



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

**NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the Department of Fair Employment and Housing, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict-of-interest code. A comment period has been established commencing on September 9, 2016, and closing on October 24, 2016. All inquiries should be directed to the contact listed below.

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

Changes to the conflict-of-interest code include: the code was updated to reflect the current organizational structure of the Department and also makes other technical changes.

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

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than October 24, 2016, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than October 9, 2016.

The Department of Fair Employment and Housing has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: David L. Cullen, Staff Counsel and Ethics Officer of Department of Fair Employment and Housing, 916-478-7251, [david.cullen@dfeh.ca.gov](mailto:david.cullen@dfeh.ca.gov).

**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

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

**CONFLICT-OF-INTEREST CODES**

**AMENDMENT**

- |               |   |
|---------------|---|
| MULTI-COUNTY: | Los Rios Community College District   |
| STATE AGENCY: | Sacramento-San Joaquin Delta Conservancy<br>Department of Fair Employment and Housing |

A written comment period has been established commencing on September 9, 2016, and closing on October 24, 2016. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Sec-

tion 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than October 24, 2016. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

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

#### EFFECT ON HOUSING COSTS AND BUSINESSES

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

#### AUTHORITY

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

#### REFERENCE

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

#### CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

#### AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

### TITLE 4. CALIFORNIA HORSE RACING BOARD

#### NOTICE OF PROPOSAL TO AMEND RULE 1632, JOCKEY'S RIDING FEE

The California Horse Racing Board (Board, or CHRB) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

#### PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1632, Jockey's Riding Fee, to adjust the Non-Winning Jockey Riding Fee scale for losing mounts to reflect the new California minimum wage increase of 5 percent that will be effective January 1, 2017. Business and Professions Code section 19501(b)(1) requires the scale of minimum jockey riding fees for losing mounts to be increased whenever the state minimum wage is increased by the percentage of that increase. In addition, the Board proposes to amend the Non-Winning Jockey Riding Fee scale to reflect only the dollar amounts to be paid to jockeys riding losing mounts. The Board also proposes to add new subsections 1632(b)(3) through 1632(b)(5) which provide direction for calculating jockey riding fees for second and third place mounts.

#### PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, November 17, 2016**, or as soon thereafter as business before the Board will permit, at the **Del Mar Surfside Race Place, 2260 Jimmy Durante**

**Blvd., Del Mar, California.** At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

#### WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on October 24, 2016.** The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Nicole Lopes–Gravelly, Regulation Analyst  
 California Horse Racing Board  
 1010 Hurley Way, Suite 300  
 Sacramento, CA 95825  
 Telephone: (916) 263–6397  
 Fax: (916) 263–6022  
 E–mail: [nlgravelly@chrb.ca.gov](mailto:nlgravelly@chrb.ca.gov)

#### AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19501 and 19562, Business and Professions Code. Reference: Sections 19401(a), 19401(d), 19420, 19440, 19501, and 19502, Business and Professions Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19401(a) and (d) provides that the intent of Chapter 4 is to allow pari-mutuel wagering on horse races, while assuring protection of the public and providing uniformity of regulation for each type of horse racing. Business and Professions Code section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations, and

conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in California. Assembly Bill (AB) 649, Chapter 605, Statutes of 2007, added section 19501 to the Business and Professions Code. Subsection 19501(b)(1) states that the scale of minimum jockey riding fees for losing mounts shall be increased whenever the state minimum wage is increased by the percentage of that increase.

Business and Professions Code subsection 19501(b)(1) requires the scale of minimum jockey riding fees whenever the state minimum wage is increased by the percentage of that increase; however, it does not provide for an increase for the second and third place mounts. Further, Rule 1632 provides specific dollar amounts to pay losing mounts. To calculate second and third place mount fees, Rule 1632 provides a formula of 5 percent of place purse, plus \$10 for second and third place mounts finishing with purses of \$10,000 to \$100,000. This has resulted in a steady increase in losing mount fees while second and third place mount fees have remained static. As a result of the minimum wage increases over the past several years, the fees paid to losing mounts have begun to encroach upon the amounts paid to second and third place mounts, with the result that the formula for second and third place mount fees (5 percent plus \$10) no longer works under all circumstances. In some instances the losing mount jockey riding fee may be equal to or greater than the third place mount. When the third place mount fee is adjusted, it may be equal to the second place mount fee. This will eliminate any disparity between the non-winning jockey riding fees and will deter jockeys from intentionally losing a race rather than put forth his best effort in order to earn more money.

The proposed amendment to Rule 1632 addresses the mount fee disparities by changing the non-winning jockey riding fee chart under subsection 1632(b) to reflect only the dollar amounts to be paid jockeys riding losing mounts, and by adding new subsections 1632(b)(3) through 1632(b)(5) to provide direction for calculating jockey riding fees for second and third place mounts. Subsections 1632(b)(3) through 1632(b)(5) do not change current practice; instead, they place current practice in narrative form. A new subsection 1632(b)(3) states that the Paymaster of Purses shall use the Horsemen’s Agreement to determine the horse owner’s place purse when calculating non-winning jockey riding fees. The Horsemen’s Agreements provide the percentage of the gross purse the horse owner will receive, based on the order of the finish. The owner’s percentage of the gross purse is the dollar amount from which the Paymaster of Purses will calculate the jockey mount fee. The subsection also provides that the losing mount jockey riding fee shall be paid as provided under sub-

section 1632(b). This is due to the fact that the losing fees are specific dollar amounts based on the requirements of Business and Professions Code section 19501. The minimum jockey riding fees for losing mounts are increased whenever California's minimum wage is increased and are not based on the owner's share of the gross purse. Therefore, the losing mount fees must be stated in the regulation. A new subsection 1632(b)(4) provides the formula for calculating the second and third place mount fees. It is the same formula that is provided under the current 1632(b) non-winning jockey riding fee chart: 5 percent plus \$10. A new subsection 1632(b)(5) provides instructions for the Paymaster of Purses should the losing mount fee be equal to or greater than the third place mount fee. The third place mount shall earn \$2 more than the losing mount and the second place mount shall earn \$2 more than the third place mount. This will allow the Paymaster of Purses to ensure that losing mount fees are never equal to or greater than second and third place mount fees.

#### POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1632(b) amends the non-winning jockey riding fee chart to reflect only the dollar amounts to be paid jockeys riding losing mounts by 5 percent based on the California minimum wage rate increase that becomes effective January 1, 2017. In addition, the proposed amendment adds new subsections 1632(b)(3) through 1632(b)(5) which provide direction for calculating jockey riding fees for second and third place mounts. This will eliminate any disparity between the non-winning jockey riding fees and will deter jockeys from intentionally losing a race rather than put forth his best effort in order to earn more money. This will increase the public's confidence in California horse racing, which may result in increased wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn may increase purses and commissions. The specific benefits anticipated from the regulation are compliance with current law and a balanced fee scale which will result in a fair and honest race product.

#### CONSISTENCY EVALUATION

During the process of developing these regulations and amendments, the CHRB 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.

#### DISCLOSURE REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Mandate on local agencies and school districts: none.  
Cost or savings to any state agency: none.

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

Other non-discretionary cost or savings imposed upon local agencies: none.

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

The Board has made an initial determination that the proposed amendment to Rule 1632 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 following studies/relevant data were relied upon in making the above determination: none.

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

Significant effect on housing costs: none.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendment to Rule 1632 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The proposed amendment to Rule 1632 is a benefit to the health and welfare of California residents because it promotes fairness and compliance with current law. The proposed regulation will increase the losing mounts fee scale to reflect the new California minimum wage increase of 5 percent that becomes effective January 1, 2017, as required by Business and Professions Code section 19501(b)(1). In addition, the proposed regulation will provide direction for calculating jockey riding fees for second and third place mounts which will create a balanced fee scale and eliminate any inequality. This will promote the public's interest in a fair and honest race product by deterring a jockey from intentionally losing a race rather than put forth his best effort in order to earn more money. Furthermore, by adjusting the Non-Winning Jockey Riding Fee scale based on the minimum wage increase there may be an increase to consumer spending that in turn may help the overall economy in California.

Effect on small businesses: none. The proposal to amend Rule 1632 does not affect small businesses be-

cause horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

#### CONSIDERATION OF ALTERNATIVES

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

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

#### CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Nicole Lopes-Gravelly, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 263-6397  
Fax: (916) 263-6022  
E-mail: [nlgravelly@chrb.ca.gov](mailto:nlgravelly@chrb.ca.gov)

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

Laurel Houle, Regulation Analyst  
Policy and Regulations  
Telephone: (916) 274-6043

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of rea-

sons. Copies of these documents, or any of the information upon which the proposed rulemaking is based, may be obtained by contacting Nicole Lopes-Gravelly, or the alternative contact person at the address, phone number or e-mail address listed above.

#### AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Nicole Lopes-Gravelly at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Nicole Lopes-Gravelly at the address stated above.

#### BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's web site address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

### TITLE 9. DEPARTMENT OF REHABILITATION

#### SUBJECT: Business Enterprises Program for the Blind — Late Penalty Fees and Monthly Operating Report

**NOTICE IS HEREBY GIVEN** that the Department of Rehabilitation (hereafter "Department") proposes to amend Sections 7211, 7212.2, 7212.4, 7213.2, 7213.3, 7213.6, 7214.1, 7215.1, 7218, 7220, 7220.3, 7221, and 7225 of Title 9 of the California Code of Regulations, described below after considering all comments, objec-

tions, or recommendations regarding the proposed action.

#### PUBLIC HEARING

The Department will hold a public hearing at **1:30 p.m. on October 25, 2016, at 721 Capitol Mall, Room 169, Sacramento, California 95814**. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. The hearing will adjourn at 3:30 p.m. No oral statements will be accepted subsequent to this 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:

Shelly Risbry, Regulations Coordinator  
Department of Rehabilitation  
721 Capitol Mall  
Sacramento, California 95814

Comments may also be submitted by facsimile at (916) 558-5826 or by email to [Legal@dor.ca.gov](mailto:Legal@dor.ca.gov). Comments must be received by the Regulations Coordinator by 5:00 p.m. on **October 25, 2016**. All written comments received by the Department during the public comment period are subject to disclosure under the California Public Records Act (Gov. Code §§ 6250 through 6276.48).

#### ACCESSIBILITY

The public hearing room is wheelchair accessible. Any person with a disability who is in need of reasonable accommodations, should contact Shelly Risbry, Regulations Coordinator, at (916) 558-5825 or [Legal@dor.ca.gov](mailto:Legal@dor.ca.gov) at least two weeks in advance of the date of the hearing.

#### AUTHORITY AND REFERENCE

##### Authority:

34 CFR Section 395.4; and Sections 19006, 19016, and 19639 of the Welfare and Institutions Code.

##### Reference:

20 USC Section 107; 34 CFR Sections 395.3(a)(11), 395.7 and 395.9; Welfare and Institutions Code Sections 19629, 19632, and 19639.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department is the State Licensing Agency designated by the United States Department of Education responsible for administering the Business Enterprises Program for the Blind (hereafter "BEP") in accordance with the Randolph-Sheppard Act (20 U.S.C. § 107 et seq.), Welfare and Institutions Code sections 19625 et seq., and implementing federal and state regulations (34 C.F.R. § 395 et seq., Cal. Code of Regs., tit. 9, § 7210 et seq.). The purpose of the BEP is to provide persons who are legally blind with remunerative employment, enlarging their economic opportunities, and stimulating their efforts in striving to make themselves self-supporting. Eligible individuals are trained and are licensed as vendors by the Department to operate vending facilities, including, but not limited to, vending machines, snack bars, cafeteria, sundry stands, and coffee carts, on state, federal, and other property.

Vendors are required to pay a set-aside fee based on a portion or percentage of the net proceeds of their vending facility operation and for workers' compensation and liability insurance to the Department for deposit into the Vending Facility Trust Fund. Use of the Vending Facility Trust Fund is limited by state and federal law for specific purposes that support the program and California Vendors Policy Committee, an elected body of vendors who are fully representative of all vendors in the program established by statute.

The proposed amendments clarify the meaning of "set-aside charge" and that penalties assessed cannot be deducted in calculating set-aside fees owed, reduce the amount of the penalty for late submission of a set-aside charge or monthly operating report, and establish a maximum penalty for the first month and each month thereafter until delinquent amounts are paid or reports submitted. The proposed amendments also reiterate the existing provision allowing for disciplinary action for failure to pay delinquent amounts after 90 days. The proposed changes remove the signature requirement from the monthly operating report form, require program staff to discuss with a vendor identified deficiencies in the monthly operating report before returning the report to the vendor for correction, and remove the requirement that program staff compare a vendor's monthly operating report with data from similarly situated vending facilities.

DOCUMENTS INCORPORATED  
BY REFERENCE

The following documents are Incorporated by Reference:

- (a) DR 478, Monthly Operating Report (REGS/Rev. 07/07) [Repealed]
- (b) DR 478A, Vendor’s Monthly Operating Report Instructions (Rev. 07/07) [Repealed]
- (c) DR 478, Monthly Operating Report (Rev. 06/16) [Adopted]
- (d) DR 478A, Vendor’s Monthly Operating Report Instructions (Rev. 06/16) [Adopted]

EVALUATION OF  
INCONSISTENCY/INCOMPATIBILITY OF  
EXISTING REGULATIONS

The Department considered other possible related regulations to this proposed action, and it has been determined that these are the only regulations relating to the subject matter. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations, as well as with federal regulations.

ANTICIPATED BENEFITS

The benefits of amending California Code of Regulations, title 9, section 7221 include providing vendors and other interested parties with clarification as to definitions and striking a better balance between discouraging vendors from submitting late set-aside charges and monthly operating reports and the financial challenges of operating some small businesses with a small profit margin. The amendments also remove the requirement for a physical signature, which allows for more efficient submission of reports and payments. Many vendors rely on bookkeepers or accountants to prepare their reports, who can now submit the completed report directly to the Department along with the payment. All of the amendments are consistent with the needs and requests of the program, as well as the vendors and the California Vendors Policy Committee.

DISCLOSURES REGARDING THE PROPOSED  
ACTION — FISCAL IMPACT

The DOR has made the following initial determinations:

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations.

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The proposed amendments will reduce the current late charges paid by vendors, which will result in a reduction to the money paid into the Vending Facility Trust Fund. Part of the reduction would be offset based on the amount of time required for vendors to pay the penalty, as an additional penalty of \$50 would accrue for each month a penalty fee remains unpaid. Currently, the Vending Facility Trust Fund’s balance is more than is spent every year on statutorily allowable expenditures.

The late fees represent 2 percent of the money deposited into the Vending Facility Trust Fund. Use of the Vending Facility Trust Fund is statutorily restricted to specific purposes that support the vendors and the program, specifically maintenance, replacement, and purchase of new vending facility equipment, construction of new vending facilities, funding functions of the California Vendors Policy Committee, and health insurance premiums for vendors. Federal regulation also allows these funds to be expended on management services and assuring a fair minimum rate of return.

Through the collaboration in developing the proposed amendments, the California Vendors Policy Committee and the Department determined that vendors would be supported more effectively with a reduction in late penalties rather than having additional money in the Vending Facility Trust Fund. With the potential 2 percent reduction of fees the Vending Facility Trust Fund has been determined adequate to continue supporting the vendors and the program. Further, the current penalty structure and rate appears financially detrimental to many vendors and contrary to the statutory purpose of the program—providing remunerative employment, enlarging the economic opportunities of individuals who are blind, and stimulating individuals who are blind to greater efforts in striving to make themselves self-supporting.

These calculations are based on historical data and will change as the number of vendors filing or submitting payment late charges, as well as the amount of the late penalties charged. This calculation will also be effected by the length of time any penalties remained unpaid.

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

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

Cost or savings in federal funding to the state: Funds expended from the Vending Facility Trust Fund are matched 78.7 percent federal fund to every 21.3 percent Vending Facility Trust Fund dollar. A reduction in the late fee deposits to the Vending Facility Trust Fund generally would mean less overall dollars that could be used to match. Currently, the Vending Facility Trust

Fund's balance is more than is spent every year on statutorily allowable expenditures. As such, a reduction in deposits to the Vending Facility Trust Fund will not reduce the amount of federal fund match dollars utilized by the Department.

SIGNIFICANT, STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESS

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

COST IMPACT ASSESSMENT

Cost impacts on a representative private person 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. The amendments reduce penalties for licensed vendors who submit late monthly operating reports or set-aside charges. The licensed vendors operate private vending facilities businesses, and as such, the proposed amendments will have a positive economic impact on the representative businesses.

RESULTS OF ECONOMIC  
IMPACT ASSESSMENT

As a result of the economic impact assessment, the Department concludes that the proposed regulations are:

1. Unlikely to eliminate any jobs or opportunities for licensed vendors in California;
2. Unlikely to create any jobs or opportunities for licensed vendors in California;
3. Unlikely to create any new businesses operated by licensed vendors in California;
4. Unlikely to eliminate any existing businesses operated by licensed vendors in California;
5. Unlikely to affect the expansion of existing licensed vendor business in California; and
6. Beneficial to vendors in that penalties for late set-aside charge payments and monthly operating report filings will be lower and payment of which should be more manageable for vendors. Further, the removal of the signature requirement on the monthly operating report provides vendors with more methods for submitting their reports.

BUSINESS REPORTS

The Department finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation, which requires a report, apply to businesses.

Business Reporting Requirement: Existing regulations require business reporting in the form of a monthly operating report. The proposed amendments revise the existing requirements, eliminating the requirement for a physical signature of the vendor, which is intended to create more efficiency for the vendors and their businesses.

HOUSING COSTS

Significant effect on housing costs: None.

DETERMINATION OF EFFECT ON  
SMALL BUSINESS

The Department has determined that these proposed regulations will affect small business in the program, as defined in Government Code section 11342.610. Currently, there are 89 vendors operating vending facilities in the program, which are considered small businesses. The proposed regulations will not have an adverse impact on small business since the amendments are to reduce the late penalties and remove a signature requirement for convenience.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, 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 the law.

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

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Shelly Risbry, Regulations Coordinator  
 Department of Rehabilitation  
 721 Capitol Mall  
 Sacramento, California 95814  
 Telephone: (916) 558-5825  
 Facsimile: (916) 558-5826  
 Email: [Legal@dor.ca.gov](mailto:Legal@dor.ca.gov)

The backup contact person for these inquiries is Jenny Garcia at (916) 558-5825 or [Legal@dor.ca.gov](mailto:Legal@dor.ca.gov).

Please direct requests for copies of the Notice of Proposed Rulemaking, Proposed Text of the Regulations, Initial Statement of Reasons, Modified Proposed Text of Regulations, if any, California Vendors Policy Committee Motions 2015.7, 2015.14, or 2015.22, or other information upon which the rulemaking is based to Shelly Risbry at the address above. The Department will also provide copies of the regulation proposal in large print, Braille, on audiotape, compact disk, or transmit copies of the regulation proposal electronically, upon request.

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

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice of Proposed Rulemaking, Proposed Text of the Regulations, Initial Statement of Reasons, and California Vendors Policy Committee Motions 2015.7, 2015.14, or 2015.22. Copies may be obtained by contacting Shelly Risbry at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the public hearing and written comment period has ended and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text with the changes clearly in-

dicated available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Shelly Risbry at the address indicated above. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they were made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Shelly Risbry at the address above or on the Department's website at [www.dor.ca.gov](http://www.dor.ca.gov).

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, Proposed Text of the Regulations with underline and strikeout, and Proposed Text of Regulations with word cues indicating strikeout and underline, and California Vendors Policy Committee Motions 2015.7, 2015.14, and 2015.22 can be accessed through the Department's website at [www.dor.ca.gov](http://www.dor.ca.gov).

### TITLE 14. FISH AND GAME COMMISSION

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 206, 215, 220, 240, 315, 316.5, and 2003 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 206, 215, 220 and 316.5 of said Code, proposes to amend Sections 1.74, 5.05, 5.40, 5.60, 7.00, 7.50, subsection (a)(1) of Section 29.45, subsection (c) of Section 43, and subsections (c)(3) and (c)(7) of Section 671, Title 14, California Code of Regulations, relating to Sport Fishing Regulations.

#### **Informative Digest/Policy Statement Overview — Inland Fisheries**

The proposed regulations combine Department of Fish and Wildlife (Department) and public requests for changes to Title 14, California Code of Regulations (CCR), for the 2016 Sport Fishing Regulations Review Cycle. The proposed regulations will increase fishing opportunities for landlocked salmon, increase protection for listed steelhead, remove regulations that are no longer relevant, update nomenclature for amphibians and reptiles, correct regulations pertaining to combined bag and possession limits for trout and landlocked salmon, clarify the bag and possession limits for trout,

and update the sport fishing report card requirements. The proposed regulatory changes are needed to reduce public confusion and improve regulatory enforcement.

The Department is proposing the following changes to current regulations:

### **Sport Fishing Report Card Requirements**

To eliminate public confusion, the Department is proposing to remove outdated requirements for lobster report cards when the reporting period was changed in 2013 from annual to a season basis, and update the general sport fishing report card requirements.

Proposal: Amend Section 1.74, Sport Fishing Report Card Requirements

Repeal outdated requirements to lobster report cards that are no longer applicable and propose minor changes for clarity.

### **Eastman Lake**

The US Army Corps of Engineers is requesting the Department to remove the closure at Eastman Lake because bald eagles are no longer nesting in the closure area. The conditions at the reservoir have changed and the closure is no longer effective or relevant. Water levels have changed so drastically that the location of the buoy line is not consistent with the regulations.

Proposal: Remove Special Fishing Regulations Subsections 7.50(b)(62A) and (62B), Eastman Lake

Removal of the existing closure area will open the lake to fishing year-round.

### **Reptile and Amphibian Nomenclature Updates**

The scientific understanding of the relationships of amphibians and reptiles has changed since the regulations were adopted. The current lists in California Code of Regulations, Title 14, Section 5.05, 5.60, 43(c)(1), 671(c)(3), and 671(c)(7) include some names that are no longer considered valid by the scientific community. In addition, some species that were thought to be only one have been split into two or more species. This can lead to confusion by Law Enforcement and permittees/licensees regarding whether a species is allowed to be possessed or not. An updated list of common and scientific names of amphibians and reptiles was developed to clarify which currently recognized species are represented by the existing names in the sport fishing, native reptile captive propagation, and restricted species regulations. The proposed changes to 5.05, 5.60, and 43(c)(1) are consistent with the May 2016 version of the Department's "Complete List of Amphibian, Reptile, Bird and Mammal Species in California," available at <http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=87155>. Nomenclature changes to restricted species in 671 were obtained from the International Union for Conservation of Nature (IUCN, <http://www.iucnredlist.org/>) and in consultation with herpetological experts.

The proposed changes are solely taxonomic and will not result in a change of sport take or restricted status, with the exception of *Batrachoseps pacificus* and *Thamnophis sirtalis* in 5.05 and 5.60, respectively. The latter corrects the accidental omission of San Mateo County from the special closure area, making the closure consistent with the take language, which specifies no *T. s. tetrataenia*, a fully protected species listed as endangered under both the federal and California Endangered Species Acts (ESA and CESA, respectively) may be taken with a sport fishing license. The former interprets the intent of allowing *B. pacificus* to be taken with sport fishing license. Prior to 2002, *B. pacificus* was considered a very widespread species, ranging from the Central Coast and Channel Islands, Baja California, and the central and southern Sierra Nevada. It was subsequently split into several species, many of which have very small ranges and some of which are species of special concern. Additionally, some of the common species' ranges overlap with those of protected species and are difficult to identify morphologically. *Batrachoseps pacificus*, as it is currently recognized, only occurs on the Channel Islands. The only currently recognized species that is relatively widespread and occurs in an area that does not overlap any currently recognized sensitive *Batrachoseps* spp. and used to be part of the *B. pacificus* complex is *B. major*. Therefore, we propose to replace *B. pacificus* with *B. major*. This change requires inclusion of a special closure to protect *B. major aridus*, which is listed as endangered under ESA and CESA, but it occurs in an area far separated from the rest of the species and any other *Batrachoseps* spp.

Proposal: Update Sections 5.05, 5.60, 43(c)(1), 671(c)(3) and (c)(7), Amphibians, Reptiles, and Restricted Species, respectively

The proposed changes will replace outdated names with valid, currently recognized names and will include the new names of the species that were split, where appropriate.

### **District General Regulations and Special Fishing Regulations Update for Clarity**

To eliminate public confusion and potential enforcement issues, the Department is proposing to further define the bag and possession limits for trout in the District General and Special Fishing regulations sections by adding the word "trout" in the bag and possession limit column in subsections 7.00(a) through (g) and 7.50(b). Updating the tables will provide consistency with the proposed updated text in sections 7.00 and 7.50(a).

Proposal: Amend Subsections (a) through (g) of Section 7.00, District General Regulations, and Subsection (b) of 7.50, Special Fishing Regulations

Add the word “trout” throughout Section 7.00, subsections (a) through (g), and Section 7.50, subsection (b), to clarify that bag and possession limits are specific to trout, unless stated otherwise.

### **San Clemente Lake**

San Clemente Dam was removed recently (Summer 2015) to provide unimpeded steelhead access upstream. With the removal of the dam no reservoir remains, therefore there is no body of water to list.

Proposal: Amend Special Fishing Regulations subsection (b)(165) of Section 7.50, San Clemente Lake

Remove special regulation for San Clemente Lake.

### **Los Padres Reservoir**

Los Padres Dam has had a fish trap located downstream where adult steelhead are captured and trucked upstream of the dam. A floating fish collector is being constructed in Los Padres Reservoir and will be completed in Fall 2015. The fish collector is designed to allow passage downstream of steelhead trout, from kelts to juveniles. Since Los Padres is accessible to steelhead, there should be no take of rainbow trout which, with access to the ocean, can become anadromous. Therefore, given the ability to assume an anadromous form, rainbow trout should not be allowed to be taken. All fish taken should be limited to brown trout.

Proposal: Amend Special Fishing Regulations subsection (b)(105) of Section 7.50, Los Padres Reservoir

Prohibit take of rainbow trout in Los Padres Reservoir to reduce take of listed steelhead.

### **Las Garzas Creek Tributaries**

Allowing a partial fishing season on this Carmel River tributary is inconsistent with other regulations for the Carmel River watershed. Removing this creek would result in consistent regulations in the Carmel River watershed.

Proposal: Amend Special Fishing Regulations subsection (b)(97) of Section 7.50, Las Garzas Creek and Tributaries

Remove Las Garzas Creek and its tributaries from the Special Fishing Regulations.

### **Increase Fishing Opportunity for Landlocked Salmon**

Landlocked salmon are stocked into select lakes and reservoirs and are a highly sought after game fish. In the Freshwater Sport Fishing Regulations the statewide daily bag and possession limit is five landlocked salmon in combination. In some reservoirs the landlocked salmon (Kokanee) are abundant, but only obtain a small overall length (<12" TL). Anglers are unsatisfied with only being allowed to take five landlocked salmon per day of this small size. Anglers would like to take and possess more of these small fish each angling day.

To increase angler satisfaction with the landlocked salmon fishery at select waters, the Department proposes an increase to the daily bag and possession limit on select waters. This proposal recommends a daily bag limit increase from five to ten fish per day and possession limit increase from ten to twenty fish, but no more than five can be Chinook salmon. Waters for which the bag and possession limits are recommended for change include: Trinity Lake (Trinity Co.), Lake Pardee (Amador Co.), New Bullards Bar Reservoir (Yuba Co.), Bucks Lake (Plumas Co.), and Scotts Flat Reservoir, Upper (Nevada Co.).

Proposal: Add Subsections (b)(27.5), (b)(130.6), (b)(135.4), (b) (174.1), and (b)(194.6) to Section 7.50, Special Fishing Regulations

Add Trinity Lake, Lake Pardee, New Bullards Bar Reservoir, Bucks Lake, and Upper Scotts Flat Reservoir to the Special Fishing Regulations with a 10 landlocked salmon daily bag limit and 20 landlocked salmon possession limit.

### **Clarify New Regulation for Landlocked Salmon**

In 2015, the Department created a new definition for landlocked salmon and established a daily bag limit of 5 fish and a possession limit of 10 fish as defined in sections 1.57 and 5.41, respectively. The words “or landlocked” were mistakenly added to Section 7.00 and, as a result, the adopted language does not significantly change the original regulation for bag and possession limits. The bag and possession limit for trout and salmon (i.e., now landlocked salmon), is still in combination as opposed to a separate limit for trout and another for landlocked salmon. Also, language in 7.50(a) states “trout and salmon in combination.” This section also needs to be revised as landlocked salmon and Chinook salmon have their own bag and possession limits and are not meant to be combined with trout bag and possession limits. Therefore, the Department is proposing to revise language in 7.00 and 7.50 that is incorrect or no longer relevant to the existing sport fishery.

Proposal: Amend Section 7.00, District General Regulations, and subsection (a) of 7.50, Special Fishing Regulations.

Revise the language in both sections to read “daily bag and possession limits, unless otherwise noted, mean the total number of trout.”

### **Minor Editorial Corrections for Clarity**

In addition to the above proposals, minor editorial corrections are proposed to correct typographical errors and to improve regulation clarity.

### **Recreational Razor Clam Fishery (Humboldt County)**

Under existing law, razor clams may be taken for recreational purposes with a sport fishing license subject to regulations prescribed by the Fish and Game

Commission (Commission). Current regulations for clams specify bag and possession limits, open/closed fishing areas by year, fishing hours and gear restrictions. The proposed regulation change is in response to public recommendations including Humboldt Area Saltwater Angers and Humboldt County Board of Supervisors, and would restore the original location of the management boundary at Little River Beach, Humboldt County.

The razor clam management boundary line at Little River Beach, commonly referred to as Clam Beach, is a seasonal creek, named Strawberry Creek, that was meant to divide the beach into approximate equal segments that could be fished in alternate years. Since the adoption of this regulation in 1953 in response to a decline in larger clams, this natural creek has meandered southward by 0.6 miles from its original location, resulting in a larger area in the northern section open for clamming during odd-numbered years. In even-numbered years, clambers now have to travel quite far south from the beach access point, the south county parking lot, to reach the smaller, southern section of the beach. The original location of the creek divided the beach relatively near where a county-maintained public parking lot exists today.

Rotating areas for clamming has been shown to encourage the recovery and productivity of clam beds for future seasons while relieving fishing pressure on alternate years so that clams can grow unmolested. As a result of the southward migration of the creek boundary line, the goal of an annual rotation of effort somewhat equally distributed between north and south sections of the beach has been compromised. The amendment would address the following:

1. Replace reference to the Strawberry Creek boundary with the boundary line due west from the county parking lot trailhead located at 40° 59.67' north latitude.
2. Also replace the name Little River Beach with Clam Beach while using the former name parenthetically.

**Consistency and Compatibility with State Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt sport fishing regulations (sections 200, 202 and 205, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incom-

patible with existing state regulations. The Commission has searched the California Code of Regulations and finds no other state agency regulations pertaining to sport fishing.

**Benefits of the Proposed Regulations**

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and inland waters under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of local California fisheries in harmony with federal law respecting fishing and the conservation of the living resources of the ocean and inland waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based trout and salmon seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of trout and salmon to ensure their continued existence. The Commission additionally anticipates benefits to the razor clam resource and its fishery in Humboldt County. The proposed regulation changes are intended to provide increased clam fishing opportunity in even-numbered years by increasing the size of the open southern Clam Beach management zone, thereby restoring the original intent of the regulation. The Commission anticipates benefits to the environment by the sustainable management of California's resources.

The benefits of the proposed regulations are concurrence with Federal law, sustainable management of California's sport fishing resources, and promotion of businesses that rely on recreational sport fishing in California.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Red Lion Inn, 1929 4th Street, Eureka, California, on Thursday, October 20, 2016 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy Canyon Road, San Diego, California, on December 8, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on November 17, 2016 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received

before 12:00 noon on December 2, 2016. All comments must be received no later than December 8, 2016, at the hearing in San Diego, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

**Availability of Documents**

The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Jon Snellstrom at the preceding address or phone number. Kevin Shaffer, Acting Chief, Fisheries Branch, Department of Fish and Wildlife, (916) 327-8841, has been designated to respond to questions on the substance of the proposed Inland Fishing regulations. Christy Juhasz, Marine Region, Department of Fish and Wildlife, (707) 576-2887, has been designated to respond to questions on the substance of the proposed Recreational Razor Clam Fishery regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

**Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

**Impact of Regulatory Action/Results of the Economic Impact Assessment**

The potential for significant statewide adverse economic impacts that might result from the proposed reg-

ulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

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

The proposed action is not anticipated to have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide.

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

The expected impact of the proposed regulations on the amount of fishing activity is anticipated to be minimal relative to recreational angling effort statewide. Therefore the Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for a salmon and trout sport fishery encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California’s sport fishing resources.

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

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

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

**Effect on Small Business**

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

**Consideration of Alternatives**

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

**TITLE 14. FISH AND GAME  
COMMISSION**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 203, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1054, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150, and 10500 of the Fish and Game Code and to implement, interpret or make specific Sections 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513, and 3801.6 of said Code, proposes to amend Section 670, Title 14, California Code of Regulations, relating to Falconry Regulations.

**Informative Digest/Policy Statement Overview —  
Inland Fisheries**

Amend Section 670, Falconry, Title 14, California Code of Regulations (CCR).

The falconry regulations were last amended in 2013 to conform to federal guidelines which required states to adopt their own rules governing the sport. At that time it was understood by the Commission, falconers, and the public that the new California regulations would require updating and amendment to bring the regulations more in line with the current practice of falconry in California.

Numerous minor edits, renumbering, and clarifying changes are proposed; the more substantive changes include:

- Revising language to be more consistent with regulatory language standards (e.g., using lower-case for all headers, renumbering subsections, appropriate references for websites, replacing “regulatory year” with “license year,” reference to expired licenses, references to federal regulations).
- Allowing falconers to complete reports using the Department’s online reporting system found on the Department website at [wildlife.ca.gov](http://wildlife.ca.gov). Accordingly, no reporting to the USFWS is required and all references to the federal form 3-186A are removed.
- Clarifying what documentation is required to be carried when engaged in falconry activities.
- Amending the definitions (e.g, falconry, hacking, imping) to more accurately represent the activity.
- Improving instructions to falconers for procedures to avoid take of unauthorized wildlife and instructions to follow in the event that inadvertent take does occur, including fully protected species, and adopting “let it lay” language for non-protected species (meaning that if take occurs to let the raptor feed on the prey) and reporting requirements.
- Clarifying that a falconry license does not authorize the take of threatened or endangered species, candidate species or fully protected species.
- Clarifying licensee application procedures for resident, nonresident, tribal, and non-US citizen falconers.
- Adding language specifying that a tribal member with a valid falconry license issued from that member’s tribe will be treated in the same manner as a nonresident licensed falconer.
- Clarifying that a tribal member that does not have a license must apply for a California license to practice falconry outside the jurisdiction of the tribe.
- Clarifying that the exam fee is charged for each multiple examination to recover the Department’s reasonable costs.
- Adding an exam exemption for new resident falconers with a valid out-of-state falconry license.
- Clarifying when inspections are needed.
- Clarifying what is allowed and not allowed under an expired license, and what steps must be taken if a licensee wishes to continue to practice falconry.

- Adding terms for renewal, at the Department's discretion, of a license where the licensee has been unlawfully in active practice without annual renewal and the payment of fees.
- Revising suspension and revocation clause to be more specific to the types of violations that would result in immediate action.
- Regarding written authorization required for certain activities, adding specifications that the authorization must be signed and dated with original signature.
- Identifying License and Revenue Branch as the point of contact for certain determinations, with the actual determination being made by Wildlife Branch in some instances.
- Clarifying the necessity of maintaining a continuous sponsorship of an apprentice; what period of time will be counted toward a total of 2 years sponsorship; and sponsor responsibility to assure that minimum qualifications have been met.
- Clarifying that falconers must maintain proper documentation of legal acquisition of birds and records retention is for 5 years only.
- Clarifying that take of northern goshawk outside of the Tahoe Basin does not have a limit.
- Adding language that identifies no need for a new inspection if the facilities shared by multiple falconers have passed a previous inspection.
- Clarifying when the administrative fee applies.
- Revising specifications for applying for the raptor capture drawing and obtaining a permit, including revision of deadline dates and times.
- Allowing falconers to remove bands or reband raptors under certain circumstances, if needed.
- Adding specific language allowing family members to watch raptors outside, but only if a specific age.
- Deleting the existing provision in 670 that raptors may be permanently transferred to a falconer from rehabilitation facilities. Section 679 provides for the permanent disposition from rehabilitation facilities of wildlife including birds.
- Clarifying that falconers may temporarily possess raptors from rehabilitation facilities for the purpose of conditioning for release back in to the wild.
- Adding text to clarify that non-native raptors or barred owls may not be released into the wild.
- Revising text regarding process and limitations for mounting raptor carcasses.

- Clarifying that unannounced inspections are applicable to falconry facilities.
- Revising language so that the Department will make a reasonable attempt to contact the licensee prior to conducting inspections.

**Benefits of the Proposed Regulations**

It is the policy of this state to encourage the conservation, maintenance, and utilization of the living resources under the jurisdiction and influence of the state for the benefit of all the citizens of the State. In addition, it is the policy of this state to promote the development of resource-related recreational activities that serve in harmony with federal law respecting conservation of the living resources under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to the management and maintenance of captive raptor populations to ensure their continued existence of a sufficient resource to support a reasonable sport use. Adoption of scientifically-based regulations provides for the health and maintenance of sufficient populations raptors. The Commission additionally anticipates benefits to the captive breeding program as well as the management of the rehabilitation of raptors as needed. The proposed regulation changes are intended to provide increased health and maintenance to the State's falconry program from its recent transition from federal to state oversight. The Commission anticipates benefits to the environment by the sustainable management of California's resources.

The Commission further anticipates benefits to licensed falconers in the current practice of the sport in California through clarified regulations.

Section 20, Article IV, of the State Constitution specifies that the Legislature may designate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the practice of falconry. No other State agency has the authority to promulgate such regulations. The Commission has searched the CCR for any regulations regarding falconry and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Red Lion Inn, 1929 4th Street, Eureka, California, on Thursday, October 20, 2016 at 8:00 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hilton Garden Inn San Diego Mission Valley/Stadium, 3805 Murphy

Canyon Road, San Diego, California, on December 8, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on November 17, 2016 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 2, 2016. All comments must be received no later than December 8, 2016, at the hearing in San Diego, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

**Availability of Documents**

The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above–mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Jon Snellstrom at the preceding address or phone number. **Carle Battistone, Senior Environmental Scientist, Department of Fish and Wildlife, phone (916) 445–3615**, has been designated to respond to questions on the substance of the proposed Falconry regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

**Availability of Modified Text**

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address

above when it has been received from the agency program staff.

**Impact of Regulatory Action/Results of the Economic Impact Assessment**

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

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

The Commission does not anticipate significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations amend the existing rules for the sport of falconry, primarily for recreational purposes.

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

The Commission does not anticipate any significant impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses. Hunting and falconry is an outdoor activity that can provide several benefits for individuals who partake in it and for the environment benefitting the health and welfare of California residents. The proposed regulations affect a limited number of falconers in California and therefore are unlikely to create or eliminate jobs, or result in the expansion or elimination of existing businesses.

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

The proposed amendments do not impose any additional fees or costs to private persons involved in the sport of falconry.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None

**Effect on Small Business**

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

**Consideration of Alternatives**

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

**TITLE 16. MEDICAL BOARD OF CALIFORNIA**

**NOTICE IS HEREBY GIVEN** that the Medical Board of California (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held on October 28, 2016, at 9:05 a.m., at the Sheraton Mission Valley San Diego located at 1433 Camino Del Rio South, San Diego, California.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on October 25, 2016, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific section(s) 2227, 2228, and 2229 of said Code, the Board is

considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

This rulemaking action seeks to amend Division 13 of Title 16 of the California Code of Regulations (CCR) section 1358.

Existing law under CCR section 1358 provides the following:

Each physician and surgeon who has been placed on probation by the division shall be subject to the division’s Probation Surveillance Compliance Program and shall be required to fully cooperate with representatives of the division and its investigative personnel. Such cooperation shall include, but is not necessarily limited to, submission to laboratory testing for the purpose of determining the existence of alcohol, narcotics, other controlled substances and/or dangerous drugs in his or her system. Such tests shall be made at the times and places required by the division or its duly authorized representative. Any monetary fees incurred as a result of such laboratory tests shall be borne by the physician–probationer.

Reference to the terms “division,” “Probation Surveillance Compliance Program,” and “laboratory testing” are obsolete, and are no longer used by the Board. Moreover, this section indicates that physicians on probation are required to fully cooperate with the “division” and personnel, and indicates that cooperation shall include submission to “laboratory testing” for the purpose of determining the existence of alcohol or drugs in the physician’s system. The requirement for cooperation is more expansive, and extends to all terms and conditions in the order placing the physician on probation.

Accordingly, this proposed rulemaking seeks to remove obsolete language referencing the “division” and the “Probation Surveillance Compliance Program” and replace it with current references to the “Board” and “Probation Program.” It also replaces “laboratory” with “biological fluid” testing, which is the term currently used by the Board. The proposed amendments further specify that probationers are required to bear the costs and be in compliance with all of the terms and conditions of the Order placing them on probation, in addition to referrals for biological fluid testing. These are existing requirements for probationers pursuant to the Board’s Manual of Model Disciplinary Orders and Disciplinary Guidelines incorporated by reference into 16 CCR section 1361.

The proposed changes are necessary to eliminate obsolete language and to clarify the Board’s requirements for probationers.

At the Board’s quarterly meeting held on May 6, 2016, Board staff requested the Board to authorize staff to prepare the necessary regulatory documents to formally notice the proposed regulatory amendment, to submit the documents to the Office of Administrative Law (OAL) for approval, and to schedule a hearing on the rulemaking. The Board granted the request to initiate the rulemaking process and authorized a hearing to be held after the 45–day comment period.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The proposed amendments will eliminate obsolete language within CCR section 1358 and prevent confusion to the reader of the regulation, as the existing language in this section referencing the “division” and the “Probation Surveillance Compliance Program” is not currently used by staff, stakeholders, or the public in written or verbal communications. It further updates the term “laboratory” with “biological fluid” testing.

Moreover, the proposed amendments specify that probationers are required to bear the costs and be in compliance with all of the terms and conditions of the order placing them on probation, in addition to referrals for biological fluid testing. These are existing requirements for probationers pursuant to the Board’s Manual of Model Disciplinary Orders and Disciplinary Guidelines incorporated by reference into 16 CCR section 1361. This provides clarity to the Board’s requirements for probationers.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, 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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

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 fact that no additional requirements are being created by the proposed amendments, as they are simply clarifying changes.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, since no additional requirements are being created by the proposed amendments, as they are simply clarifying changes.

Effect on Housing Costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- Analysis of creation/elimination of jobs: The Board has made an initial determination that this regulatory proposal will not likely have any impact on the creation of jobs or the elimination of jobs in the State of California. This initial determination is based on the fact that the proposed changes simply eliminate obsolete language from CCR section 1358, and clarify the Board’s requirements for physicians on probation. They do not add any new requirements not already in existence.
- Analysis of creation/elimination of businesses: The Board has made an initial determination that this regulatory proposal will not likely have any impact on the creation of new businesses or the elimination of existing businesses or the expansion of businesses in the State of California. This initial determination is based on the fact that the proposed changes simply eliminate obsolete language from CCR section 1358, and clarify the Board’s requirements for physicians on probation. They do not add any new requirements not already in existence.
- Analysis of expansion of business: This proposal is not expected to lead to the expansion of new businesses within California. This initial

determination is based on the fact that the proposed changes simply eliminate obsolete language from CCR section 1358, and clarify the Board's requirements for physicians on probation. They do not add any new requirements not already in existence.

- Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents because the proposed amendments eliminate obsolete language from CCR section 1358, and clarify the Board's requirements for physicians on probation. Improved clarity in the Board's regulations furthers consumer protection.

This proposed rulemaking is not anticipated to have an impact on worker safety or the state's environment.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses, since no additional requirements are being created by the proposed amendments, as they are simply clarifying changes.

CONSIDERATION OF ALTERNATIVES

The Board 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 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 present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has made available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, the initial statement of reasons, and all of the information

upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person, or by accessing the Board's website at [http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).

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 in this Notice.

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 or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Christina Delp, Chief of Enforcement  
 Address: 2005 Evergreen Street, Ste. 1200 Sacramento, CA 95815  
 Telephone No.: 916-263-2389  
 Fax No.: 916-263-2387  
 E-Mail Address: [Christina.delp@mbc.ca.gov](mailto:Christina.delp@mbc.ca.gov)

The backup contact person is:

Name: Kevin A Schunke, Regulations Manager  
 Address: Medical Board of California 2005 Evergreen St, Ste. 1200 Sacramento, CA 95815  
 Telephone No.: (916) 263-2368  
 Fax No.: (916) 263-8936  
 E-Mail Address: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

Website Access: Materials regarding this proposal can be found at [http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).

TITLE 16. MEDICAL BOARD OF CALIFORNIA

**NOTICE IS HEREBY GIVEN** that the Medical Board of California (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held on October 28, 2016, at 9:00 a.m., at the Shera-

ton Mission Valley San Diego located at 1433 Camino Del Rio South, San Diego, California.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on October 25, 2016, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 125.9, 148, and 2018 of the Business and Professions Code, and to implement, interpret or make specific section(s) 125.9, 148, 2027, 2227, 2228, 2229, and 2234 of said Code, the Board is considering amendments to Sections 1364.10, 1364.11, 1364.13 and 1364.15 of Division 13 of Title 16 of the California Code of Regulations as follows:

## INFORMATIVE DIGEST

### A. Informative Digest

This rulemaking action seeks to amend Division 13 of Title 16 of the California Code of Regulations (CCR) sections 1364.10, 1364.11, 1364.13 and 1364.15.

#### Proposed Amendments to 16 CCR 1364.10(b)

Under existing law, CCR section 1364.10 states that a Board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed physician or surgeon of the statutes referred to in section 1364.11.

Licensed midwives and polysomnographic technologists, technicians, and trainees are licensed/registered and regulated by the Board, but are not currently covered by the Board's citation and fine regulations. This proposed rulemaking will add licensed midwives and polysomnographic technologists, technicians, and trainees under CCR section 1364.10(b) as licensees/registrants to whom the Board may issue citations with orders of abatement and fines when these allied health care professionals violate statutes or regulations referenced in CCR section 1364.11.

These amendments are necessary to provide the Board with an administrative tool to bring licensed midwives, and polysomnographic technologists, techni-

icians, and trainees into compliance if they commit a violation of the specified statutes. This supports the Board's mission of public protection.

Further, CCR section 1364.10(b) currently states that citations containing orders of abatement and fines may be issued for violations of the statutes referred to in Section 1364.11. Because CCR section 1364.11 also lists regulations as citable offenses, an amendment to 1364.10(b) is necessary to clarify that citations containing orders of abatement and fines may be issued for violations of regulations, as well as statutes, referred to in Section 1364.11.

#### Proposed Amendments to 16 CCR 1364.11

Under existing law, CCR section 1364.11(a) states that a Board official may issue a citation under section 1364.10 for a violation of the provisions listed in this section. This proposed rulemaking will add additional provisions of the Business and Professions (B&P) and Health and Safety (H&S) Codes and the CCR to the list of citable offenses to authorize the Board to issue citations with orders of abatement and fines to licensees found in violation of those statutes or regulations, furthering consumer protection.

The proposed additions to 16 CCR section 1364.11(a) include the following statutes and regulation:

- B&P Code section 2234(h), relating to the repeated failure of a certificate holder, in the absence of good cause, to attend and participate in an interview by the board;
- B&P Code section 2507, relating to the practice of midwifery, the midwifery scope of practice, and the requirement for physician referral under certain circumstances;
- B&P Code section 2508, relating to required disclosures by licensed midwives to their clients;
- B&P Code section 2510, relating to requirements for a licensed midwife upon transfer of a client to a hospital;
- B&P Code section 2514, relating to requirements for midwifery students practicing midwifery as part of their course of study;
- B&P Code section 2519, relating to grounds for suspension or revocation of a midwifery license;
- B&P Code section 3575, relating to requirements for engaging in polysomnography as a polysomnographic technologist, technician, or trainee;
- B&P Code section 3576, relating to grounds for denial, suspension, or revocation of a registration as a polysomnographic technologist, technician, or trainee;

- B&P Code section 4172, relating to any prescriber who dispenses drugs and fails to store all drugs to be dispensed in an area that is secure;
- H&S Code section 11165.1(a)(1)(A)(i), requiring health care practitioners authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances to submit an application before July 1, 2016, to the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient maintained in the CURES database;
- H&S Code section 120370(a), relating to physicians providing a parent or guardian of a child a written statement indicating that the physical condition of a child, or the medical circumstances relating to the child, are such that immunization is not considered safe; and
- 16 CCR section 1355.4, relating to any licensee that practices medicine and fails to provide proper notice to each patient of the fact that the licensee is licensed and regulated by the Board.

Adding these sections of law and regulation as citable offenses is necessary to provide the Board with an administrative tool to bring licensees into compliance with these sections, furthering consumer protection.

Additionally, this proposed rulemaking reorganizes and renumbers section 1364.11(a) so that it is easier for interested parties to locate citable offenses, and also makes technical changes as follows:

- B&P Code sections 655.6 and 2265 have been repealed in statute, and these sections will be deleted as citable offenses.
- B&P Code section 802(b) is currently listed as a citable offense, but subsection (b) falls under the jurisdiction of the Board of Behavioral Sciences. The citable offense has been corrected to reflect B&P Code section 802(a) in the proposed amendments, as this subsection applies to physicians and surgeons.
- B&P Code section 2630 now falls under the Physical Therapy Board's jurisdiction, and will be stricken as a citable offense by this rulemaking.
- B&P Code section 2097 was renumbered by the legislature to B&P Code section 2426, and that change will be reflected in the amendment to this section.

These technical changes are necessary to improve the clarity of this section.

Finally, this proposed rulemaking adds a subsection (e) to specify that a citation issued under this section is separate from and in addition to any other administra-

tive, civil, or criminal remedies. This change is necessary to improve the clarity of the section.

Proposed Amendments to 16 CCR 1364.13

Under existing law, CCR 1364.13 authorizes a Board official to issue citations containing orders of abatement and fines against individuals, partnerships, corporations or associations, who are performing or who have performed services for which licensure as a physician and surgeon is required under the Medical Practice Act. However, individuals, partnerships, corporations or associations who are performing or who have performed services as unlicensed midwives and polysomnographic technologists, technicians, and trainees are not currently covered by the Board's citation and fine regulations.

This proposed rulemaking will amend this section to indicate that a Board official is authorized to issue citations with orders of abatement and fines to individuals, partnerships, corporations or associations, who are performing, or who have performed, services for which licensure as a licensed midwife or registration as a polysomnographic technologist, technician, or trainee is required. These amendments are necessary for the Board to be able to issue citations with orders of abatement and fines to these individuals and entities who practice without obtaining the required license or registration. Such authority furthers the Board's mission of consumer protection.

Thus, this proposed rulemaking specifies that a Board official is authorized to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a physician and surgeon licensed under Chapter 5 of the code (commencing with section 2000) or as a licensed midwife licensed under Chapter 5 of the code (commencing with section 2505), or registration as a polysomnographic technologist, technician, or trainee registered under Chapter 7.8 (commencing with section 3575) is required.

Additionally, this rulemaking proposes to strike the reference to the Medical Practice Act from CCR section 1364.13, since allied health care providers are being added, and each licensee's or registrant's authorizing code section under the B&P Code is specified. CCR section 1364.13 will be further clarified by indicating that the provisions of CCR sections 1364.10 and 1364.12 apply to the issuances of citations for unregistered as well as unlicensed activity, since polysomnographic technologists, technicians, and trainees are required to be registered, not licensed.

Finally, existing law under CCR section 1364.13 indicates that any sanction under this section is separate and in addition to any other civil or criminal remedies. This rulemaking will add administrative remedies to

that list to clarify that any sanction under this section is separate and in addition to any other administrative, civil, or criminal remedies.

This proposed rulemaking is necessary to amend CCR section 1364.13 to allow the Board to issue citations with orders of abatement and fines to these unlicensed/unregistered individuals and entities who violate the law, thereby giving the Board an administrative tool to further its mission of consumer protection.

Proposed Amendments to 16 CCR 1364.15

Under existing law, CCR section 1364.15 states every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public, and citations that have been resolved by payment of the administrative fine or compliance with the order of abatement shall be purged five (5) years from the date of resolution.

Effective January 1, 2015, pursuant to amendments to B&P Code section 2027(b)(9), the Board shall post on its website all historical information in its possession, custody, or control regarding all current and former licensees to include citations issued within the last three (3) years that have been resolved by payment of the administrative fine or compliance with the order of abatement.

This proposed rulemaking will change the citation purge date from five years to three years to be consistent with B&P Code section 2027(b)(9). This proposed amendment is necessary to make CCR section 1364.15 consistent with the three-year time period set forth by B&P Code section 2027(b)(9).

Board Authorization

On May 6, 2016, at the Board's quarterly meeting, Board staff requested the Board authorize staff to prepare the necessary regulatory documents to submit to the Office of Administrative Law (OAL) to formally notice the proposed regulatory amendments and schedule a hearing on the rulemaking. The Board granted the request to initiate the rulemaking process to amend CCR sections 1364.10, 1364.11, 1364.13 and 1364.15 and authorized a hearing to be held after the 45-day comment period.

At the July 29, 2016, quarterly Board meeting, Board staff readdressed its May 6, 2016, request to authorize staff to prepare the necessary regulatory documents to submit to the Office of Administrative Law (OAL) to formally notice the proposed regulatory amendment and schedule a hearing on the rulemaking. The purpose of the proposal was to add H&S Code section 120370(a) to the list of citable offenses due to the recent enactment of Senate Bill 277 relating to medical exemptions for vaccinations.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The proposed amendments will authorize the Board to issue citations containing orders of abatement and fines to licensed midwives and polysomnographic technologists, technicians, and trainees, in addition to licensed physicians and surgeons, and to unlicensed or unregistered individuals performing services that require a license or registration. Moreover, the proposed amendments add additional statutes for which the Board is authorized to issue citations containing orders of abatement and fines to California health care professionals who violate specified provisions of the B&P Code, the H&S Code, and the CCR, and will align the timeframe for retaining citations with current statute. Such amendments give the Board necessary tools to bring individuals into compliance with the law, and further the Board's mission of consumer protection pursuant to B&P Code section 2001.1. It also furthers the Board's goal of rehabilitation of licensees, when rehabilitation is not inconsistent with the Board's priority of public protection pursuant to B&P Code section 2229.

C. Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, 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.

**FISCAL IMPACT ESTIMATES**

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

Additional provisions of the B&P and H&S Codes and CCR have been added to the list of citable offenses to authorize the Board to issue citations with orders of abatement and fines to licensees found in violation of those sections. The proposed amendments also give the Board the authority to issue citations with orders of abatement and fines to licensed midwives and polysomnographic technologists, technicians, and trainees. The cost and workload to the Board is minimal and absorbable. It is anticipated that licensed midwives, polysomnographic technologists, technicians, and trainees will generate an average of \$5,872 in annual revenue to the Board from citations and fines. Over the life of this regulation, the Board anticipates receiving approximately \$58,720 in revenue from citations and fines issued to allied health professions, and for those practicing in these areas without the required license or registration.

Further, the Board anticipates collecting approximately \$107,216 in annual citation and fine revenue from physicians and surgeons, which include citations and fines for violations of the proposed additional code sections. Over the life of this regulation, the Board anticipates receiving approximately \$1,072,160 in revenue from citations and fines issued to physicians and surgeons, and for those practicing medicine without a license. The Board's attachment to the STD 399 outlines the estimated revenue anticipated.

The Board has determined that this proposed rule-making will not cause a cost or savings in federal funding to the state, since the regulation of the licenses and registrations of health care providers is a state function.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

The Board has made an initial determination that the proposed regulatory action will 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 fact that individuals who are in compliance with the law will not be impacted by the proposed amendments. Further, very few individuals are issued citations with orders of abatement and fines. For example, the Board issued 158 citations and fines for fiscal year (FY) 2012/2013 to physicians and surgeons, which was approximately .002% of the California licensed physician and surgeon population. In FY 2013/2014, the Board issued 50 citations and fines to physicians and surgeons, which was approximately .0004% of the California licensed physician and surgeon population. The Board's allied health care professionals comprise less than 1% of the total population of the Board's licensees, and the Board anticipates issuing only one to two citations per year for allied health professionals, and fewer for unlicensed individuals and entities.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are:

There may be minimal cost impact to licensed physicians and surgeons, midwives and polysomnographic technologists, technicians, and trainees and unlicensed individuals and entities performing services for which a license or registration is required as a result of a citation

and fine being issued for violating a provision(s) listed in section 1364.11(a) of the CCR. Individuals who are in compliance with the law will not be impacted. Based on data over a two year period, the average citation and fine amount is \$979.

Effect on Housing Costs: None.

## RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

- Analysis of creation/elimination of jobs: The Board has made an initial determination that this regulatory proposal will not likely have any impact on the creation of jobs or the elimination of jobs in the State of California. This initial determination is based on the fact that individuals who are in compliance with the law will not be impacted by the proposed amendments. Further, very few individuals are issued citations with orders of abatement and fines. For example, the Board issued 158 citations and fines for FY 2012/2013 to physicians and surgeons, which was approximately .002% of the California licensed physician and surgeon population. In FY 2013/2014, the Board issued 50 citations and fines to physicians and surgeons, which was approximately .0004% of the California licensed physician and surgeon population. The Board's allied health care professionals comprise less than 1% of the total population of the Board's licensees, and the Board anticipates issuing only one to two citations per year for allied health professionals, and fewer for unlicensed individuals and entities.
- Analysis of creation/elimination of businesses: The Board has made an initial determination that this regulatory proposal will not likely have any impact on the creation of new businesses or the elimination of existing businesses or the expansion of businesses in the State of California. This initial determination is based on the fact that individuals who are in compliance with the law will not be impacted by the proposed amendments. Further, very few individuals are issued citations with orders of abatement and fines. For example, the Board issued 158 citations and fines for FY 2012/2013 to physicians and surgeons, which was approximately .002% of the California licensed physician and surgeon population. In FY 2013/2014, the Board issued 50 citations and fines

to physicians and surgeons, which was approximately .0004% of the California licensed physician and surgeon population. The Board's allied health care professionals comprise less than 1% of the total population of the Board's licensees, and the Board anticipates issuing only one to two citations per year for allied health professionals, and fewer for unlicensed individuals and entities.

- Analysis of expansion of business: This proposal is not expected to lead to the expansion of new businesses within California. This initial determination is based on the fact that this proposal gives the Board a tool to bring licensees into compliance with the law if they violate certain specified statutes or regulations, and it impacts a very small percentage of licensees and unlicensed or unregistered individuals or entities.
- Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents because the proposed additions to the list of citable offenses under CCR section 1364.11(a) provide further consumer protection. Additionally, authorizing the Board to issue citations with orders of abatement and fines to licensed midwives and polysomnographic technologists, technicians, and trainees and unlicensed individuals and entities performing services as midwives and polysomnographic technologists, technicians, and trainees, provides an administrative tool to the Board to address consumer complaints that do not warrant formal disciplinary action. This assists in bringing the licensee or unlicensed individual or entity into compliance, furthering consumer protection.

This proposed rulemaking is not anticipated to have an impact on worker safety or the state's environment.

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This initial determination is based on the fact that individuals who are in compliance with the law will not be impacted by the proposed amendments. Further, very few individuals are issued citations with orders of abatement and fines. For example, the Board issued 158 citations and fines for fiscal year (FY) 2012/2013 to physicians and surgeons, which was approximately .002% of the California licensed physician and surgeon population. In FY 2013/2014, the Board issued 50 citations and fines to

physicians and surgeons, which was approximately .0004% of the California licensed physician and surgeon population. The Board's allied health care professionals comprise less than 1% of the total population of the Board's licensees, and the Board anticipates issuing only one to two citations per year for allied health professionals, and fewer for unlicensed individuals and entities.

#### CONSIDERATION OF ALTERNATIVES

The Board 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 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 present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in the Notice under Contact Person, below, or by accessing the Board's website at [http://www.mbc.ca.gov/About\\_Us/Laws/Proposed\\_Regulations](http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations).

#### 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 rule-making action may be addressed to:

Name: Christina Delp, Chief of Enforcement  
 Address: 2005 Evergreen Street, Ste. 1200 Sacramento, CA 95815  
 Telephone No.: 916-263-2389  
 Fax No.: 916-263-2387  
 E-Mail Address: Christina.delp@mbc.ca.gov

The backup contact person is:

Name: Kevin A. Schunke  
 Regulations Manager  
 Address: Medical Board of California  
 2005 Evergreen St, Ste. 1200  
 Sacramento, CA 95815  
 Telephone No.: (916) 263-2368  
 Fax No.: (916) 263-8936  
 E-Mail Address: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

Website Access: Materials regarding this proposal can be found at <http://www.mbc.ca.gov/About Us/Laws/Proposed Regulations>.

**TITLE 18. BOARD OF EQUALIZATION**

**The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1703, *Interest and Penalties***

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1703, *Interest and Penalties*. The proposed amendments clarify in subdivision (c)(3)(A) the Board's long-standing policy that a negligence penalty should not generally be imposed on a deficiency determined in the first audit of a taxpayer, unless the evidence indicates that the taxpayer's bookkeeping or reporting errors cannot reasonably be explained by the taxpayer's inexperience. The proposed amendments also make Regulation 1703 consistent with the current provisions of RTC sections 6480.1, 6480.3, and 6480.4 regarding prepayments of tax on fuel, 7076.4 regarding unpaid tax liabilities determined under the Managed Audit Program, and 7153.6 which imposes a new criminal penalty, and make other minor grammatical and formatting changes to Regulation 1703.

**PUBLIC HEARING**

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on October 25-27, 2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:00 a.m. or as soon thereafter as the matter may be heard on October 25, 26, or 27, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1703.

**AUTHORITY**

RTC section 7051.

**REFERENCE**

RTC sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.4, 7101, 7152-7153, 7153.5, 7153.6, and 7155.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Summary of Existing Laws and Regulations

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code (RTC), § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) The term "gross receipts" means the total amount of the sale price without any deduction for the cost of materials used, labor or service costs, interest paid, losses, or any other expense. (RTC, § 6012, subd. (a).) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § (Regulation or Reg.) 1700.)

When sales tax does not apply, use tax is imposed on the use of tangible personal property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) Unless an exemption or exclusion applies, the use tax is measured by the sales

price of tangible personal property and the person actually storing, using, or otherwise consuming the property is liable for the tax. (RTC, §§ 6201, 6202.) However, every retailer “engaged in business” in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the State Board of Equalization (Board), and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, §§ 6203, 6204; Reg. 1684.)

#### *Negligence Penalty Applicable to Deficiency Determinations*

Under the Sales and Use Tax Law (RTC, § 6001 et seq.), persons who owe sales and use tax (i.e., retailers and consumers) are required to file returns reporting the taxes they owe and pay the amounts owed to the Board. (RTC, §§ 6451, 6452, 6452.1, 6453, 6454.) Such persons must also maintain adequate records to support the amount of tax reported on their returns, and the Board has the authority to examine the books, papers, records, and equipment of such persons to verify the accuracy of any return made, or, if no return is made, to ascertain and determine the amount required to be paid. (RTC, §§ 7053, 7054; Reg. 1698, *Records*.)

When the Board is not satisfied with the amount of tax reported as being owed on a return or the amount of tax paid by a person, it may compute the amount required to be paid by the person, determine the deficiency between the amount of tax reported or paid and the amount required to be paid, and issue a Notice of Determination to the person to collect the deficiency. (RTC, §§ 6481, 6486.) Additionally, if any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of the Sales and Use Tax Law, a penalty of 10 percent of the amount of the determination shall be added thereto (RTC, § 6484), and interest shall be imposed on the amount of the deficiency determination, exclusive of penalties. (RTC, § 6482.) Regulation 1703, *Interest and Penalties*, lists, summarizes, and clarifies the various sales and use tax statutes relating to penalties and interest, and subdivision (c)(3)(A) of the regulation describes the negligence penalty.

Generally, Board staff conducts audits to perform examinations of taxpayers’ books and records and determine the accuracy of the amounts that they have reported and paid to the Board. During an audit, Board staff must determine whether any error found was due to the taxpayer’s negligence in keeping records or preparing returns. Though there is no definition of negligence in the RTC, negligence is commonly defined to mean “[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation” or “the failure to do what [a reasonable

and prudent] person would do under the circumstances.” (Black’s Law Dict. (10th ed. 2014), negligence; see also the Board’s Audit Manual (AM) § 506.10 [providing that negligence may be defined as the failure to exercise the care that a reasonable and prudent person would exercise under similar circumstances].) Therefore, the Board’s general guidance to staff is to determine whether a taxpayer has kept the type of records ordinarily maintained by a reasonable and prudent businessperson with a business of a similar kind and size that are adequate to meet the business’s tax requirements, and exercised the degree of care exercised by an ordinary prudent businessperson who is engaged in a business of a similar kind and size, and who in good faith has attempted to prepare returns with a reasonable degree of accuracy, in order to determine if the taxpayer’s deficiency was due to the taxpayer’s negligence in keeping records or preparing returns. (AM §§ 507.10–507.20, 508.10.)

In addition, some taxpayers make a reasonable effort to comply with their recording–keeping and reporting requirements, in good faith, but still make errors due to their lack of experience. Therefore, a taxpayer’s first audit (first–time audit) often plays a vital role in educating that taxpayer on the relevant laws and regulations applicable to its activities, providing instruction to that taxpayer on proper record–keeping practices and proper reporting, and correcting any recording–keeping and reporting errors the taxpayer may be making due to inexperience. Consequently, a taxpayer who has not been subject to audit generally does not have the same level of experience and knowledge as a taxpayer who has been audited, and generally cannot be said to be in the same or similar circumstances as a more experienced taxpayer that has been audited. Accordingly, it has been the long–standing policy of the Board to not impose a negligence penalty on a deficiency determined in a first–time audit, unless the taxpayer’s bookkeeping or reporting errors cannot reasonably be explained by the taxpayer’s inexperience. (See *Independent Iron Works, Inc. v. State Bd. of Equalization* (1959) 167 Cal.App.2d 318, 321 [upholding a negligence penalty imposed after a second audit disclosed that the taxpayer continued to make the same errors the Board found in its first audit and noting “that the Board seldom, if ever, imposes a negligence penalty for errors discovered on a first audit”].) For instance, a negligence penalty may be imposed after a first–time audit if a taxpayer has advanced knowledge of and experience complying with the Sales and Use Tax Law despite never having been subject to audit itself, or the nature and degree of the taxpayer’s error indicates that the taxpayer failed to exercise the standard of care that a reasonably prudent person with the taxpayer’s experience would have exercised, as is the

case when a taxpayer maintains no records of any kind or extremely poor records, the Board obtains other evidence indicating that the taxpayer has a substantial deficiency, and the taxpayer cannot reasonably explain why the deficiency was due to the taxpayer's inexperience.

*Late Prepayments of Sales and Use Tax on Fuel*

As relevant here, Regulation 1703, subdivision (a), currently lists RTC sections 6480.4, 6480.8, and 6480.19 as statutes that impose interest and penalties for "[f]ailure to pay tax within required time (except determinations)." Regulation 1703, subdivision (b)(2), currently explains how interest applies to late prepayments of tax on fuel and provides that:

Interest applies to amounts due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment of tax required pursuant to sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

Operative January 1, 1992, interest applies to amounts due but not paid by any producer, importer, or jobber of fuel as defined in section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment of tax required pursuant to sections 6480.16 and 6480.18 of the Revenue and Taxation Code.

Also, Regulation 1703, subdivision (c)(1)(A)5 and 6, currently explains the penalties that apply to late prepayments of tax on fuel and provides that:

5. A penalty of 25% shall apply to the amount of prepayment due but not paid by any distributor or broker of motor vehicle fuel who fails to make a timely remittance of the prepayment as required pursuant to sections 6480.1 and 6480.3 of the Revenue and Taxation Code.

6. Operative January 1, 1992, a penalty of 10 percent shall apply to the amount of prepayment due but not paid by any producer, importer, or jobber of fuel as defined in section 6480.10 of the Revenue and Taxation Code who fails to make a timely remittance of the prepayment as required pursuant to sections 6480.16 and 6480.18 of the Revenue and Taxation Code. This penalty shall be 25 percent if the producer, importer, or jobber knowingly or intentionally fails to make a timely remittance.

However, RTC sections 6480.8, 6480.10, 6480.16, 6480.18, and 6480.19 were all repealed (Stats.2001, ch. 429, operative Jan. 1, 2002) so that distributors and brokers of motor vehicle fuel are no longer required to collect and remit prepayments of tax on motor vehicle fuel. RTC sections 6480.1 and 6480.3 were amended so that they now currently require suppliers and wholesalers to

collect and remit prepayments of sales tax on sales of motor vehicle fuel, aircraft jet fuel, and diesel fuel. RTC section 6480.4 was amended so it currently requires suppliers and wholesalers that fail to timely remit such prepayments to pay a 10 percent penalty, plus interest, and provides that the penalty "shall be 25 percent if the supplier or wholesaler knowingly or intentionally fails to make a timely remittance." And, RTC sections 6480.1, 6480.3, and 6480.4 no longer apply to distributors and brokers of motor vehicle fuel.

*RTC sections 7076.4, 7076.5, and 7153.6*

As relevant here, Regulation 1703, subdivision (a), lists RTC section 7076.5 as the statute that imposes interest on unpaid tax liabilities determined under the Managed Audit Program. However, RTC sections 7076.4 and 7076.5 (referred to in the regulation) were repealed (Stats. 2000, ch 1052, operative Jan. 1, 2003) and a new version of RTC section 7076.4 was enacted (Stats. 2003, ch. 87, effective January 1, 2004) that currently imposes interest on unpaid tax liabilities determined under the Managed Audit Program. Also, section 7153.6 was added to the RTC effective January 1, 2014 (Stats.2013, ch. 532), to impose new criminal penalties related to a person's sale or use of an "automated sales suppression device or zipper or phantom-ware," under the Sales and Use Tax Law.

Effects, Objective, and Benefit of the Proposed Amendments to Regulation 1703

Board staff determined that there is an issue (or problem) because none of the Board's regulations prescribe or provide notice regarding the Board's long-standing policy regarding whether to impose a negligence penalty on a deficiency determined in a first-time audit. Board staff determined that it would be best to amend Regulation 1703, subdivision (c)(3)(A), which relates to the negligence penalty set forth in RTC section 6484, to address the issue. Board staff drafted proposed amendments incorporating the Board's long-standing policy and practice that a negligence penalty should not be applied in a first-time audit, unless the taxpayer's bookkeeping or reporting errors cannot reasonably be due to the taxpayer's inexperience, and clarifying that this means a negligence penalty should not be applied in a first-time audit, unless evidence establishes that the taxpayer did not have a good faith and reasonable belief that its practices were in compliance with the Sales and Use Tax Law. The proposed amendments were intended to create clear and consistent regulatory guidance for staff when conducting a first-time audit.

Board staff distributed an Initial Discussion Paper with the draft of the proposed amendments attached as Exhibit 1 on January 8, 2016. Staff's draft proposed amendments to Regulation 1703, subdivision (c)(3)(A), stated the following:

“Generally, a penalty for negligence or intentional disregard should not be added to deficiency determinations associated with the first audit of a taxpayer in the absence of evidence establishing that a taxpayer possessed experience and/or knowledge such that any bookkeeping and reporting errors cannot be attributed to the taxpayer’s good faith and reasonable belief that it’s [sic] bookkeeping and reporting practices were in substantial compliance with the requirements of the Sales and Use Tax Law or authorized regulations.”

In addition, in Exhibit 1 to the Initial Discussion Paper, Board staff included other draft amendments to make Regulation 1703 consistent with the RTC. Specifically, Board staff’s draft amendments proposed to:

- Delete the references to repealed RTC section 6480.8 from subdivisions (a), (b)(1)(E) and (8), and (c)(8) of the regulation and the regulation’s reference note;
- Delete the references to repealed RTC section 6480.19 from subdivision (a) of the regulation and the regulation’s reference note;
- Add references to RTC section 7153.6, which imposes a criminal penalty, to subdivision (a) of the regulation and regulation’s reference note;
- Replace the references to repealed RTC section 7076.5 with references to RTC section 7076.4, which currently imposes interest on unpaid tax liabilities determined under the Managed Audit Program, in subdivision (a) of the regulation and the regulation’s reference note; and
- Make subdivisions (b)(2) and (c)(1)(A) of the regulation consistent with the repeal of RTC sections 6480.8, 6480.10, 6480.16, 6480.18, and 6480.19, and the amendments to RTC sections 6480.1, 6480.3, and 6480.4 regarding interest and penalties imposed on suppliers’ and wholesalers’ late prepayments of tax on fuel.

Board staff held an interested parties meeting on January 19, 2016, to discuss the Initial Discussion Paper and draft amendments. At the meeting, there was general agreement that the draft amendments to Regulation 1703, subdivision (c)(3)(A), would provide clarity with respect to the Board’s policy regarding the imposition of a negligence penalty on a deficiency determined in a first-time audit. However, a concern was raised with the use of the phrase “experience and/or knowledge” in the draft amendments, specifically that when a taxpayer completely lacks either experience or knowledge, an auditor may overly focus on the other element to justify imposing the penalty.

Following the interested parties meeting, staff received comments from Mr. James Dumler of McClellan

Davis, LLC, in a letter dated January 29, 2016. Mr. Dumler also expressed concern with the “use of the word ‘and/or’ . . . as it respects the taxpayer’s experience *and/or* knowledge of the reporting or recording issue in question.” He suggested that the word “or” be removed because a taxpayer may have experience operating a business, but not the requisite knowledge.

Board staff agreed that in most circumstances where it is appropriate to impose a negligence penalty on a deficiency determined in a first-time audit, the taxpayer will have both experience and knowledge regarding the particular type of business to some degree. However, there are circumstances where a taxpayer may have the requisite knowledge of its compliance obligations yet lack any experience operating the type of business in question. For example, a CPA may gain significant knowledge regarding restaurants’ sales and use tax compliance obligations through consultation with its restaurant clients, yet have no experience actually operating a restaurant. Board staff therefore did not recommend replacing the phrase “and/or” with “and,” but appreciated the concern that audit staff may narrowly focus on knowledge or experience, instead of on whether the totality of the evidence establishes that a taxpayer’s bookkeeping or reporting errors cannot be attributed to its good faith and reasonable belief that it is in substantial compliance with the Sales and Use Tax Law. Accordingly, to avoid confusion and provide more clear direction to audit staff, Board staff revised its proposed regulatory language for subdivision (c)(3)(A) (quoted above) to delete the phrase “that a taxpayer possessed experience and/or knowledge such.”

Subsequently, Board staff prepared Formal Issue Paper 16–03 and distributed it to the Board Members for consideration at the Board’s March 30, 2016, Business Taxes Committee (BTC) meeting. Formal Issue Paper 16–03 recommended that the Board propose to adopt Board staff’s draft amendments to Regulation 1703 discussed above to provide clear and consistent guidance to Board staff and taxpayers in subdivision (c)(3)(A) that a negligence penalty should not generally be applied to a deficiency determined in the first audit of a taxpayer, unless the evidence indicates that the taxpayer’s bookkeeping or reporting errors cannot be attributed to the taxpayer’s good faith and reasonable belief in its compliance with the Sales and Use Tax Law. The formal issue paper also recommended that the Board propose to adopt the other draft amendments to make Regulation 1703 consistent with the current provisions of RTC sections 6480.1, 6480.3, 6480.4, 7076.4, and 7153.6 (discussed above), and propose to make other minor grammatical and formatting changes to Regulation 1703.

The Board discussed Formal Issue Paper 16–03 during its March 30, 2016, BTC meeting. At the conclusion

of the discussion, the Board Members unanimously voted to propose to adopt the amendments to Regulation 1703 recommended by staff.

The Board determined that the proposed amendments to Regulation 1703 are reasonably necessary to have the effect and accomplish the objective of addressing the issue or problem, discussed above, by providing clear and consistent guidance to Board staff and taxpayers clarifying that a negligence penalty should not generally be applied to a deficiency determined in the first audit of a taxpayer unless the evidence indicates that the taxpayer's bookkeeping or reporting errors cannot be attributed to the taxpayer's good faith and reasonable belief in its compliance with the Sales and Use Tax Law. The Board also determined that the proposed amendments are reasonably necessary to have the effects and accomplish the objectives of ensuring that the regulation is consistent with the RTC, grammatically correct, and properly formatted.

The Board anticipates that the proposed amendments to Regulation 1703 will promote fairness and benefit taxpayers, Board staff, and the Board by providing clarity with regard to the application of negligence penalties to deficiencies determined in first-time audits.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1703 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations. This is because there are no other sales and use tax regulations that prescribe the application of the negligence penalty set forth in RTC section 6484, or prescribe the interest and penalties that apply to late prepayments of tax on fuel. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1703 or the proposed amendments to Regulation 1703.

**NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1703 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 Government Code.

**NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1703 will result in no 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 Government Code, 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 Board has made an initial determination that the adoption of the proposed amendments to Regulation 1703 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 proposed amendments to Regulation 1703 may affect small business.

**NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

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

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the proposed amendments to Regulation 1703 do not constitute a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1703 will neither create nor eliminate

jobs in the State of California nor result in the elimination of existing businesses nor create new businesses or expand businesses currently doing business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1703 will not affect the benefits of Regulation 1703 to the health and welfare of California residents, worker safety, or the state's environment.

#### NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1703 will not have a significant effect on housing costs.

#### DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise 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 proposed amendments should be directed to Scott Claremon, Tax Counsel III, by telephone at (916) 323-3184, by e-mail at [Scott.Claremon@boe.ca.gov](mailto:Scott.Claremon@boe.ca.gov), or by mail at State Board of Equalization, Attn: Scott Claremon, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Claremon.

#### WRITTEN COMMENT PERIOD

The written comment period ends at 9:00 a.m. on October 25, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1703 during the October 25-27, 2016, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1703. The Board will only consider written comments received by that time.

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1703 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1703, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

#### SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1703 with changes that are nonsubstantial 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, the Board will make the full text of the proposed 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 Mr. Bennion. The Board will consid-

er written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1703, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov).

**TITLE 20. CALIFORNIA ENERGY COMMISSION**

Computers, Computer Monitors, and Signage Displays Appliance Efficiency Rulemaking

California Energy Commission  
Docket No. 16-AAER-02  
September 9, 2016

The California Energy Commission (Commission) proposes to modify existing appliance efficiency regulations to add requirements for computers and computer monitors, clarify that signage displays are subject to the previously adopted television standards, and add an exemption to the battery charger systems standards clarifying that battery charger systems that are contained completely within a larger product and that provide power for data storage or for continuity for volatile cache or memory systems, help maintain system memory, and are not capable of powering full operation when AC mains power is removed are not required to comply with the regulations.

NOTICE THAT A PUBLIC HEARING IS SCHEDULED

The date set for the adoption of regulations at a public hearing is as follows:

Commission Business Meeting  
**November 9, 2016**  
10:00 a.m. (Pacific Time)  
California Energy Commission  
1516 9th Street  
Sacramento, CA 95814  
Rosenfeld Hearing Room  
(Wheelchair accessible)

Audio for the adoption hearing will be broadcast over the internet. Details regarding the Commission’s webcast can be found at [www.energy.ca.gov/webcast](http://www.energy.ca.gov/webcast).

If you have a disability and require assistance to participate in these hearings, please contact Poneh Jones at (916) 654-4425 at least 5 days in advance.

ORAL AND WRITTEN STATEMENTS

Interested persons may present oral and written statements, arguments, or contentions regarding the proposed regulations at the hearing, or may submit written comments to the Commission for consideration on or prior to October 24, 2016. The Commission appreciates receiving written comments at the earliest possible date.

Additionally, the Commission will also hold a Lead Commissioner Meeting on October 10, 2016, at 10:00 a.m. in the Rosenfeld Hearing Room to receive oral comments on the rulemaking.

Please submit comments to the Commission using the Commission’s e-commenting feature by going to the Commission’s 2016 Appliance Efficiency Rulemaking webpage <http://www.energy.ca.gov/appliances/2016-AAER-02/rulemaking/> and click on the “Submit e-comment” link. A full name, e-mail address, comment title, and either a comment or an attached document (.doc, .docx, or .pdf format) is mandatory. After a challenge-response test used by the system to ensure that responses are generated by a human user and not a computer, click on the “Agree & Submit Your Comment” button to submit the comment to the Commission’s Docket Unit.

Please note that written comments, attachments, and associated contact information included within the written comments and attachments, (e.g., your address, phone, email, etc.) become part of the viewable public record.

You are encouraged to use the electronic filing system, described above, to submit comments. If you are unable to submit electronically, a paper copy of your comments may be sent to:

Docket Unit  
California Energy Commission  
Docket No. 16-AAER-02  
1516 9th Street, MS-4  
Sacramento, CA 95814  
Telephone: 916-654-5076  
Or e-mail them to: [Docket@energy.ca.gov](mailto:Docket@energy.ca.gov).

PUBLIC ADVISER

The Commission’s Public Adviser’s Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser’s Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228 or contact [publicadviser@energy.ca.gov](mailto:publicadviser@energy.ca.gov).

STATUTORY AUTHORITY AND REFERENCE —  
Government Code Section 11346.5(a)(2) and  
1 California Code of Regulations 14

Authority: Sections 25213 and 25218(e), and 25402(c), Public Resources Code.

Reference: Sections 25216(d) and 25402(c), Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW — Government Code Section  
11346.5(a)(3)

Existing law requires the Commission to reduce the inefficient consumption of energy and water by prescribing efficiency standards and other cost-effective measures for appliances that require a significant amount of energy and water to operate on a statewide basis. Such standards must be technologically feasible and attainable and must not result in any added total cost to the consumer over the designed life of the appliance.

Existing law also requires the Commission, in determining cost-effectiveness, to consider the value of the water or energy saved, the effect on product efficacy for the consumer, and the life-cycle cost to the consumer of complying with the standard. The Commission also must consider other relevant factors including, but not limited to, the effect on housing costs, the total statewide costs and benefits of the standard over the lifetime of the standard, the economic effect on California businesses, and alternative approaches and the associated costs.

The Appliance Efficiency Regulations (Title 20, Sections 1601–1609 of the California Code of Regulations) contain definitions, test procedures, labeling requirements, and efficiency standards for state- and federally-regulated appliances. Appliance manufacturers are required to certify to the Commission that their products meet all applicable state and federal regulations pertaining to efficiency before their products can be included in the Commission’s database of approved appliances to be sold or offered for sale within California. Appliance energy efficiency is identified as a key to achieving the greenhouse gas (GHG) emission reduction goals of Assembly Bill 32 (Nuñez, Chapter 488, Statutes of 2006) (AB 32), as well as the recommendations contained in the California Air Resources Board’s Climate Change Scoping Plan.

Energy efficiency regulations are also identified as key components in reducing electrical energy consumption in the Commission’s 2013 Integrated Energy Policy Report (IEPR) and the California Public Utilities Commission’s (CPUC) 2011 update to its Energy Efficiency Strategic Plan. Finally, Governor Brown identified reduced energy consumption through efficiency

standards as a key strategy for achieving his 2030 GHG reduction goals.

The proposed regulations would expand the scope of the appliance efficiency regulations to include computers and computer monitors. The proposed regulations would also establish appliance efficiency standards for computers and for computer monitors and define what types of appliances fall under the standards and what types do not. The proposed regulations would also establish test methods for computers and computer monitors for the purpose of having a consistent and systematic approach for determining that computers and computer monitors being sold in California meet the applicable standard. The proposed regulations would also exempt small volume manufacturers that meet certain criteria and are listed in the Commission’s Appliance Efficiency Database from compliance with most of the regulatory requirements, but would require them to ensure applicable products comply with power management setting requirements. Lastly, the proposed regulations would require manufacturers to list computers and computer monitors sold in California in the Commission’s Appliance Efficiency Database.

Existing regulations establish appliance efficiency standards for televisions. These regulations would clarify that the television standards apply to signage displays. The proposed regulations would also define “professional signage display” to differentiate it from signage display and clarify that those appliances are not subject to the television standards.

Existing regulations establish appliance efficiency standards for battery charger systems. These regulations would exempt certain battery charger systems that are contained completely within a larger product and that provide power for data storage or for continuity for volatile cache or memory systems, help maintain system memory, and are not capable of powering full operation when AC mains power is removed. There is no test procedure for these products, and thus, no ability to demonstrate compliance with the battery charger systems standards. These products were not intended to be included in the original battery charger systems rule-making.

There are currently no existing comparable federal regulations or statutes for computers, computer monitors, or signage displays. There are comparable federal regulations and statutes applicable to battery charger systems that will take effect June 13, 2018. These standards will preempt California’s standards at that time, so there would be no overlap in applicability between the Commission’s battery charger systems regulations and those of the United States Department of Energy (DOE). DOE has authority to adopt these requirements under the Energy Policy and Conservation Act (EPCA) 42 USC 6295 et seq. There is not a substantial differ-

ence from these proposed regulations and DOE's battery charger systems regulations.

The proposed regulations are not inconsistent or incompatible with existing state regulations. No other state regulations deal with appliance efficiency standards. No standards for computers or computer monitors previously existed. Specifically adding the term "signage displays" to the television regulations clarifies that the scope of that original rulemaking was intended to include signage displays. Adding a certain type of battery charger system to the exemption list for those standards clarifies that those types of systems were not intended to come under the scope of that rulemaking. These changes harmonize the regulations with the original intent of the previous rulemakings.

The broad objectives of this rulemaking are to increase energy efficiency savings in the state by establishing energy efficiency standards for computers and computer monitors, appliances that are prevalent in the state and for which cost-effective standards can be established.

In California, computers and computer monitors use an estimated 5,610 gigawatt hours of electricity and account for 1.7–2.9 percent of electricity consumption in the residential sector and 7 percent of electricity consumption in the commercial sector, concentrated in offices and educational facilities. More than 25.2 million computer monitors are installed in residential and commercial settings in California. Statewide, computer monitors consume about 1527 gigawatt hours (GWh) of electricity per year. Computer monitors contribute to a peak demand of almost 206 megawatts (MW).

Available technologies and design methods can improve the energy consumption of computers cost-effectively without a decrease in the product's functionality and performance, and some energy savings might be obtained through low-cost software improvements that use existing hardware more efficiently. Energy consumption of computer monitors is directly related to the brightness of the screen. As the brightness of the display increases, it consumes more energy. User-controlled and automatic dimming techniques have the potential to decrease energy consumption by decreasing screen brightness. Automatic brightness control scales screen brightness to ambient lighting conditions, dimming the screen in low light conditions. Similar to automatic brightness control, global dimming controls light output based on image content; the backlight is turned down for dark scenes and turned up for bright or white images. Even without automatic control, screen brightness can be manually controlled on most computer monitors using buttons on the display or a software menu. The proposed regulations take advantage of these opportunities for ensuring energy efficiency gains in computer monitors.

The specific benefits anticipated by the proposed regulations include achieving energy efficiency gains with regard to computers and computer monitors. Overall, these regulations help protect public health and safety and the environment by saving approximately 1,636 gigawatt-hours per year from the computer standards, calculated using the Energy Star dataset as a baseline, resulting in greenhouse gas emission reductions of 0.513 million metric tons of carbon dioxide equivalent per year and saving consumers about \$262 million, using the Energy Star dataset as a baseline, in electricity bills after the stock turnover. Regulating computer monitors will save about 696 gigawatt hours per year statewide, will result in greenhouse gas emission reductions of 0.218 million metric tons of carbon dioxide, and will save about \$111 million after existing stock is replaced. These regulations combined will benefit businesses and consumers by reducing electricity bills by \$373 million per year.

The specific benefits from adding the term signage displays to the television standards is clarity in the scope of the regulations. The specific benefit from exempting a certain type of battery charger system from the standards is clarity to the regulations that those types of systems were not intended to fall within the scope of the regulations and are not required to comply.

#### DOCUMENTS INCORPORATED BY REFERENCE — 1 California Code of Regulations Section 20(c)(3)

The Commission proposes to incorporate the 15 documents listed below by reference. Pursuant to California Code of Regulations, title 1, section 20, all of these documents are available for review at the Commission, and are also available directly from the publishing entities. All available contact information, including internet addresses, physical addresses, and phone numbers for these entities has been provided where possible. Five of the listed documents are available for download from the Commission's website for this proceeding. The other ten documents, however, are copyrighted and copies cannot be provided directly by the Commission without violating the documents' terms of use. The documents titled *Advanced Configuration and Power Interface Specification Version 5.0 (Dec. 2011)* and *Errata A (Nov. 2013)* are available for free from the Unified Extensible Firmware Interface Forum's website, listed below. Documents from the Institute of Electrical and Electronics Engineers (IEEE) and the International Electrotechnical Commission (IEC) are available electronically from these entities for a charge ranging from approximately \$130 to \$815 per document.

In this rulemaking, the affected public consists of manufacturers of computers and computer monitors

and test laboratories that are hired by these entities to conduct the required testing. Manufacturers of computers would only need to purchase those documents that apply to computers and manufacturers of computer monitors would similarly only have to purchase the documents related to computer monitors. Additionally, many of these companies likely already have the required documents, and if not, these documents would only need to be purchased once no matter how many models the manufacturers would be testing and certifying to the Commission's database. Therefore, the Commission has determined that the cost to obtain these documents is nominal for the entities that are subject to these regulations. Because all of the documents will be available for viewing at the Commission, copies of seven of the documents may be obtained for free, and the fee for obtaining copies of the remainder is a nominal one-time expense that can be easily absorbed by the entities being regulated, the Commission concludes that these documents are reasonably available to the affected public in conformance with California Code of Regulations, title 1, section 20(c).

**ADOBE SYSTEMS INCORPORATED**

*Adobe RGB (1998) Color Image Encoding Version 2005-05 (May 2005).*

Copies available from:  
Adobe Systems Incorporated  
Corporate Headquarters  
345 Park Avenue  
San Jose, CA 95110-2704  
(408) 536-6000  
<http://www.adobe.com>

**ECOVA**

*Generalized Test Protocol for Calculating the Energy Efficiency of Internal Ac-Dc and Dc-Dc Power Supplies Revision 6.7 (March 1, 2014)*

Copies available from:  
Plug Load Solutions by Ecova  
[www.plugloadsolutions.com](http://www.plugloadsolutions.com)  
Phone: (971) 201-4180

**INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)**

*IEEE 802.3az-2010. IEEE Standard for Information technology— Local and metropolitan area networks — Specific requirements — Part 3: CSMA/CD Access Method and Physical Layer Specifications Amendment 5: Media Access Control Parameters, Physical Layers, and Management Parameters for Energy-Efficient Ethernet*

*IEEE 802.3-2015. IEEE Standard for Ethernet*

*IEEE 802.11-2012. IEEE Standard for Wireless LANs*

Copies available from:  
IEEE (TechStreet)  
Publications Office  
10662 Los Vaqueros Circle  
P.O. Box 3014  
Los Alamitos, CA 90720-1264  
<http://www.techstreet.com/ieee>  
<http://standards.ieee.org>

**INTERNATIONAL ELECTROTECHNICAL COMMISSION (IEC)**

*IEC 60297-3-101:2004. Mechanical structures for electronic equipment — Dimensions of mechanical structures of the 482.6 mm (19 in) series — Part 3-101: Subracks and associated plug-in units*

*IEC 61966 2-1:1999. Multimedia systems and equipment — Colour measurement and management. Part 2-1: Colour management — Default RGB colour space — sRGB*

*IEC 62087: 2011. Methods of measurement for the power consumption of audio, video and related equipment*

*IEC 62301:2011. Household electrical appliances — Measurement of standby power*

*IEC 62623:2012. Desktop and notebook computers — Measurement of energy consumption*

Copies available from:  
International Electrotechnical Commission  
3, Rue de Varembe  
P.O. Box 131 CH — 1211 Geneva 20  
Switzerland  
<http://www.iec.ch>

Phone: +41 22 919 02 11

Fax: +41 22 919 03 00

**UNIFIED EXTENSIBLE FIRMWARE INTERFACE FORUM**

*Advanced Configuration and Power Interface Specification Revision 5.0 (December 6, 2011)*

*Advanced Configuration and Power Interface Specification Revision 5.0 Errata A (November 13, 2013).*

Copies available from:  
UEFI Forum Administration  
3855 SW 153rd Drive  
Beaverton, OR 97003 USA  
<http://www.uefi.org>  
Phone: +1 503-619-0864  
Fax: +1 503-644-6708

**UNITED STATES DEPARTMENT OF ENERGY**

*International Efficiency Marking Protocol for External Power Supplies Version 3.0 (September 2013).*

Copies available from:  
 US DOE  
 1000 Independence Ave. SW  
 Washington DC 20585  
 202-586-5000  
[www.energy.gov](http://www.energy.gov)

UNITED STATES ENVIRONMENTAL  
 PROTECTION AGENCY — ENERGY STAR

*ENERGY STAR Program Requirements for Computers*, subparts *Eligibility Criteria Version 6.1 (Rev. March-2016)* and *Final Test Method (Rev. March-2016)*.

*ENERGY STAR Program Requirements for Displays*, subpart *Final Test Method (Rev. Sep-2015)*.

Copies available from:  
 US Environmental Protection Agency  
 Climate Protection Partnership  
 ENERGY STAR Programs Hotline & Distribution  
 (MS-6202J)  
 1200 Pennsylvania Ave NW  
 Washington, DC 20460  
[www.energystar.gov](http://www.energystar.gov)

LOCAL MANDATE DETERMINATION —  
 Government Code Section 11346.5(a)(5)

The proposed regulations will not impose a mandate on local agencies or school districts.

HOUSING COSTS — Government Code Section  
 11346.5(a)(12)

The proposed regulations would not have a significant effect on housing costs.

FISCAL IMPACTS — Government Code  
 Section 11346.5(a)(6)

Cost or Savings to Any State Agencies. No public agency would necessarily incur costs or savings in reasonable compliance with these regulations. Any costs or savings to these entities would be as a result of the regulations' effect on the cost of purchasing appliances affected by these regulations and the energy savings that result from operating appliances affected by these regulations. The proposed regulations are estimated to increase the purchase cost of computers and computer monitors that a government entity needs. These incremental costs to purchases would most likely arise in fiscal year July 1, 2018–June 30, 2019 and the subsequent

five years. The incremental costs of the computers and computer monitors are more than offset by the resulting energy savings in the form of reduced utility bills. The payback is estimated to be over two years, easily offsetting the incremental cost. This fact is reflected in attachment B where the annual net impact shows savings for every year analyzed. The savings increase after the first year as incremental costs are already paid for and savings continue to be reaped. The incremental cost is estimated to be \$5 per computer monitor, \$9.55 for Tier 1 and \$14.00 for Tier 2 per desktop computer, \$1.00 per notebook, and \$13 per small-scale server or workstation computers with annual electricity savings of \$4.43 per computer monitor, \$4.86 for Tier 1 and \$7.86 for Tier 2 per desktop computer, \$0.58 per notebook, \$3.84 per small-scale server, and \$5.98 per workstation computer. These incremental costs are not targeted specifically at state or local governments, but rather more broadly at what can generally be offered for sale to any entity in California.

With regard to the cost to the Commission to implement, the regulations do not apply until 2019 and would not have any potential for fiscal impact until then. Once the regulations are in effect, the Commission is not expected to incur any additional enforcement or compliance costs as enforcement of appliance efficiency standards is self-funded through fines levied against entities that violate the standards, pursuant to Public Resources Code section 25402.11. Additionally, the Commission expects to be able to shift currently available resources to enforcement of these regulations, obviating the need to acquire any additional resources.

The clarification regarding signage displays is not expected to have any effect, as it just clarifies existing law. The exemption added to the battery charger systems standards is not expected to result in any costs or savings to state agencies.

Cost to Local Agencies or School Districts Requiring Reimbursement. As discussed above, no public agency would necessarily incur any cost or savings in reasonable compliance with these regulations. As generally applicable requirements, the proposed regulations will not impose on local agencies or school districts any costs for which Government Code sections 17500–17630 require reimbursement.

Other Nondiscretionary Cost or Savings Imposed Upon Local Agencies. As generally applicable requirements, the proposed regulations will not result in any other nondiscretionary cost or savings to local agencies.

Cost or Savings in Federal Funding to the State. The proposed regulations will not result in any cost or savings in federal funding to the state.

**INITIAL DETERMINATION RE SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE — Government Code Sections 11346.3(a), 11346.5(a)(7), and 11346.5(a)(8)**

The Commission has 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. This determination is based upon evidence in the record, including the Standardized Regulatory Impact Assessment (SRIA) conducted for this proceeding.

**STATEMENT OF THE RESULTS OF THE STANDARDIZED REGULATORY IMPACT ASSESSMENT — Government Code Section 11346.5(a)(10)**

Model results show that, relative to a baseline, the Commission’s proposed standards would increase gross state product (GSP) by 0.014% in 2030 and create slightly more than 12,000 jobs from 2018–2030. The proposal is also expected to result in modest increases in household income of 0.016% to 0.044%. Lower-income households that spend a higher proportion of their income on electricity are expected to benefit slightly more than other household groups.

Creation Or Elimination Of Jobs Within California. The proposed efficiency standards are expected to have a moderate positive impact on overall job creation. Approximately 5,500 additional jobs are expected to be created relative to the baseline in 2030. The cumulative change over the analysis period, 2018– 2030, is expected to be slightly greater than 12,000 jobs created.

The proposal is not expected to result in the elimination of jobs in the economy. Expenditure shifting by households may result in some short term employment adjustments, although the aggregate effect, as measured by the model, is positive across sectors. Employment *growth* in the electricity sector may be slighter lower than in the baseline due to lower electricity demand.

Creation Of New Businesses Or Elimination Of Existing Businesses Within California. In addition to the direct net benefits that energy efficiency standards have for California businesses, the proposal also improves overall business activity in the state. The net savings are redistributed as a general stimulus throughout the economy. The results suggest that the policy will have very modest positive impact on aggregate business creation.

Lower electricity expenditures resulting from the efficiency standards are expected to have a modest adverse impact on the electricity sector. Sectoral results

confirm this, showing a less than 2% reduction in electric power sector output in 2030, relative to the baseline. This result would be expected with any large-scale energy efficiency policy affecting the electric power sector. The slower growth in the electric power sector is partially muted by an overall increase in economic activity resulting from the policy; however, the net sectoral impact is still slightly negative. Nonetheless, there is no expectation that this would eliminate businesses in California.

Competitive Advantages Or Disadvantages For Businesses Currently Doing Business Within California. The regulation would apply to all businesses manufacturing the regulated products inside and outside of the state, and selling computers and monitors to California customers. It is therefore not anticipated that the regulation will have an adverse effect on the competitiveness of California businesses. In fact, the BEAR model results suggest that the macroeconomic stimulus effect from the proposal will induce a modest increase in the state’s aggregate export volume.

Increase Or Decrease Of Investment In California. The economic assessment predicts a modest increase in investment as a result of the proposed regulation. This result is consistent with the expected increase in economic activity resulting from the large electricity savings. Investment impact decreases over time as the incremental net savings from the proposed standards level off. This is different than GSP and employment, which grows over time relative to the baseline, due to economy-wide multiplier effects.

Incentives For Innovation In Products, Materials, Or Processes. The proposed efficiency standards are by design meant to promote innovation for the regulated product categories. While a number of technically feasible compliance options are currently available, the standards are also likely to incentivize manufacturers to consider other lower cost options for delivering energy efficiency benefits.

Due to the state’s large market share of regulated products, there is the possibility that the Commission’s proposed standards would compel manufacturers to incorporate the higher efficiency technologies into similar products sold outside of the state. It is also possible that the state’s proposal could serve as a template for federal computer efficiency standards.

Benefits Of The Regulations. The Commission’s computer and computer monitor efficiency proposal is expected to provide substantial energy savings to California consumers. Net direct savings to individuals and businesses in the state are expected to be approximately \$3.5 billion cumulatively from 2018 to 2030, or \$350 million per year once the product stock has fully turned over.

The macroeconomic impact results show that, relative to the baseline, economic growth, employment, enterprise output, and investment all increase due to the electricity savings associated with the proposed efficiency standards. Employment and enterprise output increase at a slightly faster rate than GSP due to the fact that expenditure shifting occurs from relatively low employment electricity sectors to higher employment service sectors. All macroeconomic effects are modest, relative to the size of the California economy, which is consistent with the magnitude of the stimulus generated by the standards. The proposed standards are also expected to modestly reduce greenhouse gas and criteria air pollutant emissions in the electric power sector.

The proposed computer standards will help protect the health and welfare of California residents and the state's environment by saving about 1,636 gigawatt-hours per year calculated using the Energy Start dataset as a baseline, resulting in greenhouse gas emission reductions of 0.513 million metric tons of carbon dioxide equivalent per year and will save consumers about \$262 million in electricity bills after the stock turnover. Regulating computer monitors will save about 696 gigawatt-hours per year statewide, will result in greenhouse gas emission reductions of 0.218 million metric ton of carbon dioxide equivalent, and will save about \$111 million after existing stock is replaced.

#### Summary Of Comments Submitted By Department of Finance And Responses To Those Comments.

Comment #1: The required discussion of the baseline is incomplete without specifying how many units will be sold that would meet the efficiency standards even without the proposed regulations.

Response: The average energy savings presented in Chapter 2 of the SRIA account for the fact that a number of computers are naturally complying with the proposed standards and therefore do not contribute to the energy savings. However, the Commission agrees that this is not clearly stated in the SRIA and has revised Chapter 2 to explain the calculations more clearly. The Commission also adjusted the total direct compliance costs in the final staff report to account for already-compliant products. This adjustment is not reflected in the SRIA, as it is within the range of alternatives analysis. More details can be found in the final staff report that is expected to be published in September and will be available on the Commission's website.

Comment #2: The discussion of impacts must include how users might respond to changes in their computer equipment, and how the regulation will be enforced. The analysis must specify whether the enforcement costs of verifying if manufacturers and retailers are implementing the new regulation are included, and if not included, must include a discussion of such costs.

Response: The Commission diligently reviewed many studies but couldn't find any information to determine conclusively how a user would respond to changes in computer equipment. Currently, we are working with the California Plug-Load Research Center at the University of California at Irvine, where they are conducting research studies on the user's behavior with regard to a computer's energy-saving settings. The Commission revised its SRIA in Chapter 3 to clarify assumptions made regarding user behavior.

The Commission has reviewed a few studies on compliance with efficiency standards, but these studies do not provide conclusive information about the compliance rate once the regulations are in effect. The Commission revised Chapter 3 of its SRIA to clarify that the energy-savings numbers assume 100 percent compliance.

The Commission is not expected to incur any additional enforcement or compliance costs, as enforcement of appliance efficiency standards is self-funded through fines levied against entities that violate the standards. The Commission revised its SRIA in Chapter 5 to clarify this point.

Comment #3: There may also be particular impacts on certain groups. Older individuals are more likely to use desktop computers (which have larger cost increases under the proposed regulations), as do low-income households who prioritize cost over convenience in computer usage. While the lifetime energy savings for desktops and monitors more than compensate for the increased up-front costs, the up-front costs may present a burden for low-income and elderly households. The exemption of small manufacturers from the regulation could give them an advantage versus larger manufacturers. These impacts should be discussed to the extent possible.

Response: The Commission acknowledges that the proposed regulations will likely affect the purchase price of regulated computers and computer monitors, including those in lower price range. The Commission staff conducted research to analyze the effect of the regulation on specified groups, which is included in chapter 3 of the SRIA. The Commission did not find information to suggest how older or low-income individuals make purchase decisions differently than other groups. All consumers ultimately benefit from the proposed regulations and the market is expected to naturally adjust to offer low cost products catered to the aforementioned groups. Furthermore, the estimated incremental cost is based on today's cost and by the time the regulations take effect, the costs are expected to be lower.

With regard to small manufacturers, the proposed efficiency regulations present both an advantage and a disadvantage. On the one hand, small manufacturers are

(partially) exempt from the standards. On the other hand, small manufacturers are unable to achieve economies of scale compared to the larger manufacturers. Moreover, small manufacturers usually target a different group of customers than larger manufacturers by offering highly customized computers, and therefore, small manufacturers are not in direct competition with larger manufacturers. Finally, the exemption for small manufacturers only applies up to a specified number of units. If the manufacturer makes more than that number of units, those units must comply with the efficiency standards.

The analysis did not change significantly due to Department of Finance’s comments. To help clarify the calculations for the average energy savings, an example was added comparing absolute energy savings to the energy savings when adjusted for the products that are compliant with the proposed standards without the regulations. A discussion was also added indicating that the analysis assumes that users do not change the power management setting on regulated products and that actual energy savings may be different if users change the default power management settings.

It was also clarified that the compliance rate was assumed to be 100 percent for the purpose of this economic analysis, whereas other appliance regulations typically have a 60 to 90 percent compliance rate. And the discussion regarding cost to the Commission to enforce these new standards was clarified to explain that costs would be negligible as current resources used to enforce other appliances are expected to be shifted to enforcement of these standards.

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS — Government Code Section 11346.5(a)(9)**

A representative business would incur approximately \$600 in costs per basic model associated with ensuring each of their products complies with these regulations. These costs would include testing their product to ensure it meets the applicable standard and certifying in our database the performance characteristics of their product. No cost impacts are expected from the signage displays clarification or the battery charger systems exemption.

**BUSINESS REPORT — Government Code Sections 11346.5(a)(11) and 11346.3(d)**

The proposed regulations impose new data reporting requirements on manufacturers for computers and computer monitors. The cost of certification has recently been reduced through improvements to the certification

process and new streamlined database. An estimated \$1,000 per year per manufacturer is expected for data reporting purposes. This equates to 2 staff–days from each manufacturer at a cost of \$500 per staff–day. The cost is expected to be annual as computer manufacturers and computer monitor manufacturers typically redesign their products each year, thereby triggering the need for data submittal. Signage displays are already required to be certified to existing standards previously adopted by the Commission. No new reports would be required from the battery charger exemption change.

It is necessary for the health, safety, or welfare of the people of the state that these regulations apply to businesses. As discussed above, improving energy efficiency of appliances sold in California is an important state goal with public health and safety and environmental benefits.

**SMALL BUSINESS IMPACTS —1 California Code of Regulations Section 4(a) and (b)**

The Commission has determined that these regulations will affect small business. These regulations would affect businesses, including those independently owned and operated and not dominant in their field of operation, involved in manufacturing computers and computer monitors, as well as businesses involved in retail and wholesale trade. While some of the affected small businesses will be exempted from the bulk of the new regulations through the small volume manufacturer exemption, they would still be subject to power management requirements for applicable products. Thus, small businesses would be legally required to comply with the regulations.

Additionally, small businesses would derive a benefit from the enforcement of these regulations. Small businesses, like other businesses that use computers and computer monitors, are expected to benefit from the anticipated electricity savings resulting from the efficiency standards. Like other business enterprises, small businesses will also incur an additional cost when purchasing products covered under the standards. The net effect is expected to be an overall savings in electricity spending.

Small businesses are not expected to be affected by the signage display clarification, as it reflects existing law. Small businesses may benefit from the battery charger systems exemption, as manufacturers of the particular products exempted would not be required to comply with the battery charger systems requirements.

**ALTERNATIVE STATEMENT — Government Code Section 11346.5(a)(13)**

The Commission must determine that no reasonable alternative considered by the agency, or that has other-

wise 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.

CONTACT PERSON — Government Code  
Section 11346.5(a)(14)

Inquiries concerning the proposed regulations should be directed to Harinder Singh at [Harinder.Singh@energy.ca.gov](mailto:Harinder.Singh@energy.ca.gov) or (916) 654-4091 for computer monitors, signage displays, and battery chargers, and to Soheila Pasha at [Soheila.Pasha@energy.ca.gov](mailto:Soheila.Pasha@energy.ca.gov) or (916) 657-1002 for computers. The designated backup contact person is Kenneth Rider, who can be reached at [Ken.Rider@energy.ca.gov](mailto:Ken.Rider@energy.ca.gov) or (916) 654-5006.

COPIES OF THE INITIAL STATEMENT OF  
REASONS AND EXPRESS TERMS — Government  
Code Section 11346.5(a)(16)

The Commission has prepared an initial statement of reasons for the proposed regulations, has available all the information upon which this proposal is based, and has available the express terms of the proposed action. To obtain a copy of any of this information, please visit the Commission's website at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-AAER-02> or contact Angelica Romo-Ramos at [Angelica.Romo@energy.ca.gov](mailto:Angelica.Romo@energy.ca.gov) or (916) 654-4147. Additionally, all of the documents incorporated by reference are available for viewing at the Commission at 1516 Ninth Street, Sacramento, California 95814.

AVAILABILITY OF SUBSTANTIAL CHANGES  
TO ORIGINAL PROPOSAL FOR AT LEAST 15  
DAYS PRIOR TO AGENCY  
ADOPTION/REPEAL/AMENDMENT OF  
RESULTING REGULATIONS — Government Code  
Section 11346.5(a)(18)

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the Commission considers changes to the proposed regulations pursuant

to Government Code section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Commission adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF  
REASONS — Government Code  
Section 11346.5(a)(19)

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared by visiting the Commission's website at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-AAER-02> or by contacting Angelica Romo-Ramos at [Angelica.Romo@energy.ca.gov](mailto:Angelica.Romo@energy.ca.gov) or (916) 654-4147.

INTERNET ACCESS — Government Code Sections  
11346.4(a)(6) and 11346.5(a)(20)

The Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, the Economic and Fiscal Impact Statements, and the Standardized Regulatory Impact Assessment, as well as many other documents in the rulemaking file, have been posted at: <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=16-AAER-02>.

NEWS MEDIA INQUIRIES

News media inquiries should be directed to Media and Public Communications Office at (916) 654-4989, or by e-mail at [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov).

**GENERAL PUBLIC INTEREST**

**CALIFORNIA BUREAU OF REAL  
ESTATE**

NOTICE OF MODIFIED TEXT FOR CRITERIA  
FOR REHABILITATION — SECS.2911 AND 2912  
ORIGINAL PUBLICATION ON  
OCTOBER 30, 2015

NOTICE IS HEREBY GIVEN

The Commissioner ("Commissioner") of the Bureau of Real Estate ("CalBRE") proposes to amend Sections

2911 and 2912 of the Regulations of the Real Estate Commissioner (Title 10, Chapter 6 of the California Code of Regulations) (“the Regulations”) after considering all comments, objections, and recommendations regarding the proposed action. This Notice is a republication, addressing an amendment to the proposal and affording an additional opportunity for public comment in consideration of an error in the previously published email contact address. Publication of this notice commences a 15-day public comment period.

#### AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code (“the Code”) authorizes the Commissioner to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Code Sections 10000 et. seq.). This proposal amends Sections 2911 and 2912 of the Regulations, in conformance with Section 482(a) and (b) of the Code.

#### PUBLIC HEARING

No request for a public hearing was received prior to 15 days before the close of the initial comment period.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner addressed as follows:

Regular Mail

Bureau of Real Estate  
Attn: Daniel E. Kehew, Sacramento Legal Office  
P.O. Box 137007  
Sacramento, CA 95813-7007

Electronic Mail

CalBRERegulations@dca.ca.gov

Facsimile

(916) 263-8767

**Comments may be submitted until 5:00 p.m.,  
Monday, September 26, 2016.**

#### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW — SUMMARY OF CHANGE IN RESPONSE TO PUBLIC COMMENT

Among the comments received on the original proposal, one comment noted an unintended possible con-

sequence in subdivisions 2911(a)(1)(C) and 2912(a)(1)(C) of the proposed regulations. These subdivisions address the start date of a minimum two-year period during which a respondent must show a “clean record” as part of a demonstration of rehabilitation. In the original proposal where a respondent was not subject to incarceration, probation, or parole, the start of the two-year period was the date on which the respondent’s most recent criminal conviction or license discipline order has been entered.

The comment received noted that the same unlawful act or acts may initiate both a criminal conviction and license discipline orders, and that the due process afforded for each of those events is often sequential, rather than overlapping. The result could be a significant delay following the actual wrongdoing and the start of the two-year waiting period.

To address this concern, this modified proposal adds this sentence to both sections 2911(a)(1)(C) and 2912(a)(1)(C): “*Where the same act or acts resulted in both a conviction and an order or orders, the date of the earliest conviction or order will commence the two year period.*”

This addition is intended to mitigate the issue of sequentially occurring disciplinary actions by focusing on the result of the first disciplinary process, whether it was criminal or of a licensing nature.

Alternatively, the option of commencing the two-year waiting period on the date of the unlawful acts was considered. Oftentimes, disciplinary is based upon an act that cannot be dated, or on a series of actions for which there is no specific final date. Also, where significant due process has been afforded a respondent, it may well be questioned whether the respondent is engaging in rehabilitative behavior prior to the imposition of discipline. Thus, the choice of the earliest conviction or order is a more easily established and reliable date for assessing actual rehabilitation.

#### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW — AS ORIGINALLY PUBLISHED

Sections 2911 and 2912 of the Regulations both explicitly state that they originate in Business and Professions Code (“the Code”) section 482. That statutory section reads:

*“Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:*

*(a) Considering the denial of a license by the board under Section 480; or*

*(b) Considering suspension or revocation of a license under Section 490.*

*Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.*” [Code section 482.]

CalBRE’s resulting Criteria, embodied in the present versions of sections 2911 and 2912, largely mirror one another.<sup>1</sup> Each section provides a list of actions that an applicant or licensee may have taken during a specified time period, each of which would be an additional indicator that the applicant or licensee has overcome the issues that led to their conviction(s).

The Criteria do not function as a “scorecard,” with satisfaction of some specific number or combination of conditions resulting in a favorable decision for the applicant or licensee. Instead, the applicant or licensee is encouraged to accomplish and prove to the Commissioner as many of these conditions as may apply to his or her own situation. Then, as indicated in the final sentence of the statute quoted above, the Commissioner takes all competent evidence of rehabilitation into consideration. That evidence is weighed against the evidence regarding the conviction(s) or act(s) that underlie the application denial or licensing discipline.

The core of each regulation has remained unchanged for decades, although small amendments have been made. Most recently, in 2010, the Commissioner added subdivisions (o) and (p) to section 2911 in response to the adoption of the SAFE Act (Code section 10166.01 et seq.), which imposed a national standard relating to licensing of mortgage loan originators.

This proposal makes the following amendments to the existing criteria:

- Adds language allowing consideration of the nature and severity of the applicant’s or licensee’s conviction(s) or act(s). The lack of such language was highlighted by *Singh v. Davi* (211 Cal.App.4th 141 (2012)), precipitating this proposal.
- Adds language to make explicit the holding of *In re Gossage* (23 Cal.4th 1080 (2000)) regarding the appropriate date at which rehabilitation begins.
- Adds language ensuring that the applicant or licensee has not retained funds that belong to a harmed party, even where the harmed party cannot be located.
- Eliminates unnecessary limitations on the use of expungement to demonstrate rehabilitation.

<sup>1</sup> Because the two existing Criteria for Rehabilitation sections largely duplicate one another, most of the amendments of this proposal are word-for-word duplicated in both sections. Rather than repetitively address sections 2911 and 2912, this discussion will distinctly note where only one of the two regulations sections is being amended.

- Makes explicit the statutory requirement [Code section 482] of “competent” evidence — direct documentary evidence and impartial testimony from persons other than the applicant/licensee — to support factual findings of rehabilitation.
- Adds language in section 2911(o) and (p), in order to conform with the statutory language and intent of Code section 10166.051.

#### DETERMINATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Commissioner has concluded that these are the only State of California regulations relating to the subject of rehabilitation for those subject to denial of a real estate license application or petition, or rehabilitation where a licensee is subject to license discipline.

#### PURPOSE, BENEFITS, AND GOALS OF THIS AMENDMENT

CalBRE’s statutorily stated purpose is public protection, and the Criteria for Rehabilitation play a key role in service of that purpose. Where a licensee or applicant with a criminal record comes before the Real Estate Commissioner, seeking the benefit of continued licensure or a new license — and the significant level of public trust that license entails — the Real Estate Commissioner must ensure that the risk to the public is minimal. The Criteria codify a clear standard of post-conviction behaviors that give strong indicators of a person’s capacity not just to behave well, but to atone for wrongdoing and rebuild the trust of his or her community.

The need for amendment was precipitated by the holding in *Singh v. Davi* (211 Cal.App.4th 141 (2012)), which highlighted a specific weakness in the existing Criteria. Practical experience has identified other problematic issues in the Criteria that should be addressed. This amendment will correct all those issues. Candidates for rehabilitation will have a clearer “road map” to licensure, and those who cannot meet the strengthened standard will be subject to license discipline or denial of their application. Both these results will generate greater public protection.

#### NECESSITY OF THIS AMENDMENT

While the *Singh* decision stands, uncorrected by regulatory action, the Real Estate Commissioner cannot

consider the nature and severity of the respondent's offenses when determining whether the rehabilitation presented is sufficient to protect the public. The most egregious of felonies is equivalent to a misdemeanor, and the same is true in reverse.

This reality for CalBRE stands in contrast to the standard employed by most other licensing bodies in California<sup>2</sup>, which include provisions allowing consideration of the nature and severity of the crime(s) and/or act(s) committed by the applicant or licensee. When surveying the standards applied by other licensing bodies, CalBRE staff noted another protection embodied in those Criteria, specifically, the Contractors State Licensing Board's incorporation<sup>3</sup> of the *In re Gossage* holding regarding the date upon which rehabilitation begins. *In re Gossage* is also relevant and applicable to the public protection function of CalBRE. That additional protection is incorporated into this proposal.

#### AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date CalBRE adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

#### AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from the Sacramento offices of CalBRE. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. These documents are also available at CalBRE's website at [www.bre.ca.gov](http://www.bre.ca.gov). As re-

<sup>2</sup> Some examples: The Medical Board addresses the nature and severity of the crime in its Regulations at 16 CCR 1309(a); the Board of Professional Engineers and Land Surveyors at 16 CCR 418(a)(1); the Contractors State Licensing Board at 16 CCR 869(a)(2)(A). One notable exception is the Bureau of Real Estate Appraisers ("BRE"), whose Criteria for Rehabilitation appear in the California Code of Regulations, Title 10, Section 3723. BRE's Criteria were modeled on CalBRE's Criteria and suffer the same fault identified by *Singh*.

<sup>3</sup> See 16 CCR 869(a)(1)(A) and (B).

quired by the Administrative Procedure Act, CalBRE's Sacramento Legal Office maintains the rulemaking file. The rulemaking file is available for public inspection at the Bureau of Real Estate, 1651 Exposition Boulevard, Sacramento, California.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commissioner must determine that no reasonable alternative he considered, or that has otherwise been identified and brought to the attention of CalBRE, 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.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT (Pursuant to Government Code Section 11346.3(b))

The Commissioner has conducted an Economic Impact Assessment, and that document is relied upon in reaching these results:

- The proposal does not affect the creation or elimination of the number of jobs available within the State of California. The proposal only relates to individuals' eligibility for licensure.
- The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California.
- The proposal does not affect the expansion of businesses currently doing business within the State of California.
- The proposal will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. The proposal directly impacts those individuals already subject to license discipline or denial of an application under the Real Estate Law. Indirectly, the public will benefit via a strengthened public protection standard.

#### INITIAL DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Will have no fiscal impact on the Bureau of Real Estate. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost nor impose a mandate (nondiscretionary cost or savings) on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. (Statements of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost or savings to any state agency as well as federal funding to the state. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

EFFECT ON SMALL BUSINESS

The Commissioner has determined that there is no fiscal impact to small businesses resulting from this proposed regulatory amendment because the amendments serve only to clarify and reinforce post-conviction standards for real estate licensees and license applicants, rather than impose a substantial change in those standards.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 263-8681, or via email at [CalBRERegulations@dca.ca.gov](mailto:CalBRERegulations@dca.ca.gov). The backup contact person is Mary Clarke at (916) 263-7303.

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT  
CONSISTENCY DETERMINATION NO.  
1653-2016-002-001-R3

**Project:** Stemple Creek Channel Adjustment  
**Location:** Mann County  
**Applicant:** Elise Suronen  
**Notifier:** Mann Resource Conservation District

**Background**

Project Location: The Stemple Creek Channel Adjustment project, (Project) is located at 1695 Fallon Road, Petaluma, CA, 94955, at a property owned by Scott Murphy, Assessor Parcel Number (APN), 100-070-23. The project site is generally represented by latitude 38° 15' 29.5" N and longitude -122° 51' 03.1" W. The Project will affect Stemple Creek which supports populations of California red-legged frog (*Rana draytonii*), western pond turtle (*Actinemys marmorata*), Steelhead Trout (*Oncorhynchus mykiss*), and California freshwater shrimp (*Syncaris Pacifica*). Stemple Creek also supports common native aquatic organisms.

Project Description: Elise Suronen (Applicant), representing Marin Resource Conservation District (MRCD), proposes to enhance or restore habitat within Stemple Creek to provide a net conservation benefit for California red-legged frog, western pond turtle, Central California Coast Steelhead and California freshwater shrimp. The Project entails removing riprap with a backhoe/excavator grapple over a 1,500 square foot area. Once the rocks have been removed the area will be shaped and smoothed to create an inset floodplain that will conform to upstream and downstream elevations. The rock riprap has been in the channel for decades, prior to the current landowner, and is speculated to have been placed as a rock ford crossing. The position, size, and amount of rock riprap has caused the channel to avulse to river left (as viewed looking downstream). The low flow channel has shifted and high flows are deflected towards the opposite downstream streambank. This has caused bank instability on the downstream opposite streambank resulting in excessive fine sediment delivery, constrained fish passage through the avulsed stream section, and has prevented the formation of riparian canopy and stable undercut banks on the stream margin along the rock riprap area.

The opposite streambank where scour has occurred and the upper floodplain utilized for equipment access will be revegetated with native riparian trees and

shrubs. Conservation benefits are proposed by allowing natural geomorphic stream processes to occur, reducing fine sediment delivery and planting willows to develop a riparian corridor. Natural geomorphic processes will occur once the rock is removed to allow the low flow, bankfull flow, and high flow storm events to occupy appropriate width and depth dimensions that have been constrained by the 1,500 square feet of the rock riprap in the channel. Fine sediment delivery will be reduced by eliminating flow deflections from the rock riprap on to the opposite bank and through the proposed riparian plantings that will provide root strength and bank stability. Riparian functions will also be improved from the establishment of a riparian canopy.

**Project Size:** The total area of ground disturbance associated with the Project is approximately 0.04 acres and 130 linear feet. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects, or its equivalent, and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15333).

**Project Timeframes:**

Start date: September 2016

Completion date: October 2016

Work window: September 1–October 15

**Water Quality Certification Background:** The proposed Project meets eligibility requirements of the State Water Resources General 401 Water Quality Certification for Small Habitat Restoration Projects, or its equivalent. The US Army Corps of Engineers has determined that they will not issue a federal Clean Water Act section 404 permit since a fill discharge will not result from this Project, thus, the Clean Water Act section 401 permit is not triggered nor required. Hence, based on technical review of the application, Regional Water Board staff has determined that the proposed discharge qualifies under waiver category, “Minor Dredging and Fill Operations,” under Regional Water Board Resolution R1–2012–0099, *Policy for Waiving Waste Discharge Requirements for Specific Types of Waste Discharge* (Categorical Waiver Policy). The Project is consistent with the North Coast Region’s Water Quality Control Plan for the North Coast Region (Basin Plan) and meets the requirements of the Categorical Waiver Policy. This Project has been assigned Waste Discharge Identification (WDID) No. 1B16645WNSO and Electronic Content Management Identification (ECM PIN) No. CW–825284.

Regional Water Board staff determined that the Project may proceed under the Waiver. 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 July 28, 2016, the Director of 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 (HRE) 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 August 2, 2016, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z–2016–0802–01) on August 12, 2016. 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 HRE 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 nonhabitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order; (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, or its equivalent. In this case, the Project is eligible under the waiver category, “Minor Dredging and Fill Operations,” under Regional Water Board Resolution R1–2012–0099, *Policy for Waiving Waste Discharge Requirements for Specific Types of Waste Discharge*.

**Avoidance and Minimization Measures**

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4) include, but are not limited to the following:

**Season Work Window.** Work in the stream channel will be confined to the period of June 15 through October 15.

**No Equipment on the Wet Bed of the Creek.** Equipment will not be operated in wetted areas including but not limited to ponded, flowing, or wetland areas.

**Dry Weather Restriction.** Excavation and grading activities will only occur in dry weather periods.

**Breeding Bird Survey Before Commencement.** If construction, grading, or other project-related improvements are scheduled during the nesting season of protected raptors and migratory birds (typically Febru-

ary 15 to August 15 for small bird species such as passerines; February 1 through July 31 for spotted owls), a focused survey for active bird nests will be conducted by a CDFW approved Qualified Biologist (as determined by a combination of academic training and professional experience in biological sciences and related resource management activities) within 7 days prior to the beginning to project-related activities. The results of the survey will be submitted to CDFW. If active nests are found, the Applicant will consult with CDFW and the United States Fish & Wildlife Service (FWS) regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the Fish & Game Code of California, section 3503. If a lapse in project-related work of 7 days or longer occurs, another focused survey and if required, consultation with CDFW and FWS, will be required before project work can be reinitiated.

**Biological Monitor On-site.** The applicant will designate a person to monitor on-site compliance with all project conditions. The monitor will have received training in special status species identification and shall have the authority to halt project activities and otherwise avoid impacts to species and or habitats.

**Invasive Species.** Applicant will conduct project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one project site and/or waterbody to another. Prevention BMPs and guidelines for invasive plants can be found on the California Invasive Plant Council's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.

Additionally the Applicant has provided supplemental documentation that sets forth measures to avoid and minimize impacts to fish and wildlife resources. The Biological Site Assessment prepared for this Project, the MRCD's Marin Coastal Watersheds Permit Coordination Program Initial Study/Mitigated Negative Declaration (adopted 11-10-2010), and the MRCD's Riparian Zone Management plan include general and specific avoidance and minimization measures that will be implemented during construction and over the years of vegetation success monitoring.

### Monitoring and Reporting

The Project is part of the 2016 Marin Coastal Watersheds Permit Coordination Program (PCP). The PCP's Riparian Zone Monitoring Plan (RZMP) was developed by University of California Cooperative Extension for Marin RCD's PCP conservation projects that are implemented in riparian areas targeted in watershed recovery efforts to control erosion and sedimentation;

increase aquatic, riparian, and upland habitat; and stabilize eroding stream channels. Overall, the RZMP provides a science-based guide to organize post-project monitoring based on site-specific objectives developed during project planning to further understand agricultural sustainability and ecosystem services. Monitoring under the RZMP has three purposes: to assess landowner value from the program, to provide reporting information to funders and regulators, and to evaluate the practices and program for future planning.

The monitoring metrics for the Project include: effectiveness monitoring using a Project Assessment Checklist that uses visual assessment of practices implemented to rapidly characterize the success of each project. Photo-monitoring points will be established and take pre-, during, and post-project photos. Landowner assessments will include a post-project implementation questionnaire and ongoing assessments of project function. Finally, validation monitoring will quantitatively monitor sediment load, streambank stability and planting survival.

The streambank protection repair includes the installation of willow stakes. The planting portion of the Project will be conducted by Point Blue Conservation Science's Students and Teachers Restoring a Watershed Program (STRAW). STRAW will install the willow stakes in late fall to early winter, once the rains have begun; therefore, no irrigation will be set up for the willow stakes. STRAW will source willow stakes from willows (*Salix* sp.) present on site and then soak the stakes before installing them to improve willow stake survival. STRAW has reviewed the Project site and has determined that at least 40 willow stakes will be installed along the banks along the south eroded bank, the north excavated bank, and other non-vegetated areas in close proximity to the Project site (for example, the bank just below the confluence of the tributary and Stemple Creek). If more stakes are necessary to provide bank stabilization, then more stakes will be installed. In accordance with the PCP, survival data is collected annually for three years and replanting is usually done if the survival rate is less than 80% (80% of 40 stakes is 30 living willows).

Native willow stakes installed as part of the planting plan must meet success criteria of 80% survival after three (3) years. The Applicant shall maintain livestock exclusion BMPs to exclude livestock appropriately to ensure success criteria are met. Annual reports will be submitted by June 30 of each year until year three (3).

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects, or an equivalent, requires that an as-built Notice of Completion (NOC) to be submitted by the applicant no later than 30

days after the Project has been completed. A complete NOC includes as a minimum:

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

The NOC shall demonstrate that the Project has been carried out in accordance with the Project description as provided in the applicant’s NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the Waiver. Document submittals shall be made electronically to: [timothy.dodson@wildlife.ca.gov](mailto:timothy.dodson@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 & G. Code, § 1654, subd. (c).)

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

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

**PRIORITIZATION: CHEMICALS FOR CONSULTATION BY THE CARCINOGEN IDENTIFICATION COMMITTEE**

This notice announces the beginning of a 45–day public comment period on the five chemicals or chemi-

cal groups listed below. These chemicals will be discussed at the November 15, 2016 meeting of the Proposition 65 Carcinogen Identification Committee (CIC). The CIC is the state’s qualified experts on carcinogenicity for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). The CIC will provide the Office of Environmental Health Hazard Assessment (OEHHA) with advice on the prioritization of these chemicals for possible preparation of hazard identification materials. At a later date, OEHHA will select chemicals for preparation of hazard identification materials and announce those decisions in a separate notice. **No listing decisions will be made for these chemicals at the November 15 meeting.**

OEHHA is the lead agency for the implementation of Proposition 65. The evidence of hazard used in this current round of prioritization is an epidemiologic data screen and an animal data screen. Chemicals or chemical groups passing either data screen were then subjected to a preliminary toxicological evaluation. This screening follows the procedure described in the 2004 OEHHA document, “Process for Prioritizing Chemicals for Consideration under Proposition 65 by the State’s Qualified Experts”.

The five chemicals or chemical groups are:

- Aspartame
- Asphalt and Asphalt Emissions Associated with Road Paving and Asphalt and Asphalt Emissions Associated with Roofing
- Methyl Chloride
- Type I Pyrethroids
- Vinyl Acetate

The CIC will consider these chemicals at its meeting on **Tuesday, November 15, 2016**. The meeting will be held in the Sierra Hearing Room at the CalEPA Headquarters building, 1001 I Street, Sacramento, California. The meeting will begin at 10:00 a.m. and will last until all business is conducted or until 5:00 p.m. The agenda for the meeting will be provided in an upcoming public notice published in advance of the meeting. OEHHA will send comments received on the prioritization documents for these chemicals to CIC members prior to the meeting.

Copies of the summaries of available scientific information on the chemicals and related attachments are available on OEHHA’s web site or may be requested by calling (916) 445–6900.

Interested parties may provide comment on the extent of the scientific evidence pertaining to the selection of any of these chemicals for possible preparation of hazard identification materials. **OEHHA must receive comments and any supporting documentation by 5:00 p.m. on Monday, October 24, 2016.** We encourage you to submit comments in electronic form, rather

than in paper form, Comments transmitted by e-mail should be addressed to [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov). Please include “2016 CIC Prioritization” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address: Michelle Ramirez  
 Office of Environmental Health  
 Hazard Assessment  
 P.O. Box 4010, MS-12B  
 Sacramento, California  
 95812-4010  
 Fax: (916) 323-2265  
 Street Address: 1001 I Street  
 Sacramento, California 95814

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

Comments received during the public comment period will be posted on the OEHHA web site after the close of the comment period.

**If you have any questions, please contact Michelle Ramirez at [Michelle.Ramirez@oehha.ca.gov](mailto:Michelle.Ramirez@oehha.ca.gov) or (916) 445-6900.**

**PETITION DECISION**

**BOARD OF PAROLE HEARINGS**

**RESPONSE TO PETITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO GOVERNMENT CODE SECTIONS 11340.6 AND 11340.7**

**BPH PETITION RESPONSE 2016-03**

The Board of Parole Hearings (board) received a Petition to Adopt, Amend, or Repeal a Regulation under Government Code sections 11340.6 and 11340.7 from petitioner Steven J. Kelley on July 11, 2016. In accordance with subdivision (a) of section 11340.7, this document serves as the board’s response to the petition.

The following information is provided with the response in compliance with subdivision (d) of Government Code section 11340.7:

**1. NAME OF AGENCY:**

Board of Parole Hearings

**2. PARTY SUBMITTING THE PETITION:**

Steven J. Kelley (D30828)

**3. PROVISIONS OF THE CALIFORNIA CODE OF REGULATIONS (CCR) REQUESTED TO BE AFFECTED:**

None cited.

**4. REFERENCE TO AUTHORITY TO TAKE THE ACTION:**

Petitioner cited to the Federal Administrative Procedure Act under the United States Code, title 5, section 706 and the California Government Code section 11340 and 11425.50(c) as the board’s purported authority to “provide a schedule for parole period in conformance with California Government Code 11342.590 ‘Prescriptive Standard.’” Petitioner also cites to Penal Code 5076.2 (board’s authority to promulgate regulations).

**5. REASONS SUPPORTING THE AGENCY’S DECISION:**

Petitioner requested the board repeal its “application of the Three to Fifteen year parole denials[,] . . . cease and desist the use of the Three to Fifteen year denials[,] and revert to the prior lawfully applied parole denial intervals until the time it can . . . provide a schedule for parole period in conformance with California Government Code 11342.590 ‘Prescriptive Standard.’”

**Petitioner’s request is DENIED:** As an initial matter, the board’s regulations contain no sections currently governing the lengths of time for which a hearing panel may lawfully deny parole when an inmate is found to be unsuitable at a parole consideration hearing before the board. Therefore, the board has no regulations that it could “repeal” in response to petitioner’s request. To the extent that the petition can be more broadly interpreted to include a request for the board to take any appropriate regulatory action needed to “cease and desist the use of the Three to Fifteen year denials[,] and revert to the prior lawfully applied parole denial intervals,” this would require the board to circumvent a statutory requirement through the enactment of a regulation. The board has no legal authority to grant this request.

The board’s regulations previously governing denial periods were rendered moot on November 4, 2008, when the People of the State of California approved Proposition 9, the Victim’s Bill of Rights Act of 2008, more commonly known as “Marsy’s Law.” Marsy’s Law, in part, amended Penal Code section 3041.5 to lengthen the denial periods available to hearings panels upon finding an inmate unsuitable for parole. Specifically, while previous denial periods ranged in one-year increments from one to five years, Penal Code section 3041.5, subdivision (b)(3) was amended to state:

(3) The board shall schedule the next hearing, after considering the views and interests of the victim, as follows:

(A) Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the decision denying parole are such that consideration of the public and victim’s safety does not require a more lengthy period of incarceration for the inmate than 10 additional years.

(B) Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the decision denying parole are such that consideration of the public and victim’s safety does not require a more lengthy period of incarceration for the inmate than seven additional years.

(C) Three years, five years, or seven years after any hearing is denied, because the criteria relevant to the decision denying parole are such that consideration of the public and victim’s safety requires a more lengthy period of incarceration for the inmate, but does not require a more lengthy period of incarceration for the inmate than seven additional years.

Under this amendment, hearing panels are limited to selecting parole denials only in increments of 15, 10, 7, 5, or 3 years. Thus, following the amendment of this statute, the board’s prior regulations governing parole denial periods of one to five years were rendered inoperable. Instead, upon the passage of Marsy’s Law, Penal Code section 3041.5(b)(3) governed the board’s obligations for selecting a denial period when finding an inmate unsuitable for parole.

This amendment was challenged in the California Supreme Court on the grounds that increasing the parole denial periods for unsuitable inmates violated federal Ex Post Facto laws on its face. However, on March 4, 2013, the California Supreme Court found Marsy’s Law does not violate ex post facto principles on its face, since it does not create a significant risk of prolonging an inmate’s incarceration. (*See In re Vicks* (2013) 56 Cal.4th 274.) This amendment was next challenged in the federal court on the grounds that Marsy’s Law violated federal Ex Post Facto laws as applied by the State of California. However, on February 22, 2016, the United States Court of Appeals for the Ninth Circuit ruled that the denial period amendment in Marsy’s Law did not violate the Ex Post Facto Clause as applied to California inmates, and therefore this amendment remains

constitutional and valid. (*See Gilman v. Brown* (2016) 814 F.3d 1007.)

In light of the California Supreme Court ruling in the *Vicks* case and the Ninth Circuit ruling in the *Gilman* case, Penal Code section 3041.5(b)(3) remains current, valid law and continues to govern the board’s obligations for selecting a denial period when finding an inmate unsuitable for parole. Because this is a statutory obligation, the board has no legal authority to regulate a process for hearing panels to circumvent this obligation.

Petitioner cited to the United States Code, title 5, section 706 as well as the California Government Code sections 11340, 11425.50(c), and 11342.590 as legal authority for the board to grant his request. However, none of these statutes is relevant to the request at issue. The United States Code, title 5, section 706 governs judicial review over federal agencies and has no application to state agencies. Government Code section 11340 contains the California Legislature’s findings and declarations supporting the establishment of California’s Administrative Practices Act, and does not affect parole denial periods for California inmates. Government Code section 11342.590 defines “prescriptive standard” to mean “a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means;” however, this standard is not applicable to statutes, the source of law governing parole denial periods. Finally, Government Code section 11452.50 governs the requirements for written decisions arising from administrative adjudication, and does not affect parole denial periods for California inmates. Therefore, none of these statutes provides the board with any authority to grant petitioner’s request.

Consequently, the board DENIES petitioner’s request because the board has no regulations affected by this request and no lawful authority to regulate a new process to circumvent statutory requirements.

**6. BOARD CONTACT PERSON:**

**Heather L. McCray**  
 Senior Staff Attorney  
 Board of Parole Hearings  
 P. O. Box 4036  
 Sacramento, CA 95812–4036  
 Office: (916) 322–6729  
 Fax: (916) 322–3475  
 BPH.Regulations@cdcr.ca.gov

**7. NOTICE TO INTERESTED PERSONS:**

Pursuant to subdivision (d) of Government Code section 11340.7, the board will provide a copy of this decision to the Office of Administrative Law for publication in the California Regulatory Notice Register. Any inter-

ested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the board. In submitting such a request, please reference **BPH PETITION RESPONSE 2016-03** in the request.

**DATE OF DECISION: August 10, 2016**

<p><b>SUMMARY OF REGULATORY ACTIONS</b></p>
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**REGULATIONS FILED WITH  
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.

File# 2016-0720-03  
**BOARD OF EDUCATION**  
 Course Periods Without Educational Content

This certificate of compliance rulemaking action by the State Board of Education makes permanent regulation section 1700, title 5 of the California Code of Regulations, adopted as an emergency in OAL matter No. 2016-0318-01E, relating to district recordkeeping requirements for courses without educational content and previously completed courses as set forth in Education Code sections 51228.1 and 51228.2 (enacted by Statutes 2015, chapter 703 (AB 1012)).

Title 5  
 ADOPT: 1700  
 Filed 08/30/2016  
 Effective 08/30/2016  
 Agency Contact: Hillary Wirick (916) 319-0644

File# 2016-0802-01  
**BOARD OF EQUALIZATION**  
 Property Transferred or Sold by Certain Nonprofit Organizations

The State Board of Equalization submitted this action without regulatory effect, pursuant to title 1, California Code of Regulations, section 100, to amend title 18, California Code of Regulations, section 1597 by adding a new subdivision (f)(4) to the section. New section 1597(f)(4) restates section 6018.10 of the Revenue and Taxation Code, which was enacted in S.B. 598 (Stats.2015, c. 248). Revenue and Taxation Code sec-

tion 6018.10 provides that volunteer fire departments, as defined, are exempt from sale and use tax for sales of tangible personal property, subject to specified limitations.

Title 18  
 AMEND: 1597  
 Filed 08/31/2016  
 Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0714-01  
**BOARD OF PHARMACY**  
 Vaccinations

This rulemaking action by the Board of Pharmacy establishes requirements for pharmacists who wish to independently initiate and administer vaccinations pursuant to sections 4052(a)(11) and 4052.8 of the Business and Professions Code, including training and continuing education, health care provider notification, and document retention requirements.

Title 16  
 ADOPT: 1746.4  
 Filed 08/25/2016  
 Effective 08/25/2016  
 Agency Contact: Lori Martinez (916) 574-7917

File# 2016-0719-01  
**BUREAU OF REAL ESTATE APPRAISERS**  
 Trainee License & Supervising Appraiser Responsibilities

This rulemaking by the Bureau of Real Estate Appraisers (BREA) amends section 3568 in Title 10 of the California Code of Regulations to update the requirements for trainee appraisers and the minimum qualifications for supervisors of trainees. Trainees currently must pass the residential appraisal examination to become trainees. However, this is the same examination the trainee would need to pass to become a residential appraiser, when training is completed. The examination is duplicative and therefore, this rulemaking eliminates that examination for the purpose of becoming a trainee. For supervisors of trainees, the minimum qualifications are increased, to be consistent with the requirements of Appraiser Qualifications Board (AQB), which is the federal board that sets the minimum license criteria for all states. Pursuant to Business and Professions Code section 11314, BREA must, at a minimum, meet the criteria established by AQB.

Title 10  
 AMEND: 3568  
 Filed 08/29/2016  
 Effective 10/01/2016  
 Agency Contact: Kyle Muteff (916) 341-6126

File# 2016-0719-02  
BUREAU OF REAL ESTATE APPRAISERS  
Reciprocity

This action amends licensing reciprocity standards to conform to the standards of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, as required by state statute.

Title 10  
AMEND: 3569  
Filed 08/29/2016  
Effective 10/01/2016  
Agency Contact: Kyle Muteff (916) 341-6126

File# 2016-0817-01  
CALIFORNIA POLLUTION CONTROL  
FINANCING AUTHORITY  
California ADA Small Business Capital Access  
Financing Program

In this emergency rulemaking, the California Pollution Control Financing Authority (“CPCFA”) is adopting sections 8078.8, 8078.9, 8078.10, 8078.11, 8078.12, 8078.13, and 8078.14 in title 4 of the California Code of Regulations. These sections establish the California Americans with Disabilities Act Small Business Capital Access Financing Program, which is to be administered by CPCFA’s California Capital Access Program.

Title 4  
ADOPT: 8078.8, 8078.9, 8078.10, 8078.11,  
8078.12, 8078.13, 8078.14  
Filed 08/29/2016  
Effective 08/29/2016  
Agency Contact: Bianca Smith (916) 653-5408

File# 2016-0720-02  
DENTAL BOARD OF CALIFORNIA  
Specialty Advertising

This change without regulatory effect filing by the Dental Board of California repeals sections 1054, 1054.1, and 1054.2 in title 16 of the California Code of Regulations to reflect the federal court’s ruling in *Potts v. Hamilton* (2004) 334 F. Supp. 2d 1206, which found Business and Professions Code section 651, subdivision (h)(5)(A), to be unconstitutional, and to be consistent with Senate Bill 540 (stats. 2011, ch. 385), which repealed Business and Professions Code section 651, subdivision (h)(5)(A).

Title 16  
REPEAL: 1054, 1054.1, 1054.2  
Filed 08/30/2016  
Agency Contact: Lusine Sarkisyan (916) 263-2027

File# 2016-0719-03  
DEPARTMENT OF FISH AND WILDLIFE  
Fees for Lake and Streambed Alteration Agreements

The Department of Fish and Wildlife in this action is increasing all fees in the existing fee schedule for Lake and Streambed Alteration Agreements by 129%. This increase in fees for the Lake and Streambed Alteration Program is designed to generate revenues to maintain the existing program at its current level. This rulemaking will also establish an additional fee for marijuana cultivation sites that require remediation. This action will also allow for the payment of fees by credit card.

Title 14  
AMEND: 699.5  
Filed 08/30/2016  
Effective 10/01/2016  
Agency Contact: Lance Salisbury (916) 653-3559

File# 2016-0718-01  
DEPARTMENT OF FOOD AND AGRICULTURE  
Malaysian Fruit Fly Eradication Area

This certificate of compliance makes permanent the prior emergency action (OAL file no. 2016-0126-04E) that established Los Angeles County as an eradication area with respect to the Malaysian fruit fly (“*Bactrocera latifrons*”) and added a host list due to recent findings of the pest. The effect of the establishment of the eradication area provides authority to the State to perform control and eradication activities against the Malaysian fruit fly in Los Angeles County to prevent spread of the fly to noninfested areas to protect California’s agricultural industry.

Title 3  
ADOPT: 3591.26  
Filed 08/29/2016  
Effective 08/29/2016  
Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0726-03  
DEPARTMENT OF FOOD AND AGRICULTURE  
Asian Citrus Psyllid Interior Quarantine

This certificate of compliance makes permanent the prior emergency action (OAL file no. 2016-0203-02E) that expanded the quarantine area for the Asian Citrus Psyllid (ACP) “*Diaphorina citri*” by approximately 69 square miles in the Shafter area that encompasses the boundaries of existing quarantine areas for the Bakersfield, Wasco and Buttonwillow areas of Kern County, thereby creating one total area of 1067 square miles. The effect of this action provides permanent authority for the state to perform quarantine activities against ACP within the expanded area, along with the existing regulated areas throughout the state that are already under quarantine for the ACP.

Title 3  
 AMEND: 3435(b)  
 Filed 08/29/2016  
 Effective 08/29/2016  
 Agency Contact: Sara Khalid (916) 403-6625

Title 3  
 AMEND: 1358.7  
 Filed 08/24/2016  
 Effective 08/24/2016  
 Agency Contact:  
 Jacqueline Vaughn (916) 403-6728

File# 2016-0819-01  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Oriental Fruit Fly Eradication Area

This emergency rulemaking action amends section 3591.2(a) of Title 3 of the California Code of Regulations to add Sonoma County to the list of California counties proclaimed to be eradication areas for the Oriental Fruit Fly, *Bactrocera dorsalis*. The action also amends section 3591.2(b) to specify a list of host plants of the Oriental Fruit Fly.

Title 3  
 AMEND: 3591.2  
 Filed 08/29/2016  
 Effective 08/29/2016  
 Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0819-03  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action by the Department of Food and Agriculture expands the quarantine area for the Asian Citrus Psyllid (ACP) *Diaphorina citri* by approximately 97 square miles in the Lockeford area of San Joaquin County and 120 square miles in the Escalon area of San Joaquin County. The amendment provides authority for the state to perform quarantine activities against ACP within this additional area.

Title 3  
 AMEND: 3435(b)  
 Filed 08/24/2016  
 Effective 08/24/2016  
 Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0822-04  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Denial, Suspension or Revocation of a Registration Certificate

In this File and Print Only action, the Department of Food and Agriculture (the "Department") is amending section 1358.7 in title 3 of the California Code of Regulations. Section 1358.7 sets forth procedures relating to the denial, suspension, or revocation of an egg handling or egg producer certificate of registration. In this action, the Department is correcting two citations in subdivision (f) of Section 1358.7. This filing is exempt from the Administrative Procedure Act pursuant to Food and Agricultural Code section 27561.5, subdivision (c)(2).

File# 2016-0823-02  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action by the Department of Food and Agriculture expands the quarantine area for the Asian Citrus Psyllid (ACP) *Diaphorina citri* by approximately 5 square miles in the San Luis Obispo area of San Luis Obispo County and 110 square miles in the Paso Robles area of San Luis Obispo County. The amendment provides authority for the state to perform quarantine activities against ACP within this additional area.

Title 3  
 AMEND: 3435(b)  
 Filed 08/25/2016  
 Effective 08/25/2016  
 Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0823-01  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action by the Department of Food and Agriculture expands the quarantine area for the Asian Citrus Psyllid (ACP), *Diaphorina citri* in the San Jose area of Santa Clara County by approximately 29 square miles. The amendment provides authority for the state to perform quarantine activities against ACP within this additional area.

Title 3  
 AMEND: 3435(b)  
 Filed 08/26/2016  
 Effective 08/26/2016  
 Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0721-01  
 DEPARTMENT OF JUSTICE  
 Proposition 65 Private Enforcement

This action by the Department of Justice amends regulations in title 11 of the California Code of Regulations concerning civil actions brought by private parties "in the public interest" to enforce the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Saf. Code, § 25249.5 et seq.) ("Proposition 65"). This action clarifies reporting requirements and amends settlement guidelines to further the health-protective purposes of Proposition 65.

Title 11  
ADOPT: 3205 AMEND: 3000, 3001, 3003, 3201,  
3203, 3204  
Filed 08/30/2016  
Effective 10/01/2016  
Agency Contact: Melan Noble (916) 322-0908

File# 2016-0726-01  
DEPARTMENT OF VETERANS AFFAIRS  
County Subvention

In this resubmittal of OAL File No. 2016-0426-03S, the Department of Veterans Affairs (the "Department") is amending sections 452 and 453 in title 12 of the California Code of Regulations. Specifically, the Department is amending regulations governing the State General Funded Subvention Program for County Veterans Service Offices ("CVSOs") and the Medi-Cal Cost Avoidance Program to delete and reorganize regulations, establish basic requirements for CVSOs to receive State funding, and update subvention components based on the increased amount of funding CVSOs will receive beginning in fiscal year 2015-2016.

Title 12  
AMEND: 452, 453  
Filed 08/31/2016  
Effective 10/01/2016  
Agency Contact:  
Angela Yamamoto (916) 651-3068

File# 2016-0726-02  
DEPARTMENT OF VETERANS AFFAIRS  
State Veterans Cemeteries Burial Fees and  
Disinterment

This rulemaking action by the Department of Veterans Affairs establishes new burial and disinterment fees for veterans, their spouses, and their dependent children who are eligible to be buried in a state veterans cemetery.

Title 12  
ADOPT: 463, 464 AMEND: 461  
Filed 08/30/2016  
Effective 08/30/2016  
Agency Contact:  
Angela Yamamoto (916) 651-3068

File# 2016-0726-08  
EMERGENCY MEDICAL SERVICES  
AUTHORITY  
Lay Rescuer Automated External Defibrillator  
Regulations

The Emergency Medical Services Authority submitted this action without regulatory effect, pursuant to title 1, California Code of Regulations, section 100, to re-

peal chapter 1.8 of division 9 of title 22 of the California Code of Regulations, commencing with section 100031. The action repeals all of chapter 1.8, including four articles and 13 sections, that set forth requirements related to lay rescuer use of automated external defibrillators. Justification for the repeal of chapter 1.8 is based on amendments to the Civil Code and the Health and Safety Code in S.B. 658 (Stats.2015, c. 264), which eliminated most of the requirements in chapter 1.8, thereby eliminating the statutory authority for the chapter 1.8 regulations or making the chapter 1.8 regulations either inconsistent with or duplicative of the provisions in S.B. 658.

Title 22  
REPEAL: 100031, 100032, 100033, 100034,  
100035, 100036, 100037, 100038, 100039, 100040,  
100041, 100042  
Filed 08/31/2016  
Agency Contact: Corrine Fishman (916) 431-3727

File# 2016-0801-07  
FAIR POLITICAL PRACTICES COMMISSION  
Recall Elections

This rulemaking action by the Fair Political Practices Commission amends the definition of "Committees Primarily Formed to Support or Oppose a Recall" in section 18531.5 of title 2 of the California Code of Regulations.

Title 2  
AMEND: 18531.5  
Filed 08/31/2016  
Effective 09/30/2016  
Agency Contact: Cesar R. Cuevas (916) 324-3854

File# 2016-0719-04  
OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT  
Proposition 65 Clear and Reasonable Warnings

The Office of Environmental Health Hazard Assessment (Office) repealed all sections under article 6 of chapter 1 of division 4 of title 27 of the California Code of Regulations, and replaced the repealed sections with new regulations under two new subarticles to article 6. The repealed and new regulations provide methods of transmission and the content of warnings deemed to be compliant with the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), which requires businesses to provide warnings to the public of exposures to chemicals listed by the Office that are known to cause cancer or reproductive harm. The warnings provided in the regulations are deemed to meet the "clear and reasonable" warning requirement under Proposition 65 and are considered to be safe harbor warnings for businesses to use. The new regulations will provide

warnings that are more visible, informative, and specific to identified chemical exposures than the repealed regulations, will provide more specific guidance to businesses on the content of safe harbor warnings for a wider variety of exposure situations and corresponding methods for providing those warnings than the repealed regulations, and will provide for relative responsibilities for providing warnings by businesses in the chain of commerce versus retail sellers of a given product. The operative date of the new regulations is August 30, 2018, which will allow businesses two years to transition to the new safe harbor warnings.

**Title 27**

ADOPT: 25600, 25600.1, 25600.2, 25601, 25602, 25603, 25604, 25605, 25606, 25607, 25607.1, 25607.2, 25607.3, 25607.4, 25607.5, 25607.6, 25607.7, 25607.8, 25607.9, 25607.10, 25607.11, 25607.12, 25607.13, 25607.14, 25607.15, 25607.16, 25607.17, 25607.18, 25607.19, 25607.20, 25607.21, 25607.22, 25607.23, 25607.24, 25607.25, 25607.26, 25607.27, 25607.28, 25607.29, 25607.30, 25607.31 AMEND: 25603.3(f) (renumbered to Section 25607.30), 25603.3(g) (renumbered to Section 25607.31) REPEAL: 25601, 25602, 25603, 25603.1, 25603.2, 25604, 25604.1, 25604.2, 25605, 25605.1, 25605.2  
 Filed 08/30/2016  
 Effective 08/30/2018  
 Agency Contact: Mario Fernandez (916) 323-2635

File# 2016-0715-01

**STATE TEACHERS RETIREMENT SYSTEM  
 Amendments to Format for Monthly Reports**

In this regulatory action, the Board amends section 27000 of Title 5 of the California Code of Regulations to update two documents incorporated by reference: the "CalSTRS" F496 File Specifications" and the "CalSTRS" Voluntary Deduction File Specification." The Board also amends section 27004 to change the word "member" to "participant" and remove references to fields not relevant to Cash Balance reporting.

**Title 5**

AMEND: 27000, 27004  
 Filed 08/26/2016  
 Effective 10/01/2016  
 Agency Contact: Ellen Maurizio (916) 414-1994

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN March 30, 2016 TO  
 August 31, 2016**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

**Title 2**

08/31/16 AMEND: 18531.5  
 08/17/16 AMEND: 18239  
 08/17/16 AMEND: 59000  
 07/29/16 ADOPT: 599.860  
 07/13/16 AMEND: 1859.2, 1859.102 REPEAL: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14  
 07/11/16 AMEND: 59560  
 06/27/16 AMEND: 1897  
 06/23/16 ADOPT: 17010, 17011, 17012, 17013, 17014, 17030, 17031, 17032, 17033, 17034, 17035, 17036, 17037, 17038, 17039, 17040, 17041, 17042, 17043, 17044, 17045, 17046, 17047 REPEAL: 17010, 17030, 17111, 17112, 17113, 17120, 17121, 17122, 17130, 17140, 17141, 17142, 17150, 17151, 17152, 17153, 17160, 17200, 17201, 17210, 17220, 17300, 17400, 17402, 17403, 17404, 17405, 17406, 17408, 17412, 17414, 17416, 17418, 17420, 17422, 17424, 17426, 17430, 17432, 17434, 17435, 17436, 17440, 17442, 17444, 17446, 17448, 17450, 17452, 17454, 17458, 17460, 17461, 17463, 17464, 17466, 17468, 17470, 17471, 17473, 17475, 17477, 17478, 17481, 17482, 17483, 17485, 17486, 17488, 17490, 17491, 17493, 17495, 17498, 17500,

17502, 17504, 17508, 17510, 17512, 17514, 17515, 17516, 17518, 17519, 17520, 17521, 17525, 17527, 17528, 17530, 17532, 17534, 17538, 17542, 17544, 17546, 17548, 17550, 17551, 17552, 17553, 17554, 17555, 17556, 17557, 17558, 17559, 17560, 17561, 17562, 17563, 17564, 17565, 17566, 17567, 17570, 17571, 17572, 17575, 17576, 17580, 17581, 17582, 17588, 17590, 17592	06/02/16 AMEND: 3435(b) 06/01/16 AMEND: 3435(b) 05/25/16 AMEND: 3435(b) 05/23/16 AMEND: 3435(b) 05/18/16 AMEND: 3435 05/17/16 AMEND: 3906 05/12/16 AMEND: 3435(b) 05/12/16 AMEND: 3435(b) 05/11/16 AMEND: 3435(b) 05/11/16 AMEND: 3435(b) 05/10/16 AMEND: 3435(b) 05/09/16 ADOPT: 3591.27 04/25/16 AMEND: 3435(b) 04/07/16 ADOPT: 450, 450.1, 450.2, 450.3, 450.4, 451, 452 04/05/16 AMEND: 3589
05/25/16 AMEND: 604 05/23/16 AMEND: 23000 05/19/16 ADOPT: 18750 REPEAL: 18750, 18750.1, 18750.2, 18752 04/21/16 AMEND: 599.744 04/12/16 AMEND: 18239 04/12/16 AMEND: 18616	
<b>Title 3</b>	<b>Title 4</b>
08/29/16 ADOPT: 3591.26 08/29/16 AMEND: 3435(b) 08/29/16 AMEND: 3591.2 08/26/16 AMEND: 3435(b) 08/25/16 AMEND: 3435(b) 08/24/16 AMEND: 3435(b) 08/24/16 AMEND: 1358.7 08/23/16 AMEND: 3435(b) 08/03/16 AMEND: 3435(b) 08/02/16 AMEND: 3435(b) 08/01/16 AMEND: 3435(b) 08/01/16 AMEND: 3435(b) 07/25/16 AMEND: 3024.5 07/25/16 AMEND: 3435(b) 07/25/16 AMEND: 3435(b) 07/25/16 AMEND: 3435(b) 07/21/16 AMEND: 3435(b) 07/20/16 AMEND: 3435(b) 07/07/16 AMEND: 3435(b) 07/05/16 AMEND: 3435(b) 07/05/16 AMEND: 3435(b) 06/30/16 ADOPT: 450, 450.1, 450.2, 450.3, 450.4, 451, 452 06/30/16 AMEND: 3435(b) 06/30/16 AMEND: 3435(b) 06/28/16 AMEND: 3435(b) 06/22/16 AMEND: 3435(b) 06/22/16 AMEND: 3435(b) 06/20/16 AMEND: 3591.12 06/16/16 AMEND: 3435(b) 06/13/16 AMEND: 3435(b) 06/13/16 AMEND: 3435(b) 06/08/16 AMEND: 850 06/06/16 ADOPT: 1358.7 06/02/16 AMEND: 3439(b)	08/29/16 ADOPT: 8078.8, 8078.9, 8078.10, 8078.11, 8078.12, 8078.13, 8078.14 08/09/16 AMEND: 10031, 10032, 10033, 10035, 10036 07/25/16 AMEND: 1581, 1843 07/19/16 AMEND: 5170 07/19/16 ADOPT: 1866.1 AMEND: 1844 07/05/16 AMEND: 1689.1 06/29/16 AMEND: 8034, 8035 06/15/16 ADOPT: 299 AMEND: 297, 300 06/14/16 AMEND: 5000, 5033, 5052, 5144, 5205, 5220, 5221, 5230 04/27/16 AMEND: 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11, 10170.12 04/25/16 ADOPT: 1866.1 AMEND: 1844 04/21/16 ADOPT: 610 04/13/16 ADOPT: 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7, 10091.8, 10091.9, 10091.10, 10091.11, 10091.12, 10091.13, 10091.14, 10091.15 04/12/16 AMEND: 1489 <b>Title 5</b> 08/30/16 ADOPT: 1700 08/26/16 AMEND: 27000, 27004 08/16/16 ADOPT: 80022 AMEND: 80025.3 08/03/16 AMEND: 19810 07/27/16 AMEND: 19810 07/20/16 AMEND: 30950, 30951, 30951.1, 30952, 30953, 30954, 30955, 30956, 30957, 30958, 30959 07/14/16 ADOPT: 74117 AMEND: 74110, 74112 07/05/16 REPEAL: 6100, 6101, 6102, 6103, 6104, 6105, 6110, 6111, 6112, 6113, 6115, 6116, 6120, 6125, 6126 06/15/16 REPEAL: 3820, 3822, 3823, 3824, 3831, 3840, 3860, 3870

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05/31/16	ADOPT: 11524, 11525 AMEND: 11520, 11521, 11522	08/08/16	AMEND: 2498.5
05/18/16	ADOPT: 851.5, 853.6, 853.8, 860 AMEND: 850, 851, 853, 853.5, 853.7, 855, 857, 858, 859, 861, 862, 862.5, 863, 864	07/11/16	AMEND: 2053, 2053.1, 2054, 2054.1, 2054.2, 2054.3, 2054.5, 2054.6, 2054.7, 2055, 2056, 2057, 2058, 2059, 2061, 2061.1, 2061.2, 2061.3, 2061.4, 2061.5, 2062, 2062.1, 2062.2, 2063, 2063.1, 2063.2, 2063.3, 2064, 2065, 2066, 2066.1, 2066.2, 2066.3, 2066.4, 2066.5, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2077.1, 2078, 2079, 2079.1, 2080, 2081, 2082, 2083, 2083.1, 2084, 2086, 2087, 2088, 2088.1, 2088.2, 2088.3, 2089, 2090, 2091, 2092, 2094, 2094.1, 2094.2, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2101.1, 2101.2, 2101.3, 2102, 2103, 2104 REPEAL: 2054.4, 2060
04/25/16	AMEND: 41906.5, 41906.6	06/14/16	ADOPT: 6540, 6542, 6544, 6546, 6548, 6550, 6552
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08/02/16	ADOPT: 346, 346.1, 346.2, 350.3, 350.4, 355.1, 355.2, 355.3, 355.4, 355.5, 372.8, 372.9, 376.8 AMEND: 347, 348, 352, 354, 356, 356.1, 356.2, 359, 359.1, 361.3, 364.2, 371, 371.1, 371.2, 372.6, 376.1, 376.4, 376.7, 378, 380, 383, 391.1, 392, 392.4, 392.5 REPEAL: 355	06/06/16	ADOPT: 6408, 6410, 6450, 6452, 6454, 6470, 6472, 6474, 6476, 6478, 6480, 6482, 6484, 6486, 6490, 6492, 6494, 6496, 6498, 6500, 6502, 6504, 6506, 6508, 6510, 6600, 6602, 6604, 6606, 6608, 6610, 6612, 6614, 6616, 6618, 6620, 6622
07/28/16	ADOPT: 9792.24.4 AMEND: 9792.23, 9792.24.2	05/31/16	AMEND: 2500, 2501, 2503, 2504, 2505, 2507.1, 2507.2, 2508 REPEAL: 2502
06/28/16	AMEND: 5148(c)	05/26/16	ADOPT: 6858
05/18/16	AMEND: 362, 364, 364.1	05/23/16	ADOPT: 6700, 6702, 6704, 6706, 6708, 6710, 6712, 6714, 6716, 6718
04/12/16	AMEND: 3207, 3212	05/11/16	ADOPT: 5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515, 5516
<b>Title 9</b>		05/10/16	AMEND: 2318.6, 2353.1, 2354
06/27/16	ADOPT: 4600, 4601, 4602	05/10/16	AMEND: 2353.1
06/06/16	AMEND: 811, 812, 823, 836.2, 862, 865, 865.4, 865.5	<b>Title 11</b>	
05/31/16	ADOPT: 7006.5 AMEND: 7019.1, 7020, 7024, 7029.9, 7054, 7055, 7060, 7062, 7062.3, 7122, 7143, 7157, 7164, 7164.4, 7194, 7198 REPEAL: 7004.3, 7019.2, 7022, 7029.3	08/30/16	ADOPT: 3205 AMEND: 3000, 3001, 3003, 3201, 3203, 3204
05/12/16	AMEND: 7140, 7142, 7142.5, 7143.5, 7164.6, 7196, 7211, 7290, 7353.6	08/02/16	AMEND: 1003, 1055, 1081, 1950, 1959
04/21/16	REPEAL: 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799	07/28/16	AMEND: 1005, 1007, 1008
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08/29/16	AMEND: 3568	06/22/16	AMEND: 1004, 1011
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08/10/16	AMEND: 250.30 REPEAL: 5.2000, 5.2001	06/01/16	AMEND: 51.22
08/09/16	AMEND: 2498.6	04/28/16	ADOPT: 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102,
08/09/16	AMEND: 2498.4.9		

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2109, 2130, 2131, 2132  
04/25/16 ADOPT: 50.24  
04/06/16 ADOPT: 28.5  
04/06/16 ADOPT: 28.6

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08/30/16 ADOPT: 463, 464 AMEND: 461  
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08/23/16 AMEND: 1606, 16.08, Appendix  
07/25/16 AMEND: 1202.1, 1202.2, 1232  
07/25/16 AMEND: 1900, 1956.8, 1968.2, 1968.5,  
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07/07/16 AMEND: 15.01  
06/23/16 ADOPT: 15.08 AMEND: 15.07  
06/23/16 AMEND: 268.10  
05/09/16 AMEND: 156.00, 156.01  
04/06/16 ADOPT: 150.10

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08/30/16 AMEND: 699.5  
08/15/16 ADOPT: 1666.0, 1666.1, 1666.2, 1666.3,  
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1666.9, 1666.10, 1666.11, 1666.12,  
1666.13, 1666.14, 1666.15, 1666.16  
AMEND: 1665.2 REPEAL: 1665.8  
08/03/16 AMEND: 29.85  
08/01/16 ADOPT: 131  
08/01/16 AMEND: 1724.9  
07/27/16 ADOPT: 708.18 AMEND: 265, 353, 360,  
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07/07/16 AMEND: 1120 REPEAL: 1121  
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06/30/16 AMEND: 18660.23, 18660.24,  
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06/23/16 AMEND: 502, 507  
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06/15/16 ADOPT: 8.01  
06/09/16 AMEND: 7.50  
05/25/16 AMEND: 1670  
05/11/16 AMEND: 17852  
05/02/16 AMEND: 29.85  
04/28/16 ADOPT: 131  
04/27/16 AMEND: 27.80  
04/26/16 AMEND: 29.45  
04/26/16 AMEND: 28.20  
04/20/16 ADOPT: 1760.1, 1779.1  
04/06/16 AMEND: 1038

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08/17/16 AMEND: 3000, 3306, 3323  
08/11/16 AMEND: 3375.1, 3377  
07/13/16 AMEND: 8000, 8001, 8100, 8901  
06/29/16 AMEND: 3000, 3054, 3054.1, 3054.2,  
3054.3, 3054.4, 3054.5  
06/21/16 ADOPT: 3359.8  
06/02/16 AMEND: 3000, 3084.7, 3312, 3313,  
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3320, 3322, 3326, 3340, 3341.3, 3376,  
3378.6  
05/24/16 ADOPT: 3317.1, 3317.2 AMEND: 3310,  
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05/11/16 AMEND: 3000, 3213  
05/10/16 AMEND: 3173.2  
04/28/16 AMEND: 3000  
03/30/16 AMEND: 8004.2  
03/30/16 REPEAL: 3999.16

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08/30/16 REPEAL: 1054, 1054.1, 1054.2  
08/25/16 ADOPT: 1746.4  
08/23/16 AMEND: 2043  
08/22/16 AMEND: 1023.16  
08/22/16 AMEND: 1495.1  
08/15/16 AMEND: 4110  
08/10/16 ADOPT: 1730.2  
08/03/16 AMEND: 1397.12 (renumbered to  
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08/01/16 ADOPT: 2071.1, 2087, 2087.1, 2087.2,  
2087.3 AMEND: 2034, 2035, 2036.5  
07/28/16 ADOPT: 3395.5 AMEND: 3340.1,  
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05/26/16 ADOPT: 1815.5  
05/13/16 AMEND: 910  
05/10/16 AMEND: 2403  
05/04/16 AMEND: 4170  
05/03/16 ADOPT: 2326.2, 2326.3 AMEND: 2326,  
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04/28/16 AMEND: 1417  
04/20/16 ADOPT: 1103, 1105, 1105.1, 1105.2,  
1105.3, 1105.4, 1106  
04/20/16 AMEND: 1715, 1784  
04/11/16 AMEND: 1399.523  
04/08/16 ADOPT: 1746.1

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 07/25/16 ADOPT: 51000, 51001, 51002  
 07/01/16 AMEND: 6540  
 07/01/16 AMEND: 6508  
 05/25/16 AMEND: 1050  
 05/24/16 AMEND: 2500, 2502, 2505  
 04/25/16 AMEND: 100800  
 04/04/16 ADOPT: 6500.03, 6500.05, 6500.9,  
 6500.21, 6500.33, 6500.43, 6500.50,  
 6500.51, 6500.55, 6500.58, 6500.71,  
 6500.78, 6501.5 AMEND: 6500.35,  
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08/31/16 AMEND: 1597  
 08/16/16 AMEND: 1590  
 08/02/16 AMEND: 17000.30  
 07/27/16 ADOPT: 4076  
 07/27/16 AMEND: 1506  
 06/28/16 AMEND: 1698, 4901  
 06/21/16 AMEND: 1432  
 04/22/16 AMEND: 1668  
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 2655, 2656, 2657, 2658, 2659, 2670,  
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 renumbered to 2643, 2724 renumbered to  
 2644, 2725 amended and renumbered to  
 2645, 2726 renumbered to 2646, 2727  
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 2648, 2729 amended and renumbered to  
 2650, 2729.1 amended and renumbered  
 to 2651, 2729.2 amended and  
 renumbered to 2652, 2729.3 amended  
 and renumbered to 2653, 2729.4  
 amended and renumbered to 2654,

2729.5 amended and renumbered to  
 2655, 2729.6 amended and renumbered  
 to 2656, 2729.7 amended and  
 renumbered to 2657, 2731 renumbered to  
 2658, 2732 amended and renumbered to  
 2659, 2733 amended and renumbered to  
 2670, 2734 renumbered to 2671

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 04/12/16 AMEND: 1240, 3201, 3202, 3203, 3204,  
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 04/06/16 AMEND: 2401, 2402

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 07/20/16 AMEND: 97212, 97215, 97225, 97226,  
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 97258, 97259, 97260, 97264 REPEAL:  
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 06/28/16 REPEAL: 75047  
 06/20/16 AMEND: 51179.7  
 06/09/16 ADOPT: 69600.1, 69600.2, 69600.3,  
 69600.4, 69600.5, 69600.6, 69600.7  
 06/08/16 AMEND: 7000  
 04/27/16 AMEND: 53626(a)  
 04/21/16 AMEND: 50188  
 04/19/16 AMEND: 123000  
 04/01/16 AMEND: 64417, 64418, 64418.1,  
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 64418.6, 64418.7, 64419, 64420,  
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 07/07/16 AMEND: 83074, 83087, 84074, 84087,  
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 07/18/16 AMEND: 2922  
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 08/09/16 AMEND: 27001  
 07/28/16 AMEND: 27001  
 07/27/16 AMEND: 25805  
 06/27/16 AMEND: 27001  
 06/22/16 AMEND: 27001

06/13/16 AMEND: 27001  
 06/13/16 AMEND: 25805  
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 04/18/16 AMEND: 25603.3  
 04/13/16 AMEND: 27001

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 06/13/16 ADOPT: 30-754 AMEND: 30-701  
 05/02/16 ADOPT: 45-102, 45-600, 45-601, 45-602, 45-604, 45-605, 45-606, 45-607 AMEND: 31-002, 31-003, 31-075, 31-201, 31-205, 31-206, 31-225, 31-425, 31-503, 90-101  
 03/30/16 REPEAL: 12-201, 12-202, 12-202.1, 12-202.1.11, 12-202.1.11.111, 12-202.2, 12-202.2.21, 12-202.2.21.211, 12-202.2.21.212, 12-202.2.22, 12-202.2.23, 12-202.2.24, 12-202.3, 12-202.3.31, 12-202.3.31.311, 12-202.3.31.312, 12-202.3.31.313, 12-202.3.32, 12-202.3.33, 12-202.3.33.331, 12-202.4, 12-202.4.41, 12-202.5, 12-202.5.51, 12-202.5.52, 12-202.5.53, 12-202.5.54, 12-202.6, 12-202.6.61, 12-202.6.61.611, 12-202.6.61.612, 12-202.6.61.613, 12-202.6.62, 12-202.7, 12-202.8, 12-202.8.81, 12-202.8.82, 12-202.8.83, 12-202.8.84, 12-202.8.84.841, 12-202.8.84.842, 12-202.8.85, 12-202.8.85.851, 12-203, 12-203.1, 12-203.1.11, 12-203.1.11.111, 12-203.1.11.112, 12-203.1.11.113, 12-203.1.11.113(a), 12-203.1.11.113(b), 12-203.1.11.113(c), 12-203.1.11.114, 12-203.1.11.114(a), 12-203.1.11.114(b), 12-203.1.11.114(c), 12-203.1.11.115, 12-203.2, 12-203.2.21, 12-203.2.22, 12-203.2.23, 12-203.3, 12-203.3.31, 12-203.3.32, 12-203.3.32.321, 12-203.3.32.322, 12-203.3.33

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**ADDENDUM TO THE 2016  
 RULEMAKING CALENDAR**

**DEPARTMENT OF CHILD SUPPORT  
 SERVICES**

The Department of Child Support Services' 2016 Rulemaking Calendar was inadvertently omitted from the Calendar as published and incorporated by reference in the April 29, 2016 Notice Register 2016, 18-Z. We are publishing it here for information purposes.

**DEPARTMENT OF CHILD SUPPORT SERVICES  
2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<p><b>Subject:</b> Amend Case Closure Regulations DCSS Reference Number: R-2016-01 (Renumbered from R-28)</p>	<p><b>CCR Title &amp; Sections Affected:</b> 22 CCR, Division 13, §§ 110000 through 110858 and 118203.</p>	<p><b>Statute(s) Being Implemented:</b> CCP §§ 581 and 582; FC §§ 3760, 3761, 3900, 3901, 4002, 4007, 4504, 4506.2, 4901, 4905, 5237, 5240, 17306, 17310, 17312, 17502, 17516, 17520, 17523 and 17531; GC §§ 6205 – 6211; W&amp;IC § 11479; 38 USC § 5307; 42 USC §§ 416(i) and 666; and 45 CFR §§ 302.33, 303.3(b) and 303.11.</p>				
<p><b>Responsible Agency Unit:</b> Policy and Program Regulations Unit</p>	<p><b>Contact Person &amp; Phone Number:</b> Janelle Brown 916-464-6855</p>	<p><b>Projected Dates:</b></p> <table border="1"> <tr> <td data-bbox="950 1354 1015 1438">Notice Published: 12/2016</td> <td data-bbox="950 1438 1015 1522">Public Hearing: 02/2017</td> <td data-bbox="950 1522 1015 1606">Adoption by your agency: 11/2017</td> <td data-bbox="950 1606 1015 1749">To OAL for review: 12/2017</td> </tr> </table>	Notice Published: 12/2016	Public Hearing: 02/2017	Adoption by your agency: 11/2017	To OAL for review: 12/2017
Notice Published: 12/2016	Public Hearing: 02/2017	Adoption by your agency: 11/2017	To OAL for review: 12/2017			
<p><b>Report on the status of all uncompleted rulemaking described on previous calendars:</b>  Substantive changes are being made to the case closure regulations to align with applicable federal regulations and state statutes. This regulation package will be processed as a regular permanent rulemaking.</p>						

**DEPARTMENT OF CHILD SUPPORT SERVICES**  
**2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<b>Subject:</b> Amending DCSS Local Complaint Resolution & State Hearing Process Regulations DCSS Reference Number: R-2016-02 (Renumbered from R-30)	<b>CCR Title &amp; Sections Affected:</b> 22 CCR, Division 13, §§ 120108, 120201, 120202, 120216 and 120217.	<b>Statute(s) Being Implemented:</b> 45 CFR § 303.35; and FC §§ 17800-17804.
<b>Responsible Agency Unit:</b> Policy and Program Regulations Unit	<b>Contact Person &amp; Phone Number:</b> Janelle Brown 916-464-6855	<b>Projected Dates:</b> Notice Published: 10/2016 Public Hearing: 12/2016 Adoption by your agency: 09/2017 To OAL for review: 10/2017
Report on the status of all uncompleted rulemaking described on previous calendars: Amend regulations to comply with statutes. This regulation package will be processed as a regular permanent rulemaking.		

**DEPARTMENT OF CHILD SUPPORT SERVICES**  
**2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<p>Subject: Amend Review and Adjustment of a Child Support Order Regulations DCSS Reference Number: R-2016-03 (Renumbered from R-47)</p>	<p>CCR Title &amp; Sections Affected: Dept. of Social Services Manual of Policies &amp; Procedures § 12-223; 22 CCR §§ 115500, 115503, 115510, 115520, 115525, 115530, 115535, 115540, 115545, and 115550; new regulations to be placed in 22 CCR, Division 13.</p>	<p>Statute(s) Being Implemented: FC §§ 3680.5, 4055, 4059, 4062, 4063, 4065, 4070, 4071, 17212, 17304, 17306, 17310, 17312, 17400, 17400.5, 17401.5, 17406, 17428, 17432, 17505, 17506, 17512, 17514 and 17516; 42 USC § 666; and 45 CFR §§ 302.70, 303.4 and 303.8.</p>
<p>Responsible Agency Unit: Policy and Program Regulations Unit</p>	<p>Contact Person &amp; Phone Number: Janelle Brown 916-464-6855</p>	<p>Projected Dates: Notice Published: 12/2016 Public Hearing: 02/2017 Adoption by your agency: 11/2017 To OAL for review: 12/2017</p>
<p>Report on the status of all uncompleted rulemaking described on previous calendars: These regulations need to be amended to improve local child support agency efficiency and provide better customer service. This regulation package will be processed as a regular permanent rulemaking.</p>		

**DEPARTMENT OF CHILD SUPPORT SERVICES  
2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<p><b>Subject:</b> Amendment of the Intergovernmental Regulations DCSS Reference Number: R-2016-04 (Renumbered from R-52)</p>	<p><b>CCR Title &amp; Sections Affected:</b> 22 CCR, Division 13, §§ 110000 through 110858, 112300, 112301, 113100, 116130, 117016 through 117600, and 118203.</p>	<p><b>Statute(s) Being Implemented:</b> 28 USC § 1738B implementing SB 646; and 42 USC §§ 652, 653(k)(3), 653(c), 654, 659(a), 664(a)(2)(A) and 666(f). Proposed FC §§ 5700 et seq. 28 USC §§ 1738; 42 USC §§ 654, 659 and 666; 45 CFR §§ 301.1, 302.15, 302.31, 302.33, 302.51, 303.3, 303.5, 303.7, 303.8, 303.100, and 303.11. FC §§ 4506, 4905-4907, 4909-4910, 4919, 4925, 4930, 4932-4933, 4950-4957, 4960, 4963, 4978, 5001, 5206, 8514, 17400, 17406, 17524 and 17604.</p>
<p><b>Responsible Agency Unit:</b> Policy and Program Regulations Unit</p>	<p><b>Contact Person &amp; Phone Number:</b> Janelle Brown 916-464-6855</p>	<p><b>Projected Dates:</b> Notice Published: 12/2016 Public Hearing: 02/2017 Adoption by your agency: 11/2017 To OAL for review: 12/2017</p>
<p><b>Report on the status of all uncompleted rulemaking described on previous calendars:</b> Regulations to comply with provisions of UIFSA 2008 as specified in HR 4980, The Preventing of Sex Trafficking and Strengthening Families Act, were put on hold last year but will be put forward in calendar year 2016. CCR Title and Sections affected will be amended to implement previously identified statutes to implement UIFSA and Family Code §§ 5700 et seq. (From SB 646 filed on October 4, 2015).</p>		

**DEPARTMENT OF CHILD SUPPORT SERVICES**  
**2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<p>Subject:</p>	<p>Compromise of Assigned Arrears - Family Reunification DCSS Reference Number: R-2016-05</p>	<p>CCR Title &amp; Sections Affected: 22 CCR, Division 13, §§ 118203 and 119191.</p>	<p>Statute(s) Being Implemented: CCP §§ 708.420 and 708.440(a); FC §§ 3901, 3910, 4007.5, 4053, 4058, 4059, 4060, 7050, 17306, 17310, 17312, 17402, 17406(j) and (k), 17520(g)(2), 17550; and 17560; W&amp;IC §§ 11200, 11268(a), 11360, 11400, 11401 and 16507.2; and 42 USC § 9902(2).</p>				
<p>Responsible Agency Unit:</p>	<p>Policy and Program Regulations Unit</p>	<p>Contact Person &amp; Phone Number: Janelle Brown 916-464-6855</p>	<p>*Projected Dates:  <table border="1" data-bbox="1130 201 1221 1749"> <tr> <td data-bbox="1130 201 1179 1749">Notice Published: 03/01/2017</td> <td data-bbox="1179 201 1221 1749">Public Hearing: 05/01/2017</td> <td data-bbox="1221 201 1269 1749">Adoption by your agency: 02/01/2018</td> <td data-bbox="1269 201 1352 1749">To OAL for review: 03/01/2018</td> </tr> </table> </p>	Notice Published: 03/01/2017	Public Hearing: 05/01/2017	Adoption by your agency: 02/01/2018	To OAL for review: 03/01/2018
Notice Published: 03/01/2017	Public Hearing: 05/01/2017	Adoption by your agency: 02/01/2018	To OAL for review: 03/01/2018				
<p>Report on the status of all uncompleted rulemaking described on previous calendars:</p>							
<p>Amend regulations to comply with statutes. This regulation package will be processed as a regular permanent rulemaking.</p>							
<p>*The DCSS work plan involves two phases that precede "Notice Published": 01/01/2016-03/01/2017 = Phase 1 (Design of Regulations Text) + Phase 2 (Build Notice Package).</p>							

**DEPARTMENT OF CHILD SUPPORT SERVICES**  
**2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<b>Subject:</b> Establishing a Child Support Order DCSS Reference Number: R-2016-06	<b>CCR Title &amp; Sections Affected:</b> Add Chapter 4.5 to Title 22 of CCR commencing with § 114500.	<b>Statute(s) Being Implemented:</b> FC §§ 4000-4076, 17302, 17303, 17304, 17306, 17400, 17402, 17404, 17406 and 17432.
<b>Responsible Agency Unit:</b> Policy and Program Regulations Unit	<b>Contact Person &amp; Phone Number:</b> Janelle Brown 916-464-6855	<b>Projected Dates:</b> Notice Published: 10/2016 Public Hearing: 12/2016 Adoption by your agency: 09/2017 To OAL for review: 10/2017
<p>Report on the status of all uncompleted rulemaking described on previous calendars:</p> <p>Adding regulations to achieve uniform policies and procedures to be employed statewide by all local child support agencies (LCSAs). The specific intent is to achieve uniformity in how LCSAs calculate child support to be requested in an initial pleading that requests the court to issue a child support order. This regulation package will be processed as a regular permanent rulemaking.</p>		

**DEPARTMENT OF CHILD SUPPORT SERVICES**  
**2016 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

Subject:  Amend Case Opening Regulations  DCSS Reference Number: R-2016-07	CCR Title & Sections Affected:  22 CCR, Division 13, §§ 110000 through 110858, and 112130.	Statute(s) Being Implemented:  CCP § 372; FC §§ 3900, 5001, 6601, 7570, 8514, 17212, 17307, 17400, 17405, 17415, 17550, 17552; 42 CFR §§ 233, 301-303 and 433; 42 USC §§ 608, 652 and 654; and W&IC §§11450, 11475 - 11487, 14008, 17417 and 17477.				
Responsible Agency Unit:  Policy and Program Regulations Unit	Contact Person & Phone Number:  Janelle Brown 916-464-6855	Projected Dates: <table border="1"> <tr> <td data-bbox="901 1165 982 1333">Notice Published: 12/2016</td> <td data-bbox="901 1333 982 1514">Public Hearing: 02/2017</td> <td data-bbox="901 1514 982 1753">Adoption by your agency: 11/2017</td> <td data-bbox="901 1753 982 1921">To OAL for review: 12/2017</td> </tr> </table>	Notice Published: 12/2016	Public Hearing: 02/2017	Adoption by your agency: 11/2017	To OAL for review: 12/2017
Notice Published: 12/2016	Public Hearing: 02/2017	Adoption by your agency: 11/2017	To OAL for review: 12/2017			
Report on the status of all uncompleted rulemaking described on previous calendars:  Amend regulations to comply with statutes. This regulation package will be processed as a regular permanent rulemaking.						

DEPARTMENT OF CHILD SUPPORT SERVICES  
2016 RULEMAKING CALENDAR

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2015**

<p>Subject:</p> <p>Repeal Manual of Policies and Procedures (MPP) Chapters 12-100, 12-200, 12-400, 12-500, 12-700, 12-800 and 12-900 and adopt applicable provisions into CCR as non-substantive changes.</p> <p>DCSS Reference Number: R-2016-08</p>	<p>CCR Title &amp; Sections Affected:</p> <p>MPP §§ 12-100, 12-200, 12-400, 12-500, 12-700, 12-800 and 12-900; new regulations to be placed in 22 CCR, Division 13.</p>	<p>Statute(s) Being Implemented:</p> <p>CCP, FC, GC, R&amp;TC, W&amp;IC, 45 CFR, and 42 USC.</p>								
<p>Responsible Agency Unit:</p> <p>Policy and Program Regulations Unit</p>	<p>Contact Person &amp; Phone Number:</p> <p>Janelle Brown 916-464-6855</p>	<p>Projected Dates:</p> <table border="1"> <tr> <td data-bbox="938 1171 998 1333">Notice Published:</td> <td data-bbox="998 1171 1031 1333">12/2016</td> </tr> <tr> <td data-bbox="938 1333 998 1495">Public Hearing:</td> <td data-bbox="998 1333 1031 1495">02/2017</td> </tr> <tr> <td data-bbox="938 1495 998 1656">Adoption by your agency:</td> <td data-bbox="998 1495 1031 1656">11/2017</td> </tr> <tr> <td data-bbox="938 1656 998 1747">To OAL for review:</td> <td data-bbox="998 1656 1031 1747">12/2017</td> </tr> </table>	Notice Published:	12/2016	Public Hearing:	02/2017	Adoption by your agency:	11/2017	To OAL for review:	12/2017
Notice Published:	12/2016									
Public Hearing:	02/2017									
Adoption by your agency:	11/2017									
To OAL for review:	12/2017									
<p>Report on the status of all uncompleted rulemaking described on previous calendars:</p> <p>These regulations need to be repealed out of the MPP and placed into the CCR as they are amended (with non-substantial changes) to conform to current federal provisions and state statutes. These regulation packages will be processed as a 1 CCR § 100 rulemaking package.</p>										