



# 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 FINANCE**

**NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE DEPARTMENT OF FINANCE**

NOTICE IS HEREBY GIVEN that the Department of Finance, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendments to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Department of Finance 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.

This amendment includes the addition of the following positions: Advisor to the Director on Higher Education, Executive Office; Assistant Chief, Administrative Services; Chief, Local Government; and Data Processing Manager I-III, Financial Information System for California (FI\$Cal) Project Support.

This amendment includes the deletion of all positions under Financial Information System for California (FI\$Cal) Project.

Additionally, there are other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than August 24, 2015, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested

person or person's representative requests a public hearing, he or she must do so no later than August 10, 2015, by contacting the Contact Person set forth below.

The Department of Finance has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Department of Finance 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.

In making these proposed amendments, the Department of Finance must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

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

Jeanna Wimberly  
 915 L Street, Suite 1280  
 Sacramento, CA 95814  
 (916) 445-8918  
[jeanna.wimberly@dof.ca.gov](mailto:jeanna.wimberly@dof.ca.gov)

**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (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

AUTHORITY

AMENDMENT

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

MULTI-COUNTY: Corcoran Unified School District

A written comment period has been established commencing on July 10, 2015, and closing on **August 24, 2015**. 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/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 Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

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 **August 24, 2015**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

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.

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.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture (Department) amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid (ACP) Interior Quarantine as an emergency action which was effective on May 13, 2015. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than November 9, 2015.

This notice is being provided to be in compliance with Government Code Section 11346.4.

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.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly

authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

#### WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on August 24, 2015. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid  
 Department of Food and Agriculture  
 Plant Health and Pest Prevention Services  
 1220 N Street  
 Sacramento, CA 95814  
[Sara.Khalid@cdfa.ca.gov](mailto:Sara.Khalid@cdfa.ca.gov)  
 916.654.1017  
 916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

##### Anticipated Benefits from This Regulatory Action

Existing law, FAC Section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC Section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

The amendment of this regulation benefits the citrus industries (nurseries, fruit growers, wholesalers, retailers, exporters) and the environment by having a quarantine program to prevent the artificial spread of ACP over long distances. Most all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

The national and international consumers of California citrus benefit by having high-quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who grow citrus for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The amendment of this regulation is preventing the artificial spread of ACP to uninfested areas of the State.

Huanglongbing (HLB) is generally distributed in Florida due to ACP being generally distributed there. The University of Florida Institute of Food and Agricultural Sciences Extension calculated and compared the impact of having and not having HLB present in Florida and concluded HLB had a total impact of \$3.64 billion and eliminated seven percent of the total Florida workforce. The overall California economy benefits by the amendment of this regulation which is intended to prevent ACP from becoming generally distributed in California and resulting in a similar effect on our economy as to what happened in Florida. This is now critical as HLB has been introduced into California.

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement plant quarantines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

AMENDED TEXT

This regular rulemaking action expanded the quarantine area for ACP in San Luis Obispo County by approximately 32 square miles. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within this additional area. The total area which would be under regulation is now approximately 51,612 square miles.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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

The Department has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost impacts on a representative private person or business: Most businesses will not be affected. There are four citrus production nurseries in the affected area that will be impacted. There are nine retail nurseries in the affected area. There are 18 citrus growers in the proposed area. There is no additional cost to growers who take their fruit to a packinghouse inside the current quarantine area. Growers choosing a packinghouse outside the quarantine area have three options: 1. Conduct pre-harvest treatments with an approved pesticide while fruit is still on the trees; 2. Field-clean the fruit to remove leaves and stems during harvest; 3. Send the fruit to a packinghouse within the quarantine area to be cleaned. Pre-harvest treatments cost growers approximately \$60 per acre and the fruit is required to be covered

with a tarp while in transit. Tarps range in price from \$2,500–\$3,000 apiece. Field-cleaning the fruit will cost the grower approximately \$150–\$320 per acre depending on the citrus variety. Field-cleaned fruit does not require a tarp for transport and can be moved within or from the quarantined area. Cleaning at a packinghouse within the quarantine area will cost the grower approximately \$300–\$400 per acre and the fruit must remain within the quarantine area, although the loads do not need to be covered with a tarp. There are two citrus packing houses located within this quarantine area.

Based on the preceding above information, it was determined that due to the amendment of Section 3435(b), the agency is not aware of any cost impact on a representative business or private person. For the vast majority of businesses within the regulated area, no additional costs will be incurred.

*Small Business Determination*

The Department has determined that the proposed regulations may affect small business.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations 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 Department is not aware of any specific benefits the amendment of this regulation will have on worker safety or the health of California residents. The Department believes the amendment of this regulation benefits the welfare of California residents by protecting the economic health of the entire citrus industry. In 2010 the estimated value was \$2.1 billion for citrus fruit and \$28.5 million for citrus nursery stock without all the upstream buyers and downstream retailers included (*Reference: John Gilstrap of California Citrus Nursery Board for citrus nursery stock value and USDA–National Agricultural Statistics Service 2010 data for citrus fruit*). This is a needed source of revenue for the State’s economic health and this amendment will help protect this source of revenue.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective

tive in implementing the statutory policy or other provision of law than the proposal described in this Notice.

#### AUTHORITY

The Department proposes to amend Section 3435(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the FAC.

#### REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the FAC.

#### CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is: Sara Khalid, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: Sara.Khalid@cdfa.ca.gov. In her absence, you may contact Stephen Brown at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

#### INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website ([www.cdfa.ca.gov/plant/Regulations.html](http://www.cdfa.ca.gov/plant/Regulations.html)).

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

The Department has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department 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. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

### TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Research Authorizations  
DPR Regulation No. 15-001

#### NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6260, 6262, 6264, and 6266 of Title 3, California Code of Regulations. The proposed actions will clarify the information required on the research authorization application and reporting forms, and will revise the notification requirements. DPR proposes to incorporate by reference the following application forms: Pesticide Research Authorization [(DPR-REG-027a, Est. 4/15)], Pesticide Research Authorization (Additional Pesticides) [(DPR-REG-027b, Est. 4/15)], Experimental Trial Report [(DPR-REG-029, Est. 4/15)], Experimental Pesticide Use Report [(DPR-REG-028a, Est. 4/15)], and Experimental Pesticide Use Report (Continued) [(DPR-REG-028b, Est. 4/15)]. Copies of these forms are included in the rulemaking file and are available upon request.

#### SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on August 24, 2015. Comments regarding this proposed action may also be transmitted via e-mail to <dpr15001@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

#### EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

Pesticides must be registered (licensed for sale and use) with the U.S. Environmental Protection Agency (U.S. EPA) before they can be registered in California. DPR's preregistration evaluation is in addition to, and complements, U.S. EPA's evaluation. Before U.S. EPA and DPR register a pesticide or a new use of a registered pesticide, both agencies require data on a product's: toxicology and chemistry to evaluate how it may impact human health and the environment; effectiveness against targeted pests; potential to pose hazards to non-target organisms; effect on fish and wildlife; and potential for worker exposure. Some data, such as certain efficacy (proof that the product will work when used in accordance with use directions), environmental fate, and worker exposure data, must be generated under field conditions. As part of its certified regulatory program under the California Environmental Quality Act, DPR requires that these data be generated specifically under California use conditions. Because registrants must conduct these field studies in California to collect the data, federal and state law allow registrants to apply for limited use of unregistered pesticides.

With few exceptions, section 6260 requires a researcher to obtain approval from DPR before any unregistered use of a pesticide occurs in California. A research authorization allows registrants and researchers to conduct limited field trials with products that are not registered or are not registered for a particular use pattern in California. Field data collected under the research authorization are used to support the California registration of a pesticide product or new use of a currently registered product. Prior to issuing a research authorization, DPR conducts an evaluation of the potential hazards of the pesticide to human health and the environment and determines what kind of restrictions should be imposed on the research. When trials are conducted on crops, the research authorization program also prevents produce bearing an illegal pesticide residue from entering the food chain.

There are several relevant points about research authorizations that should be noted. First, they are not always implemented. For example, in 2014, approximately 700 research authorizations were issued, but

only 550 were completed. Second, the research typically involves a limited area. According to pesticide use reports, of the 550 trials conducted in 2014, 95 percent were conducted on a total area of 10 acres or less, with 89 percent of the trials conducted on a total area of one acre or less. Only 3 percent of trials were conducted on a total area of more than 10 acres. The remaining 2 percent of trials reported use in units other than acres or square footage (such as number of trees or vines).

Section 6262 specifies the information a researcher must provide to DPR on the application form, such as: brand name, common name, or ID number of the pesticide being applied; U.S. EPA registration number; dosage of active ingredient; any existing residue tolerances; type of site or commodity being treated; size of the trials; and proposed disposition for the treated crop. DPR may also require additional data to assess potential adverse effects to workers, the public, or the environment. Currently, these elements do not require the researcher to provide certain details that would assist DPR and the CAC's evaluation of the pesticide and application.

DPR proposes to delete the elements listed in section 6262, and incorporate by reference, the Pesticide Research Authorization form (DPR-REG-027a, Est. 4/15) to include these elements and additional information including the active ingredient, product formulation, and other information to ensure that all the necessary information to evaluate the pesticide application is obtained from the researcher. Because of the limited space on DPR-REG-027(a), incorporated by reference within this form is the Pesticide Research Authorization (Additional Pesticides) form (DPR-REG-27b, Est. 4/15) that, if necessary, the applicant can list additional pesticide products that will be used in the same research trial.

Currently, the active ingredient is not required to be provided when applying for a research authorization. However, the identity of the active ingredient is critical to DPR's evaluation of the pesticide since the active ingredient is the principle way U.S. EPA and DPR classify a pesticide. In order to address concerns about disclosing the identity of unregistered, newly developed active ingredients on the application form in certain situations when confidentiality is warranted, DPR proposes to add criteria that must be met in order to justify a researcher from omitting certain unregistered active ingredients on the application form. If such criteria are met, DPR will allow the pesticide registrant to provide DPR with the identity of the active ingredient in a separate statement from the application form and it will be maintained by DPR as confidential business information.

Currently, section 6264 requires the researcher to notify the CAC at least 24 hours before the research au-

thorization field trial begins and provide the CAC with a copy of the approved research authorization (application form with DPR approval and conditions of approval). The county where the pesticide will be applied may not be known at the time the research authorization is approved by DPR, and this 24-hour notice of application may be the first time the CAC is aware that a pesticide research trial may be occurring in his/her county. In some cases, 24 hours may not be adequate notice for the CAC to fully assess the potential impacts of the application and contact DPR if there are any concerns about the research authorization. Therefore, DPR proposes to require the researcher to provide a notice of application to the CAC at least 72 hours before the application unless the CAC approves less than 72 hours' notice based on a determination that a shorter time period is adequate to evaluate the intended pesticide application. Additionally, at the time a research authorization application is submitted to DPR, the researcher may not know specific information about the crop, number of acres, date of application, etc. As part of the notice, the researcher would be required to submit this information, in addition to the location of each trial on a plot map and a map or aerial photograph designating sensitive sites, to assist CACs with their evaluation of the research authorization.

Section 6266 requires the researcher to submit an experimental trial report to the CAC after completing the final pesticide application and an experimental pesticide use report to DPR two weeks following the expiration date of the research authorization. Currently, subsection (a) lists the required elements that the researcher must provide on the experimental trial report. DPR proposes to delete the listed elements and incorporate by reference, Experimental Trial Report form (DPR-REG-029, Est. 4/15), to include the current elements and additional clarifying information that would be helpful to CACs. Subsection (b) lists the required elements that the researcher must provide on the experimental pesticide use report. DPR proposes to delete the listed elements in subsection (b) and incorporate by reference, Experimental Pesticide Use Report form (DPR-REG-028a, Est. 4/15), to include some of those elements as well as additional clarifying information. Incorporated by reference within this form is the Experimental Pesticide Use Report (Continued) form (DPR-REG-028b, Est. 4/15) where additional use information may be reported on the same research trial, if necessary.

In summary, revising the research authorization regulations as proposed will provide additional measures to protect human health and the environment. The proposed revisions would ensure that DPR has the necessary information to authorize research being conducted

on unregistered pesticide use in California. The proposed revisions would provide CACs, the local enforcers of pesticide laws and regulations, with more time to ensure compliance with the conditions and limitations of the research authorization and evaluate potential impacts that may occur from the pesticide application. These changes would also ensure that DPR has all the specific details pertaining to the pesticide application at the same time the CAC is notified of the intended application.

Adoption of these regulations will provide a benefit to public health, worker safety, and the environment by ensuring that all necessary information regarding a pesticide application is reported in a timely manner to the CACs, the primary enforcer of pesticide laws and regulations that impact human health and the environment.

During the process of developing these regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. DPR is the only state agency that has the authority to regulate pesticides. No other state agency has the authority to regulate research authorizations.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

### EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation is unlikely to have a significant cost impact on representative private persons or businesses. The additional costs faced by pesticide registrants and their researchers should not significantly affect their operations or have any adverse economic impact on the sector.

### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Benefit to the environment, worker safety, and the health of California residents: The proposed regulations are intended to increase protection to residents, agricultural workers, and the environment by ensuring that all the necessary information regarding a pesticide application is reported in a timely manner to the CAC and DPR.

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

### CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory 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.

### AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 12781, and 12976.

### REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 12995 and 14006.6.

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

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

### AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory

action may be directed to the following back-up person at the same address as noted below:

Ann Hanger, Senior Environmental Scientist  
Pesticide Registration Branch  
916-324-3535

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

**AVAILABILITY OF FINAL STATEMENT  
OF REASONS**

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

**TITLE 9. DEPARTMENT OF STATE  
HOSPITALS**

**REHABILITATIVE AND DEVELOPMENTAL  
SERVICES  
DIVISION 1. DEPARTMENT OF MENTAL  
HEALTH**

The Department of State Hospitals encourages adoption of the proposed regulation amendment below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

A public hearing will be held if any interested person, or his or her duly authorized representative, requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted by facsimile (FAX) at

(916) 651-3090 or by e-mail to [DSH.Regulations@dsh.ca.gov](mailto:DSH.Regulations@dsh.ca.gov). The written comment period closes at 5:00 p.m. on August 24, 2015. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Regulations Unit  
Department of State Hospitals  
1600 9th Street, Room 410  
Sacramento, CA 95814

**AUTHORITY AND REFERENCES**

Authority: Welfare and Institutions Code sections 4005.1, 4027, and 4101, allow the Department to adopt and enforce rules and regulations necessary to carry out the duties of the Department.

References: *In Re Qawi* (2004) 32 Cal.4th 1; *In Re Calhoun* (2004) 121 Cal. App. 4th 1315; *In Re Green-shields* (2014) 227 Cal. App. 4th 1284; *Washington v. Harper* (1990) 494 U.S. 210; Sections 1026, 2962, and 2972, Penal Code; and Sections 5300, 6316.2, and 6600, Welfare and Institutions Code.

**INFORMATIVE DIGEST AND POLICY  
STATEMENT OVERVIEW**

The Department finds that the proposed amendments to California Code of Regulations (CCR), Title 9, Division 1, Chapter 16, Section 4210 are necessary to provide appropriate treatment to patients who are committed under Penal Code (PC) section 1026 et seq. (Not Guilty by Reason of Insanity (NGI)), PC 2962 and 2972 (Mentally Disordered Offender (MDO)), Welfare and Institutions Code (WIC) section 6316 et seq. (Mentally Disordered Sex Offender (MDSO)), and/or WIC 6600 (Sexually Violent Predator (SVP)). The Department finds that any disruption or prevention of the Department's ability to appropriately treat these patients through necessary involuntary medication will create serious harm to public peace, health and safety, and general welfare to the patient and the other 7,000 patients and 10,000 employees. The failure to treat psychotic illness with medication causes worsening of the disease and can defeat overall treatment goals for a patient.

**Forms Incorporated By Reference**

This amended version of Section 4210 incorporates two forms, DSH 9164, Notice of Involuntary Psychotropic Medication Hearing (12-14), and DSH 9165, Involuntary Psychotropic Medication Review Hearing (12-14), with copies of the forms attached for review and comment. These forms are incorporated by reference as the interim involuntary medication review process requires that a hearing take place and the decision rendered by the panel must be documented as required by law.

The proposed rulemaking will:

- extend the interim involuntary medication hearing processes to the NGI, PC 2972 MDO and WIC 6316 et seq. sex offender patient populations to ensure appropriate treatment and due process;
- provide additional clarification to the interim involuntary medication hearing procedures; and
- provide increased safety and security to public peace and the general welfare of the public, including that of the other state hospital patients, visitors, and staff.

These regulations will cause no significant differences in existing comparable federal regulations or statutes.

The Department has conducted an evaluation for any regulations that would relate to this proposed action and has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

Existing Law

CCR, Title 9, Division 1, Chapter 16, Section 4210, as written, provides for the interim involuntary medication hearing procedures for MDOs committed under PC 2962 and SVPs committed under WIC 6600 et seq. The Department submitted emergency regulations on September 18, 2014, to include the NGI patients pursuant to the recent *Greenshields* case. This regular rulemaking proposal amends the regulation to include NGI, MDO committed under PC 2962 and 2972, and sex offender patients committed under WIC 6600 et seq. and 6316 et seq. who require interim involuntary medication on a non-emergency basis, prior to a court hearing.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

- Mandate on local agencies or school districts: None.
- Costs or savings to any state agency: DSH anticipates annual costs of \$375,000 for the interim hearing procedures associated with the additional patient populations.
- Costs to any local agency or school district that requires reimbursement in accordance with GC section 17500 through 17630: None.
- Other nondiscretionary costs or savings imposed on local agencies: None.
- Costs or savings in federal funding to the state: None.

- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or businesses: The Department proposes to provide additional contract funds in the amount of \$165,000 annually to the California Office of Patients’ Rights (COPR) to cover costs associated with their increased workload.
- Significant effect on housing costs: None.
- Small Business determination: The proposed action will not affect small businesses because it will only slightly increase the workload on the California Office of Patients’ Rights’ patient advocates.

**Results of the Economic Impact Analysis:**

Creation or Elimination of Jobs within the State of California:

The services performed as a result of these regulations will create a few more jobs within the Department and within COPR. The Department is requesting authority to hire three clinicians to serve on the hearing panel and perform related administrative functions. In addition, the Department will increase the contract funding with COPR to allow them to hire two more patients’ rights advocates.

Adoption of these regulations will not:

- create new businesses or eliminate existing businesses within California;
- increase or decrease investment in the state;
- create incentive for innovation in products, materials or processes;
- obstruct potential benefits to the health, safety and welfare of the citizens of California. These regulations will not obstruct worker safety, the environment or quality of life; and
- affect the expansion of businesses currently doing business in California.

Benefits that would be derived from this proposal:

- allows the Department to provide interim involuntary medication hearings to state hospital patients committed under specific statutes;
- provides more clarification to the interim involuntary medication hearing process for state hospitals;
- allows the Department to preserve public health and safety;
- allows the Department to preserve the health and safety of state hospital patients, visitors and employees;
- provides due process for the patients impacted by these regulations; and

- promotes the increase in openness and transparency in business and government.

#### CONSIDERATION OF ALTERNATIVES

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

DSH invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation amendment during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Karen Gillham  
Chief  
Regulations Unit  
Department of State Hospitals  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814  
Regulations' Telephone: (916) 653-2257  
Desk: (916) 651-5578  
E-mail: [karen.gillham@dsh.ca.gov](mailto:karen.gillham@dsh.ca.gov)

The back-up contact person for these inquiries is:

James Castro  
Department of State Hospitals  
1600 9<sup>th</sup> Street, Room 410  
Sacramento, CA 95814  
Regulations' Telephone: (916) 653-2257  
Desk: (916) 651-3247  
E-mail: [james.castro@dsh.ca.gov](mailto:james.castro@dsh.ca.gov)

Please direct requests for copies of the proposed text (the "expressed terms") of the regulation, the initial statement of reasons, the modified text of the regula-

tion, if any, or other information upon which the rulemaking is based to Ms. Gillham at the above address.

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

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, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Ms. Gillham.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if one is requested, and considering all timely and relevant comments received, the Department may adopt the proposed regulation amendment substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Karen Gillham at the address indicated above.

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

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Gillham at the above address.

#### AVAILABILITY OF DOCUMENT ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough can be accessed through our website at [www.dsh.ca.gov](http://www.dsh.ca.gov).

**TITLE 12. DEPARTMENT OF  
VETERANS AFFAIRS**

**MILITARY AND VETERANS AFFAIRS  
DIVISION 2. DEPARTMENT OF VETERANS  
AFFAIRS  
CHAPTER 7. SELECTION OF PROFESSIONAL  
SERVICE FIRMS  
SUBCHAPTER 4. SELECTION PROCESS FOR  
PRIVATE  
ARCHITECTURAL AND ENGINEERING  
FIRMS**

**NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the California Department of Veterans Affairs (CalVet) proposes to adopt the proposed amended regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CalVet. The written comment period closes at **5:00 p.m. on August 24, 2015**. CalVet will consider only comments received at CalVet offices by that time. Submit comments to:

California Department of Veterans Affairs  
Facilities and Business Services Division  
Attention: Deanna Beland  
1227 O Street, Suite 314  
Sacramento, CA 95814

Comments that are not more than ten (10) pages will be accepted by facsimile at (916) 653-1388. A fax transmission must be completed and received by CalVet by the deadline given above. Comments may also be submitted by email to Deanna Beland at [deanna.beland@calvet.ca.gov](mailto:deanna.beland@calvet.ca.gov) and must be received by CalVet by the deadline given above.

**AUTHORITY AND REFERENCE**

Authority Citation: The proposed amended regulations are authorized by Government Code sections 4526 and 4529.10, and California Constitution, Article XXII, sections 1 and 2.

Reference Citation: The code sections implemented, interpreted, or made specific by these proposed amended regulations are Government Code sections 4525, 4526, 4527, 4529.10, and 4529.12, California Constitution, Article XXII, sections 1 and 2 and Military and Veterans Code section 700.

**INFORMATIVE DIGEST**

*Summary of Existing Laws and Effects of Proposed Rulemaking*

Background and History: Before November 8, 2000

Under California constitutional law, State civil service employees must perform services provided by State agencies generally. These services cover a broad range of activities, such as clerical support, building maintenance, and security. In some cases, however, the State may contract with private firms to obtain services. Such contracting is allowed, for example, if services needed by the State are (1) of a temporary nature, (2) not available within the civil service, or (3) of a highly specialized or technical nature. Unlike the State, local governments are not subject to constitutional restrictions on contracting for services.

The State and local governments frequently contract with private firms for construction-related services, which include architectural, engineering, and environmental impact studies. State and local governments enter into these contracts through a competitive process of advertising for the service, selecting the firm determined to be best qualified, and negotiating a contract with that firm. However, neither the State nor most local government entities use a bidding process for these services. By comparison, bidding generally is used to acquire goods and for construction of projects.

Existing Law: Effective November 8, 2000

On November 7, 2000, California voters approved an initiative measure (Proposition 35) that resulted in a constitutional amendment (see Article XXII, sections 1 and 2) and the enactment of certain statutory laws (see Government Code sections 4529.10 through 4529.20). The amended State Constitution allows the State and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Thus, government agencies could decide to contract out for these specific services in any case, rather than just in limited circumstances.

The statutory laws:

- Define the term “architectural and engineering services” to include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services; and
- Require architectural and engineering services to be obtained through a fair and competitive selection process.

Effect of Proposed Rulemaking

The proposed amended regulations reflect the constitutional amendments and statute enactments and amendments, which presently are not represented in the CalVet’s existing regulations.

INFORMATIVE DIGEST /POLICY STATEMENT  
OVERVIEW

The objective of the proposed amended regulations is to improve CalVet internal procedures to contract for architectural and engineering services. CalVet’s current regulations do not reflect the passage of Proposition 35 (an initiative measure effective since November 8, 2000). Proposition 35 eliminated certain restrictions on the State to allow contracting with private qualified entities for engineering and architectural services in all phases of public works projects. The scope of definitions in the proposed regulations has been broadened, made specific, and also clarified. Government Code section 4526 authorizes CalVet to adopt regulations for the aforementioned purposes.

The specific benefits anticipated by the proposed amended regulations are:

1. The CalVet regulations for advertising, selection and contracting for architectural and engineering services will align with other State entities such as Department of General Services and the Department of Corrections and Rehabilitation.
2. The CalVet will be able to make annual announcements, without the existing \$25,000 limit, based on the general need for architectural and engineering services to assist in its overall mission and may enter into requirements contracts, also commonly known as “retainer” contracts.
3. Utilization of Retainer Agreements allows for expeditious and cost effective contracting for professional architectural and engineering services.

4. Utilization of Retainer Agreements provides the ability to contract for one or more architectural and engineering disciplines to enhance or supplement an existing team of State civil service Architect(s) and Engineer(s) when these certain services are not available within State civil service staff and the services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.
5. Landscape architecture, environmental services, and construction project management will be added to the professional services available for procurement consistent with Government Code sections 4525–4529.5.

CalVet has evaluated the proposed regulations for inconsistency or incompatibility with other existing State regulations. There are regulations currently being used by the Department of General Services in their selection process for private architectural and engineering firms. (Title 21, California Code of Regulations, Subchapter 4. Selection Process for Private Architectural and Engineering Firms). CalVet’s proposed regulations will be consistent with those regulations. Otherwise there are no other related regulations on this matter. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

*CalVet has made the following determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any State agency: Unknown fiscal impact on State spending for architectural and engineering services and construction project delivery. Actual impact will depend on how the State uses the contracting flexibility granted by these regulations.

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

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

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

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: CalVet has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. (These regulations increase the business opportunities since they

are designed to select private firms that offer services to CalVet.)

Cost impacts on a representative private person or business: CalVet 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 ANALYSIS

Adoption of these amended regulations 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.
- (4) as stated above, the benefits include refinements to CalVet's contracting processes and increased opportunities for architectural and engineering firms to bid on CalVet job opportunities.

Significant effect on housing costs: None.

#### *Small Business Determination:*

CalVet has made an initial determination and is not aware of any adverse effect on small business. Small businesses with access to electronic publication tools will have more of an opportunity to compete for services under these regulations.

### CONSIDERATION OF ALTERNATIVES

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

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

### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Deanna Beland, Departmental Construction and Maintenance Supervisor  
California Department of Veterans Affairs  
Facilities and Business Services Division  
1227 O Street, Suite 314  
Phone: (916) 651-5045  
Fax: (916) 653-1388  
Email: deanna.beland@calvet.ca.gov

The backup contact person for these inquiries is:

Sergio Mondragon-Lopez, Associate  
Governmental Program Analyst  
California Department of Veterans Affairs  
Facilities and Business Services Division  
1227 O Street, Suite 314  
Phone: (916) 503-8377  
Fax: (916) 653-1388  
Email: Sergio.mondragon-lopez@calvet.ca.gov

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

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

CalVet 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, the proposed text of the regulations, the initial statement of reasons, and the Economic and Fiscal Impact statement (STD Form 399). Copies may be obtained by request from the contact persons named above.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT  
OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Deanna Beland at the above address.

AVAILABILITY OF DOCUMENTS ON  
THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the CalVet website at: [www.calvet.ca.gov](http://www.calvet.ca.gov).

**TITLE 14. BOARD OF FORESTRY  
AND FIRE PROTECTION**

**“PROTECTION OF HABITABLE  
STRUCTURES EXEMPTION, 2015”  
Title 14 of the California Code of Regulations  
(14 CCR),  
Division 1.5, Chapter 4, Subchapter 1, Article 1  
and Subchapter 7, Article 2  
Amend: §§ 895.1, 1038 and 1038.2**

NATURE OF PROCEEDING

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

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, August 26, 2015, at its regularly scheduled meeting commencing at 8:30 a.m., at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, August 24, 2015.

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

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Thembi Borras  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

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

Board of Forestry and Fire Protection  
Room 1506-14  
1416<sup>9th</sup> Street  
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

[publiccomments@BOF.ca.gov](mailto:publiccomments@BOF.ca.gov)

AUTHORITY AND REFERENCE

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

**14 CCR § 895.1** Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code.

Reference: Sections 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4561.6, 4562, 4562.5, 4562.7, 4583.2, ~~4584~~, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 CalRptr. 82 and *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma County Superior Court No. SCV 229850.

**14 CCR § 1038** Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, and 4584, and 4584.1, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.

**14 CCR § 1038.2** Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections 4527 and 4584, Public Resources Code.

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

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

Pursuant to PRC § 4584, the Board, upon determining that the exemption is consistent with the purposes of the Z’berg–Nejedly Forest Practice Act of 1973 (FPA), may exempt from this FPA, or portions of this FPA, a person engaged in specific forest management activities.

PRC § 4584(i)(6) was added to PRC § 4584 through the recent passing of AB 1867 (2014) and is the basis for the proposed action mandated by the legislature and administration.

It was the intent of the legislature, under AB 1867, to authorize the Board to provide an exemption from some or all of the provisions of the FPA, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person’s property in compliance with PRC §§ 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 300 feet on each side from an Approved and Legally Permitted Habitable Structure, when that cutting or removal is conducted in compliance with certain conditions.

Pursuant to this statutory authority, the Board amended 14 CCR §§ 895.1, 1038 and 1038.2 in accordance with the provisions of the statute.

On May 13, 2015, the Board took action to authorize emergency rulemaking for the regulation entitled, “Protection of Habitable Structures Exemption, 2015”, based on the statutory allowance for emergency rulemaking in PRC § 4584(i)(5) and the findings provided in the Emergency Notice pursuant to GOV § 11346.1(b)(2).

Amendments to 14 CCR §§ 895.1, 1038 and 1038.2 became effective on June 22, 2015, thereby enabling PRC § 4584(i)(6).

The purpose of the proposed action is to make permanent these amendments, with modifications, through regular rulemaking.

The effect of the proposed action is to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA, to a person engaging in the cutting or removal of trees between 150 ft. and 300 ft. of an Approved and Legally Permitted Habitable Structure contingent upon certain conditions for the purposes of reducing flammable materials and maintaining a fuel break.

The primary benefit of the proposed action is to facilitate the reduction of fire hazard around Approved and Legally Permitted Habitable Structures. Additional benefits may include monetary return and restoration of lost attributes (such as solar exposure, view and reduced home maintenance). It is likely that California will continue to experience large and damaging wildfires that threaten people’s lives and destroy homes. This exemption will incentivize more owners of Approved and Legally Permitted Habitable Structures to create fuel breaks that will reduce the risk of loss of life and property damage. It will also reduce the negative impact, associated with large and damaging wildfires, to watersheds, fisheries, wildlife habitat, public health, water supply, water quality, the atmosphere from GHG emissions and local economies. Even though the proposed action is expected to benefit the protection of public health and safety, worker safety, and the environment, it is not expected to prevent discrimination, promote fairness or social equity, or result in an increase in the openness and transparency in business and government.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including portions of §§ 14 CCR 895.1, 913.2 [933.2, 953.2], 917.2(a), 1038, 1038.1, 1038.2 and 1052.4(d)(1) of Title 14 of the California Code of Regulations) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and related to the Prevention and Control of Forest Fires and found no existing State

regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends them, providing expansion to an existing exemption.

No documents are incorporated by reference.

**MANDATED BY FEDERAL LAW  
OR REGULATIONS**

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

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

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and regarding the existing system of regulation related to the Prevention and Control of Forest Fires, no existing Federal regulations that met the same purpose as the proposed action were identified.

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

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

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

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

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

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

Regarding costs or savings to any State agency, authors of AB 1867 bill analyses reported a negligible fiscal impact, except the Department which estimated that the fiscal impact to the Board and the Department would be less than \$50,000. However, the Board, in making the statute specific, added an unbudgeted com-

ponent to the proposed action, which requires the Department to evaluate the effects of the exemption allowed under 14 CCR § 1038(c)(6) including frequency and state-wide distribution of use, acres treated, compliance, professional judgment regarding post-treatment stand conditions observed relative to moderating fire behavior, and actual performance in the event of a wildfire. It also requires the Department to, annually, report its findings based on this evaluation to the Board. The estimated cost to do this evaluation is \$15,180. This is based on an estimated cost of \$138/ exemption (~2 hours of a Forester I time per exemption) multiplied by 10% (sampling percentage) of the 1,100 exemptions expected to be submitted to CAL FIRE for the current year and two subsequent Fiscal Years (200 in 2015 and 900 in 2016 and 2017). Therefore, the total fiscal impact for the current year and two subsequent Fiscal Years is estimated at \$65,180. The Department would not require additional Timber Regulation and Restoration Funds for the implementation of the requirements described because the \$65,180 is absorbable within the existing budget. In general, the cost to administer the Forest Practice Program, which includes review and inspection of the 1038(c)(6) exemption, is covered by the Timber Regulation and Restoration Fund.

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

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

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

The proposed action will not significantly affect housing costs.

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses will be beneficially impacted by the proposed action.

Pursuant to **GOV § 11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

This initial determination is based on research into the economic impact of the proposed action that was undertaken in May of 2015 from which a compilation of responses from seven (7) Registered Professional Foresters (RPF(s))/LTO(s) working throughout the State was developed.

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

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

- (A) will create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California.
- (D) Nonmonetary benefits may result.

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

The Board is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This initial determination is based on research into the economic impact of the proposed action that was undertaken in May of 2015 and represents a compilation of responses from seven (7) RPF(s)/LTO(s) working throughout the State, excerpts from which follow:

In 2015, an estimated 200 exemptions will be submitted to CAL FIRE. Between 2016 and the end of 2018 an estimated 1,350 exemptions will be submitted to CAL FIRE. This number is based on the number of 0 ft. to 150 ft. exemptions submitted in 2014, the exemption only being available for 6 months in 2015, and the life (specified in statute) of the exemption. The estimated submission numbers are less than 1/2 of the 2014 submission numbers because there are fewer Approved and Legally Permitted Habitable Structures than there are Approved and Legally Permitted Structures and due to the weak log market. Preparation costs are estimated to be between \$500 and \$5,000 depending on many factors including topography, brush, size of trees and number of trees.

Implementation costs are estimated to be between \$3,750 and \$15,750. There are approximately 5 acres in the 150 ft. to 300 ft. area, at a cost of \$750/acre to execute the exemption the cost per exemption would be \$3,750. Another scenario would be if the logger, on high site redwood ground, where 10,000 board feet (bf)/acre was removed, is paid 50% of the delivered log price. In which case, if the delivered log price for redwood is \$700/thousand board feet (MBF), the cost would be \$15,750. Implementation costs depend heavily on many factors including topography, brush, size of trees, number of trees, delivered log price and infrastructure constraints.

Therefore, the combined cost of preparation and implementation is estimated to range from \$4,250 to \$20,750 per exemption.

**BUSINESS REPORT**

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

The proposed action does not impose a business reporting requirement.

**SMALL BUSINESS**

(pursuant to **1 CCR § 4(a)** and **(b)**)

Small business, within the meaning of **GOV § 11342.610**, is expected to be affected by the proposed action. The types of small businesses that will be beneficially impacted by the proposed action are forestry consulting, logging, tree removal and landscapers.

Small business:

- (1) Is legally required to comply with the regulation to the extent that a representative private person hires a small business for implementation;
- (2) Is not legally required to enforce the regulation;
- (3) Does derive a benefit from the enforcement of the regulation by being hired for implementation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

**ALTERNATIVES INFORMATION**

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

CONTACT PERSON

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

Board of Forestry and Fire Protection  
 Attn: Thembi Borrás  
 Regulations Coordinator  
 P.O. Box 944246  
 Sacramento, CA 94244-2460  
 Telephone: (916) 653-9633

The designated backup person in the event Ms. Thembi Borrás is not available is Mr. Matt Dias, Acting Executive Officer to the Board of Forestry. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

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

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public

hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

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

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at: [http://bofdata.fire.ca.gov/regulations/proposed\\_rule\\_packages/](http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/).

**TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

**“SRA Fire Prevention Fee Exemption (Self-Certification of Home Loss), 2015”  
 Title 14 of the California Code of Regulations  
 (14 CCR), Division 1.5, Chapter 13  
 Amend: § 1665.7**

NATURE OF PROCEEDING

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

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, August 26, 2015, at its regularly scheduled meeting commencing at 8:30 a.m., at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the

meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

#### WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m. on Monday, August 24, 2015.

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

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Thembi Borras  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

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

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

publiccomments@BOF.ca.gov

#### AUTHORITY AND REFERENCE

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

Note: Authority cited: Sections 4111, 4212 and 4213.1, Public Resources Code. Reference: Sections 4117, 4125, 4127, and 4210 and 4213.1, Public Resources Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(pursuant to GOV § 11346.5(a)(3)(A)-(D))

Pursuant to Public Resources Code (PRC) § 4111, the Board shall make and enforce such regulations as are necessary and proper for the organization, maintenance, government, and direction of the fire protective system for the prevention and suppression of forest fires which is provided for in this article.

Pursuant to this statutory authority and PRC § 4210, *et seq.*, which was chaptered by Assembly Bill X1 29, the Board adopted and the Office of Administrative Law (OAL) approved, in 2012, 14 CCR §§ 1665.1-1665.8, State Responsibility Area Fire Prevention Fees.

Pursuant to PRC § 4213.1(a), the fire prevention fee imposed pursuant to PRC § 4212, shall be levied upon the Owner of a Habitable Structure identified by the Department as located within the State Responsibility Area (SRA), if that person owns the Habitable Structure on July 1 of the year for which the fee is due.

On average more than 100 Habitable Structures are destroyed each year by wildfires ([http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012\\_Redbook\\_Graphics1-10.pdf](http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf)) and the legislature estimated up to 500 Habitable Structures per year are destroyed due to natural disaster.

Since the fee was enacted, Owners of Habitable Structures that have been destroyed by natural disaster have had no way to request an Exemption from the Fire Prevention Fee. Consequently, the public outcry associated with Owners of Habitable Structures receiving bills after their Habitable Structures were destroyed, especially after the Clover fire, has been significant. In response to the public's concerns, the legislature passed AB 2048, which was, in part, chaptered in PRC § 4213.1 and became effective on January 1, 2015 and offered a solution to the problem by allowing for a Fee Exemption pursuant to specific conditions.

The proposed action is mandated by the legislature and administration through the recent passing of AB 2048, which chaptered PRC § 4213.1.

Regarding the legislative intent associated with AB 2048, following are relevant quotes from the author:

From the 6/20/2014 Bill Analysis: According to the author, "Most importantly it will allow for a homeowner who loses their home due to a natural disaster to be able to file with the Department to be exempt from paying the fee if their home is deemed uninhabitable. This is very important not only to people in my District where there were 68+ homes lost in the Clover Fire, but to all homeowners across the state."

From 06/06/14 Bill Analysis: According to the author, this bill will clarify the statute and help homeown-

ers seek much needed relief from the fee after a catastrophic fire or other natural disaster while posing minimal fiscal impact. . . . CAL FIRE is in support . . . and says that existing law does not exempt structures damaged or destroyed by natural disaster, even if the bill for the fee arrives months after the structure has been damaged.

PRC § 4213.1 offered a remedy to this problem and was the basis for the action taken by the Board on December 10, 2014 authorizing emergency rulemaking to prepare forms for purposes of the certification requirements specified in PRC § 4213.1(b). The emergency rulemaking, which amended 14 CCR § 1665.7, became effective on January 1, 2015, thereby enabling the statute, but which was set to expire on June 29, 2015. To avoid a lapse in the effective period, the Board completed the readoption process documented in file 2015-0612-02 EE, which became effective on 6/30/2015.

The basis for this proposed action is to make permanent the amendments, with modifications, to 14 CCR § 1665.7 through regular rulemaking. These modifications were informed by the use of the form; will make processing the form easier, and include the defensible space requirements pursuant to PRC § 4291 and 14 CCR § 1299.03 and other relevant regulation.

Pursuant to PRC § 4111 and PRC § 4213.1 the proposed action of the Board is to adopt amendments to 14 CCR § 1665.7, Fee Exemptions. The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee if their Habitable Structure was destroyed by natural disaster after July 1, 2014. To be eligible for the Fire Prevention Fee Exemption, the Owner of the Habitable Structure must certify that the structure is not habitable as a result of a natural disaster and either documents that the Habitable Structure passed a defensible space inspection conducted by the Department or by one of its agents within one year prior to the date the structure was damaged or destroyed or certify that clearance, as required under PRC § 4291 and 14 CCR § 1299.03, were in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

Forms, as required by PRC § 4213.1(c), have been prepared by the Board to facilitate this self-certification.

In conclusion, the primary purpose of the proposed action is to provide temporary relief in the wake of a traumatic event. The specific benefit, albeit small in comparison to the loss, is to provide an opportunity for a temporary reprieve from the Fire Prevention Fee.

Nonmonetary benefits may result, such as the peace of mind that this exemption may afford eligible owners. However, the proposed action is not expected to have additional nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and is not expected to result in an increase in the openness and transparency in business and government.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including § 1299.03 of Title 14 of the California Code of Regulations, §§ 4211 and 4291 of the Public Resources Code, § 505.1 of the 2013 California Fire Code, § 2113.9.2 of the 2013 California Building Code and the Board of Forestry Defensible Space Guidelines) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the Prevention and Control of Forest Fires and State Responsibility Area Fire Prevention Fees and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends them, providing a Fee Exemption.

No documents are incorporated by reference.

**MANDATED BY FEDERAL LAW  
OR REGULATIONS**

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

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

There are no comparable Federal regulations related to State Responsibility Area Fire Prevention Fees on State or private lands.

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

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

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

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

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

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

Regarding costs or savings to any State agency, according to the Assembly Appropriations Committee Summary (04/28/14), the following costs are projected:

- Unknown revenue loss (SRA fund) due to the fee relief for natural disasters, potentially in the range of \$20,000 to \$140,000 annually. Any loss in SRA fund that brings revenues below expenses will have to be backfilled by GF.
- The 2014–15 SRA fees are \$117.33 for structures within a local fire protection district and \$152.33 for structures not within a local district. Assuming between 100 and 500 structures are damaged per year for each type of structure, the revenue loss would range from \$11,733 to \$58,666 for structures within a district and \$15,233 to \$76,165 for structures outside a district.

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

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

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

The proposed action will not significantly affect housing costs.

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testi-

mony, or other evidence upon which the agency relies to support this initial determination:

The proposed action does not affect business because it is exclusive to individuals eligible for the Fire Prevention Fee Exemption.

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

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)–(D)**. The proposed action: (A) will not create or eliminate jobs within California; (B) will not create new businesses or eliminate existing businesses within California; or (C) will not affect the expansion of businesses currently doing business within California. (D) Non-monetary benefits may result, such as the peace of mind that this exemption may afford eligible owners. However, the proposed action is not expected to have additional nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and is not expected to result in an increase in the openness and transparency in business and government.

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

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. The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee, if their Habitable Structure has been destroyed by natural disaster, which will economically benefit those owners that comply with 14 CCR § 1665.7.

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

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS  
(pursuant to 1 CCR § 4(a) and (b))

Small business, within the meaning of GOV § 11342.610, is not expected to be affected by the proposed action because small business:

- (1) Is not legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation; and
- (4) Does not incur a detriment from the enforcement of the regulation.

**ALTERNATIVES INFORMATION**

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

**CONTACT PERSON**

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

Board of Forestry and Fire Protection  
 Attn: Thembi Borrás  
 Regulations Coordinator  
 P.O. Box 944246  
 Sacramento, CA 94244-2460  
 Telephone: (916) 653-9633

The designated backup person in the event Ms. Thembi Borrás is not available is Mr. Matt Dias, Acting Executive Officer to the Board of Forestry. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

**AVAILABILITY STATEMENTS  
 (pursuant to GOV § 11346.5(a)(16))**

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**FINAL STATEMENT OF REASONS**

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

**INTERNET ACCESS**

All of the material referenced in the Availability Statements is also available on the Board web site at: [http://bofdata.fire.ca.gov/regulations/proposed\\_rule\\_packages](http://bofdata.fire.ca.gov/regulations/proposed_rule_packages).

**TITLE 14. DEPARTMENT OF  
RESOURCES RECYCLING AND  
RECOVERY**

**NOTICE OF INTENTION  
TO AMEND THE CONFLICT-OF-INTEREST  
CODE OF THE  
DEPARTMENT OF RESOURCES RECYCLING  
AND RECOVERY**

NOTICE IS HEREBY GIVEN that the Department of Resources Recycling and Recovery (Department), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment of its conflict-of-interest code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Department proposes amending its conflict-of-interest code to include employee positions that involve making decisions or participating in making 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.

These amendments delete position titles that are no longer in use and add position titles that involve making governmental decisions by (1) voting on a matter, (2) obligating or committing the Department, or (3) entering into contractual agreements for the Department. The amendments also add position titles that participate in the making of governmental decisions by (1) negotiating on behalf of the Department or (2) advising or making recommendations to the decision maker by (a) conducting research or (b) preparing reports, analyses or opinions.

Copies of the amended conflict-of-interest code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than August 24, 2015, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than August 10, 2015, by contacting the Contact Person set forth below.

The Department has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The Department has determined that adopting 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.

In making these proposed amendments, the Department must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the code is proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment of the conflict-of-interest code and any communication required by this notice should be directed to:

Marie Nudi  
Administration, Finance & Information Technology  
Services Division  
Department of Resources Recycling and Recovery  
(CalRecycle)  
1001 "I" Street, MS 19A  
P.O. Box 4025  
Sacramento, CA 95812-4025  
Telephone: (916) 324-0857  
Fax: (916) 319-7446  
e-mail: Marie.Nudi@CalRecycle.ca.gov

**TITLE 16: BOARD OF BEHAVIORAL  
SCIENCES**

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (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 at:

Board of Behavioral Sciences  
1625 N. Market Blvd.  
El Dorado Room, Suite 220  
Sacramento, CA 95834  
August 25, 2015  
10:00 a.m.–11:00 a.m.

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 not later than 5:00 p.m. on August 24, 2015 or must be received by the Board 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 4980.60 and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 2290.5, 4980, 4989.50, 4996, 4999.30, and 4999.82 of the BPC, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations as described in this Notice.

## INFORMATIVE DIGEST

Over the past several years, therapy via electronic means (telehealth) has dramatically increased in popularity. As this happens, state licensing entities and professional associations are beginning to adopt laws, regulations, and guidelines regarding its use. Reflecting this trend, the Board of Behavioral Sciences (Board) is receiving an increasing number of inquiries regarding the lawful practice of telehealth.

Current law (Business and Professions Code Section 2290.5) specifically defines telehealth for all healing arts professions regulated by the Department of Consumer Affairs (DCA), including the Board's licensees. It sets patient consent and confidentiality standards, and it makes failure to comply with these standards unprofessional conduct.

However, the Board's licensing law offers little guidance regarding telehealth practice when performing

psychotherapy. The law simply requires a valid state license in marriage and family therapy, clinical social work, educational psychology, or clinical counseling, respectively, before a person can engage in the practice of any of these professions in this state (BPC §§ 4980, 4989.50, 4996, 4999.30, and 4999.82), but no further details are provided.

This implies that a licensee in another state may not counsel an individual who is located in the State of California, unless he or she holds a California license. If the client is not located in California, the state where the client is located would have jurisdiction. However, this is not stated specifically, leading to confusion and questions by licensees and consumers.

The regulatory proposal is as follows:

### **Add Section 1815.5. Standards of Practice for Telehealth**

#### **1815.5(a) Clarification of Need for a California License to Engage in Practice with a Client Located in California.**

Existing law states that a valid California license is needed to practice any of the professions that the Board regulates within the state of California. However, the law does not specifically discuss various scenarios that may arise during the practice of telehealth (i.e. client located in this state, practitioner located in another state, etc.).

This proposed amendment specifically states that any practitioner wishing to engage in a practice that the Board regulates, must have a valid California license if the client is physically located in California.

Policy Statement Overview: The objective of this amendment is to make it clear that if the client is located in California, the treating practitioner must have a California license. This is in response to the Board frequently being asked if a practitioner who is licensed and located in another state (who is not licensed in California) may treat a patient located in California via telehealth.

The mental-health consuming public will benefit from this amendment, because it will clarify that all psychotherapists treating a patient located in California hold a valid California license. This guarantees that those treating clients located in California have received a high level of education and experience treating diverse populations unique to California.

#### **1815.5(b) Clarification that Services Offered via Telehealth are Still Subject to the Board's Statutes and Regulations.**

The Board's statutes and regulations outline professional qualifications and standards of conduct that all licensees and registrants must abide by. This amendment makes it clear that these laws and regulations apply to

telehealth services just as they apply to traditional face-to-face services.

Policy Statement Overview: This amendment seeks to remind practitioners utilizing telehealth that even though they are using a different medium, the same standards of professional conduct apply. For example, licensees of the Board are mandated reporters, and this still applies, even in a telehealth interaction.

This amendment stating statutes and regulations apply to both face-to-face and telehealth practice will benefit practitioners, as it will serve as a reminder that the law also applies to telehealth as various professional questions arise. In addition, consumers will benefit from this assurance that their therapy via telehealth has the same legal protections as face-to-face service.

**1815.5(c) Define Actions a Licensee or Registrant Must Take Upon Initiating Telehealth Services.**

Offering services via telehealth creates some unique questions and challenges not encountered in traditional face-to-face therapy situations. To address these, the amendments define certain actions that a licensee or registrant must take when initiating telehealth services with a client for the first time. They are as follows:

- Documenting informed consent in accordance with BPC § 2290.5;
- Informing the client of potential risks and benefits of telehealth;
- Ensuring the client is given a license or registration number; and
- Ensuring the client has written emergency procedures near his or her location if a crisis arises when the therapist is not available.

Policy Statement Overview: The goal of this section is to make the practitioner aware that therapy via telehealth has some differences from face-to-face therapy. The electronic communication medium may have certain nuances (technology failure, need for specialized electronic security systems, less visibility of verbal cues) that do not exist with face-to-face therapy. In addition, online interaction can be more anonymous, so it is important to ensure the client obtains the therapist's license number so that they have the ability to verify the therapist's identity. Finally, if there is an emergency, the therapist may be less familiar with the resources in the client's area, and therefore it is important for the therapist to become aware of, and document, this information.

Requiring these actions upon initiation of telehealth services ensures that both the patient and the practitioner are informed about differences in telehealth interactions, and increases transparency for the client, thus enhancing consumer protection.

**1815.5(d) Define Actions a Licensee or Registrant Must Take Each Time he or she Performs Telehealth Services.**

This amendment defines the actions a licensee or registrant must take each and every time he or she performs telehealth with a client. They are as follows:

- Verbally obtain and document the client's full name and address of present location;
- Assess whether or not the client is appropriate for telehealth; and
- Utilize industry best practices to ensure client confidentiality and to ensure that the communication medium is secure.

Policy Statement Overview: This amendment seeks to protect the consumer of telehealth therapy services by requiring the therapist to address, at each telehealth session, key situations which could change from session to session due to environmental factors.

Verbal identification and documentation of the client's identity and location protects the client's personal information, and ensures that if an emergency arises, the therapist knows where the client can be located.

Assessing appropriateness for telehealth is crucial to the situation, because the client's mental health may change from session to session. For example, if the client is experiencing severe mental distress, a therapist may decide that in his or her professional opinion, it is in the client's best interest to seek face-to-face therapy services, or emergency resources.

Requiring the therapist to utilize industry standards to ensure confidentiality ensures that for each session, the therapist's actions are always consistent with maintaining the confidentiality of the client's information, and ensures that the therapist is always using the appropriate technology to prevent electronic communications from being compromised.

**1815.5(e) Clarify that a Board Licensee Performing Telehealth Services in Another State Must Comply with the Licensing Laws of that State.**

The Board's licensees frequently ask if they are permitted to perform services via telehealth with a client who is located in another state.

The Board does not have jurisdiction over telehealth services performed in another state. This amendment seeks to clarify that a Board licensee practicing telehealth with a client in another jurisdiction must ensure that he or she meets the requirements to lawfully provide services in that jurisdiction.

Policy Statement Overview: Adoption of this amendment will benefit licensees because it clarifies that they are not permitted to practice telehealth in another jurisdiction unless they meet the requirements of that jurisdiction. This may also benefit the public in other states,

as it helps to ensure that they are seeking telehealth from a practitioner who meets the particular licensing requirements relevant to his or her state.

**1815.5(f) State that Failure to Comply with Provisions in this Regulation is Unprofessional Conduct.**

This amendment clarifies that the regulations discussed in this proposal are required of all licensees and registrants providing services via telehealth, and must be followed.

Policy Statement Overview: This amendment will benefit consumers of mental health services by requiring certain actions be taken to promote transparency, security, and client safety when services via telehealth are rendered.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board of Behavioral Sciences has determined that these are the only regulations that apply to the subject area of telehealth for licensees and registrants of this Board. Therefore, the Board finds that these proposed regulations are consistent and compatible with existing state regulations.

FORMS INCORPORATED BY REFERENCE

No forms have been incorporated by reference.

FISCAL IMPACT ESTIMATES

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

It is possible that the Board may see an increase in enforcement cases stemming from complaints of licensee unprofessional conduct due to violation of these proposed telehealth regulations.

The Board estimates the following:

- An estimated 4 additional cases per year investigating allegations of misconduct performing telehealth that end up with action being taken by the Attorney General’s office.
- Additional subject matter expert review costs of \$680 per case (8 hours x \$85 per hour).
- Total additional subject matter expert review cost of \$2,720 (4 cases x 680 per case).
- Estimated cost of \$7,000 per case for Attorney General investigation and prosecution.

- Total estimated Attorney General costs of \$28,000 (4 cases x \$7,000) per year to prosecute these cases.
- **Total annual potential additional cost to the Board: \$2,720 subject matter expert review cost + \$28,000 Attorney General cost = \$30,720.**
- The Board is able to absorb this additional cost.

These regulations provide increased clarity regarding the practice of telehealth. It is therefore possible that the regulations may provide some cost savings. If the regulations provide any clarity to the Attorney General’s office during case preparation, it could lessen the amount of time they need to spend preparing the case. If the increased clarity encourages stipulated settlements and leads to fewer disputed cases, this could reduce hearing costs. The amount of any potential cost reduction is indeterminable.

Finally, BPC §2290.5 already permits Board licensees to practice via telehealth, and makes violations of its provisions unprofessional conduct. Therefore, there is already the potential for a fiscal impact due to needed enforcement actions from the Board to enforce the provisions of §2290.5, regardless of whether or not these regulations are adopted. These regulations are needed to provide more clarity to §2290.5 regarding the practice of telehealth.

There will be no effect on federal funding to the state.

The fiscal impact of these regulations is also discussed in **Attachment A** of the STD 399.

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. A business may employ licensees, or a licensee may own his or her own business. The decision of a business or a Board licensee to perform services via telehealth is voluntary. A business or licensee which chooses to practice via telehealth may benefit from an increased client base. However, they may incur some compliance costs to ensure the security of the communication medium according to industry best practices. Any costs incurred would depend on the communication medium chosen.

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 are insignifi-

cant. The law (Business and Professions Code (BPC) Section 2990.5) already permits Board licensees to perform services via telehealth and states that all confidentiality laws regarding health care information and patient's rights apply to telehealth interactions. This regulation specifies that the licensee must comply with industry best practices to ensure the security of the communication medium. Such costs would only apply to a licensee who chooses to practice via telehealth, and would depend on the communication medium chosen.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. With clearer regulations regarding the use of telehealth, licensees may be more willing to provide telehealth service, which could increase their client base and lead to increased access to therapists in rural areas.

Effect on Housing Costs: None.

#### EFFECT ON SMALL BUSINESS

These proposed regulations will impact a business that is owned by a Board licensee or that employs Board licensees. This could include small businesses (although the Board does not license small businesses). It will make it easier for licensees to know what is expected of them under the law in regards to telehealth. With this increased clarity, a Board licensee who owns his or her own business, or a business that employs licensees, may be more willing to perform services via telehealth, which could result in an increased client base.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Board has made an initial determination that the proposed regulatory action would not have a 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:** This regulatory proposal will not create or eliminate any jobs.
- **Analysis of creation/elimination of businesses:** No businesses will be created or eliminated as a result of this proposal.

- **Analysis of expansion of business:** This proposal may lead to some expansion of business if licensees choose to provide service via telehealth as a result of the increased clarity provided by these regulations. Therapists choosing to provide services via telehealth may gain access to an increased number of clients.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** The Board has determined these regulations will benefit consumers by providing increased clarity regarding requirements for a Board licensee to practice telehealth. Consumers will benefit from requirements that protect their confidentiality and promote transparency (for example, because the therapist practicing via telehealth will be required to disclose his or her license number). In addition, licensees may be more willing to practice telehealth because they better understand what the law requires of them. If more licensees are then willing to practice telehealth, consumers of mental health services who live in rural areas, which often have a shortage of mental health professionals, may have increased access to care.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, and it will not eliminate any jobs or occupations. This proposal does not impact multiple industries.

Occupations/Businesses Impacted: This proposed regulation will impact those licensed by the Board (and any business that they own or that employs them) if they choose to provide services via telehealth. It clarifies what the law requires of them when they offer telehealth services. It is not possible for the Board to estimate the number of businesses impacted, as this regulation will only affect licensees who practice via telehealth. Choosing to do this is voluntary.

Reporting Requirements: The proposed regulations do not impose any reporting requirements on licensees or the public.

Business Reporting Requirement: The proposed regulations do not impose any reporting requirements on businesses.

Comparable Federal Regulations: None.

Benefits: The benefits of this proposal cannot be quantified. However, Board licensees who wish to practice telehealth will benefit from increased clarity of what is required of them, and may be more willing to practice via telehealth, leading to an increased number of clients. If more Board licensees are willing to prac-

tice via telehealth due to these regulations, it is possible that consumers in rural areas, where there are typically very few therapists, may have greater access to mental health services.

#### CONSIDERATION OF ALTERNATIVES

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

1. Not adopt the regulations. This alternative was rejected because it leaves a number of questions regarding the use of telehealth by Board licensees left unanswered by current law. Confusion due to a lack of clarity in the law would continue. As telehealth continues to increase in use, this confusion will increase. In addition, there is the potential for unlicensed practice to happen due to lack of understanding that a California license is needed to practice via telehealth when the patient is located in California.
2. Adopt the regulations. The Board determined that this alternative is the most feasible. It creates a system whereby consumer protection is increased by ensuring that it is clear that practicing telehealth with a client located in California requires a California license, and by requiring certain actions that promote transparency and protect the security and safety of the client.

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 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 or by accessing the Board's website, [www.bbs.ca.gov](http://www.bbs.ca.gov).

#### 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: Rosanne Helms  
Address: 1625 N. Market Blvd., Suite S-200  
Sacramento, CA 95834  
Telephone No.: (916) 574-7897  
Fax No.: (916) 574-8626  
E-Mail  
Address: [Rosanne.Helms@dca.ca.gov](mailto:Rosanne.Helms@dca.ca.gov)

The backup contact person is:

Name: Christy Berger  
Address: 1625 N. Market Blvd., Suite S-200  
Sacramento, CA 95834  
Telephone No.: (916) 574-7817  
Fax No.: (916) 574-8626  
E-Mail  
Address: [Christy.Berger@dca.ca.gov](mailto:Christy.Berger@dca.ca.gov)

**Website Access:** Materials regarding this proposal can be found at [www.bbs.ca.gov](http://www.bbs.ca.gov).

#### TITLE 22. DEPARTMENT OF HEALTH CARE SERVICES

#### NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

#### SUBJECT: MANAGED CARE INFORMATION SHARING, DHCS-14-030

**NOTICE IS HEREBY GIVEN** that the Department of Health Care Services (Department) has adopted the regulations in California Code of Regulations (CCR), Title 22, Division 3, Subdivision 1, Chapter 2, Article 4,

Section 50188 on an emergency basis. These emergency regulations became effective on June 24, 2015, and will remain in effect for a period of 180 days. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

#### WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to Managed Care Information Sharing, DHCS-14-030 and submit using any of the following methods:

Mail Delivery: Department of Health Care  
Services  
Office of Regulations, MS 0015  
P.O. Box 997413  
Sacramento, CA 95899-7413

Hand Delivery: Department of Health Care  
Services  
Office of Regulations  
1501 Capitol Avenue, Suite 5084  
Sacramento, CA 95814

FAX: (916) 440-5748

Email: [regulations@dhcs.ca.gov](mailto:regulations@dhcs.ca.gov)

The written comment period closes at **5:00 p.m. on August 24, 2015**, any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 p.m.** on this date, for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

#### Authority and Reference

These regulations are being proposed under the following authorities:

Welfare and Institutions Code (WIC) Sections 10725 and 14124.5 authorize the Director of the Department to adopt, amend or repeal regulations as necessary and

proper to carry out the purposes and intent of the statutes governing the Medi-Cal program.

These regulations implement, interpret, or make specific the following: WIC Section 14005.36.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's mission is to provide Californians with access to affordable, high-quality health care, including medical, dental, mental health, substance use treatment services and long-term care. In support of this mission, the Department administers many health care programs including California's State Medicaid program, which is known as the Medi-Cal program.

The Medi-Cal Eligibility Division, within the Department, is responsible for the coordination and implementation of Medi-Cal regulations that support the accurate and timely determination of Medi-Cal eligibility for beneficiaries, as established by the California county departments.

#### Related State and Federal Laws

The Medi-Cal program is governed by federal and state law. Federal Medicaid law is found primarily in 42 United States Code (U.S.C.) Section 1396 et seq. and in Title XIX of the Social Security Act. State law is generally found in WIC Division 9, Part 3, Chapters 7 and 8. WIC Sections 10725 and 14124.5 authorize the director of the Department to adopt, amend or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal program.

WIC Section 14005.36(e) specifies that the Department shall adopt emergency regulations related to the reporting of updated beneficiary contact information.

#### Statement of Purpose/Problem to be Addressed

This regulatory action adopts Section 50188 to address the matter of describing how and under what circumstances updated beneficiary contact information shall be reported. This regulatory action will support accurate and timely Medi-Cal eligibility re-determinations and is consistent with the requirements to promulgate regulations as specified in WIC Section 14005.36(e).

#### Anticipated Benefits or Goals of the Regulations

This proposed regulatory action will benefit the county departments by providing a means to obtain the most up-to-date contact information for beneficiaries. This information will assist with the annual process of re-determining Medi-Cal eligibility for beneficiaries and will in turn benefit the health and welfare of California residents by providing redeterminations for beneficiaries so they can have access to all necessary Medi-Cal services in a timely manner.

This regulatory proposal also supports the intent of the initiating legislation as specified under WIC Sec-

tions 14000 and 14007. WIC Section 14000 states the purpose of Chapter 7, Basic Health Care is to afford qualifying individuals health care services in a manner equitable to the general public and without duplication of benefits available under other federal or state laws.

Within Chapter 7, Section 14124.5 further specifies that the Director may establish regulations as are necessary or proper to carry out the purpose and intent of this Chapter, which includes the establishment of Medi-Cal eligibility standards and methodologies as set forth under this Chapter (including Section 14005.30) and in accordance with U.S.C., Section 1396U-1.

This regulatory proposal ensures the proper and efficient administration of the Medi-Cal program, in accordance with federal and state laws that govern the Medi-Cal programs rules of eligibility participation and funding. This is accomplished by improvements to the eligibility determination process.

Consistency and Compatibility with Existing State Regulations

The Department has conducted an evaluation of the related existing state regulations under Title 22, CCR, Division 3 and has determined that the regulations are consistent with and compatible with those regulations. An automated search of Title 22, CCR, Division 3 using the following keywords “managed care, redetermination, eligibility, and beneficiary contact information” was conducted via Westlaw and yielded no conflicting state regulations.

Duplication Explanation

Including provisions from WIC Section 14005.36 within this regulation is an effective and convenient way to provide all current information related to the reporting of updated beneficiary contact information in one convenient and centralized location for the affected public (i.e. beneficiaries, county departments, and providers).

Regulatory Sections

This regulatory action adopts Section 50188, which makes specific the information that can be shared by a managed care plan with a county department and the Department, that consent must be requested from a beneficiary in order to share this information, and what action the county departments can take to verify the information received from the managed care plan, as well as how to verify the information received when a beneficiary does not give consent to the managed care plan to share their contact information.

DISCLOSURES REGARDING  
THE RULEMAKING

The Department has made the following initial determinations:

Fiscal Impact Statement

- A. Costs to any Local Agency or School District that is not reimbursable by the State: None.  
Costs to any Local Agency or School District that is required to be reimbursed Under Part 7 (commencing with Section 17500), Division 4 of the Government Code: None.
- B. Costs or Savings to any State Agency: None.
- C. Costs or Savings in Federal Funding to the State: None.
- D. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None.

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

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

Mandates on Local Agencies or School Districts

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Significant Statewide Adverse Economic Impact Affecting Businesses

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (Analysis)

In accordance with Government Code Section 11346.3(b)(1), the Department has made the following assessments and has determined that the proposed regulations would not significantly affect the following:

- 1. The creation or elimination of jobs in California.
- 2. The creation or elimination of businesses in California.

3. The expansion of businesses currently doing business in California.

Impact on Jobs and Businesses

The Medi-Cal program is a public health program that provides health care services for low-income individuals who choose to enroll and participate in the program. This regulatory action will affect only those managed care plans that also choose to participate in the Medi-Cal program and the beneficiaries enrolled in these plan. This regulation only requires reporting of the beneficiary's updated contact information to the Department and county department to assist with the re-determination of Medi-Cal eligibility and therefore it is not anticipated to have an impact on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses or the expansion of businesses in California.

Benefits of the Proposed Regulation

The Department has determined that the regulations will not specifically affect worker safety or the state's environment. However, the regulations will benefit the California county departments by providing the most up-to-date contact information for Medi-Cal beneficiaries. The county departments will be able to use this information to assist with the annual process of re-determining Medi-Cal eligibility for beneficiaries. This in turn will benefit the health and welfare of California residents by providing timely redeterminations for Medi-Cal beneficiaries so they can have access to necessary health care services.

This regulatory proposal ensures the proper and efficient administration of the Medi-Cal program, in accordance with federal and state laws. This is accomplished by improvements to the eligibility determination process.

Effect on Small Businesses

The Department has determined that the regulations would not affect small businesses because these regulations do not impose any additional reporting, record-keeping, or other compliance requirements on small businesses.

Housing Costs Determination

The Department has made the determination that the regulations would have no impact on housing costs.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department 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 law.

Existing regulations related to the Medi-Cal program are located in Title 22, CCR, Division 3. Using this regulatory proposal to adopt additional requirements regarding Medi-Cal eligibility is the most effective and convenient way to provide (current/updated) information directly to those impacted (county departments, providers and beneficiaries).

This regulatory action is necessary pursuant to WIC Section 14005.36, which requires the Department to adopt emergency regulations.

**ASSISTIVE SERVICES**

For individuals with disabilities, the Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading or writing assistance. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email — [regulations@dhcs.ca.gov](mailto:regulations@dhcs.ca.gov), or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

**CONTACT PERSONS**

Inquiries regarding the regulations described in this notice may be directed to Chase George, Health Care Reform Unit, at (916) 552-9542.

All other inquiries concerning the regulatory action described in this notice may be directed to Jordan Espey of the Office of Regulations, at (916) 445-1514, or to the designated backup contact person, Lori Manieri, at (916) 650-6825.

AVAILABILITY OF TEXT OF REGULATIONS  
AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at: <http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email [regulations@dhcs.ca.gov](mailto:regulations@dhcs.ca.gov), or write to the Office of Regulations at the address noted above.

**TITLE 22. OFFICE OF STATEWIDE  
HEALTH PLANNING AND  
DEVELOPMENT**

TITLE 22, DIVISION 7, CHAPTER 10, ARTICLE 8: PATIENT DATA REPORTING REQUIREMENTS Sections 97215, 97216, 97217, 97221, 97222, 97223, 97224, 97228 and 97229

The Office of Statewide Health Planning and Development ("the Office") proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

The Office proposes to update eight inpatient data element definitions, each of which currently uses a unique Office-developed definition, to align them more closely with the national standards. In addition to the changes to the data element definitions, the electronic reporting Format and File Specifications document that is incorporated by reference must also be up-

dated to implement the new definitions, and the section incorporating it must be updated with new document dates. No unrelated changes are proposed.

I. PUBLIC HEARING

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

II. WRITTEN PUBLIC COMMENT PERIOD AND CONTACT PERSON

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. All comments must be received by the Office by 5:00 p.m. on August 24, 2015.

Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by e-mail are preferred. Comments may also be faxed, hand delivered, or mailed to:

Anthony Tapney, Associate Governmental  
Program Analyst  
Healthcare Information Division  
Office of Statewide Health Planning and  
Development  
400 R Street, Room 270  
Sacramento, CA 95811-6213  
Fax: (916) 327-1262  
Tel: (916) 326-3932  
E-mail: [Anthony.Tapney@oshpd.ca.gov](mailto:Anthony.Tapney@oshpd.ca.gov)

Inquiries and comments may also be directed to the backup contact person:

Cristal Schoenfelder, Staff Services Manager II  
Healthcare Information Division  
Office of Statewide Health Planning and  
Development  
400 R Street, Room 270  
Sacramento, CA 95811-6213  
Fax: (916) 327-1262  
Tel: (916) 326-3930  
E-mail: [Cristal.Schoenfelder@oshpd.ca.gov](mailto:Cristal.Schoenfelder@oshpd.ca.gov)

III. AUTHORITY AND REFERENCE

Authority: California Health and Safety Code, Section 128810.

Reference: California Health and Safety Code, Sections 128735, 128736, 128737 and 128755.

IV. INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

a. Summary of Existing Laws and Regulations

Hospitals and freestanding ambulatory surgery clinics licensed by the California Department of Public Health are required by law to file certain patient-level information with the Office at specified intervals. Health and Safety Code subsection 128735(g) requires that each California hospital file a Hospital Discharge Abstract Data Record including specified data elements for each patient discharged from the hospital. These records are sometimes referred to as the inpatient data. These data reporting requirements have been implemented in Article 8 (Patient Data Reporting Requirements) of Chapter 10 of Division 7 of Title 22.

Under Health and Safety Code subsection 128735(f) "Data reporting requirements established by the office shall be consistent with national standards, as applicable."

This regulations package updates eight inpatient data element definitions to more closely align with national standards. In addition to the changes to the data element definitions, the electronic reporting Format and File Specifications document that is incorporated by reference must also be updated to implement the new definitions, and the section incorporating it by reference must be updated with the new document dates.

b. Policy Statement Overview/Specific Benefits of Proposed Regulations

The eight regulatory changes proposed, aligning the inpatient codes to conform to national standards, are being proposed to meet the statutory requirement of following national standards, as applicable. The January 2017 effective date for the implementation of the new definitions allows hospitals a generous period of time to implement the necessary system changes for electronic reporting of new data element definitions and formats.

In addition to the changes to the inpatient data element definitions, the electronic reporting Format and File Specifications document that is incorporated by reference must also be updated to implement the new definitions, and the section incorporating it by reference must be updated with the new document dates. The new version of the Format and File and Specifications that will be incorporated by reference to reflect these eight data element changes is titled Format and File Specifications for MIRCal Online Transmission: Inpatient Data Version 3.0 as revised on January 30, 2015.

The Format and File Specifications documents that may still be in use for the inpatient and the outpatient data reporting programs will also be updated to remove unnecessary and out of date informational but nonsubstantive language. The new version of the Format and

File and Specifications that will be incorporated by reference to reflect the inpatient changes is titled Format and File Specifications for MIRCal Online Transmission: Inpatient Data Version 2.9 as revised on January 26, 2015. The new version of the Format and File and Specifications that will be incorporated by reference to reflect the outpatient changes is titled Format and File Specifications for MIRCal Online Transmission: Emergency Care and Ambulatory Surgery Data Version 1.9 as revised on January 26, 2015.

The changes in the inpatient data element definitions are anticipated to be beneficial to the reporting hospitals — while there may be minor initial implementation costs, reporting using standard data definitions already used by the facilities in their business will be easier, more efficient, less costly and less burdensome. In addition, the data collected will be more detailed, more reflective of the industry, and more comparable to other existing data, all of which will enhance the value, usability, and usefulness of the data for data users.

c. Determination of Inconsistency/Incompatibility with Existing State Regulations

As required by Government Code section 11346.5(a)(3)(D), the Office evaluated the language contained in the proposed amendments. The Office has determined that these proposed regulations are not inconsistent with or incompatible with existing state regulations. These regulations make minor modifications to existing programs.

d. Documents Incorporated by Reference

- Format and File Specifications for MIRCal Online Transmission: Inpatient Data Version 2.9 as revised on January 26, 2015.
- Format and File Specifications for MIRCal Online Transmission: Inpatient Data Version 3.0 as revised on January 30, 2015.
- Format and File Specifications for MIRCal Online Transmission: Emergency Care and Ambulatory Surgery Data Version 1.9 as revised on January 26, 2015.

V. DISCLOSURES REGARDING THE  
PROPOSED ACTION

OSHPD has made the following initial determinations:

- a. Mandate on local agencies and school districts: None.
- b. Cost or savings to any state agency: None.
- c. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

- d. Other nondiscretionary cost or savings imposed on local agencies: None.
- e. Cost or savings in federal funding to the state: None.
- f. Cost impact on a representative business/small business: The Office anticipates a minor one-time cost to hospitals estimated to be less than \$12,000 for most facilities to reprogram data collection software that was developed for the Office-specific nonstandard codes. There are no hospitals classified as small businesses, therefore there is no small business impact by this rulemaking.
- g. Statewide adverse economic impact directly affecting businesses and individuals: The Office has initially determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- h. Significant effect on housing costs: None.

**VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)**

The changes in the eight data element definitions are anticipated to be beneficial to the reporting hospitals — while there may be minor initial implementation costs, reporting using standard data definitions already used by the facilities to meet their business needs will be easier, more efficient, less costly and less burdensome. In addition, the data collected will be more detailed, more reflective of the industry, and more comparable to other existing data, all of which will enhance the value, usability, and usefulness of the data for data users.

Therefore, the Office concludes that:

- (1) this regulatory action will not create jobs within the state;
- (2) this regulatory action will not eliminate jobs within the state;
- (3) this regulatory action will not create new businesses;
- (4) this regulatory action will not eliminate existing businesses;
- (5) this regulatory action will not affect the expansion of businesses currently doing business in the state; and
- (6) the benefit to the public is that more accurate and useful data will be available. Such data are used for understanding California's healthcare environment, which may benefit the health and welfare of California residents.

**VII. REASONABLE ALTERNATIVES**

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

**VIII. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED**

The Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address given for the contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the text of the proposed regulations, the initial statement of reasons, and an economic impact analysis contained in the initial statement of reasons.

In developing these regulations, the Office conducted a survey of affected hospitals. Facilities were asked whether they would support the proposed changes, and if they anticipated any fiscal impact to their facilities. Copies of the survey and survey results will be made available upon request.

**IX. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL**

After considering all timely and relevant comments received, the Office may adopt the proposed regulations substantially as described in this notice. If the Office makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised.

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on the website at <http://www.oshpd.ca.gov/LawsRegs/NewRegulations.html>. The Office will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**X. AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Final Statement of Reasons, including all of the comments and responses, will be available, after its

completion, through our website at <http://www.oshpd.ca.gov/LawsRegs/NewRegulations.html>. The Final Statement of Reasons will also be available for review from the designated contact person.

XI. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://www.oshpd.ca.gov/LawsRegs/NewRegulations.html>.

**GENERAL PUBLIC INTEREST**

**CALIFORNIA GAMBLING CONTROL COMMISSION**

**NOTICE OF RESCHEDULED PUBLIC HEARING CONCERNING PROGRAM FOR RESPONSIBLE GAMBLING CGCC-GCA-2015-01-R**

**NOTICE IS HEREBY GIVEN** that the California Gambling Control Commission (Commission) has rescheduled the public hearing previously set for July 3, 2015, in the Notice of Proposed Action duly published in the *California Regulatory Notice Register* (Z-2015-0224-09, Register 2015, No. 10-Z, 3/6/2015) and previously rescheduled for July 16, 2015, duly published in the *California Regulatory Notice Register* (Z-2015-0508-01, Register 2015, No. 21-Z, 5/22/2015). Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the proposed regulatory action at the rescheduled public hearing to be held on **July 29, 2015 at 10:00 a.m.**, in the Commission's Hearing Room located at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

**PUBLIC COMMENT PERIOD**

The written comment period for this proposed regulatory action has not been extended. Written comments relevant to the proposed action, including those sent by mail, facsimile, or e-mail, were to have been submitted to the Commission by April 20, 2015. Additional written comments may be received by the Commission at the above-referenced hearing.

**CONTACT PERSON**

All comments and inquiries concerning the substance of the proposed action or rescheduling of the hearing should be directed to the following contact person:

Josh Rosenstein, Analyst  
Regulatory Actions Unit  
California Gambling Control Commission  
2399 Gateway Oaks Drive, Suite 220  
Sacramento, CA 95833-4231  
E-mail: [jrosenstein@cgcc.ca.gov](mailto:jrosenstein@cgcc.ca.gov)  
Telephone: (916) 274-5823  
Fax: (916) 263-0499

**DEPARTMENT OF FISH AND WILDLIFE**

**Project:** Cedar Creek Arch Culvert on U.S. Route 101 PM 89.25

**Location:** Mendocino County

**Applicant:** California Department of Transportation

**Background**

The California Department of Transportation (Applicant) proposes to 1) repair the bottom portion (invert) of a 763-foot long concrete arch culvert, and 2) carry out fish passage restoration work within Cedar Creek, located in Mendocino County on U.S. Route 101 at approximately post mile 89.25. In particular, the fish passage and culvert restoration work for the Cedar Creek Arch Culvert Project (Project) includes stream diversion; fish exclusion, capture and relocation; removing the failing weirs in the culvert; reconstructing the culvert invert with 23 vortex weirs; removing the existing fish ladder and culvert apron at the outlet of the culvert; constructing 13 vortex weirs at the outlet of the culvert (Fishway); installing two rock weirs for grade control downstream of the Fishway; access road and slope brush removal; grading, reconstructing (in part), and paving the 60-percent slope access road; relocating an approximate 24-inch-diameter downed oak tree that spans the creek downstream; establishing staging areas, sediment basins, sumps, construction water collection storage tanks, and concrete washouts; placing clean gravel in-channel and in-culvert for driving access, installing rock slope protection at the lower end of the access road near the stream; providing bank stabilization, erosion control and revegetation of disturbed ground along the access road; and conducting post-construction monitoring at the end of the work period each year for two years to verify the success of the passage design.

The Project activities described above are expected to incidentally take<sup>1</sup> coho salmon (*Oncorhynchus kisutch*), Southern Oregon–Northern California Coast evolutionary significant unit (SONCC coho salmon) where those activities take place within and adjacent to Cedar Creek. In particular, SONCC coho salmon could be incidentally taken as a result of being stranded or desiccated during dewatering, stressed from capture and relocation efforts, or crushed during Project activities. SONCC coho salmon are designated as a threatened species pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(D)).

SONCC coho salmon individuals are documented as present at the Project site downstream of the culvert outlet, and there is suitable SONCC coho salmon habitat within and adjacent to the Project site. Because of the proximity of the nearest documented SONCC coho salmon, dispersal patterns of SONCC coho salmon, and the presence of suitable SONCC coho salmon habitat within the Project site, the National Marine Fisheries Service (Service) determined that SONCC coho salmon is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of SONCC coho salmon.

According to the Service, the Project will result in the temporary loss of 0.694 acres of aquatic SONCC coho salmon habitat in the first year (i.e., 1,313 lineal feet for up to 110 days), and 0.487 acres of aquatic SONCC coho salmon habitat in the second year (i.e., 1,063 lineal feet for up to 110 days). Construction of the Project will also result in an increase in total and peak runoff discharges from the permanent increase of impervious surface in-channel aquatic habitat from the cement Fishway structure (7,500 ft<sup>2</sup>; 0.172 acres of aquatic SONCC coho salmon habitat), and the permanent increase of impervious surface from paving 800 feet of a 60-percent slope access road (0.220 acres) that traverses the steep, sparsely-vegetated, brush-covered slope with a switchback.

The Service determined the Project would result in capture and relocation of no more than two juvenile SONCC coho salmon in the first year, and no more than four juveniles in the second year. No more than three percent of fish are expected to be injured or killed during these activities, which equates to an estimate of

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

mortality in the first year to 0.03 SONCC coho salmon, and 0.102 in the second year. The Service estimates total take of juvenile SONCC coho salmon as the result of the Project as one individual.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, the Applicant, as a Federal Highway Administration agent, consulted with the Service as required by the ESA. On May 4, 2015, the Service issued a biological opinion (Service Ref. No. SWR–2012–3549)(BO) to the Applicant. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The BO also requires the Applicant to implement and adhere to measures contained within the Biological Assessment (BA) and Essential Fish Habitat Assessment.

On May 27, 2015, the Director of the California Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and, its related ITS are consistent with CESA for purposes of the Project and, SONCC coho salmon.

#### **Determination**

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

#### Avoidance, Minimization, and Mitigation Measures

- The Applicant shall adhere to a limited operating period during the low-flow season between June 15 and October 15 annually (or November 15 if favorable conditions exist) for in-stream construction work and dewatering of the stream channel.
- The Applicant must notify and coordinate with CDFW ten days prior to stream diversion and capture and relocation activities so that CDFW staff may coordinate capture and relocation activities.

- The Applicant shall ensure that dewatering and fish relocation activities are sequenced to minimize effects, including installing fish exclusion (e.g., block nets); incrementally dewatering the stream to minimize stranding; electrofishing/seining/other capture and removal according to Service (Service 2000) and CDFW (Flosi et al. 2010) guidelines.
- The Applicant will ensure that qualified fisheries biologists are on site to monitor all work to install and remove the diversion and to minimize adverse effects to SONCC coho salmon from these activities. The Applicant will also ensure that captured individuals are kept in cool, shaded, aerated water, protected from overcrowding or other stressors, and separated by age classes to minimize predation.
- The Applicant will apply clean spawning gravels as a driving lane on top of the dewatered creek to allow construction vehicles access to the site with minimal channel disturbance. The Applicant will allow these spawning gravels to migrate downstream each year to augment sparse spawning substrate.
- The Applicant shall construct the paved access road in order to direct stormwater runoff to biofiltration/biorention prior to entering Cedar Creek, with the upper half of the road drainage leading to an existing flume that empties into Cedar Creek, and the lower half draining onto riprap before entering the creek.
- The Applicant shall ensure that all fuel storage and refueling sites, concrete washouts, and any other hazardous materials are stored on the top of the bank at least 50 feet from surface water.
- The Applicant is providing mitigation for take through the successful implementation of the Project and reestablishing connectivity of the lower Cedar Creek watershed to the upper Cedar Creek watershed. This will provide access to approximately 10 miles of spawning and natal and rearing habitat upstream of the arch culvert, and provide mitigation for take during construction. Improved fish passage will begin following the construction of the Fishway at the end of the first year; and full restoration of the arch culvert (as designed) at the end of the second year.

Monitoring and Reporting Measures

- The Applicant must conduct post-construction surveys at the close of each yearly construction work season to: 1) document the fish passage work has been installed as per approved design and the construction procedures are sound; 2) measure

hydraulic conditions through the passage structures to document they meet guidelines and design criteria and have resolved the harmonic standing-wave resonance issue; and 3) conduct biological surveys upstream to confirm hydraulic conditions allow upstream fish passage through the Fishway and weirs.

- Following each Project season and prior to April 31, the Applicant must send the Service “as-built” plans and reports that describe each year of work (i.e., year 1: Fishway and downstream grade-control weirs; year 2: vortex weirs within culvert). Reports must include calculations on pre-existing and post-existing hydraulics and how they relate to fish passage as determined using the Fish Crossing model (United States Forest Service 2006). If monitoring shows the structure as designed fails to provide juvenile passage, the Applicant will coordinate with the Service to employ adaptive management and modify the Fishway and weirs. Although not a condition of the BO, CDFW requests a copy of the “as-built” plans and reports as well.
- The BO requires the Applicant to submit a written report to the Service by December 31, which contains information on construction-related activities and documents the effects of fish capture and relocation activities. The reports must include dates construction occurred, a discussion of any, unanticipated effects, the Best Management Practices (BMPs) and measures taken to minimize the unanticipated effects, the number of SONCC coho salmon relocated, killed or injured during the Project actions, a description of circumstances surrounding the injury or death, and photographs taken before, during and after from photo reference points. Although not a condition of the BO, CDFW requests a copy of the written reports as well.

Financial Assurances

- As part of the conservation and minimization measures provided by Applicant in the BA (Section 1.4.6), the Applicant provided assurances of sufficient allocation of funds (\$3,165,000) in Expenditure Authorization 01-0C370 for the Project (EFIS 12000283; State Highway Operation and Protection Program) that ensures implementation of all measures to minimize and fully mitigate the incidental take of SONCC coho salmon resulting from construction. The Project includes funding for the entire fish passage structure and all associated BMPs and avoidance/minimization measures as described in

the BA, and monitoring following Project completion.

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

By: /s/  
Sandra Morey, Deputy Director  
Ecosystem Conservation Division  
California Department of Fish and Wildlife

Date: 6/23/15

References

Flosi, G., S. Downie, J. Hopelain, M. Bird, R. Coey, and B. Collins. 2010. California salmonid stream habitat restoration manual. Fourth Edition. California Department of Fish and Game. Inland Fisheries Division. Sacramento, California.

National Marine Fisheries Service. 2000. Guidelines for electrofishing water containing salmonids listed under the Endangered Species Act. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

United States Forest Service. 2006. FishXing software is intended to assist engineers, hydrologists, and fish biologists in the evaluation and design of culverts for fish passage. <http://www.stream.fs.fed.us/fishxing/index.html>

**DEPARTMENT OF TRANSPORTATION**

**July 1, 2015  
NOTICE OF REVISED STANDARDIZED  
REGULATORY IMPACT  
ASSESSMENT AND MODIFICATIONS TO  
TEXT OF PROPOSED  
REGULATIONS FOR AFFORDABLE  
SALES PROGRAM**

**Pursuant to Government Code section 11346.8, subdivisions (c) and (d), the California Department of Transportation (Caltrans) gives notice that:**

1. The proposed Affordable Sales Program (ASP) regulations originally noticed to the public on February 27, 2015 have been modified and are available for public inspection and comment for a 45 day comment period, and are attached to this notice.
2. The Standardized Regulatory Impact Assessment (SRIA) prepared pursuant to Government Code sections 11346.3(c) has been revised and added to the rulemaking file and is available for public inspection and comment for a 45 day comment period.

**SUMMARY OF AND NEED FOR CHANGES TO  
TEXT OF PROPOSED ASP REGULATIONS**

The originally proposed ASP regulations were published and released for public comment on February 27, 2015 (Register Z2015-0217-10). The public comment period closed on April 13, 2015. Public hearings were held on April 20, April 21, 2015, and May 12, 2015, in Pasadena, Los Angeles, and the El Sereno area of Los Angeles, and comments were accepted at those hearings. After considering the comments received, Caltrans is proposing non-substantial and sufficiently-related changes to the following sections:

Section 1476

The definition for “Affordable housing cost” in section 1476(a) has been modified, for the purpose of clarity, to expressly identify the already existing regulation (Cal. Code Regs., tit. 25, § 6924) used to calculate affordable housing cost for properties sold at an affordable price under the Government Code 54235 through 54238.7, also known as the “Roberti Act”.

The definition for “Affordable rent” was modified to add reference to the definition of affordable rent found in Government Code section 54236(g).

The definition for “Persons or families of low or moderate income” in section 1476(y), has been modified by deleting the last sentence, which read: “For purposes of this chapter, ‘persons or families of low or moderate income’ also means persons or families whose income does not exceed 150 percent of the area median income adjusted for family size.” The proposed change brings the text of the proposed regulation in line with Government Code section 54237, which places persons whose income does not exceed 150 percent of the area median income in a separate and distinct category from person or families of low or moderate income.

Section 1477

Section 1477(a)(3) has been modified to make clear that the calculation of affordable price for purchasers whose gross income exceeds the maximum income for moderate income households but does not exceed 150 percent of the area medium income is adjusted for family size, consistent with the definition of affordable housing cost in section 1476(a) of the proposed regulations.

Section 1478

The text of section 1478(b)(5) has been modified to expressly state that the use and resale restrictions required by Government Code section 54237(b) and identified in the original text of the proposed regulation will include a restriction on renting properties sold by the Department at affordable prices to affordable purchasers. The changes identify the limited circumstances under which a property that is considered affordable may be rented. The modified text clarifies section 1478(b)(5) to comport with the express intent of the Legislature that the sale of properties to affordable purchasers at an affordable price avoid the displacement of such buyers as expressed in Government Code section 54235.

Section 1478(c), paragraphs (1), (2), and (3) have been revised to make clear that the hierarchy set forth in Government Code section 54237(a), paragraphs (1), (2), and (3) applies fully to sales made pursuant to Government Code section 54237(d) and includes persons and families whose income does not exceed 150 percent of area median income as eligible occupants of properties purchased by housing entities and, also, to make clear that the calculation of affordable price for purchasers whose gross income exceeds the maximum income for moderate income households but does not exceed 150 percent of the area medium income is adjusted for family size, consistent with definition of affordable housing cost in section 1476(a) of the proposed regulations.

Section 1478(c), paragraphs (1) and (2) have been changed to replace the words “as established by the entity” with the words “in accordance with this chapter” to avoid ambiguity and make clear the Roberti Act and the proposed regulations are controlling with respect to determination of reasonable price and reasonable rent.

Section 1482

Subdivisions (a) and (b) of section 1482 have been re-ordered. The originally proposed subdivision (b) is now (a) and (a) is now (b).

The originally proposed section 1482(a)(1) is now section 1482(b)(1) and the text has been changed to clarify the nature of the documentation required to show income at the time of acceptance of the Condition-

al Offer Prior to Sale by a prospective buyer at an affordable price.

The originally proposed section 1482(a)(2) is now section 1482(b)(2) and the text has been changed to clarify the nature of the documentation required to show tenure at the time of acceptance of the Conditional Offer Prior to Sale by a prospective buyer at an affordable price.

Section 1482(b)(3) has been added to make clear the documentation required to show, under Government Code sections 54236(i)(2) and 54237(a)(4), that an affordable purchaser must not have had an ownership in real property in the last three years.

The originally proposed section 1482(a)(3) is now 1482(b)(4). Language has been deleted from the originally proposed section 1482(a)(3) which is now 1482(b)(4) to make clear that prospective buyers must intend to be owner occupants. The change has resolved an ambiguity between the originally proposed section and originally proposed section 1478(b)(5) concerning the renting of properties purchased at an affordable price from the Department and is consistent with the express intent of the Legislature that the sale of properties to affordable purchasers at an affordable price avoids the displacement of such buyers as expressed in Government Code section 54235.

Section 1486

Section 1486(d) has been revised to make clear that contracts for sale are subject to California Transportation Commission approval pursuant to Streets and Highways Code section 118.

**SUMMARY OF CHANGES TO SRIA**

Pursuant to Government Code section 11346.3(c), the Department of Finance (DOF) asked Caltrans to address certain required elements related to the SRIA. Caltrans has revised the SRIA to address each of the three concerns raised by DOF.

DOF asked Caltrans to identify whether or not the proposed regulations would result in certain impacts within the State of California.

Specifically, Caltrans was asked to identify whether or not the proposed regulations would cause any competitive advantage or disadvantage for businesses currently doing business within the state and whether or not the proposed regulations would provide any incentive or disincentive for innovation within the state. Caltrans has revised the SRIA to indicate that the proposed regulations would not cause any competitive advantage or disadvantage for business currently doing business within the state, or provide any incentive or disincentive for innovation within the state.

DOF asked Caltrans to discuss any significant resource commitments required from California Housing

Finance Agency (CalHFA) for CalHFA to perform monitoring of properties sold at affordable sales prices and reasonable sales prices.

The SRIA has been revised to detail the limited re-sourcing requirement of one quarter of one Person Year (PY) annually, or the equivalent of \$25,000, anticipated to perform this activity.

DOF asked Caltrans to discuss the benefit of redirecting sales proceeds toward housing entities and the proposed Affordable Housing Trust Account for the purposes of expanding affordable housing in the area.

Caltrans revised the SRIA to address this. It is anticipated that proposed Affordable Housing Trust Account is estimated to receive \$85 million over 30 years from the subsequent sales, while the housing related entities are estimated to receive \$30 million over 30 years. While these funds are likely to have a positive impact on low and moderate income households, the lack of local development data makes it challenging to estimate household financial gains. Further, there are multiple factors that influence economic growth of which affordable housing may be a key component. Thus, individuals, businesses, and governments may theoretically benefit from the direction of this funding to expand affordable housing; however, it is not certain without more information.

AVAILABILITY OF DOCUMENT FOR  
INSPECTION AND HOW TO  
SUBMIT COMMENTS

Attached to this notice is a copy of the modified proposed text of the Affordable Sales Regulations. The modified proposed text of the Affordable Sales Program Regulations and the revised SRIA are available for inspection at the Caltrans office located at 1120 N Street, Sacramento, California, from July 1, 2015 through August 14, 2015, between the hours of 8:00 a.m. and 5:00 p.m. The documents can also be obtained by calling the Caltrans Affordable Sales Program at (916) 654-4790 or by visiting the Caltrans website at <http://www.dot.ca.gov/regulations.htm>.

If you have any comments regarding the modifications to the text of the proposed regulations or the re-

vised SRIA, written comments must be submitted to Caltrans by 5:00 p.m. on August 14, 2015, to:

Kimberly Erickson  
ATTN: Affordable Sales Program  
California Department of Transportation  
1120 N Street, MS 37  
Sacramento, CA 95814  
FAX: (916) 654-6378  
Email: [Affordable\\_Sales\\_Program@dot.ca.gov](mailto:Affordable_Sales_Program@dot.ca.gov)

All written comments received by August 14, 2015, which pertain to the modifications of the text of the proposed regulations or the revised SRIA will be reviewed and responded to by Caltrans staff as part of the compilation of the rulemaking file.

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986  
(PROPOSITION 65)  
NOTICE OF INTENT TO LIST:  
1-BROMOPROPANE  
July 10, 2015**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) intends to list *1-bromopropane* as known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986<sup>1</sup>. This action is being proposed under the authoritative bodies listing mechanism<sup>2</sup>.

<sup>1</sup> Commonly known as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 is codified in Health and Safety Code section 25249.5 *et seq.*

<sup>2</sup> See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25306.

Chemical (CAS No.)	Endpoint	Reference	Occurrence and Uses
1-Bromopropane (106-94-5)	Cancer <sup>a</sup>	NTP (2014)	Used as a solvent cleaner in vapor and immersion degreasing operations for cleaning metals, plastics, and electronic and optical components. Also used in dry cleaning, asphalt production, and solvent and adhesive sprays. Has been used as an intermediate in the synthesis of pharmaceuticals, insecticides, quaternary ammonium compounds, flavors and fragrances.

<sup>a</sup> This chemical is currently listed for developmental, male and female reproductive toxicity under Proposition 65.

**Background on listing via the authoritative bodies mechanism:** A chemical must be listed under the Proposition 65 regulations when two conditions are met:

- 1) An authoritative body formally identifies the chemical as causing cancer (Section 25306(d)<sup>3</sup>).
- 2) The evidence considered by the authoritative body meets the sufficiency criteria contained in the regulations (Section 25306(e)).

However, the chemical is not listed if scientifically valid data which were not considered by the authoritative body clearly establish that the sufficiency of evidence criteria were not met (Section 25306(f)).

The National Toxicology Program (NTP) is one of several institutions designated as authoritative for the identification of chemicals as causing cancer (Section 25306(m)).

OEHHA is the lead agency for Proposition 65 implementation. After an authoritative body has made a determination about a chemical, OEHHA evaluates whether listing under Proposition 65 is required using the criteria contained in the regulations.

**OEHHA's determination:** 1-Bromopropane meets the criteria for listing as known to the state to cause cancer under Proposition 65, based on findings of the NTP (2014).

**Formal identification and sufficiency of evidence for 1-bromopropane:** In 2014, NTP published the Thirteenth Edition of the *Report on Carcinogens* (NTP, 2014). This report satisfies the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations for 1-bromopropane. NTP concluded that 1-bromopropane is "reasonably anticipated to be a human carcinogen" based on sufficient evidence of carci-

nogenicity from studies in experimental animals" (emphasis in original). OEHHA is relying on NTP's discussion of data and conclusions in the report that 1-bromopropane causes cancer. Evidence described in the report includes studies (NTP, 2011) showing that 1-bromopropane increased the incidence of combined malignant and benign skin tumors in male rats and increased the incidences of combined malignant and benign lung tumors in female mice:

"In male rats, 1-bromopropane caused significant dose-related increases in the incidences of several types of benign and/or malignant skin tumors (keratoacanthoma; keratoacanthorm and squamous-cell carcinoma combined; and keratoacanthoma, squamous-cell carcinoma, basal-cell adenoma, and basal-cell carcinoma combined)."

"In female mice, 1-bromopropane caused significant dose-related increases in the incidence of benign and malignant lung tumors combined (alveolar/bronchiolar adenoma and carcinoma)."

Thus, NTP (2014) found that 1-bromopropane causes increased incidences of combined malignant and benign skin tumors in male rats, and combined malignant and benign lung tumors in female mice.

**Request for comments:** OEHHA is requesting comments as to whether 1-bromopropane meets the criteria set forth in the Proposition 65 regulations for authoritative bodies listings. In order to be considered, **OEHHA must receive comments by 5:00 p.m. on August 10, 2015.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public](mailto:P65Public).

<sup>3</sup> All referenced sections are from Title 27 of the Cal. Code of Regulations.

[Comments@oehha.ca.gov](mailto:Comments@oehha.ca.gov) with “NOIL — 1-Bromopropane” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

**Mailing**

Address: Ms. Esther Barajas-Ochoa  
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

Comments received during the public comment period will be posted on the OEHHA web site after the close of the comment period. Electronic files submitted should not have any form of encryption.

If you have any questions, please contact Esther Barajas-Ochoa at [esther.barajas-ochoa@oehha.ca.gov](mailto:esther.barajas-ochoa@oehha.ca.gov) or at (916) 445-6900.

**References**

National Toxicology Program (NTP, 2011). National Toxicology Program. Toxicology and Carcinogenesis Studies of 1-Bromopropane (CAS No. 106-94-5) in F344/N Rats and B6C3F1 Mice (Inhalation Studies). Technical Report Series No. 564. NIH Publication No. 11-5906. U.S. Department of Health and Human Services, NTP, Research Triangle Park, NC. Available at URL: [http://ntp.niehs.nih.gov/ntp/htdocs/lt\\_rpts/tr564.pdf](http://ntp.niehs.nih.gov/ntp/htdocs/lt_rpts/tr564.pdf).

National Toxicology Program (NTP, 2014). Report on Carcinogens, Thirteenth Edition, U.S. Department of Health and Human Services, Public Health Service, NTP, Research Triangle Park, North Carolina. Available at URL: <http://ntp.niehs.nih.gov/pubhealth/roc/roc13/index.html>.

**SUMMARY OF REGULATORY ACTIONS**

**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# 2015-0528-01

**BOARD OF BARBERING AND COSMETOLOGY**  
Text and Reference Books for Students

The National Interstate Council of State Boards of Cosmetology (the “NIC”) currently develops the Board of Barbering and Cosmetology’s (the “Board”) examination for licensure. Through this regular rulemaking, the Board amended section 961 in Title 16 of the California Code of Regulations to transfer responsibility to approve educational materials, including text and reference books, from the Board to the NIC. Additionally, the Board added the use of on-line training programs — in lieu of text books — as an acceptable form of teaching materials.

Title 16

California Code of Regulations

AMEND: 961

Filed 06/29/2015

Effective 10/01/2015

Agency Contact: Kevin Flanagan (916) 575-7104

File# 2015-0513-01

**BOARD OF EQUALIZATION**

Application for Equalization by Member, Alternate Member, or Hearing

In this rulemaking action, the Board of Equalization is amending section 308.6 of title 18 of the California Code of Regulations regarding hearings by alternate assessment appeals boards.

Title 18

California Code of Regulations

AMEND: 308.6

Filed 06/25/2015

Effective 10/01/2015

Agency Contact:

Richard E. Bennion (916) 445-2130

File# 2015-0513-02

**BOARD OF EQUALIZATION**

Medicines and Medical Devices

This rulemaking action by the Board of Equalization (BOE) revises section 1591 of title 18 of the California Code of Regulations to clarify that articles permanently implanted in the human body to mark the location of a medical condition, such as breast tissue markers, are included in the definition of “medicines.” This rulemaking action also clarifies the type of United States Food and Drug Administration (FDA) approval that is required in order for a medical device to qualify as a “medicine.” Additionally, this rulemaking action clarifies the relationship between subdivisions (b) and (c) of the regulations as they pertain to the definition of “medicines.”

Title 18  
 California Code of Regulations  
 AMEND: 1591  
 Filed 06/25/2015  
 Effective 10/01/2015  
 Agency Contact:  
 Richard E. Bennion (916) 445-2130

File# 2015-0512-04  
 COMMISSION ON PEACE OFFICER STANDARDS  
 AND TRAINING  
 Training and Testing Specifications

This action amends Learning Domains throughout the Training and Testing Specifications for Peace Officer Basic Courses publication which is used for course instruction and training for law enforcement officers who are employed as peace officers or enrolled in a training academy.

Title 11  
 California Code of Regulations  
 AMEND: 1005, 1007, 1008  
 Filed 06/24/2015  
 Effective 08/01/2015  
 Agency Contact: Cheryl Smith (916) 227-0544

File# 2015-0522-01  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Setting The Commercial Feed License Fee

In this regulatory action, the Department is amending section 2751 of title 3 of the California Code of Regulations to increase the annual commercial fee license from four hundred dollars to five hundred dollars, effective July 1, 2015.

Title 3  
 California Code of Regulations  
 AMEND: 2751(b)  
 Filed 06/24/2015  
 Effective 07/01/2015  
 Agency Contact: Maria Tenorio (916) 900-5022

File# 2015-0619-01  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Phytosanitary Certification

In this regulatory action, the Department amends Title 3 of the California Code of Regulations, section 4603, which relates to the Departments schedule of charges for providing non-regulatory services related to Phytosanitary Certification services. The amendment removes the sunset clause of July 1, 2015, found in subdivision (i) to allow the Department to continue to recover its costs for providing such services.

Title 3  
 California Code of Regulations  
 AMEND: 4603(i)  
 Filed 07/01/2015  
 Effective 07/01/2015  
 Agency Contact: Stephen S. Brown (916) 654-0317

File# 2015-0623-01  
 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*) by approximately 13 square miles in the San Jose area of Santa Clara County and into Alameda County. The effect of the emergency action provides authority for the state to perform quarantine activities against ACP within this additional area, along with the existing regulated areas.

Title 3  
 California Code of Regulations  
 AMEND: 3435(b)  
 Filed 06/24/2015  
 Effective 06/24/2015  
 Agency Contact: Sara Khalid (916) 403-6625

File# 2015-0615-02  
 DEPARTMENT OF HEALTH CARE SERVICES  
 Managed Care Information Sharing

This emergency rulemaking by the Department of Health Care Services (the "Department") adopts section 50188 in title 22 of the California Code of Regulations. Section 50188 is adopted to address the matter of describing how and under what circumstances updated Medi-Cal beneficiary contact information shall be reported, which the Department is required to do through an emergency rulemaking no later than July 1, 2015. (See Health & Saf. Code, § 14005.36, subd. (e).)

Title 22  
 California Code of Regulations  
 ADOPT: 50188  
 Filed 06/24/2015  
 Effective 06/24/2015  
 Agency Contact: Jordan Espey (916) 445-1514

File# 2015-0515-03  
 DEPARTMENT OF INSURANCE  
 Travel Insurance Agent Licensing

The Department of Insurance in this rulemaking action is adopting nine new sections in Title 10 of the California Code of Regulations. These sections implement AB2354 (CH 257, Statutes of 2012) by establishing travel insurance agent licensing. These regulations also set the license application and renewal fees and

provide the information necessary to apply for the travel insurance agent license. These regulations also contain training requirements and consumer disclosure and record keeping requirements.

Title 10  
 California Code of Regulations  
 ADOPT: 2194.18, 2194.19, 2194.20, 2194.21, 2194.22, 2194.23, 2194.24, 2194.25, 2194.26  
 Filed 06/29/2015  
 Effective 10/01/2015  
 Agency Contact: Richard Lovell (916) 492-3614

File# 2015-0619-05  
 DEPARTMENT OF SOCIAL SERVICES  
 AB 74 CalWORKs Regulations Changes

This emergency action amends state welfare-to-work regulations and adopts one new regulation concerning Family Stabilization to conform to Assembly Bill 74, Chapter 21, Statutes of 2013. The amended regulations add expanded subsidized employment as a permitted welfare-to-work activity distinct from other forms of subsidized employment and establish a more comprehensive appraisal and early engagement process for welfare-to-work participation in which recipients can participate in any necessary welfare-to-work activity that is consistent with their assessments.

Title MPP  
 California Code of Regulations  
 ADOPT: 42-749 AMEND: 41-440, 42-711, 42-716, 44-207  
 Filed 06/29/2015  
 Effective 06/29/2015  
 Agency Contact: Ying Sun (916) 651-8267

File# 2015-0514-03  
 FISH AND GAME COMMISSION  
 Prohibition on the Use of Lead Projectiles and Ammunition

In this regulatory action, the Commission is adopting and amending regulations in title 14 of the California Code of Regulations to phase in the requirements of Fish and Game Code section 3004.5, which prohibits the use of any lead projectiles or ammunitions containing lead projectiles when taking any wildlife with a firearm on or after July 1, 2019.

Title 14  
 California Code of Regulations  
 ADOPT: 250.1 AMEND: 311, 353, 464, 465, 475, 485 REPEAL: 355  
 Filed 06/26/2015  
 Effective 07/01/2015  
 Agency Contact: Caren Woodson (916) 653-4899

File# 2015-0515-02  
 FISH AND GAME COMMISSION  
 Kelp Harvest Application and Fee

This action by the California Fish and Game Commission makes changes without regulatory effect to section 165, subdivision (a)(1) in Title 14 of the California Code of Regulations. These changes include updating the license year to 2015 and renaming form MRD 658 (Rev. 09/13) to (Rev. 08/14).

Title 14  
 California Code of Regulations  
 AMEND: 165  
 Filed 06/24/2015  
 Agency Contact: Mike Randall (916) 653-4678

File# 2015-0519-01  
 FISH AND GAME COMMISSION  
 Central Valley Salmon Sport Fish

This rulemaking action by the Fish and Game Commission (FGC) amends section 7.50 of title 14 of the California Code of Regulations to allow the limited recreational take of Chinook salmon in the Sacramento, Feather, and American rivers.

Title 14  
 California Code of Regulations  
 AMEND: 7.50  
 Filed 07/01/2015  
 Effective 07/01/2015  
 Agency Contact: Jon Snellstrom (916) 653-4899

File# 2015-0513-05  
 OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT  
 Steven M. Thompson Physician Corps Loan Repayment Program

This change without regulatory effect filing by the Office of Statewide Health Planning and Development (OSHPD) revises six sections related to the Steven M. Thompson Physician Corps Loan Repayment Program (Program). Assembly Bill 920 (Ch. 317, Stats. 2005) transferred administration of the Program from the

Medical Board of California (Board) to the Office. This filing transfers the applicable sections from title 16 to title 22 to reflect the transfer of administrative authority over the Program, amends authority and reference citations, changes references to the Business and Professions Code to references to the Health and Safety Code, and revises internal citations.

Title 16  
 California Code of Regulations  
 AMEND: 1313.01, 1313.02, 1313.03, 1313.04, 1313.05, 1313.06  
 Filed 06/25/2015  
 Agency Contact:  
 Charlene Almazan (916)326-3651

File# 2015-0515-01  
 PUBLIC UTILITIES COMMISSION  
 Certificate to Operate Passenger Stage Corporation

The Public Utilities Commission (Commission) proposed this action to amend section 3.3 of title 20 of the California Code of Regulations, which governs applications for a certificate to operate as a passenger stage corporation. The amendments implement changes in the Public Utilities Code made in SB 1840 (Stats. 2006, ch. 694) and are intended to streamline and simplify the application requirements for obtaining a certificate to operate as a passenger stage corporation.

Title 20  
 California Code of Regulations  
 AMEND: 3.3  
 Filed 06/25/2015  
 Effective 10/01/2015  
 Agency Contact:  
 W. Anthony Colbert (415) 703-2337

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN January 28, 2015 TO  
 July 1, 2015**

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**  
 06/22/15 ADOPT: 18700.3, 18707 AMEND: 18704 REPEAL: 18704.1, 18704.2, 18704.3, 18704.4, 18704.5, 18704.6  
 06/22/15 AMEND: 18361.7  
 06/16/15 AMEND: 39000, 39001, 39002  
 06/02/15 AMEND: 10001, 10002, 10005, 10006, 10007, 10008, 10009, 10011, 10012, 10013, 10015, 10021, 10022, 10024, 10025, 10029, 10030, 10031, 10033, 10035, 10037, 10038, 10039, 10041, 10042, 10046, 10047, 10050, 10053, 10054, 10056, 10057, 10061, 10062, 10063, 10065  
 05/27/15 ADOPT: 61100, 61101, 61102, 61103, 61104, 61105, 61106, 61107, 61108, 61109, 61120, 61121, 61122, 61130, 61131, 61132, 61140  
 05/18/15 AMEND: 18703 REPEAL: 18703.2, 18703.4, 18703.5, 18707, 18707.1, 18707.2, 18707.4, 18707.5, 18707.6, 18707.7, 18707.9, 18707.10  
 05/04/15 ADOPT: 1701, 1702 AMEND: 1700  
 04/27/15 AMEND: 18700, 18700.1, 18700.2, 18700.3, 18701, 18701.1, 18702, 18702.1, 18702.2, 18702.3, 18702.4, 18702.5, 18703.3, 18704, 18704.1, 18704.2, 18704.3, 18704.4, 18704.5, 18704.6, 18705, 18705.1, 18705.2, 18705.3, 18705.4, 18705.5, 18706, 18706.1, 18708, 18709  
 04/09/15 AMEND: 57400  
 04/08/15 AMEND: 212  
 04/07/15 ADOPT: 59780  
 04/02/15 AMEND: 18215  
 04/02/15 AMEND: 18530.4, 18530.45  
 03/24/15 AMEND: 1900  
 03/23/15 AMEND: 1189.10  
 03/23/15 AMEND: 59740  
 03/17/15 AMEND: 549  
 03/04/15 AMEND: 11087, 11088, 11089, 11090, 11091, 11092, 11093, 11094, 11095, 11096, 11097 REPEAL: 11098  
 02/23/15 ADOPT: 59760  
 02/23/15 ADOPT: 553, 553.1, 553.2, 553.3, 553.4, 553.5, 553.6, 599.100, 599.101, 599.102, 599.120, 599.121, 599.122, 599.123, 599.124, 599.140, 599.141, 599.142, 599.143, 599.144, 599.145, 599.146, 599.160, 599.161, 599.162, 599.163, 599.164  
 02/09/15 AMEND: 1859.76  
 02/02/15 AMEND: 18705, 18705.3, 18705.4, 18705.5 REPEAL: 18704, 18704.1, 18704.5

02/02/15	AMEND: 18450.11	03/10/15	ADOPT: 10170.16, 10170.17, 10170.18, 10170.19, 10170.20, 10170.21, 10170.22, 10170.23, 10170.24
02/02/15	AMEND: 18740	03/09/15	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
<b>Title 3</b>		03/04/15	AMEND: 1866
07/01/15	AMEND: 4603(i)	03/02/15	AMEND: 1688
06/24/15	AMEND: 3435(b)	02/26/15	ADOPT: 24465-3
06/24/15	AMEND: 2751(b)	02/02/15	ADOPT: 12003, 12311, 12312, 12313, 12315, 12316 AMEND: 12002
06/22/15	AMEND: 3435(b)		REPEAL: 12400, 12401, 12402, 12403, 12404, 12405, 12406, 12410
06/02/15	AMEND: 3591.11(a)	01/30/15	AMEND: 10085
05/28/15	AMEND: 3435(b)	<b>Title 5</b>	
05/19/15	ADOPT: 3441	05/21/15	AMEND: 19810
05/13/15	AMEND: 3435(b)	05/18/15	AMEND: 19810
05/08/15	AMEND: 3435(b)	03/12/15	AMEND: 19810
05/06/15	AMEND: 3435(b)	02/18/15	ADOPT: 58621 AMEND: 58601, 58612, 58620
05/06/15	AMEND: 6400	01/30/15	ADOPT: 71105, 71105.5, 71410, 71471, 71775, 71775.5, 74240, 74250, 75140 AMEND: 70000, 71400, 71650, 75150
04/30/15	AMEND: 3435(b)	<b>Title 8</b>	
04/30/15	AMEND: 3435	04/30/15	ADOPT: 9980, 9981, 9982, 9983 AMEND: 9990, 9992, 10208.7 REPEAL: 9994
04/16/15	AMEND: 6512	04/30/15	AMEND: 4345, 4351, 4352, 4354
04/15/15	ADOPT: 6738.1, 6738.2, 6738.3, 6738.4 AMEND: 6000, 6702, 6720, 6724, 6738, 6739, 6764, 6771, 6793, 6795 REPEAL: 6486.7, 6736	04/30/15	AMEND: 1618.1(e)
04/09/15	AMEND: 3435(b)	04/20/15	ADOPT: 9792.21.1, 9792.25.1 AMEND: 9792.20, 9792.21, 9792.23, 9792.24.1, 9792.24.3, 9792.25, 9792.26
04/08/15	AMEND: 3435(b)	04/06/15	AMEND: 9701, 9702
04/06/15	AMEND: 3	04/06/15	ADOPT: 17300, 17301, 17302, 17303, 17304, 17305, 17306, 17307, 17308, 17309, 17310
03/20/15	AMEND: 3435(b)	04/03/15	AMEND: 3395
03/17/15	AMEND: 1428.6, 1428.7, 1428.8, 1428.10, 1428.12	02/25/15	AMEND: 9789.25
03/02/15	AMEND: 3435(b)	02/12/15	AMEND: 333, 336
02/25/15	AMEND: 2	02/04/15	AMEND: 9789.10, 9789.11, 9789.20, 9789.21, 9789.22, 9789.23, 9789.25, 9789.50, 9789.60, 9789.70, 9789.110, 9789.111, 9790
02/18/15	AMEND: 4500	<b>Title 9</b>	
02/12/15	AMEND: 3435(b)	06/15/15	AMEND: 4210
02/02/15	AMEND: 1392.8.1	06/01/15	ADOPT: 4530, 4530.1, 4530.2, 4530.3, 4530.4, 4530.5, 4530.6, 4530.7, 4530.8, 4530.9, 4530.10, 4530.11, 4530.12
<b>Title 4</b>		05/27/15	AMEND: 7400
06/04/15	ADOPT: 1891.1	03/09/15	AMEND: 4210
05/19/15	ADOPT: 8130, 8131, 8132, 8133, 8134, 8135, 8136, 8137, 8138		
05/07/15	AMEND: 10325		
05/07/15	AMEND: 10315, 10322, 10325, 10327		
05/04/15	AMEND: 8035(e)-(f)		
04/27/15	AMEND: 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11		
04/21/15	AMEND: 150		
04/09/15	AMEND: 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10187		
04/07/15	AMEND: 87102, 87455, 87465, 87469, 87615, 87616, 87632, 87633		
04/06/15	ADOPT: 10080, 10081, 10082, 10083, 10084, 10085, 10086, 10087		
04/06/15	AMEND: 278		
03/30/15	ADOPT: 8078.3, 8078.4, 8078.5, 8078.6, 8078.7		
03/13/15	AMEND: 5205, 5230		

**CALIFORNIA REGULATORY NOTICE REGISTER 2015, VOLUME NO. 28-Z**

**Title 10**

06/29/15 ADOPT: 2194.18, 2194.19, 2194.20, 2194.21, 2194.22, 2194.23, 2194.24, 2194.25, 2194.26  
06/15/15 ADOPT: 6432  
05/26/15 ADOPT: 2563  
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06/22/15 AMEND: 895.1, 1038, 1038.2  
06/04/15 AMEND: 7.50  
05/28/15 AMEND: 3550.14  
05/21/15 AMEND: 708.3, 708.10, 708.11  
05/01/15 AMEND: 27.80  
04/28/15 AMEND: 28.20, 28.95  
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04/24/15 AMEND: 7.50  
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04/06/15 AMEND: 15411  
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04/01/15 AMEND: 1.73, 27.75, 27.80  
03/30/15 ADOPT: 3550.17  
03/10/15 AMEND: 1.91, 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 27.65, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.54, 28.55, 58.56, 28.58, 28.90  
02/23/15 AMEND: 1.45, 2.09, 4.05, 5.00, 5.80, 7.50, 8.00, 27.90  
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06/02/15 AMEND: 3124  
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 05/26/15 AMEND: 233  
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 04/22/15 AMEND: 3001, 3042, 3043, 3084.7,  
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 03/17/15 ADOPT: 3410.2 AMEND: 3000, 3173.2,  
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