**CIVIL RIGHTS DEPARTMENT**
**PROPOSED REGULATIONS REGARDING**
**CONCILIATION PROCEDURES OF THE CIVIL RIGHTS DEPARTMENT**

**FINAL STATEMENT OF REASONS**

***DETERMINATION OF LOCAL MANDATE [Government Code Section 11346.9(a)(2)].***

The proposed regulations do not impose any mandate on local agencies or school districts.

***ALTERNATIVES CONSIDERED [Government Code Section 11346.9(a)(4)].***

The department considered various alternatives to these regulations based upon comments it received after noticing the rulemaking action; no specific alternatives were considered prior to issuance of the original notice. The department has herein listed all alternatives it has considered applicable to specified subdivisions of these regulations. Having considered all alternatives, unless otherwise adopted and noted in the department's response, the department has determined that no reasonable alternative it considered, or was otherwise brought to its attention, would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

***ECONOMIC IMPACT ANALYSIS/ASSESSMENT [Government Code Section 11346.9(a)(5)].***

Because the proposed regulations provide detail about conciliation and mediation procedures but do not create any new liabilities or obligations, the department anticipates that the adoption of the regulations will not impact the creation or elimination of jobs or housing within the state; the creation of new businesses or housing or the elimination of existing businesses or housing within the state; the expansion of businesses or housing currently doing business within the state; or the health and welfare of California residents, worker safety, and the environment. To the contrary, adoption of the proposed regulations is anticipated to benefit California businesses, employers, housing providers, workers, tenants, and all other members of the public by making it easier for parties to a complaint to understand CRD's conciliation and mediation procedures. The department does not anticipate that the proposed amendments will benefit the State's environment because they do not relate to or impact the environment.

***NONDUPLICATION STATEMENT [1 CCR Section 12].***

For the reasons stated below, the proposed regulations partially duplicate or overlap state statutes or regulations, which are cited as "authority" or "reference" for the proposed regulations, and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code section 11349.1(a)(3).

***PUBLIC COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD [Government Code Section 11346.9(a)(3)].***

***General Comments***

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: We welcome the opportunity to submit comments on CRD's proposed changes regarding conciliation and mediation procedures. We also want to take this opportunity to express our appreciation for CRD's mediation program. The mediation program is one of the primary reasons our organizations regularly assist and encourage clients to file fair housing complaints with CRD. Mediation often provides a critical pathway to achieving swift, fair, and meaningful resolutions for individuals who have experienced discrimination. The program's accessibility, the expertise of the trained mediators, and the structured process it offers are invaluable for our clients — many of whom are navigating housing instability, disabilities, or other barriers to justice. By offering a neutral and efficient forum for dispute resolution, CRD's mediation program not only serves individual complainants but also advances broader public policy goals of promoting fair housing, equity, and community stability for all Californians.

**Department Response:** The department appreciates this comment. This comment does not request a specific change to the proposed regulatory language. No further response is required pursuant to Government Code section 11346.9(a)(3).

**Comment:** Fang L. Huang submitted the following comment: According to the CDC and NIH reaches, Covid-19 was related to toxic mold Aspergillus and Mucoromycetes. Moisture from water damages can trigger mold growth in indoor air and health risks, especially for children and elderly. Therefore, timely repair to water leak source and water damages should be addressed and enforced by Housing Regulations to protect tenants' health. Fungal eye infection can also increase severe vision problems after Lasik for regular adults and seniors with Cataract surgeries, stated in the CDC research. If necessary, I can provide more information about health risks caused by mold exposure for detail and proof.

**Department Response:** This comment is outside the scope of this rulemaking action. No further response is required pursuant to Government Code section 11346.9(a)(3).

**Comment:** Seyoum Taddesse submitted the following comment: I am SEYOUM Woldemeske from los angeles ca. I wish to participate in the meeting and what I want to share some problems. In my born area Ethiopia now no human rights. Peoples are with out shelter by the military Government destroyed their house Peoples go out of their house no water. No electricity.....out of this there is in different areas big wars by ethnic politics.....

**Department Response:** This comment is outside the scope of this rulemaking action. No further response is required pursuant to Government Code section 11346.9(a)(3).

**Comment:** Seyoum Taddesse submitted the following comment: Good Afternoon. I wish to participate the CRD program. Reason stands for those who are in different problems such as Discrimination. /color/ olso people under controlled like disabled.....in day program and olso in the facility.....

**Department Response:** This comment is outside the scope of this rulemaking action. No further response is required pursuant to Government Code section 11346.9(a)(3).

**Comment:** Kenzi Lacosta submitted the following comment: General Response to Proposed Rulemaking - Use of "Must" versus "Shall."

We write to address the usage of "must" and "shall" throughout the proposed regulations. The current draft employs both terms, creating potential legal ambiguity that should be resolved before final implementation.
The modern trend in regulatory drafting favors "must" over "shall" for several reasons:
1. "Must" provides clearer indication of mandatory requirements
2. "Shall" has become increasingly ambiguous in contemporary legal interpretation
3. In other sections, the department proposes “10281(a)(1)
The department proposes that it “may, but is not required to, offer the parties to a complaint……
4. Federal Drafting guidelines state:
a. “must” to indicate a requirement;
b. “should” to indicate a strong recommendation;
c. “may” to indicate an option; and
d. "can" to indicate that something is technically possible but you must decide if it is legal, practical, and feasible.
We recommend the Department:
Be consistent in its writing by using only “must, should, may, can.”

**Department Response:** The department disagrees with the comment and declines to implement the recommendations to change “shall” to “must” and to use only “must, should, may, can” throughout the regulations. The requested change is not necessary for clarity. The proposed regulations use both “must” and “shall” to refer to requirements, which is consistent with existing regulations. For example, existing regulations use “must” to refer to requirements in sections 10001, 10303, and 10053. Existing regulations use “shall” to refer to requirements in sections 10302, 10060, and 10064, among others. The department addresses the comment’s reference to section 10281(a)(1) in the relevant section below.

**§ 10000. Statement of Purpose.**

**Additional Changes:** After Government Code section 11135, the department proposes to remove “et seq.” and add in its place “to 11139” to clarify the range of statutes that the Civil

Rights Department enforces. The department also proposes to remove “et seq.” after Civil Code section 51 and add a reference to Civil Code section 51.5, which the department enforces pursuant to Government Code section 12935(f)(2). The department makes a similar non-substantive proposal to the reference to the Disabled Persons Act: the department proposes to remove “et seq.” and proposes to add “-55.32” to clarify that the range of statutes encapsulated by the Disabled Persons Act is Civil Code section 54 to 55.32.

**§ 10001. Definitions.**

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: We appreciate CRD’s overall move toward uniformity and using plain language in the proposed regulations. Using plain language improves accessibility to information for all and improves understanding, especially for unrepresented people accessing CRD’s complaint and conciliation processes. The average American reads at a 7th or 8th grade level. This means many parties, even those without a disability, in addition to individuals with an intellectual or cognitive disability, benefit from the proposed plain language changes.

Clear and consistent definitions are essential for ensuring that all parties —complainants, respondents, and CRD staff — can navigate the conciliation and mediation processes with understanding and confidence. To that end, we offer the following recommendations to improve clarity and consistency.

**Department Response:** The department responds to the commenters’ specific recommendations in the appropriate sections below.

**§ 10001(d). “Conciliation.”**

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: The use of the term "conciliation" in the proposed regulations (see §§ 10001, 10280) is unclear and risks creating confusion for parties navigating the CRD’s procedures. Under Proposed § 10001(d), “Conciliation” is broadly defined as “the department’s efforts to resolve disputes by agreement, including efforts to resolve complaints through settlement,” which, per § 10280(a), includes mediation. Proposed § 10001(n) also states, “Mediation is one form of conciliation.” However, in § 10280(a) of the proposed regulations, “conciliation” is also used to refer specifically to a non-mediation form of settlement discussions facilitated by investigators or other CRD staff, rather than by trained mediators.

To improve clarity and avoid ambiguity, we recommend that the Department adopt a distinct term — such as "non-mediation conciliation" or “investigator-facilitated conciliation” — to refer to the investigator-led settlement process outlined in Proposed § 10280(a). Clear and distinct

terminology will help ensure that parties fully understand the nature of the process they are participating in and the options available to them, particularly given the important procedural differences between mediation and other forms of conciliation described in the proposed regulations.

**Department Response:** The department disagrees with the comment and declines to implement the suggestion to adopt a distinct term such as "non-mediation conciliation" or "investigator-facilitated conciliation." The purpose of the regulations is to clarify and make specific terms and procedures referred to in the Fair Employment and Housing Act. "Conciliation" is used in the Fair Employment and Housing Act (see Government Code sections 12965 and 12981), while the terms recommended by the comment are not used in statute. In addition, the proposed regulations are sufficiently clear as-is. The proposed definition for "conciliation" under section 10001(d) provides that conciliation refers "generally to the department's efforts to resolve disputes by agreement, including efforts to resolve complaints through settlement." The proposed definition for mediation under section 10001(n) clarifies that mediation is one type of conciliation.

**§ 10001(~~p~~g). "Protected Basis."**

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: To ensure consistency, we recommend CRD mirror the proposed changes to § 10000 in this definition to include all the laws (and citations) the department enforces including the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), Government Code section 11135 et seq., the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.), the Ralph Civil Rights Act (Civ. Code, § 51.7), Civil Code section 51.9, the California Trafficking Victims Protection Act (Civ. Code, § 52.5), the Disabled Persons Act (Civ. Code, § 54 et seq.), the Equal Pay Act (Labor Code, § 1197.5), and any other law the department enforces.

**Department Response:** The department agrees with this comment in part and disagrees with the comment in part. The department agrees with the commenter's suggestion to add the citation "Government Code section 12900 et seq." because the regulatory section refers to the Fair Employment and Housing Act (FEHA) but does not currently include the citation for FEHA. The department also agrees with the commenter's suggestion to add a reference and citation to Government Code section 11135, the Disabled Persons Act (Civil Code section 54), and the Equal Pay Act (Labor Code section 1197.5) because these statutes refer to protected bases.

The department has implemented these changes by adding references to Government Code section 12900 et seq., Government Code sections 11135 to 11139, the Disabled Persons Act (Civil Code sections 54-55.32), and the Equal Pay Act (Labor Code section 1197.5) to the definition for "protected basis." These additions clarify the laws that under the department's jurisdiction that prohibit discrimination on a protected basis or characteristic.

The department disagrees with the suggestion to add references to Civil Code section 51.9 and the California Trafficking Victims Protection Act (Civ. Code section 52.5) because neither of these laws include protected bases. The department notes that the regulation already lists the Fair Employment and Housing Act, the Unruh Civil Rights Act, the Ralph Civil Rights Act, and any other law the department enforces.

**Subchapter 1. Employment, Unruh Civil Rights Act (Civ. Code, § 51 et seq.), Ralph Civil Rights Act (Civ. Code, § 51.7), and Disabled Persons Act (Civ. Code, § 54 et seq.) Complaints**

~~**§ 10025. DFEH Dispute Resolution Division Services.**~~

~~**§ 10025(g).**~~

**Comment:** During the April 28, 2025 public hearing, a member of the public expressed concern about removing the word "trained" before "mediator." The member of the public stated the following: I understand that the department has trained mediators, but removing [trained] from a regulation back to an administrative policy leaves out public comment and notification of changes. Thats important because there is a lot of confusion out there about some of the actions that take place in the mediation process generally, but very specifically to a large cohort or group which are senior citizens all over the age 65 through 100 who live in retirement communities. They have specific amenities that most other housing situations don't have and can tell that mediators may not have enough training in this subcategory of this large group. By way of example, in affirmative relief, one mediation allowed requiring a written reasonable accommodation request and implementing a thirty-day response for such requests which is the opposite regulation and also CRD training that's provided to the public and attorneys for their continuing education.

The member of the public raised concerns regarding senior rights, civil rights, and constitutional rights in relation to a senior housing guide for fair housing and compliance.

**Department Response:** The department disagrees with the comment and declines to implement the recommendation to maintain the word "trained" before "mediator," because "trained" is superfluous language. All mediators employed by the department or acting as a volunteer are trained mediators. All department staff are trained; however, the existing regulations only use the word "trained" to refer to mediators, which may result in the misconception that other department staff are not trained. The rest of the comment is not relevant to the proposed regulations and does not require a response pursuant to Government Code section 11346.9(a)(3).

The comment's statement regarding senior rights and fair housing is not relevant to the proposed regulations and does not require a response pursuant to Government Code section 11346.9(a)(3).

**Comment:** Kenzi Lacosta submitted the following comment: We have concerns regarding the proposed removal of the word "trained" from subsections 10025(g) and 10057(g).
While this change may appear minor, it carries significant implications for the quality and consistency of mediation services.

The proposed change would effectively downgrade mediator training from a regulatory requirement to an administrative policy. This shift would make training requirements vulnerable to modification without public notice or stakeholder input. A recent case involving a 450-unit senior housing community illustrates the critical importance of maintaining robust mediator training requirements: The mediator conducted negotiations with the respondent's attorney while excluding the complainant, a practice that undermines the fundamental principles of fair and inclusive mediation.

The mediator approved affirmative relief, that directly contradicted established California Department of Civil Rights (CRD) regulation, including: Requiring written reasonable accommodation requests; Implementing a 30-day response window for such requests; Affirmative relief that imposed requirements on the complainant.

The information available to the public:
"Affirmative Relief: In CRD settlement agreements, "affirmative relief" refers to commitments made by the respondent (e.g., an employer or housing provider) to take concrete steps to undo or counteract the effects of discrimination, in addition to any monetary compensation (if any)."

The administrator must establish community-wide housing policies that apply equally to all residents with similar disabilities, rather than issuing individual orders to complainants about specific actions they must take or avoid - with CRD enforcing trivial problems that complainant only learned about were concerns the respondent had - in the CRD mediation settlement presented to them.

These actions conflicted with a CRD training webinar, available to the public as well as attorneys earning MCLE credits, which explicitly cited § 12177 and § 12176 that housing providers cannot mandate written reasonable accommodation requests and must engage in immediate interactive dialogue when requests are not immediately granted.

This issue particularly impacts California's senior housing communities, which include over 7,800 licensed Residential Care Facilities for the Elderly (RCFE) serving more than 210,000 (85 years of age or older) residents. The number of seniors age 65 - 85 doubles that number ~ 420,000 residents living in RCFE. Senior residents are especially vulnerable to housing discrimination and often face challenges in pursuing their rights due to:

The unique nature of their housing which provides many services and Facilities/ common areas.

Rather than remove the word trained from the regulation I propose that it remain, and be expanded to require that mediators must possess dual competencies to serve in their role:

Expertise in mediation techniques and best practices

Comprehensive knowledge of current regulatory requirements and compliance standards as they protect different populations, such as senior citizens and others groups with unique circumstances.

In closing, to provide context about Senior Communities, I bring to your attention that the current guidance provided to senior living operators regarding assistance dogs states that assistance dogs under fair housing are permitted in a residents apartment, "but not in the dining room, indoor Recreation Area, and other common areas." This advice is provided to over 7,000 Senior Living operators in the United States by the American Association of Senior Living. The association's General Counsel, and author of the guidance, represented the administrator in the CRD mediation (referenced on thos comment) regarding an assistance dog. These violations of CA enabling statute and regulation may be provided by this organization to all administrators of California retirement communities- a rapidly growing industry as the Baby Boomers retire.

**Department Response:** The department disagrees with the comment and declines to implement the recommendation to maintain the word “trained” before “mediator,” because “trained” is superfluous language. All mediators employed by the department or acting as a volunteer are trained mediators. All department staff are trained; however, the existing regulations only use the word “trained” to refer to mediators, which may result in the misconception that other department staff are not trained. The rest of the comment is not relevant to the proposed regulations and does not require a response pursuant to Government Code section 11346.9(a)(3).

**Subchapter 2. Housing Discrimination Complaints**

**~~§ 10057(g)~~**

**Comment:** Kenzi Lacosta submitted the following comment: We have concerns regarding the proposed removal of the word "trained" from subsections 10025(g) and 10057(g).
While this change may appear minor, it carries significant implications for the quality and consistency of mediation services. [The remainder of the comment has been included above under section 10025.]

**Department Response:** As the department addressed under section 10025 above, the department disagrees with the comment and declines to implement the recommendation to maintain the word “trained” before “mediator,” because “trained” is superfluous language. All mediators employed by the department or acting as a volunteer are trained mediators. All department staff are trained; however, the existing regulations only use the word “trained” to

refer to mediators, which may result in the misconception that other department staff are not trained. The rest of the comment is not relevant to the proposed regulations and does not require a response pursuant to Government Code section 11346.9(a)(3).

**Subchapter 4. Conciliation**

**§ 10280. Conciliation.**

**§ 10280(d)(1)**

**Additional Change:** The department proposes to add "or" at the end of proposed subdivision (1) of subsection (d) to clarify that the confidentiality of conciliation communications shall not prevent conciliation participants from sharing information about what transpired in the conciliation with certain parties or from discussing at a continued conciliation the settlement offers and other statements parties made during an earlier conciliation of the same complaint.

**~~§ 10280(e).~~**

**Comment:** The California Department of Water Resources submitted the following comment: Regulation section 10280(e) states that for cases that are "dual-filed with [the U.S. Department of Housing and Urban Development (HUD)] or [the U.S. Equal Employment Opportunity Commission (EEOC)]," conciliations and settlement agreements shall meet all requirements contractually required by HUD or EEOC." Not specifying what those requirements are or attaching them for this comment period hampers interested parties from commenting on the impact of such requirements. The CRD should specify what those requirements are. At a minimum, this regulation section should include a citation reference for any applicable statute or regulation to inform parties where to find out what those requirements are.

**Department Response:** The department addresses this comment by adding the relevant requirements from the agreements between CRD and HUD and EEOC into the regulatory text under proposed section 10281(c)(4)(A)-(B). Specifying these requirements in the text increases clarity and accessibility. With these additions to the regulatory text, the department proposes to remove subsection (e) because the references to the contracts between CRD and HUD and EEOC are now rendered duplicative. The department also notes that the EEOC and HUD contracts are publicly available on the department's website.

**§ 10280(~~f~~e).**

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: Need for Mandatory Tolling During All Forms of Conciliation. Tolling of investigation timelines during conciliation is a crucial mechanism for ensuring fairness and providing parties the necessary time to negotiate effectively. While we recommend that non-mediation conciliation only be offered as a last resort, in cases where

investigator-facilitated mediation does occur, we recommend that CRD change the proposed language in § 10281(f) from "the Department may require all parties to agree in writing to toll any applicable statues of limitations" to "must" or "will" to ensure parity with the mediation process across all complaints.

This would provide uniformity for all conciliation processes and reduce confusion about investigation timelines and deadlines for filing a civil action. Tolling offers essential flexibility, enabling parties to engage in thorough and meaningful settlement discussions without the looming pressure of a strict investigation deadline, which could otherwise lead to hasty decisions or hinder the negotiation process.

**Department Response:** Although this comment was addressed to section 10281(f), the department interprets this comment to address section 10280(f) since that subsection addresses tolling during conciliation and there is no proposed section 10281(f). The department disagrees with the comment and declines to make any change on its basis. Tolling agreements are not always necessary to preserve the rights of parties engaging in conciliation. Conciliation is informal and may occur quickly and efficiently. In such circumstances it is not necessary that parties enter into a tolling agreement because conciliation is unlikely to run down the allotted time for the department to complete its investigation and file a civil action by the deadlines set forth in the Fair Employment and Housing Act.

**Comment:** The California Department of Water Resources submitted the following comment: Section 10280(f) provides that the "department may require all parties to agree in writing to toll any applicable statutes of limitations for filing a civil action between the date a conciliation commences and the time the department notifies the parties in writing that the conciliation has been completed." This proposed regulation attempts to unlawfully abrogate a party's right to willingly and voluntarily enter into an agreement with the CRD to toll the statute of limitations. It also gives the CRD full control over the determination of when a conciliation has been completed, rather than specifying an objective basis or providing the parties with the right to terminate conciliation and that date be effective to stop tolling the time, regardless of when notification is sent by the CRD.

**Department Response:** The department disagrees with the comment and declines to implement any change on its basis. No statute or regulation requires parties to agree to participate in the conciliation process described in proposed section 10280. If the department decides that tolling is appropriate to facilitate conciliation and requests tolling, the parties may still refuse to enter into a tolling agreement, and in so doing would decline conciliation. The parties also have the ability to stop conciliation at any point by refusing to continue to attempt to conciliate. If the parties enter into a tolling agreement, the tolling agreement ends on the date that the department notifies the parties in writing that the conciliation has been completed.

**Additional Change:** The department proposes to renumber subsection (f) of 10280 to subsection (e) because the department proposes to strike subsection (e) ("For cases that are dual-filed . . .").

**§ 10280(~~g~~f)**

**Comment:** The California Department of Water Resources submitted the following comment: Section 10280(g) provides that "[a]ll settlement agreements reached through conciliation shall comply with the requirements for settlement agreements reached through CRD mediations, as specified in section 10281 of these regulations." Section 10281 (d) (1) provides that "all CRD-mediated settlement agreements **shall include affirmative relief** and **shall include the development of polices or practices** to prevent future discrimination, harassment, retaliation, or other unlawful practices." (bold emphasis added.) Affirmative relief should not be required in all CRD-mediated settlement agreements. Affirmative relief should be required when appropriate, on a case-by-case basis, given the specific facts and circumstances of each case and the merit of any claims.

This proposed regulation also assumes and implies that an employer has no policies or practices in place to prohibit or prevent discrimination in the workplace or that they are deficient. As written, it gives the appearance that the employer is admitting fault that it has deficient policies and/or that it has engaged in unlawful practices or committed unlawful acts. Parties enter into settlement agreements for various reasons that are not related to the merits of a complaint. Requiring all employers or parties to develop policies or practices may not be appropriate in all cases and should not be a requirement. Furthermore, existing law requires employers to provide sexual harassment training at required intervals for all employees and supervisors. Employers may provide training above the minimum requirements the law requires or to supplement mandatory requirements to address specific needs. Requiring all employees to be trained may be duplicative of existing mandates, unnecessary, and burden the employer with unnecessary related costs and employee worktime.

Lastly, requiring affirmative relief in all settlements may discourage parties from participating in mediation or conciliatory efforts, because it gives the impression that a party has engaged in unlawful conduct, and that these steps are necessary to correct such conduct. Affirmative relief should only be requested and required if the circumstances warrant it.

**Department Response:** The department disagrees with this comment and declines to implement any changes on its basis. The proposed regulation is consistent with the department's existing regulations and practice. Existing regulations sections 10025 and 10057 require all mediated settlement agreements to include affirmative relief. The department's current practice requires agreements reached through both mediation and conciliation to include affirmative relief. The proposed regulation – like the existing practice – also allows for flexibility to fashion appropriate affirmative relief that is tailored to the specific allegations and other circumstances at issue.

**Additional Change:** The department proposes to renumber subsection (g) of section 10280 to subsection (f) because the department proposes strike subsection (e) ("For cases that are dual-filed . . .").

**§ 10281. Mediation.**

**§ 10281(a)(1)**

**Comment:** Kenzi Lacosta submitted the following comment: General Response to Proposed Rulemaking - Use of "Must" versus "Shall."

We write to address the usage of "must" and "shall" throughout the proposed regulations. The current draft employs both terms, creating potential legal ambiguity that should be resolved before final implementation.
The modern trend in regulatory drafting favors "must" over "shall" for several reasons:
1. "Must" provides clearer indication of mandatory requirements
2. "Shall" has become increasingly ambiguous in contemporary legal interpretation
3. In other sections, the department proposes "10281(a)(1)
The department proposes that it "may, but is not required to, offer the parties to a complaint……
4. Federal Drafting guidelines state:
a. "must" to indicate a requirement;
b. "should" to indicate a strong recommendation;
c. "may" to indicate an option; and
d. "can" to indicate that something is technically possible but you must decide if it is legal, practical, and feasible.
We recommend the Department:
Be consistent in its writing by using only " must, should, may, can."

**Department Response:** The department declines to make any change to the proposed language in section 10281(a)(1) that the department "may, but is not required to, offer the parties to a complaint. . ." because this language is sufficiently clear as-is. The phrase "may, but is not required to" emphasizes that the department has the option to offer parties the opportunity to participate in voluntary pre-determination mediation, but is not required to do so. This is consistent with the comment's statement that "may" indicates an option. The department addressed the comment's general recommendation to change "shall" to "must" throughout the proposed regulations in the section above that addresses general comments.

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: Need for Universal Access to Voluntary Mediation. Proposed § 10281(a)(1) – Opportunities for Mediation. Access to timely and neutral mediation is critical for resolving disputes efficiently and effectively. We support the mandatory availability of mediation prior to determination in all complaints, ensuring that parties have

access to a meaningful opportunity to resolve their disputes with the support of a trained, neutral mediator.

Accordingly, we recommend that the proposed § 10281(a)(1) be revised to replace "may, but is not required to" with "shall," and that the phrase "but is not required to" be removed entirely. These changes would ensure that mediation is consistently available as an option to all parties, promoting fairness, efficiency, and accessibility throughout the complaint process —goals that are central to CRD's mission and critical to meaningful civil rights enforcement.

While we recognize that the procedures as proposed by CRD still provide a mechanism for engaging in settlement discussions even if mediation is not offered (the conciliation process described in Proposed § 10280), that process is less efficient and less effective than mediation. While both mediation and investigator-facilitated conciliation aim to resolve complaints outside of litigation, mediation — particularly when conducted by a trained, neutral third party in a single, structured session — offers significant advantages in terms of efficiency, fairness, satisfaction, and accessibility, especially for vulnerable complainants in civil rights cases. Additionally, when cases are referred to mediation, tolling occurs automatically by operation of regulation, without the need for separate written agreements, which ensures consistency and fairness.

Mediation is Faster and More Efficient. Mediation typically occurs over the course of a single day, with all parties present (virtually or in person), a set schedule, and a neutral mediator guiding structured discussions. In contrast, investigator-facilitated conciliation often unfolds over several days or even weeks, through back-and-forth email or phone communications. This prolonged process can increase anxiety and emotional burden on complainants, allow power imbalances to persist or deepen, and create more opportunities for miscommunication or strategic delays. Efficient and effective dispute resolution also benefits CRD in closing cases in a timely manner and setting parties up with a clear and fair settlement agreement all parties can comply with and be satisfied with.

Neutral Facilitation Levels the Playing Field. Mediation is facilitated by a neutral third party trained in dispute resolution — typically an attorney or professional mediator. These mediators understand both the legal context and the interpersonal dynamics that often arise in discrimination cases. This creates a more balanced environment where both parties are heard and respected, there is better support for unrepresented complainants who may be emotionally impacted, and the process is focused on problem-solving, not just procedural closure. In contrast, when conciliation is handled by the investigator — the same person who is charged with developing the facts of the case — there is an inherent tension. Even if well-intentioned, the investigator cannot be fully neutral, and this can affect the trust of both parties, particularly complainants.

The experiences of FHANC, as an organization that regularly represents complainants in CRD proceedings, directly reflects the points discussed above. We have participated extensively in both mediation through the Dispute Resolution Division and investigator-facilitated

conciliation, and we consistently observe that mediation leads to quicker, more effective, and more satisfying outcomes for our clients. Mediation provides a structured, neutral forum where complainants are treated with dignity, where their cases are resolved more efficiently, and where durable settlements are more likely to be reached. In contrast, investigator-led conciliation often results in delays, misunderstandings, and heightened emotional distress for complainants — particularly those who are unrepresented and/or those who have disabilities.

Additionally, we have heard directly from unrepresented complainants who felt that investigators conducting conciliation were more focused on securing any resolution that would allow them to quickly close the case, rather than striving for a fair and equitable outcome. Unlike mediators, investigators are not truly neutral; they are responsible for managing caseloads and have an institutional interest in concluding matters efficiently. This inherent tension can leave complainants feeling pressured or unheard during the conciliation process. In our experience, mediation —where the third party has no stake in the outcome — better ensures that settlements are voluntary, informed, and truly in the complainants' best interests.

Mediation Reduces the Emotional Toll and Compounded Trauma. Mediation offers a controlled, time-bound opportunity to address sensitive issues in a respectful setting. For complainants who may have experienced trauma, this structure reduces the emotional toll of repeatedly recounting facts and waiting for fragmented communications. Mediation promotes a clear beginning, middle, and end to the resolution process, which supports accessibility for individuals with disabilities, individuals with limited legal knowledge, and those facing barriers related to language or cognitive challenges.

Better Outcomes and Higher Settlement Rates. Studies consistently show that mediation results in higher satisfaction and settlement rates than informal negotiations. Because mediation gives both parties greater agency in crafting their resolution—and does so in real time—it often produces more creative, meaningful, and durable agreements than piecemeal settlement discussions managed by an investigator.

Tolling of Investigation Timeline. Another important reason mediation should be offered to all parties is its impact on the statutory investigation timeline. When a case is transferred to the Department's Dispute Resolution Division (DRD) for mediation, the one-year statutory deadline for completing the investigation is tolled automatically. This tolling provides critical flexibility, allowing parties to engage fully in meaningful settlement discussions without the pressure of an impending investigation deadline that could otherwise force premature decisions or compromise negotiation efforts.

While we appreciate that, under Proposed § 10280(f), CRD would have the option to require parties to agree in writing to toll any applicable statutes of limitations during investigator-facilitated conciliation, this approach only partially addresses the problem. Requiring a separate written tolling agreement introduces additional procedural complexity and potential confusion — particularly for unrepresented or vulnerable complainants, who may not fully understand the legal implications of waiving tolling or risk missing essential deadlines.

Additionally, the proposed regulations state only that CRD may require a tolling agreement during conciliation — not that it must — leaving room for inconsistency across cases, creating additional administrative work for CRD staff and further uncertainty for complainants regarding critical legal deadlines. Automatic tolling through referral to DRD mediation ensures consistency, protects complainants' rights, and eliminates unnecessary procedural barriers that could undermine the fair resolution of claims.

For all the reasons discussed above, we recommend that mediation be offered to all parties at the outset of the complaint process, with non-mediation conciliation used only as a last resort — after mediation has been attempted or affirmatively declined by the parties. While we recognize that CRD may not always have the resources to provide mediation services through the Dispute Resolution Division (DRD) in every case, the decision about whether mediation is available should not rest with the investigators handling the case.

At a minimum, all parties should be informed at the beginning of the process that mediation may be available, the differences between mediation and investigator-led conciliation, and that if all parties agree to mediate, the complaint will be referred to DRD. If DRD subsequently determines that it does not have the capacity to mediate a particular case, the matter can then be returned to investigations, and parties can be offered the option to engage in investigator-facilitated conciliation at that time. Offering mediation as an initial option would better advance CRD's core goals of fairness, efficiency, and accessibility, and ensure that parties have a meaningful opportunity to pursue a neutral and equitable resolution whenever possible.

**Department Response:** The department disagrees with the comment and declines to implement the suggestion to require the department to offer mediation to all parties to a complaint filed with the department. The Civil Rights Department is not staffed or funded to offer mediation to all parties. In addition, the proposal to offer mediation to all parties would conflict with the department's authority to file a civil action in advance of conciliation "if circumstances warrant." (Gov. Code §§ 12965(a)(1), 12981(a)(1); see *Civil Rights Department v. Grimmway Enterprises, Inc.* (2025) 768 F.Supp.3d 1099, 1106-1109; see also *Department of Fair Employment and Housing v. Law School Admissions Council* (N.D. Cal. 2012) 896 F.Supp.2d 849, 864 ["the California Court of Appeal and the Fair Employment and Housing Commission have confirmed that conciliation under FEHA is not a condition precedent to filing suit."]; *Motor Ins. Corp. v. Div. of Fair Employment Practices* (1981) 118 Cal. App. 3d 209, 213 n. 1, 224 [holding the department could utilize FEHA's "circumstances warrant" clause to initiate a civil action "even if it has not obtained optimum results from . . . its efforts at conciliation"] [analyzing predecessor statute to Government Code sections 12965].) In *Civil Rights Department v. Grimmway Enterprises, Inc.*, a federal district court held that Government Code section 12965(a) does not require conciliation prior to filing a civil action. (768 F.Supp.3d 1099, 1107-08.) The court held that the statutory provision "if circumstances warrant" establishes the department's discretion to determine whether circumstances warrant filing suit prior to conciliation and that pre-suit conciliation is not necessary. (*Id.*) The court reasoned that the "if circumstances warrant" provision "expressly modifies the mandatory dispute resolution

statutory provision [in section 12965(a)(2)] because both statutory provisions are from California Government Code § 12965(a) and the "if circumstances warrant" subsection states that "[i]n the case of failure to eliminate an unlawful practice *under this part* through conference, conciliation, mediation, or persuasion, *or in advance thereof if circumstances warrant*, the director in the director's discretion may bring a civil action[.]" (Id. at 1108 [citing Gov. Code § 12965(a)(1)] (emphasis added by court).)

Finally, the department disagrees that it would be more efficient to refer all parties to the Dispute Resolution Division, which would then make the determination of whether there are sufficient resources to provide the offered mediation, because this would likely result in parties being sent back and forth between the Dispute Resolution Division and the Enforcement Division within the department. The department anticipates that such a procedure would result in confusion, frustration, and delays.

**§ 10281(a)(2)**

**Additional Changes:** The department proposes to specify some of the factors that it considers as part of exercising its discretion of whether to refer a case to voluntary pre-determination mediation. These factors include department resources, whether the complaint affects a group or class of individuals, mediator availability, and the department's interest in redressing and preventing civil rights violations in a public matter as a public prosecutor. This proposed addition provides greater clarity to the public on how the department determines whether to refer a case to voluntary pre-determination mediation.

**§ 10281(a)(5)**

**Comment:** Kenzi Lacosta submitted the following comment: § 10281(a)(5) Mandatory requirement of Agreement to Mediate and Confidentiality Agreement as a condition of participation in mediation."

Like the template proposal, this proposal should reference enabling regulations or statutes. As a procedural recommendation, the Department should consider posting these templates/Conditions for Participation in Mediation on its website with direct links to the corresponding regulations. This would significantly enhance public accessibility and understanding for the general public, allowing them to easily reference relevant legal requirements without the need for extensive research.

**Department Response:** The department addresses this comment by incorporating regulatory elements of the agreement to mediate and confidentiality agreement documents into the text of the proposed regulations. The department proposes to specify that all parties to a voluntary pre-determination mediation and their representatives, if any, as well as the CRD mediator or volunteer mediator must agree in writing, as a condition of participation in mediation, to the following: the parties agree to the confidentiality provisions in subsection (c) of proposed section 10281, the parties agree to mediate because they have a sincere desire to resolve the

complaint, no party is admitting guilt or wrongdoing by participating in mediation, the mediator assigned by CRD may upon request allow other people to participate in the mediation if in their judgment it would be beneficial to the mediation process, and the parties and their representatives are prohibited from making recordings throughout the mediation process. The department proposes similar additions to subdivision (3) of subsection (b) of proposed section 10281, which specifies agreements required to participate in mandatory post-determination mediation. These additions increase public accessibility, understanding, and clarity regarding the agreements that parties must enter into as part of mediation. The department proposes to remove the references to the agreements to mediate and confidentiality agreement forms because such references are now duplicative and removing the references improves clarity.

**§ 10281(a)(6)**

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: Need for Consistent Communication Protocols and Prohibition on Direct Communication with Represented Parties.

Effective communication is essential to protect complainants' rights and ensure fairness throughout the process. This section recommends improvements to the communication protocols, particularly regarding prohibiting direct communication with represented parties, which is vital for preventing misunderstandings and protecting legal interests.

Proposed § 10281(a)(6) provides that when a complainant or respondent is represented by an attorney or advocate, the assigned mediator shall communicate with the party's attorney or advocate regarding scheduling and settlement. However, it further states that parties "may receive automated emails that they may disregard or forward to counsel."

We strongly recommend removing the language permitting direct automated emails to represented parties. Allowing direct communications — even automated ones — is unnecessary, confusing, and could cause undue anxiety for complainants, particularly those with disabilities. Where a complainant is represented, all communications, including automated scheduling notifications, should be sent exclusively to the party's attorney or advocate, just as is required in civil court proceedings. This approach would also align with CRD's existing policies in Sections 10024(a) and 10056(a).

Moreover, the proposed language creates significant risks of confusion and prejudice. Complainants may mistakenly believe they are required to respond directly to CRD communications, potentially disclosing substantive information without the advice of counsel. Both FHANC and DRC have firsthand experience with the problems caused when CRD staff communicate directly with represented complainants. In one case handled by FHANC, an investigator contacted a complainant directly and asked how much he would be willing to settle his case for. Without understanding that he had the right to decline to speak with the investigator without his representative present — and without the opportunity to consult with

his attorney — the complainant responded with a settlement figure that was significantly lower than the typical settlement value for a strong case like his. By the time FHANC became aware of what had happened, the investigator had already conveyed the low settlement demand to the respondent, which seriously undermined future negotiations and set unrealistic expectations for the case after it was transferred to the Dispute Resolution Division. This example illustrates the real and significant harm that can result from direct communications with represented parties, including lost settlement value, compromised negotiation positions, and erosion of trust in the complaint and resolution process. It underscores the urgent need for CRD to adopt a clear, consistent rule prohibiting all direct communications — including automated emails — with represented parties.

Additionally, the proposed regulations are silent as to how CRD staff would manage such communications — raising additional concerns about whether communications would be forwarded to counsel, whether staff would respond directly, or whether other protective measures would be in place. These ambiguities would place an unnecessary administrative burden on CRD staff and could undermine complainants' procedural protections.

This confusion and burden can easily be avoided by maintaining a uniform policy: when a party is represented, all communications must be directed to their legal representative without exception. There is no valid reason to carve out automated emails from this requirement. Adopting this approach is critical to maintaining the integrity, fairness, and accessibility of the dispute resolution process.

**Department Response:** The department declines to make any changes in response to this comment. The regulation is sufficiently clear as-is. The Civil Rights Department is required by statute and regulation to provide certain notices to complainants. For example, under Government Code section 12965(c)(1)(A) and section 10005(e) of Title 2 of the California Code of Regulations, if the department does not file a civil action within 150 days of the filing of a complaint alleging an employment practice made unlawful by the Fair Employment and Housing Act, the department must issue a written notice advising the complainant of the right to request a right-to-sue notice and withdraw the complaint. It is not administratively efficient for the department to update automated notification on a case-by-case basis to remove notification to represented complainants.

**§ 10281(a)(8)**

**Additional changes:** The department proposes to remove the reference to the department's agreement to mediate and confidentiality agreement forms from subdivision (8) of subsection (a) and instead refer to the requirements that the department proposes to include under subdivision (5) of subsection (a). Government Code section 12963.7 prohibits department staff from disclosing what has transpired in any endeavors to eliminate the unlawful employment practice through conference, conciliation, and persuasion. To implement section 12963.7, it is necessary to require department representatives participating in voluntary pre-determination mediations to agree to confidentiality provisions. The department also proposes to remove a

reference to the agreement to mediate and the confidentiality agreement that is no longer necessary as the department proposes to include the relevant substantive regulatory requirements in the text of the regulations. These changes improve accessibility and clarity.

**§ 10281(b)(1)**

**Comment:** The Department of Water Resources submitted the following comment: Section 10281(b)(1) provides if the CRD determines there is reasonable cause to believe a law it enforces has been violated, the CRD shall require the parties to participate in a mandatory post-determination mediation in an effort to resolve the dispute without litigation. The proposed regulation states the "department will schedule the mandatory post-determination mediation prior to filing a civil action unless, in the department's discretion, circumstances warrant filing the civil action without scheduling a mandatory post-determination mediation."

Government Code section 12965, subdivision (a)(2) provides that "prior to filing a civil action, the department **shall** require all parties to participate in mandatory dispute resolution in the department's internal dispute resolution division free of charge to the parties in an effort to resolve the dispute without litigation." (bold added.) The statute requires the CRD to participate in mandatory dispute resolution "prior" to filing a civil action. (See also Gov't Code, § 12981.) However, Government Code section 12965, subdivision (a)(1) appears to allow the director to file a civil action before mandatory dispute resolution is attempted, if the circumstances warrant. These provisions are inconsistent and the regulation restates that inconsistency. In addition, this regulation should implement the statute and provide guidance for instances when the CRD can make exceptions to mandatory mediation and whether it requires approval from counsel.

**Department Response:** The department declines to make a change in response to this comment. The proposed regulation is sufficiently clear as-is. The proposed regulation reflects existing authority that allows the department to file a civil action without offering dispute resolution first, if the department determines that circumstances warrant doing so. (Gov. Code §§ 12965(a)(1), 12981(a)(1); *Civil Rights Department v. Grimmway Enterprises, Inc.* (2025) 768 F.Supp.3d 1099, 1106-1109 [holding that Government Code section 12965(a) does not require conciliation prior to filing a civil action]; see also *Department of Fair Employment and Housing v. Law School Admissions Council* (N.D. Cal. 2012) 896 F.Supp.2d 849, 864 ["the California Court of Appeal and the Fair Employment and Housing Commission have confirmed that conciliation under FEHA is not a condition precedent to filing suit."]; *Motor Ins. Corp. v. Div. of Fair Employment Practices* (1981) 118 Cal. App. 3d 209, 224 [holding that the department could utilize FEHA's "circumstances warrant" clause to initiate a civil action "even if it has not obtained optimum results from . . . its efforts at conciliation"]) [analyzing predecessor statute to Government Code sections 12965].)

The department declines to implement the comment's suggestions to provide guidance on the department's decision to file civil action without offering dispute resolution services first as this is not necessary for clarity. The department also declines to address the commenter's

recommendation that the department specify whether filing a civil action without offering dispute resolution requires approval from counsel as this goes beyond the scope of the proposed regulation.

**§ 10281(b)(3)**

**Additional Changes:** The department proposes to replace the reference to the agreement to mediate and confidentiality agreement forms with the substance of the regulatory elements of these documents in the text of subsection (b)(3). Instead of specifying that the parties must sign the agreement to mediate and the confidentiality agreement, the department proposes that all parties to a mandatory post-determination mediation and their representatives, if any, as well as the CRD mediator or volunteer mediator, must agree in writing to the following: the parties agree to the confidentiality provisions in subsection (c) of proposed section 10281, no party is admitting guilt or wrongdoing by participating in mediation, the mediator assigned by CRD may upon request allow other people to participate in the mediation if in their judgment it would be beneficial to the mediation process, and the parties and their representatives are prohibited from making recordings throughout the mediation process. These additions increase public understanding regarding the agreements that parties must enter as part of mediation. The department proposes to remove the references to the agreement to mediate and the confidentiality agreement forms both because such references are now duplicative and because including the references does not further public accessibility and understanding.

**§ 10281(c)(3)(C)**

**Additional Changes:** The proposed regulations specify that certain types of information generated during the course of or for purposes of mediation are not confidential. The department proposes to revise one of these exceptions to confidentiality. Specifically, the department proposes to strike references to the Agreement to Mediate and Confidentiality Agreement. In its place, the department proposes that whether a party agreed to mediate and the executed versions of any agreement to mediate and any confidentiality agreement, including any agreement completed pursuant to subsection (a)(5) or (b)(3) shall not be confidential. This change does not impact the purpose of this exception to confidentiality. The department proposes this change for clarity and to be consistent with other proposed changes throughout the regulations which strike references to an Agreement to Mediate and Confidentiality Agreement.

Proposed regulations sections 10281(a)(5) and (b)(3) require parties to agree in writing to certain terms as a condition of participation in mediation. Parties may agree to additional terms beyond those required in the regulations. The department proposes language to clarify that, where the confidentiality exception applies to an agreement, it applies to the entire agreement, including additional terms added by the parties.

**§ 10281(c)(3)(E)**

**Additional Change:** The department proposes to add “and” at the end of proposed paragraph (E) of subdivision (3) of subsection (c) because paragraph (E) is the penultimate paragraph under subdivision (3).

**§ 10281(c)(3)(F)**

**Comment:** Kenzi Lacosta submitted the following comment: We write to express concerns regarding the proposed amendment to confidentiality provisions concerning threats of physical harm in mediation settings. While we acknowledge the department's legitimate interest in ensuring the safety of all parties and personnel, we propose a crucial modification to the current language.

Specifically, we recommend that threats of physical harm should only lose confidential status when substantiated by a preponderance of evidence. The current broad language, which removes confidentiality from "[a] threat of imminent physical harm or physical harm made by a party or their representative," requires additional safeguards against potential abuse.

This modification is necessary because, in our experience, unsubstantiated allegations of threats are sometimes weaponized or used to harrass in legal proceedings. There have been instances where attorneys have made unfounded claims about opposing counsel's client threats to gain tactical advantages during hearings or litigation. Such misuse of the provision could undermine the integrity of the mediation process and create unnecessary complications in proceedings. The addition of an evidentiary standard would strike an appropriate balance between protecting safety interests and preventing the misuse of this exception. This approach would maintain the department's ability to address legitimate safety concerns while safeguarding against potential abuse of the provision for strategic advantage.

We therefore respectfully request that the proposed language be modified to include this important qualification.

**Department Response:** The department disagrees with the comment and declines to implement a change in response. The proposed regulation provides a narrow exception to the confidentiality provisions that allows the mediator to disclose a threat of imminent physical harm or physical harm made by a party or their representative. This proposed regulation is necessary to ensure that the mediator is able to take steps necessary to protect their own safety and the safety of the parties. The commenter’s suggestion to add an evidentiary standard (“substantiated by a preponderance of evidence”) would create confusion on the application to this exception for confidentiality.

**§ 10281(c)(4)**

**§ 10281(c)(4)(A)**

**Comment:** The Department of Water Resources submitted the following comment: Sections 10281(c)(4)(A) and 10281(c)(4)(B) provide that an individual complainant may choose to keep their name confidential as part of a settlement agreement, unless disclosure is required by law, by contract between the department and the EEOC or HUD, or "for any other purpose." These regulations do not specify what "other purposes" would fall under this exception. This does not allow reviewers to comment on the impact of such a regulation and leaves the door open for interpretation.

**Department Response:** The department notes that the commenter refers to proposed section 10281(c)(4)(A) and (B), but only 10281(c)(4)(A) addresses confidentiality an individual's name as part of a settlement agreement. The department disagrees with the comment and declines to make a change in response. The proposed regulation is sufficiently clear. Proposed section 10281(c)(4)(A) would make clear that an individual may choose to keep their name confidential as part of a settlement agreement under certain circumstances (where disclosure is not required by law). If the individual complainant chooses to keep their name confidential, the department will redact the complainant's name under all circumstances to the extent allowed by law, with the exception that the department shall disclose the complainant's name to HUD or EEOC if the case is dual-filed with HUD or EEOC. The phrase "for any other purpose" makes clear that the department will redact the individual's name in all lawful circumstances.

**Comment:** The Department of Water Resources submitted the following comment: These sections [10281(c)(4)(A) and 10281(c)(4)(B)] also provide that the CRD will redact the complainant's name before publicly disclosing the agreement or information about the settlement agreement under the Public Records Act, workshare agreement obligations, or for any other purpose if an individual complainant chooses to keep their name confidential. Code of Civil Procedure section 1001(c) provides that a claimant may shield its identity and all facts that could lead to the discovery of the claimant's identity in a settlement agreement at their request, but this provision also states that, "this subdivision does not apply if a government agency or public official is a party to the settlement agreement." The proposed regulations are in conflict with statute. If a government agency is a party to a settlement agreement, section 1001(c) provides that a complainant cannot keep their identity confidential. Alternatively, if the CRD is a party to litigation, the same restriction would apply – the complainant's identity cannot be protected or redacted. As proposed, the regulations are in conflict with statute. At a minimum, an exception must be made for settlement agreements where a government agency or a public official is a party.

**Department Response:** The department notes that the commenter refers to proposed section 10281(c)(4)(A) and (B), but only section 10281(c)(4)(A) relates to when an individual's name may be confidential as part of a settlement agreement. The department disagrees with the comment and declines to make changes in response. There is no conflict between the proposed regulation and section 1001(c) of the Code of Civil Procedure because the proposed regulation states that an individual may keep their name confidential "unless disclosure is required by law," which would include Code of Civil Procedure section 1001, if applicable. In addition, the department is not a party to a voluntary settlement agreement when it signs the voluntary

settlement agreement. The department signs the voluntary settlement agreement for enforcement purposes only. Therefore, Code of Civil Procedure section 1001(c) would not prohibit an individual complainant from keeping their name confidential under proposed section 10281(c)(4)(A) merely because the department has signed the voluntary settlement agreement.

**Additional Changes:** The department proposes to add that the department may disclose the complainant's name to HUD or EEOC if the case is dual-filed with HUD or EEOC. This addition recognizes that the HUD and EEOC workshare agreements require that CRD fully-disclose settlement agreements for dual-filed cases (see HUD MOU 1997, page 13; the EEOC workshare agreement, 2022, page 6.) The department proposes to remove the reference to "contract between the department and EEOC or HUD" and the reference to "workshare agreements" because these references are rendered duplicative and unnecessary by this proposed addition. This proposed change also increases clarity and accessibility by specifying that the department is required to disclose the complainant's name to HUD or EEOC if the case is dual-filed.

**§ 10281(c)(4)(B) & (C)**

**Comment:** Disability Rights California (DRC), Fair Housing Advocates of Northern California (FHANC), Western Center on Law and Poverty (WCLP), and the National Housing Law Project (NHLP) submitted the following comment: Need for Transparency in Civil Rights Settlement Agreements.

Transparency is fundamental to maintaining the integrity and public accountability of the civil rights enforcement process. As such, we have significant concerns regarding the proposed changes to § 10281(c)(4)(B) and (C), which would allow settlement amounts and other terms to be kept confidential under certain negotiated circumstances. Historically, CRD has appropriately limited confidentiality to a narrow set of exceptions, where disclosure would not serve the public interest — such as cases involving allegations of sexual harassment, a complainant's physical or mental health conditions and medical diagnoses, and safety concerns such as those related to domestic violence. Under existing regulations, settlements have been public records unless nondisclosure was specifically requested and approved by the Chief of the Dispute Resolution Division or the Director based on these limited, justifiable grounds.

The proposed changes represent a serious and unnecessary departure from this important standard and notably omit confidentiality of a complainant's physical or mental condition or medical diagnoses. By allowing settlement amounts and other terms to be kept confidential as part of negotiation, the Department risks fundamentally undermining its civil rights enforcement mission. If respondents know they can negotiate for confidentiality of settlement amounts, they will inevitably seek it in nearly every case — and complainants, particularly those who are vulnerable or unrepresented, will feel pressured to accept confidentiality terms in order to secure a settlement at all. Moreover, if complainants do not have the security of knowing their medical information will be kept confidential, they will be much less willing to file a complaint or share their disability-related discrimination and supporting evidence.

FHANC has seen this issue first-hand in our involvement with CRD mediations. Our organization has participated in numerous CRD mediations, both voluntary and mandatory, on behalf of clients and as an advocate for the organization. In almost every case, despite mediators explaining ahead of time that confidentiality is prohibited in CRD settlements, respondents' attorneys persist in pushing for some form of confidentiality. While we are fortunate to have the legal expertise and resources to push back on these requests, one of the most powerful tools we have at our disposal is CRD's prohibition of confidentiality. If CRD opens the door to partial confidentiality, we will no longer be able to rely on this policy, and our clients — even those who are represented — will feel increasing pressure to agree to some form of confidentiality or compromise in other ways to reach an agreement.

Moreover, in cases not mediated by CRD, such as private litigation or mediation, where we have agreed to some confidentiality — even partial —our clients have often regretted it. Clients have expressed how confidentiality makes them feel silenced, compounding the harm they experienced related to the discrimination. As an organization, it is particularly challenging when we are unable to discuss the terms of settlements, especially monetary amounts and injunctive relief. This restriction limits our ability to use that information in future negotiations, to educate the public about the consequences of violating fair housing laws, and to assist other advocates when assessing reasonable damages in similar cases.

Even partial confidentiality is a slippery slope. Such terms, including nondisclosure or non-publicity clauses, are vague and difficult to follow. Complainants end up feeling too scared to discuss the settlement for fear of inadvertently violating the agreement, which leads to self-censorship. In the end, respondents benefit from more confidentiality than they originally bargained for. This not only undermines the goals of transparency but also prevents the public from holding violators accountable.

This shift would be deeply damaging as a matter of public policy. Transparency in civil rights settlements is critical to promoting public awareness of fair housing rights, informing advocates and future complainants of expected case outcomes, and deterring future discrimination by demonstrating that civil rights violations carry real consequences. Confidential settlements obscure these important systemic goals and undermine CRD's, FHANC's, and DRC's collective missions to promote fair housing, accountability, and equal opportunity for all Californians.

For these reasons, we strongly urge CRD to reject the proposed changes to § 10281(c)(4)(B) and (C) and instead return to the Department's prior confidentiality standard. At the very least, CRD must retain confidentiality of complainants' physical or mental conditions or medical diagnoses. Settlement agreements should remain public records except where nondisclosure is affirmatively requested and approved by CRD leadership in limited circumstances involving allegations of sexual harassment, threats to safety, a complainant's physical or mental condition or medical diagnosis, or other exceptional privacy concerns. Maintaining this narrow, principled approach is essential to preserving the public integrity and systemic impact of CRD's enforcement work.

**Department Response:** The department declines to implement changes in response to this comment. The proposed regulations make clear that there is a presumption that the settlement agreements are not confidential documents and are public records, with limited specified exceptions. See proposed regulation 2 CCR section 10281(c)(4). The proposed regulation comports with Code of Civil Procedure section 1001, which does not foreclose a mutually negotiated term providing for confidentiality of a settlement amount in cases involving workplace or housing harassment or discrimination.

The department also declines to make a change in response to the comment's request to maintain confidentiality of complainants' physical or mental conditions or medical diagnoses. The existing regulation, section 10057(h)(2), provides that "[c]ircumstances that may result in partial or complete nondisclosure of a settlement agreement may include, but are not limited to: . . . (B) A complainant's physical or mental condition, or medical diagnoses; or. . ." The department declines to include this provision in the proposed regulation because it is not necessary to include a complainant's physical or medical condition or diagnosis in a settlement agreement. In addition, the proposed regulation provides that the department may approve a term designating as confidential a portion of a settlement agreement under exceptional and unusual circumstances such as where disclosure would endanger a party. This provision allows discretion for the department to approve a term's confidentiality when there are exceptional and unusual circumstances.

**Additional Change:** The department proposes to amend subsection 10281(c)(4)(B) to add that the department shall disclose the amount of monetary recovery to HUD or EEOC if the case is dual-filed with HUD or EEOC. This addition recognizes that the HUD and EEOC workshare agreements require that CRD fully-disclose settlement agreements for dual-filed cases (see HUD MOU 1997, page 13; the EEOC workshare agreement, 2022, page 6.) The department proposes to remove the reference to "contract between the department and EEOC or HUD" and the reference to "workshare agreements" because these references are rendered duplicative and unnecessary by this proposed addition. This proposed change also increases clarity and accessibility by specifying that the department is required to disclose the complainant's name to HUD or EEOC if the case is dual-filed.

**Additional Change:** Under subsection 10281(c)(4)(C), the department proposes to remove the reference to "contract between the department and the EEOC or HUD" from the paragraph because this reference is unnecessary and confusing. The relevant exceptions to confidentiality that apply to cases that are dual-filed with HUD and EEOC are included under paragraphs (A) and (B) of subdivision (4) of subsection (c).

**§ 10281(c)(4)(D)**

**Additional Change:** The department proposes to specify certain confidentiality exceptions that apply in circumstances when parties agree to keep a party's name or amount of monetary recovery confidential under subdivision (4) of subsection (c). Specifically, the department may

disclose these types of information as compelled by law, as necessary to enforce the terms of the settlement agreement, or in the event that CRD needs to reopen the case. This addition improves clarity and accessibility. These are regulatory provisions included in the department's settlement agreement templates. With this addition, the department removes references to the settlement agreement templates elsewhere in the regulations because it is duplicative and confusing to retain references to the templates. This exception to the confidentiality provision is necessary for the department to exercise its authority to enforce the terms of the settlement agreement and to reopen the case pursuant to Government Code section 12964 and proposed regulation section 10281(e).

~~**§ 10281(d)(2)**~~

**Comment:** Kenzi Lacosta submitted the following comment: The Department proposes that settlement agreements from voluntary predetermination mediation must use the dispute resolution division's template.

Key concerns include: The template currently used requires complainants to waive constitutional rights to free speech and petitioning the government, as a condition for CRD mediation participation. The template allows for "outside" contingency agreements without safeguards, creating potential power imbalances when experienced attorneys face self-represented complainants or with a law student. This is particularly concerning for senior citizens, who may be required to additionally surrender specific protections guaranteed by the California Department of Public Health and Social Services under such agreements, in exchange for their civil rights.

Your assigned mediator will provide you with an electronic copy or paper copy of the applicable settlement agreement template for your case. If you are not willing to use the settlement agreement template (that requires waiving 1st amendment rights), please inform your mediator so that we can close the mediation case file and return the case to the Enforcement Division for further investigation."

First, the complaintant is not always provided this information prior to the mediation.

Second: After extensive research we were unable to locate an enabling statute or regulation for this template's requirements.

To improve transparency and usability, we recommend adding specific regulatory citations for each requirement within the template. This would help all parties better understand the legal basis for each substantive (versus simply a "procedural" provision.

**Department Response:** To address this commenter's request that the department improve transparency regarding settlement agreements, the department proposes to add regulatory

elements of the settlement agreements to the proposed regulations. See proposed subsections (c)(4)(D) and (d)(1).

To improve clarity, the department proposes to remove references to the settlement agreement templates from the proposed regulations. Accordingly, the department proposes to strike subsection (d)(2). The content of the settlement agreement templates include legal requirements based on statute and regulation (such as the requirement that the agreement is written down, signed by all parties, and that parties agree to confidentiality provisions specified in the proposed regulations). The department has determined that it is not necessary to include references to the templates and that it is clearer to remove references.

The department disagrees with the comment's statement that the settlement agreement templates require complainants to waive constitutional rights. The template agreements include provisions regarding confidentiality, waiver, and release of claims that are consistent with state law that parties may negotiate and that are common to all legal settlement agreements. Neither the settlement agreement templates nor the templates for an agreement to mediate and confidentiality agreements state that parties must waive First Amendment rights.

The department appreciates the feedback regarding "outside contingency agreements." The department does not control whether and under what terms parties reach private agreements outside of the CRD process.

***PUBLIC COMMENTS RECEIVED DURING 15-DAY COMMENT PERIOD [Government Code Section 11346.9(a)(3)].***

***General Comments***

**Comment:** Wade Sammis submitted the following comment: One of your Best!!!!!!!!!!!!!!!!!!!

**Department Response:** The department appreciates this comment. This comment does not request a specific change to the proposed regulatory language. No further response is required pursuant to Government Code section 11346.9(a)(3).

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to this commenter's comments incorporated by reference under the relevant section in the 45-day comment period.

**~~§ 10025(g)~~**

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to this commenter's comments incorporated by reference under the relevant section in the 45-day comment period.

**~~§ 10025(h)~~**

**Comment:** Lisa Rose submitted the following comment: I am submitting this comment regarding the first modified text of the proposed conciliation and mediation regulations, specifically the confidentiality and redaction provisions set forth in sections 10281(c)(4)(A)–(D), 10025(h), and 10057(h).

This is 2025, not 1995. These regulations operate in a post-COVID environment in which people's work arrangements, residence patterns, communication methods, and personal safety considerations have materially changed. Redaction standards must therefore reflect how individuals actually live and assert their rights today, rather than relying on outdated assumptions.

It is also critical to recognize that the vast majority of users of the Civil Rights Department—well over 80 percent—are not lawyers. They are individuals attempting to exercise rights guaranteed by FEHA and related statutes without formal legal training. As a result, the clarity and usability of redaction rules are not peripheral administrative concerns. They directly determine the usability of FEHA itself as an enforceable civil-rights law.

When evidentiary data necessary to establish a protected characteristic, comparator analysis, or discriminatory pattern is improperly redacted, FEHA's protections cease to function as an enforceable legal framework and instead operate only as an aspirational statement of policy—formally intact, but in practice not capable of producing meaningful or durable change.
With that context, I respectfully urge the Department to clarify and refine the modified redaction provisions in two areas directly implicated by the current text: age-related data and address information.

Age-related data (sections 10281(c)(4)(A)–(D)):

In age-discrimination matters, the distinction between full date of birth, year of birth, and age range is not merely personal identifying information—it is often central evidentiary data. Overbroad redaction of age-related information, particularly birth year, can materially

undermine:
- the ability to establish age-based comparators and patterns;
- the Department's public-interest enforcement function under FEHA; and
- the successful adjudication of a case in any court, where age is an essential element of proof and must be demonstrable from the record.

While protection of complainant identity is appropriate, redaction practices that remove or obscure birth year information risk defeating both enforcement and adjudicative purposes. In many contexts, disclosure of a birth year (as distinct from a full birth date) appropriately balances privacy concerns with evidentiary necessity.

The modified text would benefit from explicit guidance recognizing that birth year may be essential data in age-based cases and should not be reflexively or inconsistently redacted under the confidentiality provisions of section 10281(c)(4).

Address information (sections 10281(c)(4), 10025(h), 10057(h)):

Address data likewise requires explicit and modern treatment.

In 2025, many individuals maintain separate residence and mailing addresses, often intentionally. For complainants in high-risk circumstances—including threats, stalking, or gun violence—disclosure of a residence address may pose serious safety concerns, while a mailing address or generalized geographic indicator may be sufficient for transparency and recordkeeping.

Absent clear standards, inconsistent redaction of address information risks either endangering complainants or unnecessarily impairing usability and transparency. Residence address, mailing address, and geographic identifiers are not interchangeable and should not be treated as such in redaction decisions under the modified confidentiality provisions.

Accordingly, I recommend that the Department:
- clarify within sections 10281(c)(4)(A)–(D) that redaction of age-related information must be narrowly tailored and must not eliminate birth year data necessary for FEHA enforcement or court adjudication;
- explicitly distinguish between full birth dates and birth years in the application of confidentiality and redaction standards;
- provide clear guidance distinguishing residence address from mailing address, with explicit consideration of safety-based redaction; and
- ensure that redaction standards are understandable and usable by non-lawyer complainants, reducing the risk that confidentiality practices unintentionally undermine enforcement, adjudication, or personal safety.

Clear, specific guidance in these areas would improve consistency, protect complainants appropriately, and ensure that redaction practices support—rather than frustrate—the

Department's statutory mission.

Thank you for the opportunity to comment on these modifications and for your consideration.

**Department response:** The department addresses this comment under the section addressing proposed section 10281(c)(4) below.

**~~§ 10057(g)~~**

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to the commenter's comments incorporated by reference under the relevant section in the 45-day comment period.

**~~§ 10057(h)~~**

**Comment:** Lisa Rose submitted the following comment: I am submitting this comment regarding the first modified text of the proposed conciliation and mediation regulations, specifically the confidentiality and redaction provisions set forth in sections 10281(c)(4)(A)–(D), 10025(h), and 10057(h) . . . [See sections 11025(h) and 10281(c)(4) for the remainder of this comment].

**Department response:** The department addresses this comment under the section addressing proposed section 10281(c)(4) below.

**§ 10281(a)(1)**

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to the commenter's comments incorporated by reference under the relevant section in the 45-day comment period.

**§ 10281(a)(5)**

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to the commenter's comments incorporated by reference under the relevant section in the 45-day comment period.

**§ 10281(c)(3)(F)**

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to the commenter's comments incorporated by reference under the relevant section in the 45-day comment period.

**§ 10281(c)(4)**

**Comment:** Lisa Rose submitted the following comment: I am submitting this comment regarding the first modified text of the proposed conciliation and mediation regulations, specifically the confidentiality and redaction provisions set forth in sections 10281(c)(4)(A)–(D), 10025(h), and 10057(h).

This is 2025, not 1995. These regulations operate in a post-COVID environment in which people's work arrangements, residence patterns, communication methods, and personal safety considerations have materially changed. Redaction standards must therefore reflect how individuals actually live and assert their rights today, rather than relying on outdated assumptions.

It is also critical to recognize that the vast majority of users of the Civil Rights Department—well over 80 percent—are not lawyers. They are individuals attempting to exercise rights guaranteed by FEHA and related statutes without formal legal training. As a result, the clarity and usability of redaction rules are not peripheral administrative concerns. They directly determine the usability of FEHA itself as an enforceable civil-rights law.

When evidentiary data necessary to establish a protected characteristic, comparator analysis, or discriminatory pattern is improperly redacted, FEHA's protections cease to function as an enforceable legal framework and instead operate only as an aspirational statement of policy—

formally intact, but in practice not capable of producing meaningful or durable change.
With that context, I respectfully urge the Department to clarify and refine the modified redaction provisions in two areas directly implicated by the current text: age-related data and address information.

Age-related data (sections 10281(c)(4)(A)–(D)):
In age-discrimination matters, the distinction between full date of birth, year of birth, and age range is not merely personal identifying information—it is often central evidentiary data. Overbroad redaction of age-related information, particularly birth year, can materially undermine:
- the ability to establish age-based comparators and patterns;
- the Department's public-interest enforcement function under FEHA; and
- the successful adjudication of a case in any court, where age is an essential element of proof and must be demonstrable from the record.

While protection of complainant identity is appropriate, redaction practices that remove or obscure birth year information risk defeating both enforcement and adjudicative purposes. In many contexts, disclosure of a birth year (as distinct from a full birth date) appropriately balances privacy concerns with evidentiary necessity.

The modified text would benefit from explicit guidance recognizing that birth year may be essential data in age-based cases and should not be reflexively or inconsistently redacted under the confidentiality provisions of section 10281(c)(4).

Address information (sections 10281(c)(4), 10025(h), 10057(h)):

Address data likewise requires explicit and modern treatment.

In 2025, many individuals maintain separate residence and mailing addresses, often intentionally. For complainants in high-risk circumstances—including threats, stalking, or gun violence—disclosure of a residence address may pose serious safety concerns, while a mailing address or generalized geographic indicator may be sufficient for transparency and recordkeeping.

Absent clear standards, inconsistent redaction of address information risks either endangering complainants or unnecessarily impairing usability and transparency. Residence address, mailing address, and geographic identifiers are not interchangeable and should not be treated as such in redaction decisions under the modified confidentiality provisions.

Accordingly, I recommend that the Department:
- clarify within sections 10281(c)(4)(A)–(D) that redaction of age-related information must be narrowly tailored and must not eliminate birth year data necessary for FEHA enforcement or court adjudication;
- explicitly distinguish between full birth dates and birth years in the application of

confidentiality and redaction standards;
- provide clear guidance distinguishing residence address from mailing address, with explicit consideration of safety-based redaction; and
- ensure that redaction standards are understandable and usable by non-lawyer complainants, reducing the risk that confidentiality practices unintentionally undermine enforcement, adjudication, or personal safety.

Clear, specific guidance in these areas would improve consistency, protect complainants appropriately, and ensure that redaction practices support—rather than frustrate—the Department's statutory mission.

**Department Response:** The department declines to make any changes in response to this comment because the proposed regulations are sufficiently clear as-is. Proposed subdivision 10281(c)(4) specifies limited confidentiality exceptions to the requirement that settlement agreements reached through the department's conciliations processes are public documents. Under proposed subdivision 10281(c)(4), an individual complainant may choose to keep their name confidential as part of the settlement agreement unless disclosure is required by law, parties to a voluntary pre-determination mediation may negotiate a term making the amount of monetary recovery confidential unless required by law, or the deputy director of the dispute resolution division may approve a term designating a portion of the settlement agreement confidential in exceptional and unusual circumstances, such as when public disclosure of the term could endanger a party.

The proposed regulations do not refer to the redaction of age-related information. An individual's age or date of birth could potentially be designated confidential under paragraph 10281(c)(4)(C), but only in the circumstance where the deputy director of the dispute resolution division or their designee determine that it is necessary to make it confidential and that disclosure is not required to further the purpose of the laws that the department enforces. Because the proposed regulations do not refer to the redaction of age-related information, it would not add clarity to distinguish between full birth dates and birth years in the confidentiality provisions, as the commenter requests. It would also not add clarity to specify, as the commenter requests, that redaction of age-related information must be narrowly tailored and must not eliminate birth year data necessary for FEHA enforcement or court adjudication. Proposed section 10281(c)(4) applies only to settlement agreements reached through the department's conciliation processes; such settlement agreements would only be used for FEHA enforcement if the terms of the settlement agreement are not being fulfilled.

Similarly, the proposed regulations do not refer to the redaction of addresses. An individual's address could be designated confidential under paragraph 10281(c)(4)(C), but only in the circumstance where the deputy director of the dispute resolution division or their designee determine that it is necessary to make the address confidential and that disclosure is not required to further the purpose of the laws that the department enforces. It would not add clarity to the regulations to add guidance distinguishing residence address from mailing address, with explicit consideration of safety-based redaction, as the commenter requests,

because paragraph (c)(4)(C) already requires the deputy director or their designee to consider whether exceptional circumstances warrant redacting a provision, including whether doing so is necessary for an individual's safety.

In addition, if a settlement agreement is requested for disclosure under the Public Records Act, additional exemptions to disclosure may apply that would prevent disclosure of an individual's address or date of birth. (See, e.g., Gov. Code §§ 7930.100, 7930.180).

Finally, the department declines to make changes in response to the commenter's request that the department ensure that redaction standards are understandable and usable by non-lawyer complainants. The proposed regulations are sufficiently clear as-is. Furthermore, the department notes that department staff would be able to explain the confidentiality provisions for settlement agreements to parties, including unrepresented complainants.

**~~§ 10281(d)(2)~~**

**Comment:** Kenzi Lacosta submitted the following comment: These comments are submitted pursuant to Government Code section 11346.8(c). The modifications noticed during the 15-day comment period do not cure or resolve the objections raised in my April 28, 2025 written comments submitted during the 45-day comment period. Those comments are incorporated by reference and expressly preserved for the rulemaking record and the Final Statement of Reasons.

**Department Response:** The department has responded to the commenter's comments incorporated by reference under the relevant section in the 45-day comment period of the Final Statement of Reasons.