulation 2461: RTC sections 41028, 42101, 42101.6, 42101.7, 42101.9, and 42103

Regulation 2462: RTC sections 42101.6, 42101.8, 42103 and 42105

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

Emergency Telephone Users Surcharge Act Prior to SB 96

The ETUS Act was enacted in 1976. (Stats. 1976, ch. 443.) The State Board of Equalization (Board) was originally responsible for the administration and en-

forcement of the ETUS Act (RTC, § 41128 as enacted by Stats. 1976, ch. 443), and in 1977 the Board adopted chapter 5.5, which contains the old ETUS Act regulations that implement, interpret, and make specific the imposition, reporting, and remittance of the emergency telephone users (911) surcharge originally imposed by the ETUS Act.

Prior to January 1, 2016, the ETUS Act imposed the 911 surcharge on amounts paid by every person in this state for intrastate telephone communication service in this state and Voice over Internet Protocol (VoIP) service that provides access to the 911 emergency system, including charges for mobile telecommunications service provided to customers in this state. (RTC, § 41020, as amended by Stats, 2008, ch. 17.) The 911 surcharge rate was a percentage of 0.5% to 0.75% of those charges that, pursuant to a specified formula, the Office of Emergency Services (OES) annually estimated would produce sufficient revenue to fund the current fiscal year's 911 costs. (RTC, § 41030, as amended by Stats, 2015, ch. 25.) Also, service suppliers were required to collect the 911 surcharge from service users, generally on the monthly service billings, and pay it to the state. (RTC, §§ 41021 (as amended by Stats, 2008, ch. 179) and 41051 (as amended by Stats. 1996, ch. 432).)

AB 1717

AB 1717 (Stats. 2014, ch. 885) enacted the Prepaid MTS Surcharge Collection Act and the Local Prepaid MTS Collection Act and amended the ETUS Act. From January 1, 2016, until January 1, 2020, the Prepaid MTS Surcharge Collection Act defined prepaid MTS to mean "the right to utilize a mobile device for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars." (RTC, § 42004.) It defined "prepaid consumer" to mean "a person who purchases prepaid MTS in a retail transaction." (*Ibid.*) It imposed a prepaid MTS surcharge on each prepaid consumer on and after January 1, 2016, in lieu of the 911 surcharge imposed by the ETUS Act. (RTC, §§ 41020 and 42010.). The prepaid MTS surcharge was a percentage of the sales price for each retail transaction that occurred in this state. (RTC, § 42010.) The Prepaid MTS Collection Act also required sellers of prepaid MTS to collect the surcharge from each prepaid consumer at the time of each retail transaction and pay it to the state. (*Ibid.*)

The prepaid MTS surcharge rate was annually calculated by adding:

- The surcharge rate as determined by the OES;
- The California Public Utilities Commission (CPUC) reimbursement fee; and
- The telecommunications universal service surcharges. (RTC, § 42010.)

The Prepaid MTS Surcharge Collection Act defined a "seller" to mean "a person that sells prepaid [MTS] to a person in a retail transaction." (RTC, § 42004.) It defined "direct seller" to mean a prepaid MTS provider or service supplier (as defined in the ETUS Act) that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than resale in the regular course of business. (*Ibid.*) It required sellers, other than direct sellers, to remit the prepaid MTS surcharges and local charges (discussed below) they collected to the Board. (RTC, § 42010.) It also required direct sellers to remit portions of the prepaid MTS surcharges they collected to the CPUC and the Board, and required direct sellers to remit the local charges they collected directly to the local jurisdictions that imposed the local charges. (*Ibid.*)

Local Prepaid MTS Collection Act

The Local Prepaid MTS Collection Act established the exclusive method for the collection of local charges imposed by a local jurisdiction or local agency, as defined in RTC section 42004, on prepaid MTS beginning January 1, 2016. Local charges include local utility user taxes on the consumption of prepaid MTS, local 911 charges, and any other local charges for the consumption of communication services that apply to prepaid MTS. (RTC, §§ 42101, 42102, and 42102.5.)

Prior to July 1, 2017, the Local Prepaid MTS Collection Act required a local jurisdiction or local agency imposing a local charge on prepaid MTS to contract with the Board to collect and administer the local charge. (RTC, §§ 42101.5, 42103.) It required sellers to collect a local jurisdiction's or local agency's local charge from prepaid consumers at the same time and in the same manner as the prepaid MTS surcharge and it required the Board to collect the local jurisdiction's or local agency's local charge from sellers in accordance with the Prepaid MTS Surcharge Collection Act (described above) after the local jurisdiction or local agency entered into the required contract with the Board. (RTC, §§ 42101.5, 42103.) Also, the Prepaid MTS Surcharge Collection Act required the Board to calculate the combined total of the rates of the prepaid MTS surcharge and the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, and post the combined rates on its website. (RTC, § 42010.)

Prepaid MTS Regulations

The Board adopted chapter 5.7 to provide Prepaid MTS regulations that implement, interpret, and make specific the provisions of the Prepaid MTS Surcharge

Collection Act and Local Prepaid MTS Collection Act. Chapter 5.7 became operative on January 11, 2017.

California Department of Tax and Fee Administration

AB 102 (Stats. 2017, ch. 16) established the Department and transferred the Board's duties, powers, and responsibilities to administer and enforce numerous tax and fee laws to the Department effective July 1, 2017, including the ETUS Act, Prepaid MTS Surcharge Collection Act, Local Prepaid MTS Collection Act, Fee Collection Procedures Law (FCPL) (RTC, § 55001 et seq.), and Sales and Use Tax Law (RTC, § 6001 et seq.). (Gov. Code (GC), §§ 15570, 15570.22.) AB 102 also deemed the references to the Board in the ETUS Act, Prepaid MTS Surcharge Collection Act, Local Prepaid MTS Collection Act, FCPL, Sales and Use Tax Law, old ETUS Act regulations in chapter 5.5, and Prepaid MTS regulations in chapter 5.7 to refer to the Department on and after July 1, 2017. (GC, § 15570.24.)

As a result, the Local Prepaid MTS Collection Act requires a local jurisdiction or local agency imposing a local charge on prepaid MTS to contract with the Department to collect and administer the local charge, instead of the Board, on and after July 1, 2017. The Department also updated the Prepaid MTS regulations in 2018 to refer to the Department, instead of the Board.

Prepaid MTS Surcharge Collection Act Litigation

On November 15, 2018, the United States District Court for the Northern District of California enjoined state agencies from enforcing the Prepaid MTS Surcharge Collection Act because it conflicts with and is preempted by federal law. (*MetroPCS Cal., LLC v. Picker, et al.* (N.D. Cal. 2018) 348 F.Supp.3d 948.) A notice of appeal of the district court's decision was filed on December 14, 2018, but a judicial stay of the injunction was not requested. In December 2018, the Department advised prepaid MTS sellers that they are only required to collect applicable local charges on their sales of prepaid MTS, but not the enjoined prepaid MTS surcharge. The Department also advised service suppliers that, effective January 1, 2019, they were required to collect and remit the 911 surcharge on charges for prepaid MTS in the same manner as they did prior to January 1, 2016.

On August 14, 2020, the Ninth Circuit Court of Appeals reversed the district court and concluded that the Prepaid MTS Collection Act was not preempted by federal law. (*Metro PCS Cal., LLC v. Picker, et al.*, (9th Cir. 2020) 970 F.3d 1106.) The case was remanded for further proceedings. However, the Prepaid MTS Surcharge Collection Act was repealed by its own terms on January 1, 2020. (RTC, § 42024.)

SB 96

SB 96 added RTC sections 41007.1, 41007.2, 41007.3, and 41016.5 to the ETUS Act to define "access line" to mean a wireline communications service line, a wireless communications service line, and a VoIP service line that has access to the 911 emergency system. SB 96 repealed and reenacted RTC sections 41020 and 41030 in the ETUS Act to repeal the percentage based 911 surcharge and instead impose a flat monthly 911 surcharge amount on each access line in this state for each month or part thereof for which a service user subscribes with a service supplier, beginning January 1, 2020. The rate is to be set at an amount no greater than $0.80 and is based on OES' estimate, pursuant to a specified formula, of the rate that will produce sufficient revenue to fund the current fiscal year's 911 costs when applied to the number of access lines to which the 911 surcharge will be applied per month for the calendar year. (RTC, § 41030.) Service suppliers continued to be required to collect the 911 surcharge amount from service users, generally on the monthly service billings (RTC, § 41021), but SB 96 also amended RTC section 41051 to require service suppliers to pay the entire surcharge to the Department.

Additionally, SB 96 amended RTC section 41020 and added RTC section 41028 to the ETUS Act to impose the 911 surcharge on the purchase of prepaid MTS in this state beginning on January 1, 2020. RTC section 41028 requires sellers to collect the 911 surcharge from each prepaid consumer at the time of each retail transaction in this state at a rate equal to the monthly surcharge amount per access line and pay it to the Department. It clarifies when a retail transaction occurs in this state for purposes of the 911 surcharge. It also requires sellers, other than service suppliers, to remit the 911 surcharges they collect to the Department, along with a return filed using electronic media, and requires the Department to administer such remittances and returns as prescribed pursuant to the Sales and Use Tax Law. However, RTC section 41051 still requires service suppliers to remit all the 911 surcharges they collect to the Department pursuant to the ETUS Act, including the 911 surcharges imposed on the purchase of prepaid MTS.

Furthermore, SB 96 amended RTC section 41040 to require every service supplier and seller in this state to register with the Department. The 911 surcharge funds collected under the ETUS Act help make emergency telephone service available to persons in this state by supporting the costs of installing, administering, and supplying communication services for the 911 emergency telephone number system.

SB 334 and SB 1441

RTC section 42111 would have repealed the Local Prepaid MTS Collection Act on January 1, 2020. However, SB 344 and SB 1441 amended RTC section 42111 to change January 1, 2020, to January 1, 2021, and then January 1, 2026, respectively. SB 344 and 1441 also amended the Local Prepaid MTS Collection

Act to replace obsolete references to the Board with references to the Department.

In addition, SB 1441 added RTC section 42101.6 to the Local Prepaid MTS Collection Act to require the Department to post on its website the combined total of the rates of the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5. SB 1441 amended RTC section 42103 to require the Department to collect and administer local charges pursuant to the FCPL, instead of the repealed Prepaid MTS Surcharge Collection Act. SB 1441 also amended RTC section 42103.2 to require every seller, except a seller that is not required to collect local charges pursuant to RTC section 42101.7, to register with the Department regardless of whether they are in this state.

Also, a seller, other than a direct seller, with de minimis sales of prepaid MTS during the previous calendar year is not required to collect local charges under RTC section 42101.7. The de minimis sales threshold was originally sales of prepaid MTS of less than $15,000 and the Department of Finance is required to adjust the threshold annually as necessary to minimize program administration costs and maintain revenues to support program administration and enforcement activities. However, nothing prevents a seller that meets the de minimis sales threshold from collecting and remitting local charges on a voluntary basis.

AB 988

AB 988 amended several provisions in the ETUS Act, including RTC sections 41020, 41028, and 41030, to impose a separate and additional 988 surcharge amount on each access line for each month or part thereof for which a service user subscribes with a service supplier and on the purchase of prepaid MTS in this state, beginning January 1, 2023. The rate of the 988 surcharge is set at eight cents ($0.08) per access line per month and at a flat rate of eight cents ($0.08) on each retail transaction involving a sale of prepaid MTS for calendar years 2023 and 2024. (RTC, § 41030.) The rates for subsequent calendar years are to be determined by OES, pursuant to a specified formula, and may not exceed thirty cents ($0.30) per access line or retail transaction. (*Ibid.*). Service suppliers and sellers must collect the 988 surcharge and pay it to the Department in the same manner as the 911 surcharge. (RTC, §§ 41021, 41022, 41028, 41050.)

The 988 surcharge funds the national 988 system in California so that all people experiencing a mental health crisis can receive life–saving care.

EFFECTS, OBJECTIVES, AND BENEFITS OF THE PROPOSED REGULATORY ACTION

After SB 96 was enacted, the Department determined that it is reasonably necessary to keep the old ETUS Act regulations in chapter 5.5 in place because they continue to apply to existing appeals of 911 surcharges imposed prior to January 1, 2020. It is reasonably necessary to adopt new ETUS Act regulations, to be included in new chapter 5.6, to have the effect and accomplish the objectives of addressing issues (or problems within the meaning of GC, § 11346.2, subdivision (b)) regarding the registration requirements and imposition, collection, reporting, and payment of the 911 surcharge imposed by the ETUS Act as amended by SB 96 beginning January 1, 2020. It is also reasonably necessary to amend the old ETUS Act regulations and draft the new ETUS Act regulations to have the effect and accomplish the objective of addressing issues (or problems) readers may have distinguishing the old ETUS Act regulations in chapter 5.5 from the new ETUS Act regulations in chapter 5.6.

In addition, the Department determined that there are issues (or problems) with the Prepaid MTS regulations in chapter 5.7 because the Prepaid MTS Surcharge Collection Act was repealed by its own terms on January 1, 2020, but the repeal of the Local Prepaid MTS Collection Act was delayed by SB 334. The Department also determined that it is reasonably necessary to amend the Prepaid MTS regulations to make them consistent with the repeal of the Prepaid MTS Surcharge Collection Act to have the effect and accomplish the objective of addressing those issues.

On June 10, 2020, the Department distributed a discussion paper with drafts of the new ETUS Act regulations and proposed amendments to the old ETUS Act regulations and Prepaid MTS regulations. An interested parties meeting was held on June 24, 2020, to obtain public input. During the interested parties meeting, the Department explained the rationale for the new regulations and proposed amendments. The Department also explained that the new regulations and proposed amendments may change if SB 1441, which was pending at the time, was signed into law. Following the interested parties meeting, Lisa Volpe McCabe submitted comments and suggested changes on behalf of CTIA, the trade association for the wireless communications industry. Based on comments received, industry was generally supportive of the new regulations and proposed amendments.

After reviewing and considering CTIA's comments and suggested changes, the amendments to the Local Prepaid MTS Collection Act made by SB 1441, and the amendments made to the ETUS Act by AB 988, the Department determined that it was necessary to

revise the drafts of the new regulations and proposed amendments read as discussed below.

AMENDMENTS TO OLD ETUS ACT REGULATIONS

The Department initially determined that it is reasonably necessary to propose the following amendments to the old ETUS Act regulations to have the effect and accomplish the objective of helping readers distinguish between the old ETUS Act regulations and the new ETUS Act regulations:

- Change the name of chapter 5.5 from "Emergency Telephone Users Surcharge Law" to "Emergency Telephone Users Surcharge Act Operative Prior to January 1, 2020";
- Change the name of article 1 in chapter 5.5 from "Imposition of Surcharge" to "Imposition of Surcharge and Application of Chapter"; and
- Adopt new Regulation 2400, Application of Chapter, which clarifies that chapter 5.5 "applies to the Emergency Telephone Users Surcharge Act (Rev. and Tax. Code, 41101 et seq.), operative prior to January 1, 2020. Chapter 5.6 (commencing with Reg. 2435) applies to the Emergency Telephone Users Surcharge Act, operative on and after January 1, 2020."

The Department also determined that there is an issue (or problem) because readers may not understand that the references to the Board in the old ETUS Act regulations currently mean the Department. Therefore, the Department determined that it is reasonably necessary for proposed Regulation 2400 to clarify that the administration of the ETUS Act was transferred from the Board to the Department, operative July 1, 2017, and any references to the "Board" in chapter 5.5 refer to the Department on and after July 1, 2017, to have the effect and accomplish the objective of addressing that issue.

NEW ETUS ACT REGULATIONS

The Department determined that it is reasonably necessary to propose to adopt new chapter 5.6 to contain the new ETUS Act regulations. Also, to have the effect and accomplish the objective of helping readers distinguish between the old ETUS Act regulations and the new ETUS Act regulations, the Department determined that it is reasonably necessary to:

- Name proposed chapter 5.6 "Emergency Telephone Users Surcharge Act Operative on and after January 1, 2020"; and
- Include new Regulation 2435, Application of Chapter, in chapter 5.6 to clarify that chapter 5.6 applies to the ETUS Act operative on and after January 1, 2020, and that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020.

The Department also determined that it is reasonably necessary to include proposed Regulations 2436 through 2446 (discussed below) in chapter 5.6 to have the effect and accomplish the objective addressing the issues (or problems) regarding the registration requirements and imposition, collection, and reporting of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. Proposed chapter 5.6 also includes provisions from chapter 5.5 that implement, interpret, or make specific provisions in the ETUS Act that still apply on or after January 1, 2020.

The Department determined that it is reasonably necessary for chapter 5.6 to define the important terms used throughout chapter 5.6 to have the effect and accomplish the objective of addressing issues (or problems) readers may have understanding the meanings of those terms. Therefore, proposed Regulation 2436, Definitions, defines the important terms used throughout chapter 5.6. It incorporates the ETUS Act's current definitions for the terms "access line," "access line in this state," "in this state," "person," "prepaid consumer," "prepaid MTS," "public agency," "retail transaction," "seller," "service supplier," "service user," "wireless communications service line," and "wireline communication service." It incorporates the provisions in RTC section 41028 specifying when a retail transaction occurs in this state. It defines the terms "911 surcharge," "988 surcharge," and "surcharges" based on the ETUS Act's current definition of "surcharges." It incorporates and clarifies the industry terms "billing agent" and "billing aggregator" used in the old ETUS Act regulations. It also incorporates Prepaid MTS Regulation 2460's current definitions for the terms "business information," "contact information," "identifying information," "ownership information," and "representative Information" because those terms are used in chapter 5.6's registration provisions.

In addition, proposed Regulation 2436 defines "account" to mean an account issued and maintained by the Department to uniquely identify a service supplier that is registered with the Department pursuant to proposed Regulation 2437 (discussed below) or a seller that is registered with the Department pursuant to Regulation 2437 or Prepaid MTS Regulation 2460 (discussed below). It clarifies that an "emergency telephone account" shall be issued and maintained for a registered service supplier. It clarifies that a "prepaid MTS account" shall be issued and maintained for a seller, other than a service supplier, that is registered with the Department pursuant to Regulation 2437 or 2460, except as provided in Regulation 2460. It also defines the terms "Department" and "regulation" to clarify the references to the Department and sim-

plify the references to the Department's regulations throughout the chapter.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2437, Imposition of and Liability for the 911 and 988 Surcharges, to have the effect and accomplish the objective of addressing the issues (or problems) regarding the registration requirements and imposition, collection, and reporting of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2437 clarifies the provisions of RTC section 41020 that impose the 911 and 988 surcharges on each access line for each month or part thereof for which a service user subscribes with a service supplier. It clarifies that service suppliers are required to register with Department pursuant to RTC section 41040 and prescribes the requirements for a service supplier to register with the Department. It clarifies that service users are liable for the surcharges until they are paid to this state or a registered service supplier pursuant to RTC section 41024, that a service supplier is liable for the surcharges it is required to collect pursuant to RTC section 41023, and that billing aggregators and billing agents are not liable for the surcharges they collect on behalf of service suppliers. It also clarifies that service suppliers are required to report and pay the surcharges they are required to collect to the Department as provided in proposed Regulation 2440 (discussed below) and prescribes the requirements for a billing aggregator to report and remit surcharges on behalf of a service supplier.

In addition, proposed Regulation 2437 clarifies the provisions of RTC section 41020 that impose the 911 and 988 surcharges on the purchase of prepaid MTS in a retail transaction that occurs in this state. It clarifies that sellers in this state are required to register with Department under RTC section 41040 and prescribes the requirements for a seller in this state to register with the Department. It clarifies that sellers, other than service suppliers, that are not in this state are required to register with the Department as provided in Prepaid MTS Regulation 2460 (discussed below). It clarifies that consumers of prepaid MTS are liable for the surcharges pursuant to RTC section 41028 until they are paid to the Department, unless they obtain a receipt, as provided in proposed Regulation 2441 (discussed below), showing the surcharges were paid to a seller that has an emergency telephone account or a prepaid MTS account. It clarifies that a seller is liable for the surcharges it is required to collect pursuant to RTC section 41028. It also clarifies that sellers are required to report and pay the surcharges they are required to collect to the Department as provided in proposed Regulation 2440 (discussed below).

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2438, Exemptions for Access Lines, to have the effect and accomplish the objective of addressing issues (or problems) regarding the imposition of the 911 and 988 surcharges imposed on access lines by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2438 incorporates and clarifies the exemptions from the 911 and 988 surcharges for specified access lines, including the exemptions for:

- Access lines supplying lifeline services (RTC, § 41046);
- Access lines connected to public telephones (RTC, § 41046);
- Access lines provided for no charge (RTC, § 41046);
- Accesses lines where imposition of the surcharges would violate federal or state laws (RTC, § 41027);
- Access lines supplying wide–area telephone service used by common carriers (old ETUS Act Regulation 2413); and
- Access lines supplied to a nonprofit hospital or educational organization or specified public agency (RTC, § 41003).

In addition, subdivision (c) of the June 2020 draft of proposed Regulation 2438 was revised, as suggested by CTIA, to include the word "for" in the phrase "access lines for which no charges are billed." Also, subdivision (d)(5) was deleted from the June 2020 draft of Regulation 2438 and the other subdivisions were renumbered accordingly because the exemption for banks referred to in subdivision (b)(5) of old ETUS Act Regulation 2413 was repealed.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2439, Exemptions for Sales of Prepaid MTS for Resale and to Prepaid Consumers Eligible for a Lifeline Program, Seller's Deductions and Credits for Bad Debts from Sales of Prepaid MTS, and Prepaid Consumers' Credits for Surcharges Paid to Another State on Purchases of Prepaid MTS, to have the effect and accomplish the objective of addressing issues (or problems) regarding the imposition of the 911 and 988 surcharges imposed on the purchase of prepaid MTS by the ETUS Act as amended by SB 96 and AB 988. Subdivision (a) of proposed Regulation 2439 clarifies that the seller has the burden to establish that a sale of prepaid MTS is not a retail transaction subject to the 911 and 988 surcharges and local charges. It establishes a rebuttable presumption that a sale is for resale and not subject to the surcharges if the seller timely takes a resale certificate from the purchaser in the form prescribed by the regulation in good faith. It also clarifies that other evidence, including XYZ letters, may be used to prove that a sale was not in fact a retail transaction subject to the surcharges or that the purchaser

reported or paid the surcharges and local charges due on the transaction to the Department.

Subdivision (b) of proposed Regulation 2439 incorporates and clarifies the provisions of subdivision (d) of RTC section 41028, that relieve a seller from liability for the 911 and 988 surcharges, insofar as the base upon which the surcharges are imposed is represented by accounts found worthless and charged off for income tax purposes by the seller. Subdivision (b) further implements and clarifies subdivision (d) by providing that a seller that previously paid the surcharges may claim a bad debt deduction for the percentage of the surcharges paid that is equal to the percentage of the base upon which the surcharges were imposed that is represented by the account(s) found worthless and charged off for income tax purposes by the seller because the surcharges are imposed at a flat rate. Subdivision (b) clarifies the types of records a seller must maintain to support such a deduction, when such a deduction must be claimed on a return, and that the failure to take such a deduction on the proper return will not prohibit the seller from filing a timely claim for refund for the amount that could have been timely deducted. Subdivision (b) also clarifies the provisions of subdivision (d) that make a seller liable for the surcharges when the seller subsequently collects on such account(s), in whole or in part.

Subdivision (c) of proposed Regulation 2439 incorporates the lifeline exemption from the surcharges imposed on purchases of prepaid MTS provided by subdivision (h) of RTC section 41028, clarifies that the exemption does not apply if the seller is not an authorized provider of lifeline service, and clarifies the meaning of the state lifeline program as used in the exemption. Subdivision (d) of proposed Regulation 2439 implements the credit allowed by subdivision (c)(2) of RTC section 41028 to the extent that a prepaid consumer has paid surcharges on the purchase of prepaid MTS to any other state.

CTIA submitted written comments concerning the lifeline exemption provisions in the June 2020 draft of Prepaid MTS Regulation 2461, subdivision (e), that are relevant to proposed Regulation 2439, subdivision (c); therefore, CTIA's comments were treated as though they were made to comparable provisions in proposed Regulation 2439. CTIA commented that the part of those provisions defining "lifeline transaction" limited the exemption and should be revised to clarify that the exemption applies to subsidized lifeline services. The Department determined that it is not necessary to define "lifeline transaction" in proposed Regulation 2439 and that the proposed language in Regulation 2439 will not limit the exemption like the provisions that concerned CTIA.

CTIA also suggested removing provisions from the June 2020 draft of Prepaid MTS Regulation 2461, subdivision (e)(3), that incorporated repealed limitations on the lifeline exemption and provided that the lifeline exemption is applied only to the amount paid for the portion of the prepaid MTS that the lifeline program specifies is exempt from the surcharges and fees. Similar provisions were included in the prior draft of proposed Regulation 2439; however, the provisions were deleted because they implemented RTC section 41028, subdivision (h)(3), which was repealed.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2440, Returns, Reporting, and Payment, to have the effect and accomplish the objective of addressing issues (or problems) regarding the reporting and payment of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. It separately clarifies the reporting and payment requirements for service suppliers under the ETUS Act, and for sellers of prepaid MTS, other than service suppliers, under the Sales and Use Tax Law, as incorporated into RTC section 41028. It also clarifies that returns are required to be filed electronically through the Department's website and separately report the amounts of 911 and 988 surcharges collected.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2441, Receipts, to have the effect and accomplish the objective of addressing issues (or problems) regarding the collection of the 911 and 988 surcharges imposed on the purchase of prepaid MTS by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2441 clarifies that RTC section 41028 requires sellers of prepaid MTS to provide an invoice, receipt, or other similar document to prepaid consumers separately stating the 911 and 988 surcharges or the combined 911 and 988 surcharges collected, unless otherwise disclosed electronically to the prepaid consumer at the time of the retail transaction. It also clarifies that prepaid MTS is sold on a tax–included basis if the seller discloses to the consumer in the receipt that the price of the prepaid MTS includes applicable taxes and fees.

CTIA suggested adding a new subdivision to Regulation 2441 to separately address when prepaid MTS is sold on a tax–included basis and the 911 surcharge is not separately disclosed. CTIA suggested the following language:

> (4) If the prepaid MTS is sold on a tax–included basis and the 911 surcharge is not separately disclosed to the purchaser, it is presumed that the price includes the 911 surcharge unless an exemption applies and the seller can prove the exemption through documentation.

The Department did not incorporate CTIA's suggested language because subdivision (a)(2) of RTC

section 41028 requires the 911 surcharge and 988 surcharge to be separately stated or stated as a combined "911/988 Surcharge" on the invoice, receipt, or similar document provided to a prepaid consumer or disclosed to the prepaid consumer electronically at the time of the retail transaction, and CTIA's suggested language is inconsistent with RTC section 41028.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2442, Payment by Electronic Funds Transfer, to have the effect and accomplish the objective of addressing issues (or problems) regarding the payment of the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. It clarifies that service suppliers must remit the 911 and 988 surcharges to the Department by electronic funds transfer, as required by Regulation 4905, which currently implements RTC section 41060's requirements for service suppliers to remit surcharges by electronic funds transfer. It also clarifies that sellers, other than service suppliers, must remit the 911 and 988 surcharges to the Department by electronic funds transfer, as required by Regulation 1707, which currently implements the Sales and Use Tax Law's requirements to remit sales and use tax by electronic funds transfer.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2443, Records, to have the effect and accomplish the objective of addressing issues (or problems) regarding the records service suppliers and sellers are required to maintain and make available under RTC section 41129 so that the Department can verify that they reported and paid the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988. Proposed Regulation 2443 clarifies that service suppliers and sellers are required to maintain and make available records in accordance with Regulation 4901, Records, which currently implements the ETUS Act's record keeping requirements. It also specifically requires service suppliers to keep complete and accurate records showing:

(1) Total number of access lines in this state billed to service users.

(2) Total number of retail transactions.

(3) All exemptions allowed by law.

(4) Amount of 911 and 988 surcharges collected.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2444, Reasonable Reliance on Written Advice, to have the effect and accomplish the objective of addressing issues (or problems) regarding the provisions of RTC section 41098, which authorize the Department to relieve a person from liability for the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988 due to reasonable reliance on written advice from the Department. Proposed Regulation 2444 clarifies that a person may be relieved from the liability for the payment of the 911 and 988 surcharges, including any penalties and interest added to the surcharges, under RTC section 41098, when that liability resulted from the failure to make a timely return or a payment and such failure is found by the Department to be due to reasonable reliance on written advice given by the Department under the conditions set forth in Regulation 4902, Relief from Liability, which currently implements RTC section 41098.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2445, Innocent Spouse Relief, to have the effect and accomplish the objective of addressing issues (or problems) regarding the provisions of RTC section 41099, which authorize the Department to relieve a spouse from liability for the 911 and 988 surcharges imposed by the ETUS Act as amended by SB 96 and AB 988, under specified circumstances. Proposed Regulation 2445 clarifies that a spouse or registered domestic partner claiming relief from liability for the 911 and 988 surcharges, interest, penalties, and other amounts under RTC section 41099 shall be relieved from such liability where all the requirements set forth in Regulation 35055 are met because Regulation 35055 currently implements RTC section 41099.

The Department determined that it is reasonably necessary for chapter 5.6 to include proposed Regulation 2446, Refunds of Excess Charges Collected, to have the effect and accomplish the objective of addressing issues (or problems) regarding the provisions of:

- RTC section 41023 providing that any amount unreturned to the service user that is not owed as part of the surcharges but was collected from the service user under the representation by the service supplier that it was owed as part of the surcharges, constitute debts owed by the service supplier to this state; and
- RTC section 41028 providing that any amount unreturned to the prepaid consumer of MTS that is not owed as part of the surcharges, but was collected from the prepaid consumer under the representation by the seller that it was owed as part of the surcharges, constitutes debts owed by the seller to this state.
- Proposed Regulation 2446 clarifies that:
- Service suppliers and sellers that have collected any amount of 911 and 988 surcharges in excess of the amount actually due may refund that amount even if it has already been paid to the Department;
- Any excess charges that are not refunded constitute a debt to the state;

- A service supplier or seller can claim credit for the overpayment of excess charges that were refunded; and
- Any person that believes it has overpaid 911 and 988 surcharges, including a service supplier or seller, may file a timely claim for refund, within the statute of limitations.

AMENDMENTS TO PREPAID MTS REGULATIONS

The Department determined that there are issues (or problems) with the Prepaid MTS regulations in chapter 5.7 because the Prepaid MTS Surcharge Collection Act was repealed by its own terms on January 1, 2020, but the repeal of the Local Prepaid MTS Collection Act was delayed by SB 334 and SB 1441 and the Local Prepaid MTS Collection Act was also amended by SB 334 and SB 1441. The Department also determined that it is reasonably necessary to amend the Prepaid MTS regulations to make them consistent with the repeal of the Prepaid MTS Surcharge Collection Act and amendments to the Local Prepaid MTS Collection Act to have the effect and accomplish the objective of addressing those issues.

The Department determined that it is reasonably necessary to propose to change the name of chapter 5.7 from "Prepaid Mobile Telephony Services" to "Local Charges on Prepaid Mobile Telephony Services" to have the effect and accomplish the objective of clarifying that chapter 5.7 only applies to local charges imposed on prepaid MTS after the repeal of the Prepaid MTS Collection Act.

The Department determined that it is reasonably necessary to propose to add definitions to subdivision (a) of Regulation 2460, Administration, to have the effect and accomplish the objective of:

- Defining "account" to mean an account issued and maintained by the Department to uniquely identify a seller that is registered with the Department pursuant to new ETUS Act Regulation 2437 or Regulation 2460, and clarifying that an "emergency telephone account" shall be issued and maintained for a registered direct seller, a "prepaid MTS account" shall be issued and maintained for a registered seller, other than a direct seller, and each account shall have its own unique account number.
- Defining "911 surcharge," "988 surcharge," "surcharges," and "911 and 988 surcharges."
- Defining "regulation" to simplify the references to the Department's regulations throughout the chapter.
- Clarifying when a "retail transaction occurs in this state" under RTC section 42101.8.

The Department determined that it is reasonably necessary to propose to delete the definition of "Emergency telephone users surcharge" from subdivision (a) of Regulation 2460 because that term is being replaced by the term "911 surcharge." The Department determined that it is reasonably necessary to propose to delete the definition of "Prepaid MTS Account" from subdivision (a) of Regulation 2460 because the new definition of "account" includes prepaid MTS accounts. The Department determined that it is reasonably necessary to propose to delete the definitions of "Prepaid MTS Surcharge," "Public Utilities Commission," and "Public Utilities Commission Surcharges" from subdivision (a) of Regulation 2460 because they are unnecessary after the repeal of the Prepaid MTS Surcharge Collection Act. The Department also determined that it is reasonably necessary to propose to renumber the remaining definitions in subdivision (a) of Regulation 2460 and move the definition of "Department" so that all the definitions are in alphabetical order.

The Department determined that it is reasonably necessary to propose to update Regulation 2460's definitions of "business information," "contact information," and "identifying information" to have the effect and accomplish the objective of making them consistent with the revised registration requirements (discussed below) and replacing the references to the repealed prepaid MTS surcharge with references to the 911 and 988 surcharges. The Department determined that it is reasonably necessary to propose to clarify that contact information includes an "email address" and "identifying information" includes a federal Employer Identification Number, rather than a federal Taxpayer Identification Number. The Department determined that it is reasonably necessary to propose to amend Regulation 2460's definitions of "local charge" or "local charges" and "prepaid mobile telephony services" or "prepaid MTS" to have the effect and accomplish the objective of making them consistent with RTC section 42101's definitions of "local charge" and "prepaid mobile telephony services." The Department determined that it is reasonably necessary to propose to amend Regulation 2460's definition of "retail transaction" to have the effect and accomplish the objective of making it consistent with the provisions of subdivision (c) of RTC section 42101.9 regarding sales of a minimal amount of prepaid MTS for a single, nonitemized price with a mobile telephony communications device, and clarifying that multiple items of prepaid MTS may be purchased at one time in a single retail transaction. The Department also determined that it is reasonably necessary to propose to amend Regulation 2460's definition of "seller" to have the effect and accomplish the objective of clarifying that the term includes "direct sellers."

The Department determined that it is reasonably necessary to propose to amend subdivision (b) of Regulation 2460 to have the effect and accomplish the objective of clarifying that every seller in this state is required to register with the Department under new ETUS Act Regulation 2437 (discussed above) and a seller that is not in this state is required to register under Regulation 2460, except a seller with de minimis sales of prepaid MTS that is not required to collect local charges under RTC section 42101.7. However, such a seller may voluntarily register with the Department by completing an application for registration.

The Department determined that it is reasonably necessary to propose to amend subdivisions (c), (d), (e), (g), and (h) of Regulation 2460 to have the effect and accomplish the objective of deleting the references to the prepaid MTS surcharge. The Department also determined that it is reasonably necessary to propose to amend subdivision (c) to have the effect and accomplish the objective of clarifying that the subdivision is only referring to local charges subject to collection under chapter 5.7.

The Department determined that it is reasonably necessary to propose to amend subdivision (d) of Regulation 2460 to have the effect and accomplish the objective of replacing "the combined prepaid MTS surcharge and local charges" with "any local charges" because the prepaid MTS surcharge was repealed. The Department also determined that it is reasonably necessary to propose to amend subdivision (d) to have the effect and accomplish the objective of clarifying that the subdivision only applies to sellers that are required to collect local charges under chapter 5.7, replacing "service" with "prepaid MTS" in subdivision (d)(2), and clarifying in subdivision (d)(3) that RTC section 42101.6 requires receipts to show the amount of any local charges collected, unless otherwise disclosed electronically to the prepaid consumer at the time of the transaction.

The Department determined that it is reasonably necessary to propose to amend subdivision (e) of Regulation 2460 to have the effect and accomplish the objective of deleting the references to the repealed prepaid MTS surcharge and Prepaid MTS Surcharge Collection Act. The Department determined that it is reasonably necessary to propose to amend subdivision (e)(1) to have the effect and accomplish the objective of clarifying that it only applies to payments of local charges subject to collection under chapter 5.7. The Department determined that it is reasonably necessary to propose to amend subdivision (e)(2) to have the effect and accomplish the objective of clarifying that it only requires a person to file returns if they are liable for local charges under chapter 5.7. The Department determined that it is reasonably necessary to propose to amend subdivision (e)(3) to have the effect and accomplish the objective of clarifying that it only applies to local charges required to be reported to the Department pursuant to the Local Prepaid MTS Collection Act. The Department determined that it is reasonably necessary to propose to shorten subdivision (e)(5)'s reference to Regulation 1707. The Department also determined that it is reasonably necessary to propose to amend subdivision (e)(6) to have the effect and accomplish the objective of clarifying that direct sellers are required to report and remit the 911 and 988 surcharges to the Department as provided in new ETUS Act Regulation 2440 (discussed above).

The Department determined that it is reasonably necessary to propose to move the reference to "records" and shorten the reference to Regulation 4901 in subdivision (f) of Regulation 2460 to have the effect and accomplish the objective of making the subdivision read more clearly. The Department determined that it is reasonably necessary to propose to shorten the reference to Regulation 4902 in subdivision (g) of Regulation 2460. The Department also determined that it is reasonably necessary to propose to amend subdivision (h) of Regulation 2460 to have the effect and accomplish the objective of replacing the reference to Regulation 4903 with a reference to Regulation 35055 because Regulation 35055 currently implements RTC section 55045.1 in the FCPL and prescribes the substantive requirements for innocent spouse relief.

The Department determined that it is reasonably necessary to propose to amend subdivision (i)(1) of Regulation 2460, so it uses the past tense to refer to contracts that were or were not entered into on or before September 1, 2015. The Department determined that it is reasonably necessary to propose to amend subdivision (i)(1) to have the effect and accomplish the objective of clarifying that local charges are required to be collected at the time prepaid MTS is sold in a retail transaction that occurs in the state, pursuant to the Local Prepaid MTS Collection Act and chapter 5.7, rather than at the same time and manner as the prepaid MTS surcharge. The Department also determined that it is reasonably necessary to propose to delete the last sentence from subdivision (i)(1), which refers to subdivisions (i)(2) through (5), because it's unnecessary.

The Department determined that it is reasonably necessary to propose to amend subdivision (i)(3) of Regulation 2460 to have the effect and accomplish the objective of clarifying that it is only referring to increases in local charges required to be collected under subdivisions (i)(1) or (2). The Department determined that it is reasonably necessary to propose to amend subdivision (i)(4) of Regulation 2460 to have the effect and accomplish the objective of clarifying that it is only referring to local charges required to be collected under subdivision (i), clarifying that the first para-

graph applies when timely written notice is provided not less than 110 days prior to the date a local charge is scheduled to expire or decrease, and clarifying that the second paragraph applies when written notice is provided in advance of such a change, but less than 110 days prior to the change. The Department also determined that it is reasonably necessary to propose to delete "scenarios" from subdivision (i)(5) of Regulation 2460 because the word is unnecessary.

The Department determined that it is reasonably necessary to propose to amend subdivision (j) of Regulation 2460 to have the effect and accomplish the objective of changing the name of subdivision (j) from "Posting and Calculation of Combined Rates" to "Posting Rates," deleting subdivisions (j)(1) and (2) regarding the calculation of the prepaid MTS surcharge rate and combined rates, and reformatting subdivision (j)(3) as subdivision (j) because the Department is no longer required to calculate the prepaid MTS surcharge rate or total combined rates of the prepaid MTS surcharge and local charges. The Department also determined that it is reasonably necessary to propose to amend reformatted subdivision (j) to have the effect and accomplish the objective of implementing, interpreting, and making specific the current requirements for the Department to post the combined total of the rates of the local charges imposed by each local jurisdiction, as calculated pursuant to RTC sections 42102 and 42102.5, on its website.

The Department determined that it is reasonably necessary to propose to amend Regulation 2461, Exemptions, Deductions, Credits, and Specific Applications of Tax, to have the effects and accomplish the objectives of deleting subdivision (a) because it is redundant, deleting subdivision (e) because the Local Prepaid MTS Collection Act does not provide an exemption from local charges for lifeline transactions, and renumbering the other subdivisions accordingly. The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (a) of Regulation 2461 to have the effects and accomplish the objectives of clarifying that the burden of proving that a sale of prepaid MTS is for resale in the regular course of business is on the seller, clarifying that timely taking a resale certificate from the purchaser in good faith raises a rebuttable presumption that a sale of prepaid MTS is for resale for purposes of local charges and the 911 and 988 surcharges, clarifying when a resale certificate is required to contain the purchaser's emergency telephone account or prepaid MTS account number, clarifying the current requirements for purchasers to issue blanket and qualified resale certificates, clarifying the current requirements for a seller to accept a resale certificate in good faith, clarifying the other evidence a seller can provide to show that they are not liable for local charges on a sale of prepaid MTS, and clarifying the use of XYZ letters and alternative methods for that purpose.

The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (b) of Regulation 2461 to have the effects and accomplish the objectives of clarifying that RTC section 42101.6 relieves a seller from liability to collect local charges insofar as the base upon which local charges are imposed is represented by accounts that have been found to be worthless and charged off for income tax purposes, clarifying that a seller that has previously paid the local charges must take a bad debt deduction for the local charges on the proper return or file a timely claim for refund, clarifying how payments and credits may be applied to an account for purposes of determining a bad debt deduction, clarifying how local charges apply to amounts subsequently collected on accounts previously found to be worthless and charged off for income tax purposes under RTC section 42101.6, and clarifying the records a seller must maintain to support relief of liability, a deduction, or a claim for refund. The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (c) of Regulation 2461 to have the effects and accomplish the objectives of clarifying how local charges apply under RTC section 42101.9 when prepaid MTS is sold in combination with other services or products for a single price and including language CTIA suggested before that language was added to section 42101.9.

The Department determined that it is reasonably necessary to propose to amend renumbered subdivision (d) of Regulation 2461 to have the effect and accomplish the objective of clarifying that prepaid consumers are only allowed a credit for local charges paid to another state on the purchase of prepaid MTS. The Department determined that it is reasonably necessary to propose to add new subdivision (e) to Regulation 2461 to have the effect and accomplish the objective of clarifying that sellers, other than direct sellers, with de minimis sales are not required to, but may voluntarily collect local charges. The Department also determined that it is reasonably necessary to propose to amend the resale certificate in appendix A of Regulation 2461 to have the effects and accomplish the objectives of deleting the unnecessary introductory paragraph, revising paragraph 1 to require a purchaser to certify that they hold a valid emergency telephone account or prepaid MTS account with a specific account number or explain why they are not required to register with the Department under Regulations 2437 and 2460, replacing the references to "property" and "items" in paragraphs 2, 3, and 4 with "prepaid MTS" because the certificate is specifically for purchases of prepaid MTS, and deleting the unnecessary language after "business operations" in paragraph 3.

The Department determined that it is reasonably necessary to propose to amend Regulation 2462, Refunds of Excess Charges Collected, to have the effects and accomplish the objectives of:

- Deleting the references to the repealed prepaid MTS surcharge;
- Clarifying subdivision (a) and making it consistent with the wording in subdivision (h) of RTC section 42101.6;
- Updating the reference to repealed RTC section 42014 in subdivision (c)(1) to refer to current RTC section 42105; and
- Making non–substantive edits to language throughout the regulation for clarity.

SECOND DISCUSSION PAPER

On November 9, 2023, the Department distributed a second discussion paper with the revised drafts of the new ETUS Act regulations and proposed amendments to the old ETUS Act regulations and Prepaid MTS regulations. An interested parties meeting was held on November 30, 2023, to obtain public input. However, the Department did not receive any comments regarding the revised amendments or new regulations.

DETERMINATIONS

The Department subsequently determined that there is an issue (or problem) because there are no longer any pending appeals of 911 surcharges imposed prior to January 1, 2020, and it is no longer necessary to continue to publish the old ETUS Act regulations in the CCR. Therefore, the Department determined that it is reasonably necessary to propose to repeal chapter 5.5 prospectively, rather than amend it, to have the effect and accomplish the objective of addressing that issue. The Department also determined that there is an issue (or problem) because it is unnecessary for proposed Regulation 2435 to clarify that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020, now that the Department is proposing to repeal chapter 5.5. Therefore, the Department determined that it is reasonably necessary to revise new Regulation 2435, so it no longer clarifies that chapter 5.5 applies to the ETUS Act operative prior to January 1, 2020, to have the effect and accomplish the objective of addressing that issue.

The Department determined that the adoption of the revised drafts of the new ETUS Act regulations is reasonably necessary to have the effect and accomplish the objective of addressing the issues (or problems) discussed above by providing new ETUS Act regulations that:

- Implement the ETUS Act operative on and after January 1, 2020;
- Clarify the registration requirements in the ETUS Act as amended by SB 96;
- Clarify the imposition, collection, reporting, and payment of the 911 surcharge imposed by the ETUS Act as amended by SB 96 beginning January 1, 2020; and
- Clarify the imposition, collection, reporting, and payment of the 988 surcharge imposed by the ETUS Act as amended by AB 988 beginning January 1, 2023.

The Department also determined that the adoption of the proposed amendments to the Prepaid MTS regulations is reasonably necessary to have the effect and accomplish the objective of addressing the issues (or problems) discussed above by making the Prepaid MTS regulations consistent with the repeal of the Prepaid MTS Surcharge Collection Act and amendments to the Local Prepaid MTS Collection Act made by SB 344 and SB 1441.

The Department anticipates that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will promote fairness and benefit the Department, service suppliers, service users, sellers, and prepaid consumers by providing new ETUS Act regulations that clarify the ETUS Act operative on and after January 1, 2020, and making the Prepaid MTS regulations consistent with the repeal of the Prepaid MTS Surcharge Collection Act and amendments to the Local Prepaid MTS Collection Act made by SB 344 and SB 1441. The Department has performed an evaluation of whether the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations are inconsistent or incompatible with existing state regulations. The Department determined that the new ETUS Act regulations are not inconsistent or incompatible with existing state regulations because the Department is repealing the old ETUS Act regulations and the new ETUS Act regulations are consistent with other existing state regulations that implement specific statutes in the ETUS Act, such as Regulations 1707, 4901, 4902, 4905, and 35055 (discussed above). The Department also determined that the proposed amendments to the Prepaid MTS regulations are not inconsistent or incompatible with existing state regulations because the Prepaid MTS regulations are the only regulations that implement the Local Prepaid MTS Collection Act, and the amendments to the Prepaid MTS regulations are consistent with Regulations 1707, 4901, 4902, and 35055 (discussed above).

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regu-

lations and proposed amendments to the Prepaid MTS regulations will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE–TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will result in an absorbable $484 one–time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not result in any other direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non–discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (B)

The Department assessed the economic impact of repealing chapter 5.5 and adopting the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and CCR, title 1, section 2000. Therefore, the Department prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the State of California and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it 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 than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations should be directed to Sarah Smith, Business Taxes Specialist II, by telephone at (916) 309–5292, by email at BTC.InformationRequests@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attention: Sarah Smith, MIC:50, 651 Bannon Street, Suite 100, P.O. Box 942879, Sacramento, CA 94279–0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309–5227, by fax at (916) 322–2958, by email at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attention: Kim DeArte, MIC:50, 651 Bannon Street, Suite 100, P.O. Box 942879, Sacramento, CA 94279–0050. Kim DeArte is the designated backup contact person to Sarah Smith.

WRITTEN COMMENT PERIOD

The written comment period ends on January 6, 2025. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to repeal chapter 5.5 and adopt the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to repeal chapter 5.5 and adopt the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department has prepared copies of the text of repealed chapter 5.5, the new ETUS Act regulations, and the proposed amendments to the Prepaid MTS regulations illustrating the express terms of the proposed action. The Department has also prepared an initial statement of reasons for the proposed repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations, which includes the economic impact assessment required by GC section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 651 Bannon Street, Suite 100, Sacramento, California. The express terms of repealed chapter 5.5, the new ETUS Act regulations, and proposed amendments to the Prepaid MTS regulations and the initial statement of reasons are also available on the Department's website at www.cdtfa.ca.gov/taxes–and–fees/regscont.htm.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the repeal of chapter 5.5 and adoption of the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GC SECTION 11346.8

The Department may repeal chapter 5.5 and adopt the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations with changes that are non–substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made pursuant to GC section 11346.8, the Department will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider timely written comments it receives regarding a sufficiently related change.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Department repeals chapter 5.5 and adopts the new ETUS Act regulations and proposed amendments to the Prepaid MTS regulations, the Department will prepare a final statement of reasons. Upon its completion, the final statement of reasons will be made available for inspection at 651 Bannon Street, Suite 100, Sacramento, California, and available upon request by contacting the contact person(s) named above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice, initial statement of reasons, and the text of repealed chapter 5.5, the new ETUS Act regulations, and proposed amendments to the Prepaid MTS regulations are available on the Department's website at www.cdtfa.ca.gov/taxes–and–fees/regscont.htm. If the Department publishes other related documents, they will also be available at that website.

TITLE 23. STATE WATER RESOURCES CONTROL BOARD

UNDERGROUND STORAGE TANK REGULATIONS

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) proposes to amend, adopt, or repeal the underground storage tank (UST) regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to amend California Code of Regulations, title 23, division 3, chapter 16 (commencing with section 2610) (UST Regulations) to make them consistent with current technology and operational practices, including deleting deadlines that have passed. The State Water Board further proposes to amend the UST Regulations to implement amendments to the Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280) (Health and Safety Code chapter 6.7) enacted by Chapter 536, Statutes of 2012, Chapter 547, Statutes of 2014, Chapter 721, Statutes of 2018, and Chapter 207, Statutes of 2023.

PUBLIC HEARING

The State Water Board will hold a hearing beginning at 1:00 p.m. on Monday January 13, 2025, in the Sierra Hearing Room at the Joe Serna Jr./Cal–EPA Headquarters Building, 1001 I Street, Sacramento, California 95814. The Joe Serna Jr./Cal–EPA Headquarters Building is accessible to people with disabilities. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed regulatory action described in the Informative Digest/Policy Statement Overview. The State Water Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The State Water Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modifications of the proposed regulations. The State Water Board will not accept oral statements subsequent to the public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes on January 7, 2025 at 12:00 p.m. The State Water Board only will consider written comments received by that time at the addresses below.

Please send comment letters to Ms. Courtney Tyler, Clerk to the Board, by email at commentletters@waterboards.ca.gov, by fax at (916) 341–5620, or by mail or hand delivery addressed to:

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812–2000
(by mail)
1001 I Street, 24th Floor, Sacramento, CA 95814
(by hand delivery)

Please also indicate in the subject line, **"Comment Letter — Proposed UST Regulations."**

Hand and special deliveries also should be addressed to Ms. Tyler at the address above. Couriers delivering comments must check in with lobby security and have them contact Ms. Tyler at (916) 341–5600. Due to the limitations of the email system, emails larger than 15 megabytes are rejected and cannot be delivered or received by the State Water Board. Therefore, the State Water Board requests that comments larger than 15 megabytes be submitted under separate emails.

To be added to the mailing list for this rulemaking and to receive notification of updates of this rulemaking, you may subscribe to the listserv for **"Program Requirements and Guidance"** by going to:

https://public.govdelivery.com/accounts/CAWRCB/subscriber/new?qsp=ca_swrcb. You also may call Mr. Tom Henderson at (916) 319–9128 or email him at Tom.Henderson@Waterboards.ca.gov. **Persons who receive this notice by mail or electronic mail already are on the mailing list.**

AUTHORITY AND REFERENCE

Health and Safety Code section 25299.3 authorizes the State Water Board to adopt regulations to implement chapter 6.7 of division 20 of the Health and Safety Code. The proposed regulations implement, interpret, or make specific chapter 6.7 of division 20 of the Health and Safety Code, commencing with section 25280. References to specific code sections are identified in the proposed amendments to the UST Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Water State Water Board proposes to amend the UST Regulations located in chapter 16 of division 3 of title 23 of the California Code of Regulations to update the UST Regulations to make them consistent with current technology and operational practices, including deleting deadlines that have passed. The State Water Board further proposes to amend the UST Regulations to implement amendments to the Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280) (Health and Safety Code chapter 6.7) enacted by Chapter 536, Statutes of 2012, Chapter 547, Statutes of 2014, Chapter 721, Statutes of 2018, and Chapter 207, Statutes of 2023.

The State Water Board intends for the amendments to the UST Regulations to go into effect on January 1, 2026. Consequently, the State Water Board proposes to delete any provisions in the regulations regarding those USTs which must be permanently closed on or before December 31, 2025, in accordance with Health and Safety Code section 25292.05 (single–walled USTs). All USTs meeting the definition of single–walled USTs include those USTs that meet the definition of "existing underground storage tank" in the existing regulations and the only USTs that will be permitted to continue in operation will be certain USTs that meet the definition of "new underground storage tanks." For this reason, these terms will be deleted from the UST Regulations. Instead of classifying USTs as existing or new, the proposed regulations classify USTs as Type 1, Type 2, or Type 3 based on the date they were installed consistent with regulatory requirements in chapter 6.7 of division 20 of the Health and Safety Code and existing regulations.

The State Water Board proposes to significantly reorganize the regulations to rearrange the order in which topics are presented, consistent with the deletion of provisions related to single–walled tanks. Like subjects are grouped and placed together in separate articles for ease of use. In addition, the General Applicability sections in the existing regulations are deleted as these sections are redundant and unnecessary.

The State Water Board also proposes changing terminology uses in the regulations for greater specificity and clarity. Specifically, as defined by Health and Safety Code section 25281(i), there are two types of local agencies, with different roles and responsibilities. Existing regulations use the term "local agency" for both types. To distinguish between these two types of local agencies and to implement amendments to the Health and Safety Code enacted by Statutes 2012, Chapter 536, the term "local agency" is replaced by either "Unified Program Agency" or "Cleanup Oversight Agency" throughout the proposed regulations.

The term "leak" has been replaced with the defined terms "release" or "unauthorized release" throughout the proposed regulations because these terms are the defined terms used in Health and Safety Code chapter 6.7. The term "line leak detector," however, continues to be used to refer to devices that monitor buried pressurized piping for catastrophic releases because this term is commonly used in industry.

The use of the terms "inspect," "certify," and "test" in the existing regulations are largely interchangeable. The proposed regulations use the term "test" exclusively for consistency and accurately describe all the activities required for verifying that UST components are properly functioning and in compliance.

The State Water Board also proposes certain amendments to the California UST Regulations that do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision (e.g., changes without regulatory effect). These amendments without regulatory effect include changes made for purposes of revising structure, syntax, cross–references, grammar, punctuation, capitalization, renumbering or relocating regulatory provisions. For consistency purposes, the citation format for statutory and regulatory references is made consistent throughout the proposed regulations. To the extent that many of these amendments without regulatory effect are non–substantive and their purposes are self–evident or merely editorial, they are not discussed herein. To the extent that many of these amendments without regulatory effect are non–substantive and their purpose is self–evident or merely editorial, they are not discussed herein.

In Fall of 2022 State Water Board staff hosted a serious of focus workgroups via Microsoft Teams and

conference calls consisting of State Water Board staff, select UST regulators, and select representatives from the UST industry including UST testers and installers. State Water Board staff also reached out to other members of industry for insight related to the proposed forms and cost of implementing specific actions of the proposed regulations. The State Water Board did not rely on any other technical, theoretical, or empirical studies, reports, or documents in proposing these amendments.

The State Water Board relied on an Economic and Fiscal Impact Statement (Form 399) and an Economic Impact Analysis/Assessment prepared pursuant to Government Code section 11436.3, subdivision (b) in proposing these amendments to the UST Regulations. The specific purpose and basis for the State Water Board's determination of the necessity of each amendment are explained herein.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulatory action will implement statutory changes and update the UST Regulations to: 1) provide higher standards of UST construction, monitoring, and testing; 2) improve tracking, notification procedures, and clarify agency responsibilities; and 3) update abatement and corrective action procedures and oversight. These amendments decrease the risk of a release of a hazardous substance from a UST and decrease the risks of soil and groundwater contamination in the event of a release of a hazardous substance from a UST, improving the health and welfare of California residents, worker safety, and the State's environment. As a consequence, the proposed regulations will: 1) improve the health and welfare for California residents, worker safety, and the State's environment; 2) result in a savings in cleanup costs to businesses and the UST Cleanup Fund; 3) reduce confusion within the regulated community; and 4) be consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

EVALUATION OF DUPLICATION/ CONFLICT WITH EXISTING STATE REGULATIONS

The State Water Board has determined that the proposed regulations do not duplicate or conflict with any federal law or federal regulation.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The State Water Board has determined that the proposed amendments to the UST Regulations are not inconsistent or incompatible with existing regulations. After conducting a review of any regulations that would relate to or affect this area, the State Water Board has concluded that these are the only regulations that concern USTs.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with section 17500) of the Government Code, division 4.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations specify new notification requirements and streamline existing reporting requirements. Electronic notification is via the internet using readily available technology; and it is expected that this process will be automated and not incur fiscal impact.

COST OR SAVINGS IMPOSED ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations specify new notification requirements and streamline existing reporting requirements. Electronic notification is via the internet using readily available technology; and it is expected that this process will be automated and not incur fiscal impact to local agencies or school districts.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The proposed regulations do not have fiscal impacts on any federally funded State agency or program.

ANY OTHER NON–DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

The proposed regulations do not have any other non–discretionary cost or savings imposed upon local agencies.

EFFECT ON HOUSING COSTS

The State Water Board has determined that the proposed regulatory action will have no effect on housing costs.

BUSINESS IMPACT/SMALL BUSINESS

The State Water Board has determined that the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its 25–year lifetime is $13,309,590. The Board initially determined that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations will affect small businesses. Approximately 80 percent of the affected businesses are small businesses. The State Water Board has determined that a representative person or business may incur up to $45,000 over the lifetime of the proposed regulations, depending on whether the person or business will be installing new USTs or has USTs with single–walled spill containers or uses mechanical released detection to monitor under–dispenser containment.

More specifically, the proposed regulations expand existing requirements regarding anchoring of USTs to require all new USTs to be anchored. As a result of existing regulations, local requirements, and best practices, anchoring currently is used on 60 to 70 percent of new UST installations, therefore, this proposed requirement only impacts approximately 35 percent of new UST installations. Anchoring new USTs will cost an additional $45,000 for a typical business who would not otherwise anchor its new USTs. It should be noted, however, that anchoring the USTs avoids the potential risk of buoyant tanks, which is increasing as storm events become more extreme due to climate change. The costs associated with this are similar to a complete, new UST installation, including re–excavation, re–plumbing, paving, and all associated testing, and system down time.

For those businesses with existing USTs with direct buried, single–walled spill containers, the proposed regulations will require direct buried, single–walled spill containers to be replaced with secondarily contained spill containers when they need to be repaired. The cost of replacing direct buried, single–walled spill containers with secondarily contained spill containment for a typical business will cost approximately $39,000 more than replacing the spill container with a new direct–buried spill container. Owners and operators, however, will incur reduced future repair costs as a result of this change, resulting in approximately $720 in cost savings over the lifetime of the proposed regulations.

For those businesses with existing USTs with mechanical release detection equipment used to continuously monitored under–dispenser containment, the proposed regulations will require mechanical release detection equipment to be replaced with a continuous electronic monitoring method if it fails to function properly during operation or testing.

The cost of replacing the mechanical release detection equipment with a continuous electronic monitoring method, instead of replacing the failed mechanical release detection equipment with new mechanical release detection equipment, will cost a typical business an additional $2,100.

BUSINESS REPORTING REQUIREMENTS

It is necessary for the health, safety, or welfare of the people of the state that the regulation which requires a report apply to business.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

No businesses will be affected by all three of the proposed regulatory requirements discussed above that may increase costs of compliance for typical businesses regulated by the UST Regulations. New UST installations are prohibited from installing direct bury spill containers and using under–dispenser mechanical release detection equipment. Additionally, many businesses will not be impacted by any of these three proposed regulatory requirements. Typical businesses installing new USTs that would not otherwise anchor their USTs would incur an additional $45,000, while avoiding the potential risk of significant costs resulting from their USTs becoming buoyant. A typical business with existing USTs may incur the cost of replacing three single–walled spill containers with secondarily contained spill containers ($39,000) and six under–dispenser mechanical release detection methods be replaced with continuous electronic monitoring methods ($2,100), for up to $41,100 in additional costs, however, these initial costs are off–set by long–term savings in lower ongoing repair costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The State Water Board has determined that the proposed regulations will impact about 3,600 businesses. The typical UST business employs less than 500 employees, and it is estimated that 80 percent of affected businesses are small businesses. Individuals affected by the proposed regulations are owners and operators

of these businesses. The majority of affected businesses are fueling stations and hospitals and includes other facilities that store hazardous substances in USTs.

ASSESSMENT REGARDING EFFECT ON JOBS AND BUSINESSES

The State Water Board estimates that the proposed regulatory action will have a minimal impact on the creation or elimination of jobs within California because the amendments to the UST Regulations do not create or eliminate a significant enough workload to support the creation or elimination of jobs within California.

The State Water Board has determined that the proposed regulatory action will have a minimal impact on the creation and elimination of new businesses within the State of California, because the added construction, monitoring, and testing requirements for existing equipment do not create a significant workload to support the creation of new businesses. Businesses that are unable or unwilling to invest in equipment to meet the proposed regulatory requirements may be eliminated; however, the State Water Board expects the number of these businesses that are either unable or unwilling to invest in new equipment to be minimal based on the cost of the proposed requirements, including the long–term cost savings for businesses implementing these requirements.

BENEFIT OF THE REGULATION FOR PUBLIC HEALTH, SAFETY, AND WELFARE

The proposed regulatory action will implement statutory changes and update the UST Regulations to: 1) provide higher standards of UST construction, monitoring, and testing; 2) improve tracking, notification procedures, and clarify agency responsibilities; and 3) update abatement and corrective action procedures and oversight. These amendments decrease the risk of a release of a hazardous substance from a UST and decrease the risks of soil and groundwater contamination in the event of a release of a hazardous substance from a UST, improving the health and welfare of California residents, worker safety, and the State's environment. As a consequence, the proposed regulations will: 1) improve the health and welfare for California residents, worker safety, and the State's environment; 2) result in a savings in cleanup costs to businesses and the UST Cleanup Fund; 3) reduce confusion within the regulated community; and 4) be consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

CONSIDERATION OF ALTERNATIVES

The State Water Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention: 1) would be more effective in carrying out the purpose for which the action is proposed; 2) would be as effective and less burdensome to affected private persons than the proposed action; or 3) would be more cost–effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND THE RULEMAKING FILE

The State Water Board has prepared an Initial Statement of Reasons for the proposed action. The statement includes the specific purpose for the regulation proposed for adoption and the rationale for the State Water Board's determination that adoption is reasonably necessary to carry out the purpose for which the regulation is proposed. All the information upon which the proposed regulation is based is contained in the rulemaking file. The Initial Statement of Reasons, the express terms of the proposed regulations, and the rulemaking file are available from the contact person listed below or at the website listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearing and considering all timely and relevant comments received, the State Water Board may adopt the regulatory language as originally proposed, or with non–substantial or grammatical modifications. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for written comment at least fifteen (15) days before the State Water Board adopts the regulations as modified. A copy of any modified regulation may be obtained by contacting Mr. Tom Henderson, the primary contact person identified below. The State Water Board will accept written comments on the modified regulations for fifteen (15) days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting either of the

persons listed below. A copy may also be accessed on the State Water Board website previously identified.

CONTACT PERSONS

Requests of copies of the text of the proposed regulation, the Statement of Reasons, or other information upon which the rulemaking is based, or other inquiries should be addressed to the following:

Name: Tom Henderson, Manager
Address: State Water Resources Control Board
Division of Water Quality
1001 "I" Street
Sacramento, CA 95814
Telephone Number: (916) 319–9128
Email address:
Tom.Henderson@Waterboards.ca.gov

The backup contact person is:

Name: Austin Lemire–Baeten
Address: State Water Resources Control Board
Division of Water Quality
1001 "I" Street
Sacramento, CA 95814
Telephone Number: (916) 327–5612
Email address:
Austin.Lemire–Baeten@Waterboards.ca.gov

The documents relating to this proposed action may also be found on the State Water Board's website at the following address: https://www.waterboards.ca.gov/ust/leak_prevention/chapter16.html.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080–2024–015–05

Project: 9451 Batchelder Road, Los Alamos, CA, 93440

(Assessor's Parcel Number (APN) 099–010–045)

Location: Santa Barbara County

Applicant: Farming First, LLC

Notifier: Owen Troy, Flowers and Associates

Background

Farming First, LLC (Applicant) proposes to develop approximately 41.2 acres of a 606.1–acre parcel (APN 099–010–045) for a cultivation project (Project). The Project is located at 9451 Batchelder Road, Los Alamos, County of Santa Barbara, California, 93440 (Property). The Project includes outdoor cultivation within hoop structures. Two existing wells will be used as water sources and a 17,600–square foot irrigation reservoir will be graded to supply water. Five 120–square foot storage containers will be added to the site and thirteen existing structures totaling 10,637 square feet will be demolished. The Project will use existing roads.

Cultivation Areas

The proposed Project includes development of approximately 41 acres of hoop house production in an area that is primarily used for agricultural production and various elements that support production: fencing, gated vehicular access points, screening and landscape planting, parking, and roadway improvements to meet fire department standards.

Streams and Stream Setbacks

An unnamed tributary flows through the Property and ultimately connects to San Antonio Creek approximately 0.5 miles downstream. There are also multiple ephemeral tributaries in the hills located at the westerly property boundary. All proposed hoop houses will be set back a minimum of 100 feet from the on–site stream that runs through the Property and a minimum of 50 feet from ephemeral tributaries that run down the hillsides. Native plants, comparable in species composition and density to the surrounding hillsides, may be used as ground cover for erosion control in historically cultivated areas. No other activities would occur within the proposed setback areas. The Project does not include vegetation clearing or planting within the stream.

Agricultural Support Facilities/Structures

Thirteen existing structures, totaling 10,637 square feet will be demolished and removed. Grading for the reservoir will require 1,400 cubic yards of cut that will be evenly spread across the cultivation areas.

The Project will use a well located in the northeastern corner of the Property at latitude 34.75050, longitude –120.37319. Water for cultivation will be pumped from the on–site well into the on–site reservoir and then used for irrigation. There is an off–site well located at latitude 34.73480, longitude –120.36830 that will be used as a backup to supplement the on–site well.

Fencing and Lighting

4–foot–high cattle wire fencing exists in various areas of the Property and will remain. A 6.5–foot–high wire mesh security fencing will be erected around the cultivation areas. A 6–inch clearance at the bottom of the fencing will allow for small wildlife passage. Security lighting proposed for the operation will be motion–sensor activated, fully shielded, and direct-

ed downward. Lights will be mounted to 8–foot–high poles.

Access and Roadways

Access to the Project will occur from Batchelder Road and exclusively use an existing bridge located on the property that crosses over the on–site stream tributary. The existing bridge, located at latitude 34.748609, longitude –120.374000, is roughly 45 feet long and 15 feet wide. No alteration or maintenance of the bridge is proposed as part of this Project.

Federal Permit History

In September 2019, the United States Fish and Wildlife Service (Service) approved a General Conservation Plan for Cultivation Activities in Santa Barbara County, California (GCP). The GCP is a conservation plan as required in Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.) section 10(a)(2)(A) for issuance of an incidental take permit (ITP) pursuant to ESA section 10(a)(1)(B) for take of California tiger salamander (*Ambystoma californiense*; CTS). These ESA provisions allow the Service to develop a 10(a)(1)(B) conservation plan suitable for the needs of a local area, and then to issue individual permits to landowners who apply for an ITP and demonstrate compliance with the terms and conditions of the plan. The GCP therefore provides a federal ESA permitting mechanism for incidental take of CTS by private landowners engaged in horticulture activities. The Project is located in the Purisima CTS metapopulation identified in the GCP.

Anticipated Take of CTS

The Project activities described above are expected to incidentally take CTS[1] where those activities take place within the approximately 41.2–acre project site. In particular, CTS could be incidentally taken as a result of the development–related and long–term activities that include equipment access, staging, material storage, earth moving activities, active agricultural activities, operation and maintenance of structures, agricultural fields, infrastructure, irrigation and water management, vehicular traffic, security fencing and lighting, and increased human activities. CTS is designated as an endangered species pursuant to the federal ESA and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G).)

CTS is assumed to be present because the Project is within its range and suitable breeding habitat is present in the migratory distance of the species. Burrows, which are suitable upland habitat for the species, were found within the cultivation area. The cultivation area is generally disturbed by existing agricultural activities. There is potential to destroy burrows containing CTS during these existing activities. Impacts could include disturbances or crushing when burrows are destroyed by equipment preparing the sites. In addition, for the purposes of this Project, the Applicant is assuming that once installed, the cultivation area will no longer be suitable for CTS upland habitat and that the Project area will be a complete barrier to movement of CTS from other areas. While it is possible that CTS could migrate through these areas, the Applicant will assume the Project will be a total barrier. For this reason, permitting and mitigation associated with CTS includes mitigation credits as if these areas could no longer be used by the species.

On May 16, 2023, the Service issued an ITP (Permit Number ESPER2809265) to the Applicant pursuant to the GCP. The ITP describes the Project, requires the Applicant to comply with terms of the ITP and GCP, and incorporates additional measures.

The federal ITP authorizes the take of CTS in the form of capture for up to ten individuals and up to three individuals in the form of injury or mortality during Project construction.

The Service calculated the value of the impacted habitat using the method outlined in Searcy and Shaffer (2008)[2] that included incorporating the amount of CTS aquatic breeding habitat and upland habitat on the Project site that will be impacted. The method described in Searcy and Shaffer (2008) attaches a value to habitat that scales with the reproductive value of the individuals estimated to be occupying an area. According to Searcy and Shaffer (2008), the reproductive value of a site is a function of: (1) distance from each known or potential breeding pond within dispersal distance of the site; and (2) land–use in the surrounding areas.

The Service determined that the Project would consequently result in the loss of a reproductive value of up to 2,677 units as calculated in accordance with Searcy and Shaffer (2008). Compensatory mitigation is based on the loss of this reproductive value for CTS.

On September 9, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from Owen Troy of Flowers and Associates on behalf of Farming First, LLC, requesting a determination pursuant to Fish and Game Code section 2080.1 that the federal ITP is consistent with CESA

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

[2] Searcy, C. A. and H. B. Shaffer. 2008 Calculating biologically accurate mitigation credits: insights from the California tiger salamander. Conservation Biology 22: 997–1005.

for purposes of the Project and CTS. (Cal. Reg. Notice Register 2024, Number 39–Z, p. 1289).

Determination

CDFW has determined that the ITP is consistent with CESA as to the Project and CTS because the mitigation measures contained in the ITP and the GCP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA–listed species. Specifically, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITP, and the GCP, insofar as the ITP references and requires compliance with mitigation measures in the GCP, will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of CTS. The mitigation measures in the ITP, and the GCP insofar as the ITP references and requires compliance with the GCP, include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

1. Prior to the commencement of any activity that could result in take of CTS, the Applicant will demonstrate that 3.15 mitigation credits have been purchased from the La Purisima Conservation Bank. Proposed Project impacts result in a loss of reproductive value of 2,677 units using methodology described in Searcy and Shaffer (2008). Using the same calculations, one credit at the La Purisima Conservation Bank has a reproductive value of approximately 850 units. Therefore, the purchase of 3.15 credits will offset the impacts resulting from the Project.

   1.1 Although not a condition of the ITP, CDFW requests a copy of the documentation of the credit purchase at La Purisima Conservation Bank.

2. During the Project planning phase, the Applicant worked with the Service to site all impacts as far away from known and potential CTS breeding habitats and to avoid high quality upland and dispersal habitat as possible.
3. At least 15 days prior to ground–disturbing activities, the Applicant will submit the names and credentials of biologists and monitors to the Service for approval to conduct the minimization measures outlined below. Excluding an emergency activity, no Project activities will begin until the Applicant has received notice from the Service that the biologists and monitors are approved to do the work. The Service–approved biologist(s) will notify the Ventura Fish and Wildlife Office of their intent to conduct any monitoring events within 48 hours of commencing the activity.

   3.1 Although not a condition of the ITP, CDFW requests that Applicant submits the names and credentials of proposed biologists and monitors to CDFW at least 15 days prior to ground–disturbing activities.

4. A Service–approved biologist will conduct a biological resources training program for all construction workers and their contractors to minimize potential impacts to the CTS and sensitive habitats. Training will occur prior to initial ground disturbing–activities and be repeated, annually and as needed for new workers for the duration of each Project covered by the permit. The training program will be reviewed and approved by the Service and will include a description of: (1) important biological resources within their Project site, specifically CTS that have potential to occur within or adjacent to work areas; (2) the applicable avoidance and minimization measures; (3) the roles and responsibilities of personnel; and (4) communication protocols if CTS are detected.
5. A Service–approved biologist will periodically review and monitor ground disturbing activities and restoration efforts and will be responsible for ensuring that conditions of approval are being enforced and that success criteria are being met. Except for emergency situations, a Service–approved biologist will have the authority to temporarily halt activities if permit requirements and conditions are not being met.
6. Prior to ground disturbing activities, Applicant will ensure all grading limits and construction boundaries, including staging areas, parking, and stockpile areas, are delineated, and clearly marked in the field. All suitable CTS habitat located within 10 feet of ground disturbing activities will be delineated with specific sensitive species labeling (e.g., permanent signage stating, “No Entry — Sensitive Habitat”). A service–approved biologist(s) will work with the Service to identify these areas.
7. Applicant will ensure all proposed linear routes (i.e., roads and pipelines) are reviewed and modified, if necessary, in the field to minimize impacts to the CTS with assistance by the on–site biologist or environmental monitor.
8. Personnel will limit their vehicle use to existing routes of travel. Travelling off designated roads will be prohibited unless access is determined critical for a particular activity and the route has been flagged to avoid or minimize adverse effects.

To minimize the potential for road mortality of CTS and their habitat, nighttime traffic will be minimized during the ground disturbing phase to the extent feasible; all hauling activities within habitat for covered wildlife will be restricted to daylight hours, defined as the hours after sunrise and before sunset.

9. Except in areas with posted speed limits greater than 10 miles–per–hour, Project–related vehicle speeds will not exceed 10 miles–per–hour when driving within CTS habitat.

10. Prior to moving vehicles or equipment, personnel will look under the vehicles or equipment for the presence of CTS. If a CTS or any other wildlife species is observed, the vehicle will not be moved until the animal has vacated the area on its own accord or has been relocated out of harm's way in accordance with Measure 12.

11. A Service–approved biologist will conduct pre–activity surveys of CTS habitat within Project disturbance boundaries immediately prior to the onset of any ground disturbance associated with the Project to determine if any CTS individuals are present, and to refine the final habitat mitigation acreages. The Service–approved biologist will monitor ground disturbing activities in the vicinity of habitats to be avoided. Upon completion of initial ground disturbance, the biologist or monitor will periodically (minimum twice per week) visit the Project site throughout the ground disturbing period to ensure that impacts to the Project site are in compliance with the permit. After periods of rain, a Service–approved biologist will conduct daily pre–activity surveys to ensure no CTS have migrated into the work area prior to ground disturbing activities resuming. No construction work will be initiated until a Service–approved biologist determines that the work area is clear of CTS. Should any CTS be observed within harm's way, the animal will be allowed to vacate the area on its own accord or be relocated in accordance with Measure 12.

12. Applicant will ensure any CTS is allowed to vacate the Project areas on their own accord under the observation of a Service–approved biologist. If any CTS does not relocate on their own, or if they are in harm's way, they will be relocated out of harm's way to nearby suitable habitat, similar to that in which it was found, and outside the Project area. Only a Service–approved biologist will relocate CTS.

    The biologists conducting relocation activities will follow the Declining Amphibian Task Force Fieldwork Code of Practice: https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_ForceFieldwork_Code_of_Practice.pdf. A Service–approved biologist will relocate any CTS found within the Project footprint to an active rodent burrow system located no more than 300 feet outside of the Project area unless otherwise approved by the Service. The individuals will be handled with clean and wet hands. During relocation they will be placed in a clean, covered plastic container with a wet non–cellulose sponge. Captured individuals will be relocated immediately; individuals will not be stored for lengthy periods or in heated areas. The relocation container will be kept out of direct sunlight. A Service–approved biologist will monitor relocated CTS until they enter a burrow and are concealed underground or otherwise deemed safe in the relocation area by the biologist. Relocation areas will be identified by the Service–approved biologist based on the best suitable habitat available. The Service–approved biologist will document both the capture site and the relocation site by photographs and GPS positions. The CTS will be photographed and measured (snout–vent) for identification purposes prior to relocation. All documentation will be provided to the Service within 24 hours of relocation.

    12.1 Although not a condition of the ITP, CDFW requests that the Applicant provides copies of the translocation and monitoring reports to CDFW.

13. Applicant will ensure rodent burrows within the Project areas that overlap CTS habitat are excavated by a Service–approved biologist using hand tools until it is certain that the burrows are unoccupied. In lieu of burrow excavation, steel plates or plywood may also be utilized to protect small mammal burrows from ground disturbance. Plates and plywood will be removed nightly and will be removed if work is scheduled to cease for consecutive days. Any individual CTS that are encountered will be allowed to vacate the area on their own accord or be relocated out of harm's way in accordance with Measure 12.

14. Exclusionary silt fencing (or other suitable fencing material) will be installed at the discretion of a Service–approved biologist to minimize the potential for CTS to enter the worksite. Exclusionary fencing will be maintained for the duration of the Project. If a CTS or other wildlife species is observed within an enclosed worksite, a portion of the fencing will be removed to allow the individual to vacate the area on its own. Alternative-

ly, the animal may be relocated out of harm's wat in accordance with Measure 12.

15. Applicant will ensure all construction and sediment control fencing is inspected each workday during construction activities to ensure they are functioning properly.
16. Applicant will ensure steep–walled excavations (e.g., trenches) that may act as pitfall traps are inspected for wildlife at least once per day and immediately before backfilling. In lieu of daily inspections (weekends, etc.), exclusionary fencing, covers, ramps, or similar measures will be taken to prevent wildlife entrapment.
17. Applicant will ensure open pipe segments are capped or sealed with tape (or equivalent material) nightly, or otherwise stored at least three feet above ground. Should a pipe segment become occupied by a CTS or any other wildlife species, the animal will be allowed to vacate the pipe on its own or will be removed and relocated in accordance with Measure 12.
18. If covered activities must occur during the rainy season, Applicant will not work during rain events, 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, to the extent practicable. If work must occur 48 hours prior to significant rain events (>0.5 inch), or during the 48 hours after these events, a Service–approved biologist will conduct a pre–activity survey to ensure that the work area is clear (refer to Measure 10 above).
19. The Applicant will ensure that all staging areas, equipment storage areas, stockpile sites, and refueling areas are located at least 100 feet from surface water bodies and wetland habitats to minimize the potential for releases into surface water or wetland habitat. In lieu of the 100–feet buffer, secondary containment measures may be employed to prevent contamination of soil and water.
20. When working in areas with a predominance of native plants, the Applicant will ensure the upper layer of topsoil material (6 inches) is segregated during excavations to preserve the seed bank. The preserved topsoil will be covered to protect it from erosion and invasion of non– native plants until completion of the activity, when the topsoil will be replaced in the affected area. Existing access roads are not subject to this measure.
21. Applicant will ensure disturbed areas are restored and stabilized to reflect pre–existing contours and gradients to the extent practicable. Erosion and sediment controls (e.g., silt fences, fiber rolls, sandbags) will be installed, where necessary, using weed–free materials in areas with a predominance of native plants. Where necessary, restored areas will be maintained and monitored, including weed removal focused on noxious weeds and excluding nonnative annual grasses. All planting and seeding will occur the first year after construction is complete, after the first significant rain event of the year (i.e., more than 0.25 inch of precipitation).
22. Upon locating CTS individuals that may be dead or injured as a result of Project related activities, Applicant will ensure notification is made within 72 hours to the Service's Ventura Field Office at (805) 644–1766.

Monitoring and Reporting Measures

Applicant will submit annual reports and a final report to the Service by December 31 of each year for the duration of the 20–year permit when construction and/or initial ground disturbing activities (new habitat impacts) take place in a calendar year. Operations and maintenance of proposed activities does not require submission of an annual report, unless take of CTS occurs.

> *Although not a condition of the ITP, CDFW requests a copy of the annual reports and final report.*

Financial Security

As set forth in Avoidance, Minimization and Monitoring Measure Number 1 above, prior to the commencement of any activity that could result in take of CTS, the Applicant will demonstrate that 3.15 mitigation credits have been purchased from the La Purisima Conservation Bank. Proposed Project impacts result in a loss of reproductive vale of 2,677 using methodology described in Searcy and Shaffer (2008). Using the same calculations, one credit at the La Purisima Conservation Bank has a reproductive value of approximately 850. Therefore, the purchase of 3.15 credits will offset the impacts resulting from the Project. Because the ITP and GCP require the mitigation obligation to be completed prior to any ground–disturbing activities or other activities that could result in take, security is not required for this Project.

> *Although not a condition of the ITP, CDFW requests a copy of the documentation of the credit purchases at the La Purisima Conservation Bank.*

Conclusion

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of CTS, provided the Applicant implements the Project as described in the ITP and associated GCP, including adherence to all measures contained therein, and complies with the mit-

igation measures and other conditions described in the ITP and GCP, insofar as the ITP references and requires compliance with mitigation measures in the GCP. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the ITP and GCP, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish and Game Code, §§ 2080.1, 2081, subdivisions (b) and (c).)

CDFW's determination that the Service ITP and associated GCP are consistent with CESA is limited to CTS.

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NUMBER 1653–2024–149–001–R3

Project: Chicken Ranch Beach Wetland Enhancement Project

Location: Marin County

Applicant: Tom Gaman, Tomales Bay Foundation

Notifier: Samantha Thomas, PCI Ecological

Background

Project Location: The Chicken Ranch Beach Wetland Enhancement Project (Project) is located at is located at 13000 Sir Francis Drake Boulevard in the Community of Inverness, Marin County, Latitude 38.109925, Longitude –122.865644, at a property owned by Marin County Parks, an adjacent property owned by a private landowner, and an adjacent property owned by the California State Lands Commission, Assessor Parcel Numbers (APN) 112–042–04, 112–043–05, 112–091–01 and 112–032–19; and affects Third Valley Creek, and drainage ditch Channel B, both of which are tributaries to Tomales Bay. Third Valley Creek and Channel B may support populations of California giant salamander (*Dicamptodon ensatus*), California red–legged frog (*Rana draytonii*), western pond turtle (*Actinemys marmorata*), olive–sided flycatcher (*Contopus cooperi*), saltmarsh common yellowthroat (*Geothlyps trichas sinuosa*), western snowy plover (*Charadrius nivosus nivosus*), and yellow warbler (*Setophaga petechia*).

Project Description: Tom Gaman, representing the Tomales Bay Foundation (Applicant) proposes to enhance or restore habitat within Channel B and Third Valley Creek to provide a net conservation benefit for California giant salamander, California red–legged frog, western pond turtle, saltmarsh common yellowthroat, and tidewater goby (*Eucyclogobius newberryi*). The Project will restore 0.7 acres of wetland and riparian habitat and remediate water quality issues currently affecting Channel B and Chicken Ranch Beach. Currently, wetland habitat on the site is degraded, and elevated levels of bacteria are found in Channel B, which at times flows directly over Chicken Ranch Beach.

To restore riparian and wetland habitat, a wetland complex will be created, including three shallow pools, by removing historic fill and sediment accumulation. The project has been designed to maximize wetland efficiency at improving water quality and to provide habitat for special–status species. Approximately 230 feet of Channel B will be filled, and flow will be redirected into the wetland complex, before connecting with Third Valley Creek upstream of the beach environment. Excavated fill will be used on–site to elevate the existing grade of the upper beach, adjacent sand berm, and lower yard of the adjoining private property to provide resiliency to sea–level rise. To facilitate construction of the Project, a temporary access ramp would be constructed across Third Valley Creek. Additionally, the Project will remove invasive vegetation such as ice plant, poison hemlock, scotch broom, and acacia trees, and revegetate the site with native species.

Project Size: The total area of ground disturbance associated with the Project is approximately 1.3 acres and 230 linear feet. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., title 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project include those associated with the following: (1) 167 cubic yards (cy) of soil fill; (2) 4,400 grasses and rushes for wetland native revegetation; (3) 85 trees, 87 shrubs and vines, and 4,200 grasses and rushes for wet meadows native revegetation; (4) 8 trees and 201 shrubs and vines for riparian forest native revegetation; and (5) 0.08 acres of erosion control materials.

Project Timeframes: Start date: August 2025.

Completion date: October 2025.

Work window: August 1–October 15.

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California, restore wetland habitat, and address elevated bacterial counts in Channel B, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for

Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) Number 2 CW457158, RM Number 457158, Place ID 895135) for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to California red–legged frog, California giant salamander, nesting birds, bat species, and plant species.

Receiving Water: Channel B and Third Valley Creek, tributaries to Tomales Bay.

Filled or Excavated Area: Permanent area impacted: 0.0861 acres.

Temporary area impacted: 0.0148 acres.

Length temporarily impacted: 55 linear feet.

Length permanently impacted: 230 linear feet.

Dredge Volume: None.

Discharge Volume: 167 cy of soil fill, native revegetation (approx. 8600 grasses and rushes, 93 trees, and 189 shrubs and vines), and 0.08 acres of erosion control materials.

Project Location: Latitude 38.109925. and Longitude –122.865644., (NAD 83); APN: 112–042–05, 112–042–04, 112–091–01 and 112–032–19.

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

On October 23, 2024, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on October 23, 2024, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2024–1023–02) on November 8, 2024. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

Determination

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

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

Avoidance and Minimization Measures

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Applicable Wildlife Species Protection Measures from the USFWS Programmatic Biological Opinion; (2) General Protection Measures from the USFWS Programmatic Biological Opinion; (3) Northwestern Pond Turtle Protection Measures; (4) California Red–Legged Frog Protection Measures; (5) California Giant Salamander Protection Measures; (6) Nesting Bird Protection; (7) Special–status and Common Bat Protection; (8) General Wildlife Species Protection Measures PCI Biology Report; and (9) Native Plants and Plant Communities Protection Measures. The specific avoidance and minimization requirements are found in an attachment to the NOI, *Protection and Avoidance Measures*, prepared by Prunuske Chatham, Inc, 2024.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant's Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI, *Maintenance and Monitoring Plan — Chicken Ranch Beach Wetland Enhancement Design*, prepared by Prunuske Chatham, Inc, 2024.

Notice of Completion

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

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number, RM Number, and Place ID number indicated above;
- success criteria for the Project.

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant's NOI.

Applicant shall include the project name, WDID number, RM Number, and Place ID number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: Michael.Stuhldreher@wildlife.ca.gov.

Project Authorization

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

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

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080R–2024–017–03

Project: Pescadero Marsh Habitat Restoration and Resiliency Project: North Marsh and North Pond

Location: San Mateo County

Applicant: California Department of Parks and Recreation — Santa Cruz District

Background

California Department of Parks and Recreation — Santa Cruz District (Applicant) proposes to restore the ecologic, geomorphic, and hydraulic processes acting on the North Marsh North Pond (NMNP) complex through strategic naturalization of the topography. The restoration activities are designed to achieve a broad range of habitat, resiliency, and water quality benefits for the Pescadero marsh and lagoon system. The Pescadero Marsh Habitat Restoration and Resiliency Project: North Marsh and North Pond (Restoration Project) includes partial removal of the existing levee that separates the NMNP system from Pescadero Creek; removal of culverts associated with the drainage channels; partial filling of the relic drainage channels that increase tidal inundation/salinity, increase efficiency of freshwater export, and create conditions for rapid export of anoxic/hypoxic water into the lagoon; removal of approximately 50 *Eucalyptus* to create subsurface grade control structures within the filled channels and different types of habitat structures to function as habitat features on the marsh plain and in Pescadero Creek; removal of invasive vegetation and revegetation with native species to restore dune habitat; and control of water levels at the creek mouth during bar closure to facilitate aquatic species relocation prior to Restoration Project implementation and to avoid flooding of the work site during implementation. The Restoration Project is located in Pescadero Creek, north of the confluence of Pescadero and Butano Creeks and the Pescadero Lagoon located in the Pescadero Marsh Natural Preserve, owned and operated by the Applicant, centered approximately at Latitude 37.26707, Longitude –122.40746, Assessor's Parcel Number 086–241–060.

The Restoration Project activities described above are expected to take[1] Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*) (Covered Species) where those activities occur within tidal wetland and riverine aquatic habitat within the Restoration Project site. In particular, the Covered Species could be taken as a result of the dewatering of drainage channels and aquatic species relocation efforts needed prior to in–water Restoration Project construction, and from the use of heavy equipment operating within the drainage channels during Restoration Project construction. The Covered Species is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.; Cal. Code Regs., title 14, § 670.5, subdivision (a)(2)(N)).

Covered Species individuals are documented as present within the Restoration Project site and there is seasonally occupied habitat for the Covered Species within and adjacent to the Restoration Project site. Because of the dispersal patterns of the Covered Species, and the presence of seasonally occupied habitat for the Covered Species within the Restoration Project site, the National Marine Fisheries Service (NMFS) deter-

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

mined that the Covered Species is reasonably certain to occur within the Restoration Project site and that Restoration Project activities are expected to result in incidental take of the Covered Species. NMFS anticipates that 300 individuals of the Covered Species will be captured and up to 9 individuals of the Covered Species will be killed as a result of implementing the proposed Restoration Project.

The intent of the Restoration Project is to improve marsh and lagoon processes, increase habitat resiliency to sea level rise and climate change, and enhance habitat conditions for aquatic and terrestrial species including the Covered Species. NMFS has determined that the long–term effects of Restoration Project actions will be beneficial to the Covered Species and are expected to result in increased usage of the area by Covered Species. According to NMFS, construction of the Restoration Project will result in approximately 21 acres of temporary impacts from construction activities and approximately 3.12 acres of permanent wetland impacts from placing fill in existing tidal wetland channels to improve conditions for the Covered Species.

As described below, the Central Coastal California Office of the National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) has determined that the Restoration Project meets the eligibility requirements of the NOAA RC's Central Coastal California Office Restoration Program for restoration actions within the NOAA RC's Santa Rosa Office jurisdictional area (Program). The Program is implemented by the NOAA RC and the U.S. Army Corps of Engineers, San Francisco District Regulatory Division (Corps). Because the Program is expected to result in incidental take of species designated as threatened or endangered under the federal ESA, the NOAA RC and the Corps consulted with NMFS pursuant to section 7 of the ESA (NMFS Consultation No: WCRO–2015–3755). On June 14, 2016, NMFS issued a programmatic biological opinion, entitled Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson–Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Program for restoration projects within the NOAA RC's Central Coastal California Office jurisdictional area in California to the NOAA RC and the Corps. On August 3, 2022, NMFS issued an addendum to that programmatic biological opinion. The June 14, 2016, programmatic biological opinion and the August 3, 2022, addendum to that programmatic biological opinion are hereinafter referred to collectively as the PBO. The PBO describes the Program's eligibility criteria for restoration projects and requires all projects that receive NOAA RC approval for inclusion in the Program to comply with terms of the PBO and its incidental take statement (ITS).

The Applicant submitted a project–specific application dated January 29, 2024, to the NOAA RC for the Restoration Project, a copy of which is attached hereto and incorporated herein as Exhibit 1. The NOAA RC issued a project–specific approval for the Restoration Project on April 24, 2024, a copy of which is attached hereto and incorporated herein as Exhibit 2. The NOAA RC's project–specific approval for the Restoration Project requires the Applicant to comply with the terms of the ITS, along with the accompanying PBO, project–specific application, and project–specific approval, when carrying out the Restoration Project.

On October 8, 2024, the Director of the Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS, along with the accompanying PBO, project–specific application, and project–specific approval for the Restoration Project, is consistent with CESA for purposes of the Restoration Project and the Covered Species. (Cal. Reg. Notice Register 2024, Number 43–Z, p. 1390)

Determination

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

Avoidance, Minimization, and Mitigation Measures.

The avoidance, minimization, and mitigation measures in the ITS and PBO include, but are not limited to, the following:

1) Construction will occur between June 15 and October 31. Restoration, construction, fish relocation and dewatering activities within any wetted or flowing stream channel shall occur only within this period. Revegetation activities, including soil preparation, may extend beyond October 31, if necessary, to better ensure successful plant establishment during the onset of winter precipitation. If precipitation greater than one inch is forecast

during the June 15–October 31 work window, the NOAA RC must be notified, implementation work must stop, and erosion control Best Management Practices (BMPs) must be implemented.

2) Guidelines for Dewatering and Cofferdams:
   a) The work area shall be isolated and all the flowing water upstream of the work site shall be temporarily diverted around the work site to maintain downstream flows during construction. Prior to dewatering, the Applicant will determine the best means to bypass flow through the work area to minimize disturbance to the channel and avoid direct mortality of Covered Species and other aquatic vertebrates.
   b) Covered Species will be excluded from reentering the work area by blocking the stream channel above and below the work area with fine–meshed net or screens. Mesh will be no greater than 1/8–inch diameter. The bottom of the seine must be completely secured to the channel bed to prevent Covered Species from reentering the work area. Exclusion screening must be placed in areas of low water velocity to minimize Covered Species impingement. Upstream and downstream screens must be checked daily (prior to, during, and after instream activities) and cleaned of debris to permit free flow of water. Block nets shall be placed and maintained throughout the construction period at the upper and lower extent of the areas where Covered Species will be removed. Block net mesh shall be sized to ensure salmonids upstream or downstream do not enter the areas proposed for dewatering between passes with the electro–fisher or seine.
   c) The Applicant will coordinate Restoration Project site dewatering with a qualified fisheries biologist to perform Covered Species relocation activities. The qualified fisheries biologist(s) will possess all valid state and federal permits needed for Covered Species relocation and will be familiar with the life history and identification of Covered Species within the action area.
   d) Prior to dewatering a construction site, qualified individuals will capture and relocate Covered Species to avoid direct mortality and minimize take.
   e) Applicant will bypass stream flow around the work area but maintain the stream flow to channel below the construction site.
   f) Applicant will minimize the length of the dewatered stream channel and duration of dewatering.
   g) Any temporary dam or other artificial obstruction constructed shall only be built from materials such as sandbags or clean gravel that will cause little or no siltation. Impenetrable material shall be placed over sandbags used for construction of cofferdams construction to minimize water seepage into the construction areas. The impenetrable material shall be firmly anchored to the streambed to minimize water seepage. Cofferdams and the stream diversion systems shall remain in place and fully functional throughout the construction period.
   h) When cofferdams with bypass pipes are installed, debris racks will be placed at the bypass pipe inlet. Bypass pipes will be monitored a minimum of two times per day, seven days a week, during the construction period. The contractor or Applicant shall remove all accumulated debris.
   i) Bypass pipe diameter will be sized to accommodate, at a minimum, twice the existing summer baseflow.
   j) The work area may need to be periodically pumped dry of seepage. Applicant will place pumps in flat areas, well away from the stream channel, and secure pumps by tying off to a tree or stake in place to prevent movement by vibration. Applicant will refuel in an area well away from the stream channel and place fuel absorbent mats under pump while refueling. Pump intakes shall be covered with appropriately sized screening material to prevent potential entrainment of Covered Species that failed to be removed. Applicant will check intake periodically for impingement of Covered Species.
   k) If pumping is necessary to dewater the work site, procedures for pumped water shall include requiring a temporary siltation basin for treatment of all water prior to entering any waterway and not allowing oil or other greasy substances originating from the contractor or Applicant's operations to enter or be placed where they could enter a wetted channel. Projects will adhere to currently approved CDFW and NMFS Fish Screening Criteria.
   l) Applicant will discharge wastewater from construction area to an upland location where it will not drain sediment–laden water back to the stream channel.

m) When construction is completed, the flow diversion structure shall be removed as soon as possible in a manner that will allow flow to resume with the least disturbance to the substrate. Cofferdams will be removed so surface elevations of water impounded above the cofferdam will not be reduced at a rate greater than one inch per hour. This will minimize the risk of beaching and stranding of the Covered Species as the area upstream becomes dewatered.

3) General Conditions for all Covered Species Capture and Relocation Activities:

a) Covered Species relocation and dewatering activities shall only occur between June 15 and October 31 of each year. If precipitation sufficient to produce runoff is forecast to occur while construction is underway, work will cease and erosion control measures will be put in place sufficient to prevent significant sediment runoff from occurring. Exceptions to the Covered Species relocation/dewatering time period will be considered on a case–by–case basis only if justified and if precipitation sufficient to produce runoff is not forecast to occur during any of the above activities, and if approved by the NOAA RC, Corps, and NMFS. If the channel is expected to be seasonally dry during this period, construction should be scheduled so that Covered Species relocation and dewatering are not necessary.

b) A qualified fisheries biologist shall perform all seining, electrofishing, and Covered Species relocation activities. The qualified fisheries biologist shall capture and relocate Covered Species prior to construction of the water diversion structures (e.g., cofferdams). The qualified fisheries biologist shall note the number of Covered Species observed in the affected area, the number of Covered Species captured and relocated, and the date and time of collection and relocation. The qualified fisheries biologist shall have a minimum of three years of field experience in the identification and capture of Covered Species, including juveniles. The qualified biologist will adhere to the following requirements for capture and transport of Covered species:

1. Determine the most efficient means for capturing Covered Species. Complex stream habitat generally requires the use of electrofishing equipment, whereas in outlet pools, Covered Species may be concentrated by pumping down the pool and then seining or dip netting individuals.
2. Notify the NOAA RC one week prior to capture and relocation of Covered Species to provide NOAA RC or NMFS staff an opportunity to attend.
3. Initial Covered Species relocation efforts will be conducted several days prior to the start of construction. This provides the qualified fisheries biologist an opportunity to return to the work area and perform additional electrofishing passes immediately prior to construction if there is water in the isolated construction area. In these instances, additional Covered Species could be captured that eluded the previous day's efforts. If water is left in the construction area, dissolved oxygen levels sufficient for Covered Species survival must be maintained.
4. At project sites with high summer water temperatures, perform relocation activities during morning periods.
5. Prior to capturing Covered Species, determine the most appropriate release location(s). Consider the following when selecting release site(s): similar water temperature as capture location; ample habitat for captured Covered Species; low likelihood of Covered Species reentering work site or becoming impinged on exclusion net or screen.
6. Periodically measure air and water temperatures and monitor captured Covered Species. Temperatures will be measured at the head of riffle tail of pool interface. Cease activities if health of Covered Species is compromised owing to high water temperatures, or if mortality exceeds three percent of captured Covered Species.

4) Post–Construction Erosion Control: Immediately after Restoration Project completion and before close of seasonal work window, stabilize all exposed soil with mulch, seeding, and/or placement of erosion control blankets. Remove all artificial erosion control devices after the Restoration Project area has fully stabilized. All exposed soil present in and around the Restoration Project site shall be stabilized within seven days. Erosion control devices such as coir rolls or erosion control blankets will not contain plastic netting

of a mesh size that would entrain reptiles and amphibians.

a) All bare and/or disturbed slopes (larger than 10' × 10' of bare mineral soil) will be treated with erosion control methods such as straw mulching, netting, fiber rolls, and hydro–seed as permanent erosion control measures.

b) Where straw, mulch, or slash is used as erosion control on bare mineral soil, the minimum coverage shall be 95% with a minimum depth of two inches.

c) When seeding is used as an erosion control measure, only natives will be used. Sterile (without seeds), weed–free straw, free of exotic weeds, is required when hay bales are used as an erosion control measure.

Monitoring and Reporting Measures.

The monitoring and reporting measures in the ITS and PBO include, but are not limited to, the following:

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

Although not a condition of the PBO, CDFW requests a copy of the Post–Construction Implementation Report.

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

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

DEPARTMENT OF FISH AND WILDLIFE

CALIFORNIA ENDANGERED SPECIES ACT CONSISTENCY DETERMINATION NUMBER 2080R–2024–013–02

Project: Redwood Siphon Repair and Replacement Project

Location: Butte County

Applicant: United States Fish and Wildlife Service

Sacramento National Wildlife Refuge Complex

Background

The United States Fish and Wildlife Service (Applicant, USFWS) proposes to replace two redwood siphons and associated water infrastructure to enhance water conveyance to a complex of wildlife areas and agricultural land located approximately 2 miles west of the unincorporated town of Dayton, in Butte County. The Redwood Siphon Repair and Replacement Project (Restoration Project) includes removal of sediment and vegetation in canal channels, repair of canal levees, water control structure replacement and installation, construction of two wells, lift station repair, and replacement of two siphons. The Restoration Project area encompasses the Llano Seco Ranch, the USFWS Steve Thompson North Central Valley Wildlife Management Area — Llano Seco Unit, other privately owned land under USFWS easement, and the California Department of Fish and Wildlife (CDFW) Upper Butte Basin Wildlife Area — Llano Seco Unit. The Restoration Project intends to restore water delivery to the wildlife areas, which have been severely impacted by the failure of the siphons. The Restoration Project will improve the ability of the USFWS, CDFW, and the Llano Seco Ranch to manage their collective 4,500 acres of wetlands and 2,700 acres of irrigated agricultural lands to benefit giant garter snake (*Thamnophis gigas*), as well as waterbirds and other wetland–associated species utilizing these habitats.

The Restoration Project activities described above are expected to take[1] giant garter snake (Covered Species) where those activities take place within canal channels, canal levees, or upland areas. In particular, the Covered Species could be taken as a result of crushing or entombment from construction activities. The Covered Species is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.). (See Cal. Code Regs., title 14, § 670.5, subdivision (b)(4)(E).)

Covered Species individuals are documented as present within 5 miles from the Restoration Project site and there is suitable habitat for the Covered Species within the Restoration Project site. In particular, failure of the siphons flooded a 14.78–acre area of valley oak riparian habitat, creating an emergent wetland that is suitable aquatic habitat. Because of the proximity of the nearest documented Covered Species and the presence of suitable habitat for the Covered Species within the Restoration Project site, the USFWS determined that the Covered Species could occur within the Restoration Project site and that Restoration Project activities could result in take of the Covered Species. The USFWS anticipates that individuals of the Covered Species may be incidentally killed, injured, or captured and moved out of harm's way as a result of implementing the proposed Restoration Project within the 81.51 acres of temporarily disturbed habitat and the 14.78 acres of habitat that will be permanently lost. The USFWS acknowledges that it is infeasible to quantify the number of individuals that may be incidentally taken, and that the number will be low due to avoidance and minimization measures and the likelihood that the Covered Species move away from construction activity. The USFWS has stated that detection of one dead or injured snake will indicate when authorized take is exceeded. The USFWS expects higher numbers of Covered Species to occur within the Restoration Project area after the Restoration Project is completed and has determined that the Restoration Project will aid in recovery of the species.

The intent of the Restoration Project is to repair the conveyance system to improve performance of 4,500 acres of managed wetlands and 2,700 acres of irrigated agricultural lands. The Restoration Project will benefit the Covered Species by providing additional aquatic habitat at the downstream wetlands and agricultural fields. The USFWS has determined that the long–term effects of Restoration Project actions will be beneficial to the Covered Species and are expected to result in increased usage of the area by Covered Species. According to the USFWS, construction of the Restoration Project will result in the enhancement of 350 acres of suitable wetland Covered Species habitat on USFWS fee title property, 18 acres of year–round suitable aquatic channel and upland levee habitat for the Covered Species, and improved management of over 4,500 permanent and semi–permanent wetland acres (CDFW, USFWS, and Llano Seco Ranch, and privately owned lands).

Because the Restoration Project is expected to result in take of a species designated as threatened under the federal ESA, the USFWS consulted with itself, as required by the ESA. On August 27, 2024, the USFWS issued a biological opinion for the Restoration Project, entitled Formal Consultation on the Redwood Siphon Repair and Replacement Project, Butte County, California, (USFWS file Number 2023–0129536–S7–001) (BO). The BO describes the Restoration Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

On September 5, 2024, the Director of CDFW received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITS, along with its accompanying BO, is consistent with CESA for purposes of the Restoration Project and the Covered Species. (Cal. Reg. Notice Register 2024, Number 38–Z, p. 1271.)

Determination

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

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

1) Ground disturbing activities along the canals and in the siphon construction area will occur during the Covered Species active season (May through October).

[1] Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

2) A qualified monitoring biologist will be determined prior to project construction. This person will have demonstrated knowledge of, and experience with, the Covered Species and its habitat as well as experience safely handling the Covered Species or similar species.
3) Twenty–four hours prior to the commencement of construction activities, suitable potential Covered Species habitat within the construction area will be surveyed for the Covered Species to determine if individuals are likely to be present.
4) Onsite monitoring during will take place during all construction activities to avoid effects to the Covered Species.
5) All areas within the Restoration Project area will be dewatered and will remain dry and absent of aquatic prey for 48 hours prior to the initiation of construction activities. If complete dewatering is not possible, the qualified monitoring biologist will remove all prey from the remnant water. After aquatic prey are removed, the biologist will survey the site again before construction is allowed to begin. If individuals of the Covered Species are observed, the biologist will not allow construction to begin until the individual leaves the immediate area on its own volition.
6) Injured individuals of the Covered Species must be cared for by a licensed veterinarian or other qualified person(s), such as the qualified monitoring biologist. Dead individuals of the Covered Species must be sealed in a re–sealable plastic bag containing a paper with the date and time when the animal was found, the location where it was found, the name of the person who found it, and the bag containing the specimen frozen in a freezer located in a secure site, until instructions are received from the USFWS and CDFW regarding the disposition of the dead specimen. The USFWS and CDFW will immediately respond to the monitoring biologist to provide further guidance before work continues.
7) A Worker Environmental Awareness Training Program for construction personnel will be conducted by the qualified monitoring biologist for all construction workers, including contractors, prior to the commencement of construction activities. Interpretation will be provided by the construction contractor for non–English speaking workers and the same instruction provided for any new workers prior to performing work on site. The training will include information regarding the appearance, biology, distribution, and habitat needs of the Covered Species, legal protections for those Covered Species and penalties for violations, and project–specific protective measures.
8) During construction, stockpiling of construction materials, portable equipment, vehicles, and supplies will be restricted to the defined construction work areas or work limits and designated construction staging areas and all operations will be confined to the minimal area necessary, as designated on the engineering plans.
9) Project–related vehicles will observe a 15 mile–per–hour speed limit within construction areas.

Monitoring and Reporting Measures.

The monitoring and reporting measures in the ITS and BO include, but are not limited to, the following:

1) The Applicant shall provide the USFWS and CDFW with a written report that adequately documents the pre–construction survey monitoring efforts within 24 hours of commencement of construction activities.
2) During construction, the Applicant shall immediately report to both the USFWS and CDFW any direct encounters between the Covered Species and project workers or their equipment whereby incidental take in the form of harassment, harm, injury, or mortality occurs.
3) For those components of the Restoration Project that will result in habitat degradation or modification, the Applicant shall provide a precise accounting of the total acreage of habitat impacted to the USFWS after completion of construction.
4) Once construction is completed, all construction debris will be removed and wherever feasible, disturbed areas will be restored. A photo documentation report showing pre– and post–project area conditions will be submitted to the USFWS and CDFW one month after the implementation of restoration.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Restoration Project for take of the Covered Species, provided the Applicant implements the Restoration Project as described in the ITS and BO, including adherence to all measures and conditions contained therein. If there are any substantive changes to the Restoration Project, including changes to the measures, or if the USFWS amends or replaces the ITS or the BO, the Applicant shall be required to obtain a new consisten-

cy determination or a CESA take permit for the Restoration Project from CDFW. (See generally Fish and Game Code, §§ 2080.1, 2081, subdivision (a) and (c)).

CDFW's determination that the ITS, along with its accompanying BO, is consistent with CESA is limited to the Covered Species and the Restoration Project.

DEPARTMENT OF FISH AND WILDLIFE

CESA CONSISTENCY DETERMINATION
REQUEST FOR TEN MILE RIVER
HABITAT ENHANCEMENT PHASE 2
MAINSTEM AND MILL CREEK
2080R–2024–019–01
MENDOCINO COUNTY

The California Department of Fish and Wildlife (CDFW) received a notice on November 7, 2024, that The Nature Conservancy (TNC) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves enhancement of existing habitat and increasing floodplain connectivity in Ten Mile River and Mill Creek. Proposed activities will include, but are not limited to, side channel excavation, berm removal, and construction of large wood structures, alcoves, a floodplain bench, a bank layback, and an off–channel wetland pond. The proposed project will occur in the lower portion of the Ten Mile River's 119–square–mile watershed in Mendocino County, California, approximately 8 miles north of Fort Bragg, California, and 1.5 mile east of the Pacific Ocean.

The National Marine Fisheries Service (NMFS) issued a federal programmatic biological opinion (PBO)(NMFS Number WCR–2015–3755) in a memorandum to the National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) and the U.S. Army Corps of Engineers on June 14, 2016, which considered the effects of the eligible restoration projects on multiple federally listed species. In September 2024, TNC applied to NOAA RC for inclusion of the proposed project under the PBO for state [threatened/endangered] and federally endangered central California coast coho salmon (*Oncorhynchus kisutch*). On September 23, 2024, NOAA RC determined that the project fits within the scope of the PBO.

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

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.

Board of Education
File # 2024–0926–03
CAASPP

This rulemaking action makes permanent the emergency amendments to section 855 of Title 5 of the California Code of Regulations which advanced, from July 15 to June 30, the closing date of the annual California Assessment of Student Performance and Progress (CAASPP) testing window for Local Education Agency administration of these assessments.

Title 05
Amend: 855
Filed 11/06/2024
Effective 11/06/2024
Agency Contact: Lori Adame (916) 319–0860

Department of Food and Agriculture
File # 2024–1101–01
Commercial Feed Ingredient Definitions

This emergency rulemaking action amends, adopts and repeals various sections of title 3, regarding labeling of common or usual names for commercial feed ingredients, to be consistent with the US Food and Drug Administration (FDA) requirements and to promote clarity in the regulated industry.

Title 03
Adopt: 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811
Repeal: 2691, 2695, 2704, 2705, 2706, 2770, 2773, 2773.1, 2773.5, 2774, 2774.5, 2775, 2776, 2777, 2778, 2781, 2782, 2783, 2783.5, 2785, 2787, 2788, 2789, 2790, 2790.5, 2790.7, 2791, 2793, 2794, 2795, 2795.5, 2796, 2796.5, 2797, 2798, 2798.5, 2799, 2800, 2801, 2802, 2803, 2804
Filed 11/12/2024
Effective 11/12/2024
Agency Contact: Erika Lewis (916) 576–0201

Department of Fish and Wildlife
File # 2024–1101–02
Commercial Groundfish Management Measures
Emergency Readopt

This emergency readopt with no changes establishes the California Groundfish Restriction Area (CGRA) which prohibits the take of federal groundfish from 20 fathoms depth to the shoreward Economic Exclusive Zone, and permits take of specific groundfish shoreward of 20 fathoms.

Title 14
Adopt: 35.00
Amend: 150.06, 150.16, 189
Filed 11/12/2024
Effective 11/13/2024
Agency Contact: Ona Alminas (916) 902–9222

Civil Rights Department
File # 2024–1025–02
Conflict–of–Interest Code

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

Title 02
Amend: 10500
Filed 11/12/2024
Effective 12/12/2024
Agency Contact:
Alexandria Sadler (916) 204–5082

State Water Resources Control Board
File # 2024–1001–02
Deletion of Cross–Connection Control Regulations and Inclusion of CCCPH

This action without regulatory effect by the State Water Resources Control Board ("SWRCB" or "state board") satisfies mandates set forth in Health and Safety Code ("HSC") section 116407 and Water Code ("WC") section 13521.2. Specifically, this action repeals Article 1 (commencing with Section 7583) and Article 2 (commencing with Section 7601) of Group 4 of Subchapter 1 of Chapter 5 of Division 1 of Title 17 of the California Code of Regulations ("CCR") as required by HSC section 116407; and adopts Section 60301.175 of Title 22 of the CCR, which incorporates by reference the Cross–Connection Control Policy Handbook ("CCCPH") adopted pursuant to HSC section 116407, as required by WC section 13521.2. The action also revises cross–references in existing regulations located in Title 22 of the CCR, replacing cross–references to the above–referenced repealed regulations in Title 17 of the CCR with the CCCPH.

Title 17, 22
Adopt: 60301.175
Amend: 60310, 60315, 60316, 64654
Repeal: 7583, 7584, 7585, 7586, 7601, 7602, 7603, 7604, 7605
Filed 11/06/2024
Agency Contact: Zachary Rounds (707) 576–2733

California Tax Credit Allocation Committee
File # 2024–1001–04
State Historic Rehabilitation Tax Credit

Senate Bill 451 (Ch. 703, Stats. 2019) provided a 20% credit or 25% tax credit for qualified rehabilitation expenditures if the structure met specified criteria for rehabilitation of a certified historic structure or a qualified residence. This action adopts the procedures required for taxpayers to apply for the tax credit.

Title 04
Adopt: 11010, 11011, 11012
Filed 11/12/2024
Effective 11/12/2024
Agency Contact: Ricki Hammett (916) 653–1065

Commission on Peace Officer Standards and Training
File # 2024–1003–02
Minimum Training Standards for Instructors

This action by the Commission on Peace Officer Standards and Training ("POST" or "Commission") adds an update training course requirement for instructors of the following specialized subjects: Arrest and Control; Defensive Tactics; Driver Awareness; Driver Training; Firearms; and Physical Training. This action further establishes minimum course content for each of the specialized subject update training courses, and the frequency in which the update training must be completed. This action also adds Use of Force as a standalone specialized subject for instructors and establishes minimum course content for the initial training and update training, eliminates the dis-

tinction between "primary instructors" and "non–primary instructors, and amends the minimum course content requirements for several specialized subject instructor training courses.

Title 11
Amend: 1001, 1070, 1082
Filed 11/06/2024
Effective 01/01/2025
Agency Contact: Thomas Chalk (916) 936–7964

Department of Public Health
File # 2024–1001–01
Clinical Laboratory Personnel Standards

This rulemaking action by the California Department of Public Health amends definitions and requirements relating to education, training, experience, and examinations leading to licensure and certification of clinical laboratory personnel.

Title 17
Adopt: 1030.8, 1032, 1032.5, 1034, 1035.3
Amend: 1029, 1030, 1030.5, 1030.6, 1030.7, 1030.16, 1030.17, 1031, 1035.1, 1035.2
Filed 11/13/2024
Effective 01/01/2025
Agency Contact: Veronica Rollin (916) 445–2529

Fish and Game Commission
File # 2024–1002–02
Inland Sport Fishing Regulations

In this regular rulemaking, the Fish and Game Commission is amending inland sport fishing regulations. These amendments include the following: (1) adding American Shad as a species that may be taken by spearfishing in the Valley District; (2) revising the spearfishing boundaries for the Valley District and Black Butte Lake (Tehama County); (3) reducing the 15–inch total length minimum size limit for black bass at Castaic Lake to 12 inches; (4) revising the fishing boundary for Deep Creek (San Bernardino County); (5) revising the fishing regulations for Parker Lake (Mono County) and Willow Creek (Alpine County); and (6) revising the process for accessing low–flow information.

Title 14
Amend: 2.30, 5.00, 7.50, 8.00, 703
Filed 11/13/2024
Effective 01/01/2025
Agency Contact: David Haug (916) 902–9286

Fish and Game Commission
File # 2024–1003–01
Fisheries Logbook Forms And Fishing Block Charts

In this rulemaking action the Fish and Game Commission updates its Commercial Dive Fishing Log, its Daily Lobster Log, and the Fisheries Series Charts depicting different fishing blocks along the California coast (including some inland waters).

Title 14
Amend: 120.7, 122, 165, 190, 705.1
Filed 11/13/2024
Effective 01/01/2025
Agency Contact: Jennifer Bacon (916) 653–4899

Office of Historic Preservation
File # 2024–1002–01
Application for State Historic Rehabilitation Tax Credits

Senate Bill 451 (Ch. 703, Stats. 2019) provided a 20% credit or 25% tax credit for qualified rehabilitation expenditures if the structure met specified criteria for rehabilitation of a certified historic structure or a qualified residence. This action adopts the procedures required for taxpayers to apply for the tax credit.

Title 14
Adopt: 4859.01, 4859.02, 4859.03, 4859.04, 4859.05, 4859.06
Filed 11/13/2024
Effective 11/13/2024
Agency Contact: Mark Huck (916) 502–8731

State Water Resources Control Board
File # 2024–0926–01
Water Quality Enforcement Policy

This resubmittal action, under Government Code section 11353, amends the Water Quality Enforcement Policy to among other things (1) incorporate factors for determining whether a community is disadvantaged; (2) provide for engagement with California Native American Tribes on a government–to–government basis when enforcement impacts or threatens to impact tribal lands, tribal interests, or tribal cultural resources; (3) alter provisions regarding prioritizing violations; (4) alter factors to consider when assessing multiple day violations; (5) alter provisions regarding mandatory minimum penalties; (5) further interpret and implement statutory factors Water Boards must consider in enforcement matters; (6) provide that enhanced compliance actions are not applicable to offset mandatory minimum penalties; (7) alter provisions regarding corrective action projects; and (8) provide model templates for use in enforcement actions.

Title 23
Adopt: 2910
Repeal: 2910
Filed 11/07/2024
Effective 11/07/2024
Agency Contact: David Boyers (916) 341–5276

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.