



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. STATE LANDS COMMISSION**

**NOTICE OF INTENTION TO AMEND CONFLICT-OF-INTEREST CODE**

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

The California State Lands Commission proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment modifies the California State Lands Commission’s Conflict-of-Interest Code by adding the Consultant/New Position and Systems Software Specialist III (Tech) positions to our assigned disclosure categories, changes designated position titles to accurately reflect the correct classification title, abolishes designated positions that do not foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code and makes other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than **February 18, 2013**, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person’s representative requests a public hearing, he or she must do so no later than 15 days be-

fore close of the written comment period, by contacting the Contact Person set forth below.

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

The California State Lands Commission has determined that the proposed amendments:

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

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

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

California State Lands Commission  
 Attn: Anne Kerri  
 100 Howe Ave., Suite 100-S  
 (916) 574-1912  
[anne.kerri@slc.ca.gov](mailto:anne.kerri@slc.ca.gov)

**TITLE 4. CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY**

The California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”), organized and operating pursuant to Division 16 (commencing with Section 26000) of the California Public Resources Code — pursuant to the authority vested in it by the Public Resources Code Section 26131 to promulgate regulations and Public Re-

sources Code Section 26130 to establish the Clean Energy Upgrade Program — proposes to amend and adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

### PROPOSED REGULATORY ACTION

The Authority proposes to adopt Title 4, Division 13, Article 3, Sections 10050 through 10060 of the California Code of Regulations (“Regulations”) concerning the implementation of the Clean Energy Upgrade Program (“Program”). These regulations that were initially adopted under the emergency regulation process on May 4, 2012 (OAL File No. 2012–0425–01E) and amended effective July 16, 2012 (OAL File No. 2012–0706–01E) (together the “Regulations”), pursuant to Public Resources Code 26130. In addition, the Authority submitted a second re–adoption of these regulations to the Office of Administrative Law (“OAL”) for its consideration, and the re–adoption became effective October 29, 2012. These proposed regulations are similar to those enacted on July 16, 2012 under the emergency rulemaking process.

### AUTHORITY AND REFERENCE

Authority: Public Resources Code Sections 26130 and 26131. Public Resources Code 26131 authorizes CAEATFA to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code 26130 provides the authority to develop and implement the Clean Energy Upgrade Program.

Reference: Section 26130 of the Public Resources Code. This regulation will implement, interpret, and make specific section 26130 of the Public Resources Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority (“Authority”) and authorizes the Authority to provide financial assistance, as defined, to Participating Parties (as defined in Public Resources Code Section 26003(f)) for alternative source and advanced transportation technology projects. (See Public Resources Code Sections 26003(g)(2) and 26011.8(b)(2).)

Existing law, Assembly Bill x1 14 of 2011, pursuant to Public Resources Code Section 26130, establishes the Program, which enables the Authority to provide financial assistance in the form of credit enhancements to eligible participating financial institutions making

loans to residential property owners for energy efficiency improvements and distributed generation renewable energy sources.

Pursuant to Title 1, CCR section 52(b)(1), CAEATFA has made progress and proceeded with diligence to comply with Government Code section 11346.1(e). CAEATFA staff has been working with various stakeholders on the implementation of the Program and has had ongoing conversations on issues raised by the emergency regulations. The proposed modifications to the Program regulations further clarify and specify provisions and address “lessons learned” from the early implementation of the Program.

Government Code Section 11346.5(a)(3)(C) requires that the notice of proposed adoption of a regulation shall include “a policy statement overview explaining the broad objectives of the regulation and the specific benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, including, to the extent applicable, nonmonetary benefits such as the protection of the public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.”

California has developed several aggressive energy generation goals (such as deriving 33 percent of its energy from renewable generation by 2020) as well as goals for energy reduction and conservation. A series of legislation passed in recent years, including Assembly Bill 32 (Nuñez, Chapter 488, Statutes of 2006) and Assembly Bill 758 (Skinner, Chapter 470, Statutes of 2009), has addressed various energy efficiency issues and provided direction for establishing ambitious energy goals for the state.

In 2008 the California Public Utilities Commission adopted the California Long–Term Energy Efficiency Strategic Plan (“Strategic Plan”), which sets forth a statewide roadmap to maximize the achievement of cost–effective energy efficiency in California’s electricity and natural gas sectors from 2009 through 2020 and beyond. While the single–family residential sector is not restricted by lack of financial products, two of the main barriers to achieving the energy efficiency goals laid out by the Strategic Plan are the high interest rates associated with that financing and the fact that many of the financing products currently available are difficult to access.

The purpose of the Clean Energy Upgrade Financing Program is to provide credit enhancement support for financial institutions making loans to finance energy efficiency and renewable energy improvements on real property. Through the use of credit enhancements, it is the intent of the statute to reduce overall costs to the property owners making these improvements. More

specifically, the Program has three underlying goals: 1) to increase access to retrofit financing at better rates than a borrower would be able to receive without the existence of credit enhancements, 2) to promote the creation of California-based green jobs, and 3) to promote the reduction of greenhouse gases, air and water pollution, or energy consumption consistent with the statute.

First, the Authority's financial assistance — in the form of a loan loss reserve — will allow CAEATFA to leverage private capital while mitigating some of the initial credit risk financial institutions associate with making loans in what is considered to be a new market. By providing an incentive to participating financial institutions, they may be more likely to gain confidence and express interest in making loans and offering new products to their customers who wish to make an energy efficiency or renewable energy investment. It is the intent of the Program to provide a loan loss reserve so that participating financial institutions will also be more inclined to offer loans at lower interest rates than currently available in the marketplace, ideally well below ten percent.

Second, the Legislature has expressed interest in promoting and expanding California-based green jobs, particularly in the manufacturing sector and construction industry. The California Energy Commission has invested millions of dollars in worker-training programs for more than 2,000 Building Performance Institute contractors who may be ready to jumpstart the construction industry by completing energy-related installation projects. While CAEATFA has not estimated the number of direct and indirect green jobs that may be created or retained as a result of this Program, the Authority may apply the methodology used by the federal government to estimate numbers of jobs created by direct government spending.

Finally, this Program seeks to promote the reduction of greenhouse gases, air and water pollution, or energy consumption since it is presumed that borrowers making energy efficiency improvements will reduce their energy consumption by making their homes more energy efficient. The Authority has adopted a loading order policy for this Program that requires borrowers to first install energy efficiency improvements before they proceed to make larger investments in distributed generation energy sources. While the energy savings vary by the property's size and age and type of equipment installed, it can be assumed that an energy efficient installation that involves replacing a furnace with a more efficient model or installing high-efficiency air conditioning — along with insulation, lighting and envelope and duct sealing for a more comprehensive project — could increase a home's energy efficiency by 20 percent.

Furthermore, Government Code Section 11346.5(a)(3)(D) requires that the notice of proposed adoption of a regulation shall include "an evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations." The proposed regulations were evaluated and not found to be inconsistent or incompatible with existing state regulations. The proposed regulations, their purpose and alternatives considered by the Authority are discussed in detail in the Initial Statement of Reasons.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effects of the regulations:

**Mandate on local agencies or school districts:** None.

**Cost or savings to any state agency:** The authorizing statute appropriates \$550,000 for the initial administrative costs of implementing the Program.

**Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561:** None.

**Other non-discretionary cost or savings imposed on local agencies:** None.

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

**Significant effect on housing costs:** None.

**Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states:** The Authority has made the determination that the regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In fact, the Authority finds that the proposed regulation will have a positive effect on businesses of contractors who conduct the energy assessments, perform the work and install the Eligible Improvements, and those who conduct the post-project inspection. The proposed regulation will also have a positive effect on the state's economy and environment generally as a result of the increased economic activity and energy conservation as a result of Borrower's investment in energy upgrades to their homes. This determination is based on a review of public comments received and studies which have cited the need for lower-cost financing as a main impediment to increasing the number of homeowners investing in energy upgrades.

RESULTS OF ECONOMIC IMPACT ANALYSIS

**Assessment regarding effect on jobs/businesses:**

The regulations will not have a negative effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing businesses within California. The Authority finds that the proposed regulation will have a positive effect on the state's economy and environment generally as a result of the increased economic activity and energy conservation as a result of Borrower's investments in energy upgrades to their homes. Studies have cited the need for lower-cost financing as a main impediment to increasing the number of homeowners investing in energy upgrades, so the Authority finds that there would be increased economic activity for certain businesses of contractors who conduct energy assessments, perform the work and install the Eligible Improvements, and those who conduct the post-project inspection. The Authority finds that this regulation will have a positive impact on the creation of jobs within California, particularly those commonly referred to as "green jobs" and will help expand businesses currently doing business within the state, particularly contractor companies. While unquantifiable at this moment, the Authority finds that this regulation will have a positive benefit to the health and welfare of California residents and the state's environment since energy improvements to residential properties will assist in energy conservation and the reduction of greenhouse gas emissions.

**Cost impact on a representative private person or business:** The Authority is not aware of any cost impacts that a representative private person would incur as a result of compliance with the proposed action. However, those private persons who wish to access lower-cost financing to invest in energy retrofits for their homes would be required to comply with certain Program requirements regarding a pre-energy and a post-energy assessment. While a representative private person would incur a minimal cost of a pre-energy assessment to assist in identifying appropriate and comprehensive energy efficiency retrofits and operation improvements, and a minimal cost of the post-energy assessment to assist in verifying the improvements were installed adequately, the costs of these assessments may be included as part of the total cost of the Eligible Improvements. These assessments are required as a quality assurance mechanism to assist the Borrower in determining what energy savings home improvements to obtain and to verify they are adequately installed so that the deemed energy and cost savings are achieved. Fur-

thermore, this regulation, through the loan loss reserve contribution, will allow Borrowers to have access to better financing interest rates and longer loan terms, which could result in cost savings to the Borrower. The Authority is not aware of any cost impacts business entities who are contractors or work in the home improvement or home construction industry would incur as a result of compliance with the proposed action. The regulation requires a quarterly report to be submitted to the Authority by Participating Financial Institutions benefitting from the credit enhancement. The Authority finds that this report is necessary for the health, safety, and welfare of the people of the state in order to assess the environmental benefits and cost savings to the state and California residents, respectively.

**Small business:** The regulation will not have an adverse impact on small business in California and will not affect small businesses since they do not impose additional restrictions or cost on small businesses. As suggested above, this regulation has the potential to increase lending in this industry, which could lead to increased retrofit activity which could assist in the retention, expansion and creation of direct and indirect jobs for companies involved in the installation of eligible improvements and for those who manufacture the products being installed on residential properties. This determination is unquantifiable at this time, and is based on the review of public comments and estimated jobs calculation by the federal government.

CONSIDERATION OF ALTERNATIVES

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

The Authority invites interested persons to present statements with respect to alternatives to the regulations during the written comment period.

AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the regulations shall be submitted or directed to:

Deana Carrillo, Program Manager  
California Alternative Energy and Advanced  
Transportation Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, California 95814  
Telephone: 916-651-8157  
Email: [caeatfa@treasurer.ca.gov](mailto:caeatfa@treasurer.ca.gov)

Martha Alvarez, Associate Treasury Program  
Officer  
California Alternative Energy and Advanced  
Transportation Financing Authority  
915 Capitol Mall, Room 457  
Sacramento, California 95814  
Telephone: 916-651-5105  
Email: [malvarez@treasurer.ca.gov](mailto:malvarez@treasurer.ca.gov)

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the regulations to the Authority. **The written comment period on the regulations ends on February 21, 2013.** All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Article 2, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

#### PUBLIC HEARINGS

Public hearings regarding the regulations have been scheduled for **2:00 p.m. on Wednesday, January 23, 2013** and **1:30 p.m. on Wednesday, February 20, 2013** at 915 Capitol Mall, Room 587, Sacramento, California 95814. Any additional public hearings will be publicized on the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the public hearing and the written comment period ends, the Authority may adopt the regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

#### AVAILABILITY OF MATERIALS

Materials published or distributed through the Authority's website can be accessed at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. Copies of these items are also available upon request from the Agency Contact Person designated in this Notice.

#### TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 215, 219, 220, 331, 332, 460, 1050, 1572, 3452, 3453, 4302, 4334,

4902 and 10502; reference sections 200, 201, 202, 203, 203.1, 207, 210, 215, 219, 220, 331, 332, 458, 459, 460, 713, 1050, 1570, 1571, 1572, 1575, 2005, 3452, 3453, 3950, 3951, 4302, 4334, 4902, 10500 and 10502, Fish and Game Code; proposes to Amend Sections 354, 360, 361, 362, 363, 364 and 708, Title 14, California Code of Regulations (CCR), relating to Mammal Hunting Regulations for the 2013–2014 season.

**INFORMATIVE DIGESTS**

**Section 354**

There have been recent changes in technology regarding equipment used for archery hunting. There is currently an arrow developed and being used by hunters that has a nock that emits light. This allows the arrow to be seen better as it travels through the air and the ability to see the arrow path after it leaves the bow is improved. This can assist the hunter in determining whether they accurately hit the intended target. If the arrow hits an animal and it does not pass through the animal in a low light situation, the hunter may be able to see the lighted nock attached to the animal and track the light to assist in finding a dead or wounded animal and recovering the animal.

Fish and Game Code (FGC) section 2005 regulates the use of lights and gives the Fish and Game Commission authority to regulate the use of lights while taking

game. Wording in FGC 2005 makes it illegal to use lights while taking big game and other game under certain areas and situations. FGC section 2005 allows the use of a lantern as long as the lantern does not cast a directional light. The intent of FGC section 2005 is to not allow someone to cast a large directional beam of light while taking game.

It is illegal to waste game, and this technology will assist hunters in retrieving animals and therefore decrease loss and waste. The regulation needs to be revised to add to the archery regulations that a lighted nock that does not send out a directional beam of light is a legal arrow.

**Subsection 360(a)**

Existing regulations provide for the number of license tags available for the A, B, C, and D Zones. This regulatory proposal changes the number of tags for all existing zones to a series of ranges presented in the table below. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and over-winter adult survival, final tag quotas may fall below the proposed range into the “Low Kill” alternative identified in the 2007 Environmental Document Regarding Deer Hunting.

Minor editorial changes are necessary to provide consistency in subsection numbering, spelling, grammar, and clarification.

<b>Deer: § 360(a) A, B, C, and D Zone Hunts</b>		
<b>Tag Allocations</b>		
<i>Zone</i>	<i>Current</i>	<i>Proposed</i>
A	65,000	30,000–65,000
B	35,500	35,000–65,000
C	8,150	5,000–15,000
D3–5	33,000	30,000–40,000
D–6	10,000	6,000–16,000
D–7	9,000	4,000–10,000
D–8	8,000	5,000–10,000
D–9	2,000	1,000–2,500
D–10	700	400–800
D–11	5,500	2,500–6,000
D–12	950	100–1,500
D–13	4,000	2,000–5,000
D–14	3,000	2,000–3,500
D–15	1,500	500–2,000
D–16	3,000	1,000–3,500
D–17	500	100–800
D–19	1,500	500–2,000

**Subsection 360(b)**

Existing regulations provide for the number of hunting tags for the X zones. The proposal changes the number of tags for all existing zones to a series of ranges presented in the table below. These ranges are necessary, as the final number of tags cannot be determined

until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and over-winter adult survival, final tag quotas may fall below the proposed range into the “Low Kill” alternative identified in the 2007 Environmental Document Regarding Deer Hunting.

<b>Deer: § 360(b) X-Zone Hunts Tag Allocations</b>		
<b>Zone</b>	<b>Current</b>	<b>Proposed</b>
X-1	1,150	1,000-6,000
X-2	175	50-500
X-3a	310	100-1,200
X-3b	935	200-3,000
X-4	385	100-1,200
X-5a	65	25-200
X-5b	140	50-500
X-6a	325	100-1,200
X-6b	315	100-1,200
X-7a	230	50-500
X-7b	140	25-200
X-8	240	100-750
X-9a	650	100-1,200
X-9b	325	100-600
X-9c	325	100-600
X-10	400	100-600
X-12	860	100-1,200

**Subsection 360(c)**

Existing regulations provide for the number of hunting tags in the Additional Hunts. The proposal changes the number of tags for all existing hunts to a series of ranges as indicated in the table below. The proposal provides a range of tag numbers for each hunt from which a final number will be determined, based on the post-winter status of each deer herd. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Due to this, the final recommended quotas may fall below the current proposed range into the “Low Kill” alternative identified in the 2007 Environmental Document Regarding Deer Hunting.

Existing regulations for Additional Hunts G-8 (Fort Hunter Liggett Antlerless Deer Hunt) and J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt) provide for hunting to begin on October 6 and continue for three (3) consecutive days and reopen on October 13 and continue for two (2) consecutive days in order to accommodate for Base operations and other hunt opportunities. The proposal would modify the season to account for the annual calendar shift by changing the season opening dates to October 5 and October 12 (for 2 and 3 consecutive days), respectively, in order to accommodate for Base operations.

Minor editorial changes are necessary to provide consistency in subsection numbering, spelling, grammar, and clarification.

<b>Deer: § 360(c) Additional Hunts Tag Allocations</b>		
<b>Hunt Number (and Title)</b>	<b>Current</b>	<b>Proposed</b>
G-1 (Late Season Buck Hunt for Zone C-4)	2,710	500-5,000
G-3 (Goodale Buck Hunt)	35	5-50
G-6 (Kern River Deer Herd Buck Hunt)	50	25-100
G-7 (Beale Either-Sex Deer Hunt)	20 Military*	20 Military*
G-8 (Fort Hunter Liggett Antlerless Deer Hunt)	10 Military* and 10 Public	10 Military* and 10 Public
G-9 (Camp Roberts Antlerless Deer Hunt)	0	0
G-10 (Camp Pendleton Either-Sex Deer Hunt)	400 Military*	400 Military*
G-11 (Vandenberg Either-Sex Deer Hunt)	500 Military*, DOD and as Authorized by the Installation Commander**	500 Military*, DOD and as Authorized by the Installation Commander**
G-12 (Gray Lodge Shotgun Either-Sex Deer Hunt)	30	10-50
G-13 (San Diego Antlerless Deer Hunt)	300	50-300
G-19 (Sutter-Yuba Wildlife Areas Either-Sex Deer Hunt)	25	10-50

<b>Deer: § 360(c) Additional Hunts Tag Allocations</b>		
<b>Hunt Number (and Title)</b>	<b>Current</b>	<b>Proposed</b>
G-21 (Ventana Wilderness Buck Hunt)	25	25-100
G-37 (Anderson Flat Buck Hunt)	25	25-50
G-38 (X-10 Late Season Buck Hunt)	300	50-300
G-39 (Round Valley Late Season Buck Hunt)	5	5-150
M-3 (Doyle Muzzleloading Rifle Buck Hunt)	20	10-75
M-4 (Horse Lake Muzzleloading Rifle Buck Hunt)	10	5-50
M-5 (East Lassen Muzzleloading Rifle Buck Hunt)	5	5-50
M-6 (San Diego Muzzleloading Rifle Either-Sex Deer Hunt)	80	25-100
M-7 (Ventura Muzzleloading Rifle Either-Sex Deer Hunt)	150	50-150
M-8 (Bass Hill Muzzleloading Rifle Buck Hunt)	20	5-50
M-9 (Devil's Garden Muzzleloading Rifle Buck Hunt)	10	5-100
M-11 (Northwestern California Muzzleloading Rifle Buck Hunt)	20	20-200
MA-1 (San Luis Obispo Muzzleloading Rifle/Archery Either-Sex Deer Hunt)	150	20-150
MA-3 (Santa Barbara Muzzleloading Rifle/Archery Buck Hunt)	150	20-150
J-1 (Lake Sonoma Apprentice Either-Sex Deer Hunt)	25	10-25
J-3 (Tehama Wildlife Area Apprentice Buck Hunt)	15	15-30
J-4 (Shasta-Trinity Apprentice Buck Hunt)	15	15-50
J-7 (Carson River Apprentice Either-Sex Deer Hunt)	15	10-50
J-8 (Daugherty Hill Wildlife Area Apprentice Either-Sex Deer Hunt)	15	10-20
J-9 (Little Dry Creek Apprentice Shotgun Either-Sex Deer Hunt)	5	5-10
J-10 (Fort Hunter Liggett Apprentice Either-Sex Deer Hunt)	10 Military* 75 and Public	10 Military* and 75 Public
J-11 (San Bernardino Apprentice Either-Sex Deer Hunt)	40	10-50
J-12 (Round Valley Apprentice Buck Hunt)	10	10-20
J-13 (Los Angeles Apprentice Either-Sex Deer Hunt)	40	25-100
J-14 (Riverside Apprentice Either-Sex Deer Hunt)	30	15-75
J-15 (Anderson Flat Apprentice Buck Hunt)	10	5-30
J-16 (Bucks Mountain-Nevada City Apprentice Either-Sex Deer Hunt)	75	10-75
J-17 (Blue Canyon Apprentice Either-Sex Deer Hunt)	25	5-25
J-18 (Pacific-Grizzly Flat Apprentice Either-Sex Deer Hunt)	75	10-75
J-19 (Zone X-7a Apprentice Either-Sex Deer Hunt)	25	10-40
J-20 (Zone X-7b Apprentice Either-Sex Deer Hunt)	20	5-20
J-21 (East Tehama Apprentice Either-Sex Deer Hunt)	50	20-80

\* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.

\*\* DOD = Department of Defense and eligible personnel as authorized by the Installation Commander.

**Section 361**

Existing regulations provide for the number of hunting tags for existing area-specific archery hunts. The proposal changes the number of tags for existing hunts

to a series of ranges presented in the table below. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and over-winter adult survival, final tag quotas may fall below the proposed range into the "Low Kill" alternative identified in the 2007 Environmental Document Regarding Deer Hunting.

<b>Archery Deer Hunting: § 361</b>		
<b>Tag Allocations</b>		
<b>Hunt Number (and Title)</b>	<b>Current</b>	<b>Proposed</b>
A-1 (C Zones Archery Only Hunt)	1,945	150-3,000
A-3 (Zone X-1 Archery Hunt)	130	50-1,000
A-4 (Zone X-2 Archery Hunt)	10	5-100
A-5 (Zone X-3a Archery Hunt)	30	10-300
A-6 (Zone X-3b Archery Hunt)	90	25-400
A-7 (Zone X-4 Archery Hunt)	140	25-400
A-8 (Zone X-5a Archery Hunt)	10	15-100
A-9 (Zone X-5b Archery Hunt)	5	5-100
A-11 (Zone X-6a Archery Hunt)	55	10-200
A-12 (Zone X-6b Archery Hunt)	110	10-200
A-13 (Zone X-7a Archery Hunt)	50	10-200
A-14 (Zone X-7b Archery Hunt)	25	5-100
A-15 (Zone X-8 Archery Hunt)	50	5-100
A-16 (Zone X-9a Archery Hunt)	140	50-500
A-17 (Zone X-9b Archery Hunt)	300	50-500
A-18 (Zone X-9c Archery Hunt)	350	50-500
A-19 (Zone X-10 Archery Hunt)	120	25-200
A-20 (Zone X-12 Archery Hunt)	190	50-500
A-21 (Anderson Flat Archery Buck Hunt)	25	25-100
A-22 (San Diego Archery Either-Sex Deer Hunt)	1,000	200-1,500
A-24 (Monterey Archery Either-Sex Deer Hunt)	100	25-200
A-25 (Lake Sonoma Archery Either-Sex Deer Hunt)	35	20-75
A-26 (Bass Hill Archery Buck Hunt)	30	10-100
A-27 (Devil's Garden Archery Buck Hunt)	5	5-75
A-30 (Covelo Archery Buck Hunt)	40	20-100
A-31 (Los Angeles Archery Either-Sex Deer Hunt)	1,000	200-1,500
A-32 (Ventura/Los Angeles Archery Late Season Either-Sex Deer Hunt)	250	50-300
A-33 (Fort Hunter Liggett Late Season Archery Either-Sex Deer Hunt)	25 Military* & 25 Public	25 Military* & 25 Public

\* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.

**Section 362**

The existing regulation provides for limited hunting of 27 Nelson bighorn rams in specified areas of the State. The proposed change is intended to adjust the number of tags based on the Department's annual estimate of the population in the management unit. The number of tags allocated for each of the nine hunt zones is based on the results of the Department's 2012 esti-

mate of the bighorn sheep population in each zone. Tags are proposed to ensure the take of no more than 15 percent of the mature rams estimated in each zone. Final tag quota determinations will be completed by February of 2013 pending completion of analyses.

The following proposed number of tags was determined using the procedure described in Fish and Game Code Section 4902:

<b>HUNT ZONE</b>	<b>NUMBER OF TAGS</b>
Zone 1 — Marble Mountains	1-4
Zone 2 — Kelso Peak/Old Dad Mountains	1-4
Zone 3 — Clark/Kingston Mountain Ranges	1-2
Zone 4 — Orocopia Mountains	1-2
Zone 5 — San Gorgonio Wilderness	1-3
Zone 6 — Sheep Hole Mountains	1-2
Zone 7 — White Mountains	1-5
Zone 8 — South Bristol Mountains	1-3
Zone 9 — Cady Mountains	1-4
Open Zone Fund—Raising Tag	0-1
Marble/Clipper/South Bristol Mountains Fund—Raising Tag	0-1
Kelso Peak/Old Dad Mountains Fund—Raising Tag	0-1
<b>TOTAL</b>	9-32

**Section 363**

Existing regulations provide for the number of pronghorn antelope hunting tags for each hunt zone. This proposed regulatory action would provide for tag allocation ranges for most hunt zones pending final tag quota determinations based on winter survey results

that should be completed by March of 2013. The final tag quotas will provide for adequate hunting opportunities while allowing for a biologically appropriate harvest of bucks and does in specific populations. The proposed 2013 tag allocation ranges for the hunt zones are as set forth below.

<b>2013 Pronghorn Antelope Tag Allocation Ranges</b>						
<i>Hunt Area</i>	<i>Archery-Only Season</i>		<i>General Season</i>			
	<b>Buck</b>	<b>Doe</b>	<b>Period 1</b>		<b>Period 2</b>	
			<b>Buck</b>	<b>Doe</b>	<b>Buck</b>	<b>Doe</b>
Zone 1 — Mount Dome	0-10	0-3	0-60	0-20	0	0
Zone 2 — Clear Lake	0-10	0-3	0-80	0-25	0	0
Zone 3 — Likely Tables	0-20	0-7	0-150	0-50	0-130	0-50
Zone 4 — Lassen	0-20	0-7	0-150	0-50	0-150	0-50
Zone 5 — Big Valley	0-15	0-5	0-150	0-50	0	0
Zone 6 — Surprise Valley	0-10	0	0-25	0-7	0	0
Likely Tables Apprentice Hunt	N/A		0-5 Either-Sex		0	
Lassen Apprentice Hunt	N/A		0-15 Either-Sex		0	
Big Valley Apprentice Hunt	N/A		0-15 Either-Sex		0	
Surprise Valley Apprentice Hunt	N/A		0-4 Either-Sex		0	
Fund-Raising Hunt	N/A		0-10 Buck			

**Section 364**

Existing regulations specify elk license tag quotas for each hunt. In order to maintain hunting quality in accor-

dance with management goals and objectives, it is periodically necessary to adjust quotas in response to dynamic environmental and biological conditions. This

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proposed amendment modifies elk tag numbers to ranges of tags to adjust for fluctuations in population numbers.

Periodic quota changes are necessary to maintain hunting quality in accordance with management goals and objectives.

<b>2013 Proposed Elk Tag Allocation</b>				
<b>Hunt Name and Type</b>	<b>Bull</b>	<b>Antlerless</b>	<b>Either-Sex</b>	<b>Spike</b>
<b>Apprentice Hunts</b>				
Marble Mountains			0-4	
Northeastern CA			0-4	
Cache Creek	0-2			
La Panza Period 1	0-2	0-2		
Bishop Period 2	0-10	0-30		
Grizzly Island Period 1		0-2		0-2
Grizzly Island Period 2				0-2
Fort Hunter Liggett P1		0-4		
Fort Hunter Liggett P2		0-4		
Fort Hunter Liggett P3	0-2			
<b>Archery Only Hunts</b>				
Northeastern California Archery Only			0-20	
Owens Valley Multiple Zone Archery Only	0-10	0-10		
Lone Pine Archery Only Period 1	0-10	0-30		
Tinemaha Archery Only Period 1	0-10	0-30		
Whitney Archery Only Period 1	0-10	0-30		
Fort Hunter Liggett Archery Only		0-10	0-6	
<b>Muzzleloader Only Hunts</b>				
Bishop Muzzleloader Only Period 1	0-10	0-30		
Independence Muzzleloader Only Period 1	0-10	0-10		

2013 Proposed Elk Tag Allocation				
Hunt Name and Type	Bull	Antlerless	Either-Sex	Spike
Fort Hunter Liggett Muzzleloader Only	0-6			
<b>Muzzleloader/Archery Only Hunts</b>				
Marble Mountains Muzzleloader/Archery Only			0-10	
<b>General Roosevelt Elk Hunts</b>				
Siskiyou	0-30	0-30		
Big Lagoon	0-10	0-10		
Northwestern California			0-30	
Klamath	0-20	0-20		
Del Norte	0-15	0-20		
Marble Mountains	0-70	0-30		
<b>General Rocky Mountain Elk Hunts</b>				
Northeastern California	0-30	0-10		
<b>General Roosevelt/Tule Elk Hunts</b>				
Mendocino	0-4	0-4		
<b>General Tule Elk Hunts</b>				
Cache Creek	0-4	0-4		
La Panza Period 1	0-12	0-10		
La Panza Period 2	0-12	0-12		
Bishop Period 3	0-10	0-30		
Bishop Period 4	0-10	0-30		
Bishop Period 5	0-10	0-30		
Independence Period 2	0-10	0-30		
Independence Period 3	0-10	0-30		
Independence Period 4	0-10	0-30		
Independence Period 5	0-10	0-30		
Lone Pine Period 2	0-10	0-30		
Lone Pine Period 3	0-10	0-30		
Lone Pine Period 4	0-10	0-30		
Lone Pine Period 5	0-10	0-30		
Tinemaha Period 2	0-10	0-30		
Tinemaha Period 3	0-10	0-30		
Tinemaha Period 4	0-10	0-30		
Tinemaha Period 5	0-10	0-30		
West Tinemaha Period 1	0-10	0-30		
West Tinemaha Period 2	0-10	0-30		
West Tinemaha Period 3	0-10	0-30		
West Tinemaha Period 4	0-10	0-30		
West Tinemaha Period 5	0-10	0-30		
Tinemaha Mountain Period 1	0-8			
Tinemaha Mountain Period 2	0-8			
Tinemaha Mountain Period 3	0-8			
Tinemaha Mountain Period 4	0-8			
Tinemaha Mountain Period 5	0-8			
Whitney Period 2	0-4	0-10		
Whitney Period 3	0-4	0-10		
Whitney Period 4	0-4	0-10		
Whitney Period 5	0-4	0-10		
Grizzly Island Period 1	0-3	0-12		0-6
Grizzly Island Period 2	0-3	0-12		0-6
Grizzly Island Period 3	0-3	0-12		0-6
Grizzly Island Period 4	0-2	0-12		0-6
Grizzly Island Period 5	0-2	0-12		0-6
Fort Hunter Liggett Period 1		0-16		

2013 Proposed Elk Tag Allocation				
Hunt Name and Type	Bull	Antlerless	Either-Sex	Spike
Fort Hunter Liggett Period 2		0-14		
Fort Hunter Liggett Period 3	0-14			
East Park Reservoir	0-4	0-8		
San Luis Reservoir	0-10	0-10	0-10	
Bear Valley	0-4	0-2		
Lake Pillsbury	0-4	0-4		
Santa Clara	0-4			
Alameda	0-4			
<b>Fund Raising Tags</b>				
Multi-zone	1			
Grizzly Island	1			
Owens Valley	1			
<b>Military Only Elk Tags</b>				
Fort Hunter Liggett Military Early Season	0-2	0-2		
Fort Hunter Liggett Military Period 1		0-16		
Fort Hunter Liggett Military Period 2		0-14		
Fort Hunter Liggett Military Period 3	0-14			
Fort Hunter Liggett Military Apprentice Period 1		0-4		
Fort Hunter Liggett Military Apprentice Period 2		0-4		
Fort Hunter Liggett Military Apprentice Period 3	0-2			
Fort Hunter Liggett Military Archery Only		0-10	0-6	
Fort Hunter Liggett Military Muzzleloader Only	0-6			

**Section 708**

The purpose of this proposed change is to clarify that fund-raising tags are defined in Section 362 of Title 14, California Code of Regulations, and not in Section 708.9 of Title 14; and to propose the Commission, based on public input and Commission interest, consider increasing the maximum number of non-residents general license tags from one to a maximum of ten percent (10%) of the bighorn sheep tags available.

Existing Section 708.9, Title 14, California Code of Regulations is inconsistent with fundraising tags defined in Section 362 for bighorn sheep. Section 708.9 needs to be updated to accurately reflect and refer to the correct fund-raising tags available for bighorn sheep.

Existing Section 708.9, Title 14, California Code of Regulations limits the number of bighorn sheep general license tags to non-resident hunters to one. The number of general license tags has increased over the years and now averages 24 tags (when the regulation was established there were less than 5 general tags issued annually). Non-resident general license tags have remained capped at one (1) so to remain consistent in the distribution of tags, there is a need to develop flexibility and allow more non-resident general license tags as the number of tags changes over time.

The benefits of the proposed changes are to maintain or increase big game populations and to ensure their continued existence.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate big game hunting regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held in the Mt. Shasta Hatchery Museum, #3 North Old Stage Road, Mt. Shasta, California, on Wednesday, March 6, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held at the Flamingo Conference Resort & Spa, 2777 Fourth Street, Santa Rosa, CA 95405, California, on Wednes-

day, April 17, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before April 3, 2013 to be included in the Commissioners' briefing materials, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 12:00 noon on April 15, 2013 to be delivered by staff to the meeting; or be presented to Commission staff at the meeting no later than the agenda item is heard on April 17, 2013, in Santa Rosa, CA.** If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout–underline format, as well as an initial statement of reasons, including all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Mr. Brad Burkholder, Wildlife Branch, Department of Fish and Game, telephone (916) 445-1829, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

**Availability of Modified Text**

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

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

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

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

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

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

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

The proposed upland game regulations will have positive impacts to jobs and/or businesses that provide services to hunters in 2012-2013. The best available information is presented in the 2006 National Survey of Fishing, Hunting, and Wildlife associated recreation for California, produced by the U.S. Fish and Wildlife Service (USFWS) and National Census Bureau, which is the most recent survey completed. The report estimates that hunters spent about \$659,366,000 on hunting trip-related and equipment expenditures in California in 2006. Most businesses will benefit from these regulations, and those that may be impacted are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed regulations is to maintain or increase game-hunting populations, and subsequently, the long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. The proposed regulations are intended to provide additional recreational opportunity to the public.

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

The Commission anticipates benefits to the environment by the sustainable management of California's big-game resources.

(c) Cost Impacts on Representative Private Person or Business

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

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State.

There are no costs or savings with regard to state agencies or federal funding to the State.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

None.

(f) Programs Mandated on Local Agencies or School Districts.

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4.

None.

(h) Effect on Housing Costs.

None.

Effect on Small Business

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

Consideration of Alternatives

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

**TITLE 15. CALIFORNIA PRISON  
INDUSTRY AUTHORITY**

**NOTICE OF INTENTION TO ADOPT A  
CONFLICT-OF-INTEREST CODE**

NOTICE IS HEREBY GIVEN that the California Prison Industry Authority (CALPIA), pursuant to the authority vested in it by section 87300 of the Government Code proposes its Conflict-of-Interest Code.

The CALPIA proposes to adopt its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. A written explanation of why each position was selected and the reasons for the disclosure categories is available.

The duties of the authority include development and operation of industrial, agricultural, and service enterprises employing prisoners in institutions under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR), which enterprises may be located either within those institutions or elsewhere, all as may be determined by the authority. The authority creates and maintains working conditions within the enterprises as much like those which prevail in private industry as possible. The CALPIA works to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills. The CALPIA operates a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by the CDCR, thereby reducing the cost of its operation.

Copies of the proposed code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed code by submitting them in writing no later than February 18, 2013, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than February 3, 2013, by contacting the Contact Person set forth below.

The CALPIA has determined that the proposed code:

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

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

All inquiries should be directed to:

**Jeff Sly**  
**General Counsel**  
**California Prison Industry Authority**  
**560 East Natoma Street, CA 95630**  
**Telephone (916) 358-1711**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Ann Cunningham**  
**Regulation and Policy Manager**  
**California Prison Industry Authority**  
**Telephone (916) 358-1711**

**TITLE 16. BUREAU OF AUTOMOTIVE REPAIR**

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING**

**Smog Check Inspection Procedures**

SPECIFICALLY

**Inspection Equipment, Updated Reference Documents, and Inspection Procedures and Standards**

**NOTICE IS HEREBY GIVEN** that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau" or "BAR") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

**NORTHERN CALIFORNIA**

Tuesday, February 19, 2013 at 10:00 a.m.  
 Bureau of Automotive Repair  
 10949 North Mather Blvd  
 Rancho Cordova, CA 95670

**SOUTHERN CALIFORNIA**

Tuesday, February 19, 2013 at 10:00 a.m.  
 Live streamed from Northern California  
 Bureau of Automotive Repair  
 1180 Durfee Ave., Suite 120  
 South El Monte, CA 91733

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on Tuesday, February 19, 2013**, or must be received by the Bureau at one of the above-referenced hearings. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44001.5, 44002, 44003, 44012.1, 44013, 44036, 44037.1, 44072.10, 44091 and 44095 of the Health and Safety Code, the Bureau is proposing to adopt the following changes to Chapter 1, Division 33, Title 16, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION

BAR is the state agency charged with administration and implementation of the Smog Check Program (Pro-

gram). The Program is designed to reduce air pollution from mobile sources, such as passenger vehicles and trucks, by requiring that these vehicles meet specific inspection standards. Currently, Smog Check stations rely on the BAR-97 EIS to perform either a Two-Speed Idle (TSI) or Acceleration Simulation Mode (ASM) test depending on the program area. For instance, vehicles registered in urbanized areas or Enhanced Areas, will receive an ASM test, while vehicles in rural areas or Basic Areas receive a TSI test.

#### BACKGROUND

Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010) requires BAR to implement a new protocol for testing 2000 and newer model-year vehicles. This new test relies primarily on a vehicle's On-Board Diagnostics (OBD) system. OBD systems are designed to identify when a vehicle's computer-controlled emissions system and/or component is malfunctioning and is operating outside of the vehicle manufacturer's specifications. The current BAR-97 EIS utilizes OBD test equipment; however, this equipment is rudimentary and is not capable of communicating complete OBD information for all vehicles. As a result, BAR determined it best to develop equipment specifications for new test equipment, referred to as the Data Acquisition Device (DAD), which is a component of the OBD Inspection System (OIS). Further, AB 2289 provided BAR the ability to establish alternate testing procedures, in addition to the existing ASM, TSI, and the proposed OBD-focused test.

These changes are intended to provide for additional emissions reductions, quicker and potentially less costly Smog Check inspections for consumers, and will help to lower Smog Check station operating costs associated with the Smog Check equipment.

#### Smog Check Equipment

The current BAR-97 EIS lacks functionality and flexibility to easily incorporate new inspection procedures. The need for new inspection equipment is further necessitated as replacement parts for the BAR-97 EIS are scarce and its integrated OBD scan tool does not read or gather data on vehicles with newer OBD technology. Because the existing tailpipe inspection is being eliminated for most 2000 and newer model-year vehicles, BAR must rely more heavily on the vehicle's OBD system to determine if a vehicle has failing emissions control systems. In order to collect this vital OBD information, BAR determined that it was necessary to develop and implement new OBD inspection equipment. Additionally, AB 2289 permits the use of real-time data to prevent a vehicle from passing an inspection in cases where vehicle information does not match known data for the vehicle, mismatched information, or

other irregularities — the new OIS will incorporate this functionality.

This proposed regulatory action requires most gasoline-powered vehicles model-year 2000 and newer and diesel-powered vehicles model-year 1998 and newer to have an OBD-focused inspection on the OIS. The OBD-focused inspection will also accommodate hybrid-powered vehicle inspections, which cannot currently receive an inspection due to testing incompatibilities with the BAR-97 EIS. Vehicle model-years 1999 and older will continue to receive their Smog Check inspection exclusively on the existing BAR-97 EIS.

Additionally, this proposed regulation departs from the current practice of requiring Smog Check stations to purchase all available equipment, regardless of the vehicles being inspected or repaired at a particular station. Only STAR certified stations will be required to have all equipment including, but not limited to, the BAR-97 EIS, the Low Pressure Fuel Evaporative Tester (LPFET), and the OIS. This requirement for STAR stations to have all equipment is necessary because BAR directs a portion of the vehicle fleet to have a Smog Check inspection at STAR certified stations. Vehicles directed for an inspection have been identified by BAR as having a higher likelihood of failing their Smog Check inspection. These vehicles may require an OBD-focused, tailpipe emissions inspection, or a combination of both. As a result, STAR-certified stations need to have all of the inspection equipment used in the Smog Check Program.

Non-STAR stations may continue to use the BAR-97 EIS, purchase the OIS, or use both. Additionally, these stations will have the flexibility to choose which vehicles they wish to inspect. For instance, a station may choose to inspect 1999 and older model-year vehicles with a BAR-97 EIS, inspect 2000 and newer model-year vehicles with the OIS, or a combination of both.

As part of this project, BAR developed the BAR OBD Inspection System — Data Acquisition Device Specification, dated October 22, 2012. This document describes the equipment standards for the Data Acquisition Device (DAD), which is a component of the OIS. Equipment manufacturers must build the DAD to meet these specifications. Any device that meets the performance specifications will then be certified by BAR for use in the Smog Check Program. It is anticipated that the OIS equipment will be available for use starting in 2013.

#### Smog Check Inspection Procedures

AB 2289, specifically, Health and Safety Code (H&S) section 44012 provided BAR the authority to develop a process for inspecting vehicles that present problematic or unusual circumstances. Until the passage of AB 2289, BAR did not have flexibility in statute

and could not prescribe alternative inspection procedures in regulation for vehicles with testing incompatibilities. Experience shows that a single test process, while convenient for motorists and BAR enforcement efforts, cannot be applied to over 26,000 vehicle configurations. Flexibility allows BAR to assign alternate tests for vehicles with OBD systems that exhibit operational problems and for vehicles with original equipment manufacturer configurations which are incompatible with the ASM or TSI test. Alternative testing procedures are necessary to capture polluting vehicles that would otherwise be exempted from inspection due to their incompatibility with the inspection equipment. Examples of vehicles with systems that cannot be disengaged to perform an ASM test include: All-Wheel Drive (AWD) vehicles, hybrid powered vehicles, and traction control vehicles.

This regulatory package establishes alternative inspection procedures for hybrid-powered vehicles. Hybrid-powered vehicles have always been subject to the Smog Check Program since they have an internal combustion engine with emissions control systems. However, their configuration (e.g., gasoline engine starting under varying conditions) prohibits them from being inspected with tailpipe emissions measurement equipment. As a result, this proposal allows all 2000 and newer model-year hybrid-powered vehicles to receive an OBD-focused inspection solely on the OIS. BAR estimates that 271,246 hybrid-powered vehicles<sup>1</sup> will be subject to the Smog Check Program annually.

#### Smog Check Inspection Standards

This regulation package also revises the OBD standards to better align with United States Environmental Protection Agency guidance<sup>2</sup>. This revision lowers the maximum number of unset readiness monitors an OBD system can be reporting and still pass an inspection, based on specific model-year ranges.

At present, 1996 through 2000 model-year gasoline-powered vehicles can have up to two readiness monitors set and still pass a Smog Check inspection. Meanwhile, 2001 and newer model-year gasoline-powered vehicles cannot have more than one readiness monitor. Under this proposal, 1996 through 1999 model-year vehicles can have no more than one incomplete readiness monitor reporting, while 2000 and newer model-year vehicles with any incomplete monitors, excluding the evaporative system monitor, will fail an inspection.

Originally, diesel-powered vehicles had to meet the same OBD readiness monitor standards as gasoline-

powered vehicles. Since implementing diesel Smog Check inspection procedures in 2010, BAR has gathered data regarding the number and types of monitors that diesel-powered vehicles typically report. BAR determined that the current OBD monitor standard was too lenient and additional air quality benefits could be achieved by reducing the number of allowable readiness monitors for diesel-powered vehicles. For instance, 1998 through 2006 model-year diesel vehicles only operate on a few readiness monitors as compared to gasoline-powered vehicles which use more than 11 monitors. Further, 2007 and newer model-year diesel-powered vehicles cannot have any unset readiness monitors at the time of the inspection, excluding the particulate filter monitor. Starting in 2007, diesel vehicles introduced the particulate filter and monitors which can take a long time to complete, similar to the gasoline powered vehicle evaporative system monitor.

At present, all 1976 through 1999 model-year vehicles receive a fuel cap integrity test. This regulatory action limits the use of the fuel cap integrity test to 1976 through 1995 model-year vehicles. This change was made to align with the applicability of the Low Pressure Fuel Evaporative Test, which is performed on 1976 through 1995 model-year vehicles. BAR does not anticipate this modification will result in a significant change to the overall Smog Check failure rate as most 1996 and newer model-year vehicles already electronically monitor the fuel cap through their OBD system.

Additionally, BAR requires an ignition timing test on all vehicles equipped with adjustable timing. However, vehicles that do not have adjustable timing (i.e., some newer model-year vehicles) do not require this test. As a result, BAR has limited the functional ignition timing test to 1976 through 1995 model-year vehicles. BAR does not anticipate this modification will result in lost emissions benefits as 1996 and newer model-year vehicles already electronically monitor engine ignition timing through their OBD system.

BAR data indicates that the overall initial test failure rate for 1996 and newer gasoline-powered vehicles could rise by 4.6% due to the vehicle's OBD systems needing to complete more emissions control system fault detection diagnostics, while accounting for the removal of the tailpipe test for 2000 and newer model-year vehicles. However, based on the implementation of prior OBD changes, the expected failure rate may be 50% less due to inspector and consumer vehicle preparation prior to a Smog Check inspection. As a result, BAR anticipates a 2.3% increase to the failure rate or an additional 183,159 Smog Check failures annually.

Additionally, BAR data indicates that the diesel-powered vehicle overall failure rate could rise by 6.4% for 1998 and newer model-year vehicles. As with the

<sup>1</sup> It is estimated that approximately 271,246 (159,356 biennial inspections and 111,890 change of ownership inspections) hybrid-powered vehicles would require a Smog Check inspection in the calendar year 2013.

<sup>2</sup> <http://www.epa.gov/otaq/regs/im/obd/r01015.pdf>

gasoline powered vehicles, the actual failure rate may be 50% less. As a result, BAR anticipates a 3.2% increase to the failure rate or an additional 5,969 failures annually.

Smog Check Manual

BAR has provided Smog Check technicians and stations with an inspection procedures manual since the inception of the Program in 1984. The manual has served both BAR and the Smog Check industry and is the Program’s primary reference source for conducting proper Smog Check inspections.

At present, Smog Check inspection procedures and equipment are described in both the regulation text and the current Smog Check Inspection Procedures Manual. Because requirements are split into multiple sources, BAR determined that it would be more clear and concise to list all of these requirements in a single source as a convenience to the end user, Smog Check stations, inspectors, and technicians. Further, recent changes, including the planned addition of the OIS into the Smog Check Program necessitate the need to create a new manual that more appropriately represents the current equipment, license classifications, and flexible testing. The new Smog Check Manual relies on simple charts to explain which tests are applicable to specific model-year vehicles or vehicle types, as well as to explain what equipment stations are required to have.

As part of updating the manual, BAR eliminated the Visible Smoke Test Failure Consumer Information Sheet. This document is redundant as BAR already requires Smog Check stations to indicate, on the Vehicle Inspection Report (VIR) and the consumer’s invoice, if the vehicle has failed the Visible Smoke Test.

CURRENT REGULATION

*Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, is summarized as follows:*

1. Article 5.5, Section 3340.1 specifies definitions used in the Smog Check Program.
2. Article 5.5, Section 3340.16 specifies Test-Only station requirements and conflict of interest rules for consumer referrals.
3. Article 5.5, Section 3340.16.4 specifies Repair-Only station requirements and conflict of interest rules for consumer referrals.
4. Article 5.5, Section 3340.16.5 specifies Test and Repair station requirements and conflict of interest rules for consumer referrals.

5. Article 5.5, Section 3340.17 specifies the Smog Check test equipment, maintenance, and calibration requirements. Additionally, how the Smog Check inspection test results are electronically transmitted to BAR.
6. Article 5.5, Section 3340.17.1 specifies the process for decertifying Smog Check equipment manufacturers, including notification process and ability for Manufacturers to request a hearing.
7. Article 5.5, Section 3340.17.2 specifies the ability for an equipment manufacturer to request an informal hearing.
8. Article 5.5, Section 3340.18 specifies the certification criteria for the BAR-97 EIS calibration gases and blenders of gases.
9. Article 5.5, Section 3340.42 specifies the Smog Check inspections methods for certain model-year vehicles.
10. Article 5.5, Section 3340.42.2 specifies the OBD test methods and standards for certain model-year vehicles.
11. Article 5.5, Section 3340.45 incorporates by reference the Smog Check Manual in regulation.
12. Article 11, Section 3394.5 Amended to allow vehicles inspected with new OBD Inspection Equipment (OIS) to continue to participate in the Consumer Assistance Program (CAP).

EFFECT OF REGULATORY ACTION

The Bureau of Automotive Repair (BAR) is proposing the following amendments to existing regulations:

- I. **Inspection Equipment:** Incorporate the new OBD Inspection System (OIS) equipment that Smog Check stations may choose to purchase into regulation and the *Smog Check Manual*, dated 2013.
- II. **Updated Reference Documents:** Incorporate by reference the *BAR OBD Inspection System OBD Data Acquisition Device Specification*, dated October 22, 2012, into regulation. This proposed action will establish equipment standards for the Data Acquisition Device (DAD) portion of the OIS. Additionally, BAR incorporated by reference an updated version of the *Low Pressure Fuel Evaporative Tester (LPFET) Specifications*, dated January 2012.

BAR originally created the *Smog Check Inspection Procedures Manual* to help act as a guide for performing proper inspections. This document has been substantially changed to

capture new inspection procedures for using the OIS, to specify new equipment requirements, to incorporate existing equipment requirements that were previously codified in regulation, and to clarify required tests for vehicles subject to the Smog Check Program. This regulatory action establishes the *Smog Check Manual*, dated 2013, which details both current and new inspection procedures and required equipment for both inspection and repair stations.

Specifications and certification procedures for calibration and audit gases were previously incorporated by reference in Title 16 of the California Code of Regulations (CCR) section 3340.18 in January 1990. BAR revised the specifications in 1997 when a new protocol for inspecting vehicles was incorporated into the Smog Check Program. The document was revised again in 2004 to address proper gas blending and storage procedures necessary to prevent a calibration gas contaminant that could affect calibration accuracy. The document was further revised to reduce the allowable level of CO<sub>2</sub> in the zero air gas blend from 400 parts per million (ppm) to 40 ppm. This improvement is intended to make it more difficult to use contaminated or counterfeit zero air to calibrate emissions measurement equipment. All of the gas blend manufacturers meet this specification. Finally, this regulatory action revises the document to reduce the allowable level of CO<sub>2</sub> in the zero air gas blend. This proposed change seeks to incorporate by reference the changes made to the document in 1997, 2004 and 2012. The revised document *Specifications and Accreditation Procedures for Calibration and Audit Gases Used in the California Emissions I/M Program*, dated January 2012 will be incorporated into regulation.

III. **Inspection Procedures and Standards:** Amend the On-Board Diagnostics (OBD) inspection procedures to require an OBD test in lieu of a tailpipe test on most 2000 and newer model-year vehicles. In addition, this proposed regulatory action allows for alternative testing procedures for vehicles randomly selected for the purpose of identifying operational problems, 1996 and newer model-year vehicles with OBD systems that exhibit operational problems, and vehicles with physical incompatibilities with any Smog Check inspection equipment. Further, BAR deleted the visual and functional tests from the regulation text, as they have been moved into the *Smog Check Manual*, which is incorporated by reference.

Amend the test methods and standards for the OBD inspection to better align with the United States Environmental Protection Agency (USEPA) guidance for performing an OBD inspection. This modification establishes new inspection standards for gasoline-powered vehicle model-years 2000 and newer and for diesel-powered vehicle model-year 1998 and newer.

The proposed action will make the following changes to existing regulation:

1. **Amend Section 3340.1 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Add definition for “BAR-97 Emissions Inspection System or EIS.”

This term is necessary to define because this Smog Check equipment is discussed throughout this proposed regulation package. This definition replaced the deleted definition of Emissions inspection equipment (EIS) to better differentiate between new inspection equipment referred to as the OBD Inspection System (OIS) and the existing BAR-97 EIS.

- b. Delete definition for “Emissions inspection system or EIS.”

This term is unnecessary, as BAR created a new, more recognizable definition in regulation — “BAR-97 Emissions Inspection System or EIS.”

- c. Amend the definition of “Gear Shift Incident.”

This definition was revised as the “Smog Check Inspection Procedures Manual” has been retitled as the “Smog Check Manual.” This conforming change has been made throughout this proposed regulation.

- d. Add definition for “OBD Inspection System or OIS.”

This definition is necessary to define because the OIS equipment will be used by Smog Check technicians in performing Smog Check inspections on 2000 model-year and newer vehicles.

- e. Amend the definition of “Vehicle Inspection Report.”

This definition was revised to reference the new OIS equipment. In addition, minor, conforming changes have been made to incorporate “EIS,” which is an abbreviation for emission inspection system.

2. **Amend Section 3340.16 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Remove subsections (a) and (b) regarding equipment required for a Smog Check Test-Only stations.

The equipment requirements for all Smog Check station types have been added to the proposed Smog Check Manual in a simple table format. This revision eliminates redundancy between regulation and the proposed Smog Check Manual. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference source relating to the Smog Check equipment and inspection procedures.

Currently, some of the Smog Check equipment and inspection procedures appear in both regulation and the proposed Smog Check Manual. For example, some of the Smog Check equipment that is being moved from regulation to the Smog Check Manual for a Test-Only station includes the BAR-97 EIS, ignition timing light, hand vacuum pump, vacuum gauge, basic hand tools, emission control application guide, bureau manuals and bulletins, Low Pressure Fuel Evaporative Tester, and tire pressure gauge.

- b. Add subsection (a) to read as follows, “A smog check test-only station shall meet the equipment requirements as provided in the Smog Check Manual referenced in section 3340.45.”

The equipment requirements for all Smog Check station types, including Test-Only stations, have been added to the proposed Smog Check Manual in a simple table format. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference source regarding Smog Check equipment and inspection procedures. Currently, some of the Smog Check equipment and inspection procedures appear in both regulation and the proposed Smog Check Manual. This revision eliminates redundancy between regulation and the proposed updated Smog Check Manual.

This amendment renumbers subsection (c) to (b), subsection (d) to (c), subsection (e) to (d), subsection (f) to (e), subsection (g) to (f), and subsection (h) to (g).

- c. Amend subsection (f) by deleting “smog check.”  
This amendment is necessary to clarify that a Smog Check Test-Only station may not refer a vehicle to a provider of repair service in which the Test-Only station has a financial interest.
- d. Amend subparagraph (1) of subsection (f) by deleting “stations” and adding “automotive repair dealer.”

This amendment clarifies what ownership situations will create a financial interest. Because the term “station” is synonymous with a Smog Check station BAR must replace the term with “automotive repair dealer” as it is the generic license classification that applies to all Smog Check stations and repair facilities.

- e. Amend subsection (h) by deleting “a station” and “station” and by adding “an automotive repair dealer” and “automotive repair dealer.”

This amendment clarifies that an applicant for a Smog Check Test-Only station shall not qualify if the same party owns an automotive repair dealer that provides repair services and is located adjacent to, or in the same business park, strip mall, or industrial complex.

**3. Amend Section 3340.16.4 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Amend subsection (a) by deleting “operating in any program area” and add “meet the requirements for equipment and materials as specified in the Smog Check Manual referenced in section 3340.45.” Additionally, remove the remaining text in subsection (a) and paragraphs (1)–(15).

The equipment requirements for all Smog Check station types including repair-only stations have been added to the proposed Smog Check Manual in a simple table format. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference source regarding Smog Check equipment. Currently, some of the Smog Check equipment appears in both regulation and in the proposed Smog Check Manual. This revision eliminates redundancy between regulation and the proposed updated Smog Check Manual.

Currently, some of the smog check equipment appears in both regulation and the proposed Smog Check Manual. The Smog Check equipment that is proposed to be removed from regulation and required in the Smog Check Manual for Repair-Only stations includes: engine diagnosis and repair tools; ignition analyzer; compression tester; tachometer; fuel pressure gauge; propane enrichment kit; ammeter; volt/ohmmeter; basic hand tools; OBD scan tool; diagnosis and repair information; electronic component location manuals; automotive computer diagnostic and repair manuals; bureau manuals and bulletins; an electronic device capable of graphically displaying any electronic signal; and tire pressure gauge.

- b. Remove subsection (b) regarding equipment required for a Smog Check Repair–Only station.

Subsection (b) was moved to the proposed updated Smog Check Manual. This section allows stations only performing diesel vehicle repairs to have only the equipment needed for diesel repairs.

- c. Remove subsection (c) regarding diagnostic and repair equipment which is required for a Smog Check Repair–Only station.

Subsection (c) was also moved to the proposed updated Smog Check Manual. This section required all the equipment required to be calibrated or adjusted in accordance with the manufacturer’s instructions.

- d. Amend subsection (d) by adding “the station does not have the necessary equipment, tools, personnel, diagnostic and reference materials to repair that vehicle. The station may reject a vehicle if, as a matter of policy, the station:”. Additionally, delete “any of the following conditions apply” and subsection (d) subparagraph (1) in its entirety. Other minor formatting, grammatical and editorial changes have been made to incorporate these modifications.

This amendment renumbers subsection (d) to (b) and subsection (e) to (c). Additionally, renumber subsection (b)(2) to (b)(1) and (b)(3) to (b)(2).

- e. Amend subsection (e) by deleting “particular station for a” and “station” and “stations.” Add “automotive repair dealer” in multiple places.

These changes are necessary to remove ambiguity regarding business referrals from regulation.

**4. Amend Section 3340.16.5 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Amend subsection (a) by deleting “operating in any program area” and “have the equipment and materials specified by, and conform to the requirements of, subsection (a) of section 3340.16 and subsection (a) of section 3340.16.4 of this article.” Add the following text “meet the equipment requirements for equipment and materials as specified in the Smog Check Manual referenced in section 3340.45.”

The equipment requirements for all Smog Check station types including Test–and–Repair stations have been added to the proposed Smog Check Manual in a simple table format. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference

source regarding Smog Check equipment and inspection procedures. Currently, some of the Smog Check equipment and inspection procedures appear in both regulation and the proposed Smog Check Manual. This revision eliminates redundancy between regulation and the proposed Smog Check Manual.

- b. Remove subsection (b) in its entirety.

This revision eliminates redundancy between regulation and the proposed updated Smog Check Manual. The equipment requirements for all Smog Check station types have been added to the proposed Smog Check Manual in simple table format. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference source regarding Smog Check equipment.

Currently, some of the Smog Check equipment appears in both regulation and the proposed Smog Check Manual. The Smog Check equipment that is proposed to be moved from the regulation text to the Smog Check Manual for a Test–and–Repair station includes the equipment and material specified in subsection (a) of section 3340.16 and subsection (a) of section 3340.16.4, the BAR–97 EIS, and a tire pressure gauge.

This amendment renumbers subsection (c) to (b), subsection (d) to (c), subsection (e) to (d), and subsection (f) to (e).

**5. Amend Section 3340.17 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Remove subsection (a) in its entirety.

This revision eliminates redundancy between regulation and the proposed updated Smog Check Manual. The equipment requirements for all Smog Check station types have been added to the proposed Smog Check Manual in simple table format. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference source regarding Smog Check equipment.

- b. Amend subsection (b) by removing “Each smog check test–only and test–and–repair station operating in an enhanced area shall have a”. Add “The EIS shall be calibrated only with bureau approved gases that are certified in accordance with section 3340.18 of this article.” Other minor formatting, grammatical and editorial changes have been made to incorporate these modifications.

This revision eliminates redundancy between regulation and the proposed updated Smog Check Manual. The equipment requirements for all Smog Check station types have been added to the proposed Smog Check Manual in simple table format. The proposed Smog Check Manual will provide Smog Check technicians and station owners a single reference source regarding Smog Check equipment.

BAR moved text in subsection (e) regarding calibration gases to subsection (b) for improved clarity.

This amendment renumbers subsection (b) to subsection (a).

- c. Add new subsection (b) with the following text: “The OBD data acquisition device shall meet the specifications contained in the BAR OBD Inspection System Data Acquisition Device Specification dated, October 22, 2012, which is hereby incorporated by reference.”

This new subsection specifies requirements for the new DAD. These requirements were developed to meet the requirements of H&S section 44012. Additionally, H&S section 44036 requires BAR to certify Smog Check inspection equipment for use in the Smog Check Program. As such, BAR developed specifications for the new DAD equipment.

- d. Add new subsection (c) with the following text “Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the Bureau’s centralized database.”

This subsection specifies how the OIS communicates with BAR’s Vehicle Information Database (VID). These requirements to be connected to the VID were moved from subsection (a), and are not new requirements. The OIS system connection was added to the current EIS connection requirements.

- e. Remove subsection (c) in its entirety.  
This subsection (c) was moved to the Smog Check Manual because it is easier for Smog Check technicians and stations to have a single source document for all Smog Check Program equipment.
- f. Remove subsection (d) in its entirety.

This subsection (d) was moved to the Smog Check Manual because it is easier for Smog Check technicians and stations to have a single source document for all Smog Check Program equipment. Additionally, similar requirements for the new OIS equipment were added to the Smog Check Manual.

- g. Delete subsection (e) in its entirety.  
The text of subsection (e) was moved to subsection (a). By moving this subsection all of the equipment calibration requirements will be in one section which provides improved clarity and conciseness.
  - h. Amend subsection (f) regarding access to protected areas of the EIS, LPFET and OIS equipment.  
Minor formatting, grammatical and editorial changes have been made to help deter tampering of the EIS, LPFET and OIS.  
This amendment renumbers subsection (f) to (d).
  - i. Add new subsection (e) regarding LPFET equipment.  
This subsection (e) was moved from section 3340.16(a)(9). This change improves clarity and provides affected individuals with concise regulations.
  - j. Amend subsection (g) regarding disabling EIS, LPFET and OIS communication to the VID that do not comply with bureau requirements.  
This subsection was amended to apply the ability to lock out equipment that is not compliant with hardware and software requirements from performing inspections to the EIS and to the new OIS and existing LPFET equipment. Other minor formatting, grammatical and editorial changes have been made to incorporate these modifications.  
This amendment renumbers subsection (g) to (f).
  - k. Remove subsection (h) in its entirety.  
These requirements have been moved into the Smog Check Manual because it improves clarity and conciseness of the regulations. Smog Check technicians and stations will now have a single source for all Smog Check equipment. Additionally, similar requirements for the new OIS equipment have been added to the Smog Check Manual.
- 6. Add Article 3340.17.1 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**
- a. Add new Article to read as follows:  
Article § 3340.17.1. Decertification of Equipment Manufacturers
  - b. Add sections (a)–(e) to regulation concerning the decertification of Smog Check equipment manufacturers.  
This Article describes the process for decertifying Smog Check equipment manufacturers, including notification process and ability for manufacturers to request a hearing.

**7. Add Article 3340.17.2 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Add sections (a)–(d) to regulation concerning the ability for an equipment manufacturer to request an informal hearing.

An informal hearing process concerning the issuance of a citation is an alternative hearing to formal hearing and may help alleviate workload on administrative courts.

**8. Amend Section 3340.18 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. These changes incorporate by reference revised specifications and certification procedures for calibration and audit gases.

The “Specifications and Certification Procedures for Calibration and Audit Gases Used in the California Emissions I/M Program” was updated to address proper gas blending and storage procedures necessary to prevent a calibration gas contaminant that could affect calibration accuracy and influence Smog Check inspection results.

**9. Amend Section 3340.42 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Amend the section title from “Smog Check Emissions Test Methods and Standards” to “Smog Check Test Methods and Standards.”

The title of this section was changed to clarify that the section pertains to all of the Smog Check inspection standards and not just the emissions portion of the inspection.

- b. Amended introductory text to state “Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.”

The introductory text was changed to refer to the Smog Check Manual. This change deleted the following text: “With the exception of diesel-powered vehicles addressed in subsection (f) of this section, the following emissions test methods and standards apply to all vehicles:.” This text is no longer necessary as subsection (a) clearly describes what vehicles will receive a particular inspection.

- c. Add subsection (a) with the following text “All vehicles subject to a smog check inspection, shall receive one of the following test methods:.”

Subsection (a) was added to better organize the regulations and to clearly identify which test a particular vehicle will receive.

- d. Amend subsection (a) to delete the text “, except as otherwise specified,” and add the text “1976–1999 model–year”, “, except diesel–powered,”, and change the referenced subsection from subsection “(b)” to “(a)”.

This change limits the loaded–mode inspection to 1976 through 1999 model–year vehicles, as required by AB 2289 (Statutes of 2010). The revised text clearly indicates what type of Smog Check inspection a particular model–year vehicle will receive.

This amendment renumbered subsection (a) to subparagraph (1).

- e. Amend subsection (b) by deleting “, unless a different test is otherwise specified in this article,” and add “1976–1999 model–year”, “except diesel–powered,”, and change the referenced subsection from “(b)” to “(a)”.

This change limits the tailpipe emissions inspection to 1976 through 1999 model–year vehicles, as required by AB 2289 (Statutes of 2010). The revised text clearly indicates what type of Smog Check inspection a particular model–year vehicle will receive.

This amendment renumbered subsection (b) to subparagraph (2).

- f. Add subparagraph (3) to subsection (a).

This subparagraph describes which model–year vehicles will be subject to an OBD–focused Smog Check inspection, as mandated by H&S section 44012. This change requires gasoline–powered vehicles model–year 2000 and newer and diesel–powered vehicles model–year 1998 and newer to have an inspection on the OIS.

- g. Add subsection (b) to section 3340.42.

Subsection (b) was added to more clearly describe which vehicles are subject to a visual and functional inspection. The visual and functional tests are not new requirements. The details of the visual and functional tests were moved to the Smog Check Manual to reduce redundancy between regulation text and the Smog Check Manual.

- h. Remove subsection (c) in its entirety.

Testing procedures for heavy–duty vehicles have been moved to the Smog Check Manual for consistency and clarity.

- i. Add a new subsection (c) to regulation.

This subsection (c) was amended to provide for alternative inspection procedures for vehicles that present incompatibilities and 2000 and newer model–year vehicles with OBD systems that exhibit operational problems, as authorized by

H&S section 44012. Additionally, vehicles selected for testing pursuant to H&S section 44014.7 may receive an alternative Smog Check inspection.

- j. Amend subsection (d) subparagraphs (1) and (3) by making minor conforming changes.

Subparagraphs (1) and (3) were amended to correctly reference the gross polluter standards.

- k. Remove subsections (e) and (f) in their entirety. These requirements are described in subsection (b) subparagraphs (1) and (2). Additionally, detailed description of the inspection procedures is provided in the Smog Check Manual. The Smog Check Manual relies on simple, easily understood charts as a means to convey ideas that would otherwise require extensive regulation text. Placing the equipment requirements in one location ensures consistency and avoids potential conflicts between the Smog Check Manual and the regulation text.

- l. Remove the “Visible Smoke Test Failure Consumer Information Sheet” form SMOKE INFO (01/07) from regulations.

The “Visible Smoke Test Failure Consumer Information Sheet” was eliminated. This document is redundant as BAR already requires Smog Check stations to indicate on the Vehicle Inspection Report (VIR) and the consumer’s invoice if the vehicle has failed the Visible Smoke Test.

**10. Amend Section 3340.42.2 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Amend the title from “Pass/Fail Criteria for On-Board Diagnostic System Readiness Monitors” to “Test Methods and Standards for the On-Board Diagnostic Inspection”. This revision more accurately describes the contents of the regulatory section.

- b. Amend subsections (a) and (b) to add “Effective until the implementation of subsection (c),”.

These amended subsections allow the current On-Board Diagnostic (OBD) test methods and standards to remain in place until the OIS Smog Check equipment can be implemented that can enforce the proposed standards in subsection (c). The new OIS smog check equipment is targeted sometime after January 1, 2013.

- c. Add subsection (c) to adopt new OBD Smog Check standards.

Subparagraphs (1)–(8) of subsection (c) list all of the failure modes for the OBD test. Previously many of these requirements were dispersed in the

BAR–97 specifications, Smog Check Inspection Procedure Manual, and regulation text. These sections did not fully detail all of the OBD failure criteria. This amendment places all of the OBD failure criteria in one place and provides further detail as to when a vehicle will fail a portion of the OBD inspection.

Most of these criteria are currently applied during a Smog Check inspection. However, certain failure criteria have been added or modified due to the future OIS equipment. Below is a comprehensive description of the changes to subsection (c):

1. Currently, a Malfunction Indicator Light (MIL) inspection is performed on a vehicle. This regulatory action seeks to clarify and describe, in easily understandable language, the failure criteria for the MIL inspection.
2. At present, BAR regulations do not fully or adequately describe the OBD failure criteria. To address this concern BAR elaborated on the failure criteria to better inform consumers. For instance, a vehicle shall fail an OBD inspection if the OBD system reports that the MIL is commanded on, the OBD system reports a diagnostic trouble code (DTC), or the vehicle’s OBD system does not communicate with the Smog Check inspection equipment. Additionally, BAR modified the failure criteria of incomplete readiness monitors. This means: 1) gasoline-powered vehicles model-years 1996 through 1999 with more than one incomplete monitor will fail an inspection; 2) gasoline-powered vehicles model-years 2000 and newer with any incomplete monitor, excluding the evaporative system monitor, will fail an inspection; 3) diesel-powered vehicles model-years 1998 through 2006 with any incomplete monitors will fail an inspection; 4) diesel-powered vehicles model-years 2007 and newer with any incomplete monitors, excluding the particulate filter system monitor, will fail an inspection.
3. The planned OIS is able to gather more information than the BAR–97 EIS. As a result, additional OBD failure criteria have been added to regulation. The OIS will be able to determine whether the OBD system has been sufficiently operated to determine the presence or absence of a DTC, if the OBD system data is inappropriate for the vehicle being tested, or if an OBD system does not

match the original equipment manufacturer or Air Resources Board exempted OBD software configurations.

This amendment renumbered subsection (c) to section (d).

- d. Amend subsection (d) and subparagraphs (1) and (2) to modify the definitions used in the Test Methods and Standards for the On-Board Diagnostics Inspection section, specifically, the OBD and readiness monitors.

The definitions for On-Board Diagnostics and Readiness Monitor(s) were reworded for improved clarity.

- e. Add subsection (d) subparagraphs (3) and (4).  
Diagnostic Trouble Code and the Malfunction Indicator Light definition were added to this section because they are industry specific terms which are used in the Test Methods and Standards for the On-Board Diagnostics Inspection section.

**11. Amend Section 3340.45 of Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Amend the title of section 3340.45 from “Smog Check Inspection Procedures Manual” to “Smog Check Manual.”

This change is necessary because the manual will now include Smog Check repair requirements in addition to inspection requirements.

- b. Amend this section to specify an end date for the existing Smog Check Inspection Procedures Manual and specify and start date for the Smog Check Manual.

The majority of these changes are conforming, non-substantive changes to make the language match the rest of the regulation package. Also, this section changes the title of this reference manual from the “Smog Check Inspection Procedures Manual” to the “Smog Check Manual.” This name change was done to more accurately reflect the contents of the manual since the Manual now has required equipment also incorporated into the document. Finally this section adopts an updated version of the *Smog Check Manual* dated 2013.

**12. Amend Section 3394.5 of Article 11 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations, as follows:**

- a. Amend subsection (a)(9) by adding “or OBD Inspection System (OIS)” to the existing requirement.

This change is necessary because the OBD Inspection System (OIS) is the new piece of equipment to test newer model-year vehicles (2000 and newer). Without this addition these newer model-year vehicles would not be able to participate in CAP as they are currently allowed.

**CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

BAR has evaluated this regulatory proposal and it is not inconsistent, nor incompatible with existing state regulations.

As described in H&S section 44002, BAR is the state agency solely responsible for the development and implementation of the motor vehicle inspection program. The revisions being made during this regulatory package are consistent with USEPA regulations, specifically, Title 40, Part 51, the California Health and Safety Code, BAR regulations, and Air Resources Board (ARB) regulations.

**INCORPORATION BY REFERENCE**

Title 16 of the California Code of Regulations (CCR) section 3340.17 incorporates the *BAR OBD Inspection System Data Acquisitions Device Specification*, dated October 22, 2012. This document will be used by contractors during the development of the OIS equipment.

Title 16 of the CCR section 3340.17 incorporates the updated *Low Pressure Fuel Evaporative Tester Specifications*, dated January 2012. Updates to the LPFET Specifications have already been implemented by equipment manufacturers. Revisions to the specifications are being done to codify existing equipment requirements into statute.

Title 16 of the CCR section 3340.17 incorporates the updated *Specification and Certification Procedures for Calibration and Audit Gases Used in the California Emissions I/M Program*, dated January 2012. Updates to this document have already been implemented by gas blenders which sell gases to Smog Check stations for the use in the BAR-97 EIS. This change is necessary to codify existing requirements concerning audit gases in regulation.

Title 16 of the CCR section 3340.45 incorporates the *Smog Check Manual*, dated 2013. This document will be used by Smog Check inspectors as a guide to performing correct Smog Check inspections. Additionally, licensed Smog Check technicians can use the manual as a reference document for performing proper repairs. Station owners will be able to use the Manual to determine what equipment is required for their particular station.

The incorporation by reference of these documents is appropriate since publishing these documents in the CCR would be cumbersome, unduly expensive, impractical and unnecessary. If anyone should wish to examine the revised applications, they are available upon request from BAR. The revised documents will also be available for review throughout this rulemaking process and will be available on BAR's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).

**FISCAL IMPACT ON PUBLIC AGENCIES  
INCLUDING COSTS OR SAVINGS TO STATE  
AGENCIES AND COSTS/SAVINGS IN FEDERAL  
FUNDING TO THE STATE**

Costs associated with the development of the OIS specifications will be fully absorbed within existing resources. Costs associated with the certification of the DAD will be recovered from participating vendors as mandated by Health and Safety Code section 44036.

BAR anticipates that the development of inspection procedures for hybrid-powered vehicles will result in an additional \$2.2 million in revenue to the Vehicle Inspection and Repair Fund. This estimate is based on \$8.25 for each certificate of compliance and 271,246 hybrid inspections each year.

Additionally, modifications to the inspection procedures and the incorporation of hybrid-powered vehicles into the Smog Check Program may increase the number of vehicle owners that are eligible to participate in the Consumer Assistance Program (CAP) due to a greater number of vehicles failing a Smog Check inspection. However, participation in CAP is voluntary and based on the availability of funds. The minor changes to the CAP ineligible vehicles regulation only keep pace with adding the new OIS equipment to the Smog Check program. As a result, BAR does not anticipate any fiscal impact from the proposed changes.

This proposal will result in no costs or savings in federal funding to the state.

**NONDISCRETIONARY COSTS/SAVINGS TO  
LOCAL AGENCIES**

None.

**LOCAL MANDATE**

None.

**COSTS TO ANY LOCAL AGENCY OR  
SCHOOL DISTRICT FOR WHICH  
GOVERNMENT CODE SECTIONS 17500-17630  
REQUIRE REIMBURSEMENT**

None.

**BUSINESS IMPACT**

BAR has made an initial determination that the proposed regulation may have a significant statewide adverse economic impact directly affecting business. However, this proposed regulation will not affect the ability of California businesses to compete with businesses in other states.

**Smog Check Stations — Equipment**

*OBD Inspection System*

Smog Check stations opting to either participate in the STAR Program or to inspect 2000 and newer model-year vehicles must purchase the OIS. Equipment manufacturers will use the equipment specifications to build the DAD, which will then be certified by BAR for use in the Smog Check Program. The DAD will facilitate the transfer of data between a vehicle's OBD system and a computer enabled device. As required by AB 2289, the OIS cannot be implemented until 2013.

OBD inspection systems similar to the one proposed by BAR have been procured by other states. For instance, New York currently utilizes a single source vendor for its OBD inspection system, which costs \$2,666.91<sup>3</sup>. This system is bundled as a package and requires the use of components sold by a specific vendor. To address concerns associated with the current absence of interchangeable parts for the current BAR-97 EIS, BAR decided to set performance standards rather than prescribing specific brands of equipment. For instance, Smog Check station owners will be able to purchase any of the commercially available ancillary equipment (i.e., computer enabled device, monitor, printer, and a barcode scanner), which meets BAR performance standards, from any source. This flexibility will allow station owners to shop around for the lowest costing equipment or to use existing equipment (i.e., printer, computer enabled device, bar code scanner, etc.). As a result, BAR anticipates that the OIS may cost up to \$3,000.

Non-STAR certified Smog Check stations have flexible equipment requirements. This means stations are only required to possess the equipment, tools and reference materials for the types of vehicles being inspected.

<sup>3</sup> <http://www.nyvip.us/interior/configure.php>. A basic unit consists of a Lenovo ThinkCenter computer, Viewsonic 17" LCD color display, Lexmark inkjet printer, HHP3800 Barcode Scanner, and an Actron KM9020 OBDII Scan Kit.

This allows stations to make a business decision regarding whether it is cost-effective to continue to operate the BAR-97 EIS, or opt to purchase the OIS, or utilize both. For instance, a station can decide to inspect 1999 and older model-year vehicles with a BAR-97 EIS or inspect 2000 and newer model-year vehicles with the OIS or a combination of both.

This proposed regulatory action only requires STAR-certified stations to purchase the OIS. However, if all 7,200 active Smog Check stations purchase an OIS at an estimated total package cost of \$3,000, then the total statewide impact would be \$21.6 million (7,200 stations X \$3,000 = \$21.6 million).

*BAR-97 EIS*

Tailpipe emissions tests are required on most 1976 through 1999 model-year vehicles and must be performed on the BAR-97 EIS. As a result, the current tailpipe emissions test volume will diminish over time, while OBD-focused inspection volume will rise. Because many non-STAR Smog Check stations will have flexible equipment requirements, BAR anticipates that stations may choose to concentrate on OBD-focused inspections, thus eliminating overhead costs associated with the BAR-97 EIS.

Smog Check Stations — OBD Standards

This proposed regulatory action reduces the maximum number of incomplete OBD monitors a vehicle can be reporting at the time of a Smog Check inspection. As previously indicated, this modification will raise the Smog Check failure rate and result in up to an additional 183,159 gasoline-powered vehicles failing an inspection due to incomplete monitors annually. These gasoline-powered vehicles must be repaired in order to complete their vehicle registration process. Based on repair data entered into the BAR-97 EIS by Smog Check inspectors, BAR anticipates the average repair cost to be \$329.90.<sup>4</sup> It is estimated that consumers will spend \$60.4 million (183,159 failures x \$329.90 estimated repair cost = \$60.4 million) annually on repairs in order to bring a vehicle back into compliance with the Smog Check Program.

Additionally BAR data indicates that changing the number of allowable readiness monitors on 1998 and newer diesel-powered vehicles will raise the overall failure rate by 6.4%. As with the gasoline-powered vehicles, the actual failure rate may be 50% less. As a result, BAR anticipates a 3.2% increase to the failure rate or an additional 5,969 failures annually. These failures may result in an additional \$2 million being spent annually on the repair of diesel-powered vehicles (5,969 failures x \$329.90 estimated repair cost = \$2 million).

<sup>4</sup> As reported in the 2011 BAR Executive Summary, the average repair cost for a Smog Check failure was \$329.90.

Further, approximately 271,246 hybrid-powered vehicles that were previously exempted from the Program due to testing incompatibilities with the BAR-97 EIS, will now receive an OBD-focused inspection on the OIS. The incorporation of hybrid-powered vehicle inspection procedures will result in an estimated 271,246 additional Smog Check inspections and 10,044 inspection failures annually. As a result, BAR anticipates that the total statewide impact to individuals will be an additional **\$6.8 million** [(271,246 inspections X \$13 inspection cost) + (10,044 failures X \$329.90 repair cost)] to **\$12.3 million** [(271,246 inspections X \$33 inspection cost) + (10,044 failures X \$329.90 repair cost)] in inspection and repair services. This estimate is based on the proposed OBD-focused inspection cost between \$13 and \$33 per inspection and an average repair cost of \$329.90 as reported in the 2011 BAR Executive Summary.

Some costs to consumers will be offset through lower Smog Check inspection costs and improved air quality. As identified in the Air Resources Board's (ARB) March 2009 report, "Transitioning Away from Smog Check Tailpipe Emission Testing in California for OBD-II Equipped Vehicles" estimated that the cost of a Smog Check inspection would decrease by \$15 to \$35 from the current inspection cost. By applying this analysis to the current \$48 average Smog Check inspection cost, the proposed OBD-focused inspection may cost between \$13 and \$33 per inspection. In calendar year 2011, 6.2 million<sup>5</sup> vehicles that received a Smog Check inspection were model-year 2000 and newer. BAR estimates that consumers will save between \$93.0 million (\$15 decrease in inspection cost x 6.2 million = \$93.0 million) and \$217.0 million (\$35 decrease in inspection cost x 6.2 million = \$217.0 million) in the first full year of this regulation.

The proposed regulatory change may lower Smog Check station revenue by \$14.3 million to \$138.3 million annually. This estimate is based solely on the difference between the costs associated with additional repair work and lower inspection costs.

DAD Manufacturers

The manufacturers of the new DAD equipment are estimated to sell 7,200 units (current number of Smog Check stations) at an estimated cost of \$3,000 each for a total of \$21.6 million (7,200 stations X \$3,000 per DAD = \$21.6 million). The DAD manufacturers will be required to pay a \$10,000 certification fee to BAR to partially cover the costs of certification. The cost to certify each submitted device will grossly exceed \$10,000. Specifically, for each piece of equipment certified, BAR has estimated that it must purchase \$38,210 in

<sup>5</sup> BAR 2011 Executive Summary Report.

hardware and invest staff time that will at minimum cost \$166,977.

**BAR-97 EIS Manufacturers**

Currently, the BAR-97 EIS is manufactured by four vendors. When the BAR-97 EIS was first introduced in 1998, Smog Check stations made an initial investment by purchasing the BAR-97 EIS. As a result, demand for purchasing new BAR-97 EIS units has dissipated. The current BAR-97 EIS manufacturers derive a portion of their revenue from servicing the aging BAR-97 EIS. Because non-STAR Smog Check stations have flexible equipment requirements, BAR-97 EIS manufacturers may lose revenue associated with the maintenance of existing BAR-97 EIS units and the sale of new units.

BAR has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

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

BAR does not anticipate any new reporting, record-keeping or other compliance requirements as a result of the proposed action.

**COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

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

1. The implementation of the new OIS will save consumers time, may lower inspection costs, will help to improve air quality, and will help to lower Smog Check stations' equipment maintenance costs. As described below, consumers may save

between \$18.3 and \$147.8 million annually from lower inspection costs.

	Savings/Costs <sup>6</sup>	
	Low	High
OBD-Focused Inspection	(\$93.0)	(\$217.0)
Modified Inspection Procedures	\$74.7 <sup>7</sup>	\$69.2
Total	(\$18.3)	(\$147.8)

This translates to \$183 million to \$1.48 billion over the lifetime (10 years) of this proposed regulatory action.

2. Additionally, consumers that fail a Smog Check inspection may seek financial assistance to repair or retire their vehicles through BAR's Consumer Assistance Program (CAP). The Repair Assistance (RA) option helps to mitigate the cost of bringing a vehicle into compliance with the Smog Check Program. The RA option will provide income-eligible consumers up to \$500 in financial assistance toward emissions-related repairs. Further, consumers may elect to retire their vehicle and receive immediate compensation of \$1,000, or \$1,500 if income-eligible. Participation in CAP is subject to available funding.
3. It is anticipated that Smog Check stations will see a shift in revenue from inspections to repairs.

*BAR-97 EIS*

Non-STAR Smog Check stations will have flexible equipment requirements. BAR anticipates that some stations may choose to concentrate on OBD-focused inspections, thus reducing overhead costs associated with the BAR-97 EIS.

*OBD Standards*

As previously indicated, reducing the maximum number of incomplete readiness monitors a vehicle can report may result in an additional 183,159 gasoline-powered vehicles failing an inspection annually. Repairing these vehicles will result in an additional \$60.4 million (183,159 x

<sup>6</sup> Figures shown in millions.

<sup>7</sup> Consumers will likely spend an additional \$69.2 million to \$74.7 million on Smog Check inspection and/or repairs (\$60.4 million due to an additional 183,159 vehicle failing a Smog Check inspection, \$2 million due to an additional 5,969 diesel-powered vehicles failing an inspection, and \$6.8 million to \$12.3 million from additional inspections and repairs for hybrid-powered vehicles.

\$329.90 estimated repair cost = \$60.4 million) in annual station revenue.

Additionally, BAR anticipates that the readiness monitor changes will raise the overall diesel failure rate by approximately 3.2%. In turn, an additional 5,969 diesel failures will occur annually. These failures may result in an additional \$2 million being spent annually on the repair of diesel-powered vehicles (5,969 failures x \$329.90 estimated repair cost = \$2 million).

The incorporation of hybrid-powered vehicle inspection procedures will result in an estimated 271,246 additional Smog Check inspections and 10,044 inspection failures annually. As a result, BAR anticipates that stations will receive an additional \$6.8 million to \$12.3 million in inspection and repair services. This estimate is based on the proposed OBD-focused inspection cost between \$13 and \$33 per inspection and an average repair cost of \$329.90 as reported in the 2011 BAR Executive Summary.

EFFECT ON HOUSING COSTS

None.

EFFECT ON SMALL BUSINESS

BAR has determined that the proposed regulations would affect small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, the expansion of businesses, or worker safety in the State of California.

BAR has made an initial determination that the proposed regulatory action will have the following benefits to the health and welfare of California residents and the state's environment:

Recent studies such as the 2010 RAND Health Foundation report, *The Impact of Air Quality on Hospital Spending*, concluded that, "Meeting federal clean air standards would have prevented an estimated 29,808 hospital admissions and ER visits throughout California over 2005–2007. . . Failing to meet federal clean air standards cost health care purchasers/payers \$193,100,184 for hospital care alone. In other words, improved air quality would have reduced total spending on hospital care by \$193,100,184 in total."

Additionally, an ARB study, *Health Effects of Particulate Matter and Ozone Air Pollution*, November 2007,<sup>8</sup> identified significant health effects attributable to high levels of ozone. Polluting vehicles produce hydrocarbons and oxides of nitrogen which combine in the presence of sunlight to form bad ozone. The report stated that, "Ozone is a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation, and induces symptoms such as coughing, chest tightness, shortness of breath, worsening of asthma symptoms, and even death. Ozone in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The greatest risk is to those who are more active outdoors during smoggy periods, such as children, athletes, and outdoor workers. Exposure to levels of ozone above the current ambient air quality standard leads to lung inflammation and lung tissue damage, and a reduction in the amount of air inhaled into the lungs. Recent evidence has, for the first time, linked the onset of asthma to exposure to elevated ozone levels in exercising children (McConnell, 2002). These levels of ozone also reduce crop and timber yields, damage native plants, and damage materials such as rubber, paints, fabric, and plastics."

Further, a recent study by USEPA, *Estimating the National Public Health Burden Associated with Exposure to Ambient PM2.5 and Ozone*, found that, "Ground-level ozone (O<sub>3</sub>) and fine particulate matter (PM<sub>2.5</sub>) are associated with increased risk of mortality. . . Using PM<sub>2.5</sub> and O<sub>3</sub> mortality risk coefficients drawn from the long-term American Cancer Society (ACS) cohort study and National Mortality and Morbidity Air Pollution Study (NMMAPS), respectively, we estimate 130,000 PM<sub>2.5</sub>-related deaths and 4,700 ozone-related deaths to result from 2005 air quality levels. Among populations aged 65–99, we estimate nearly 1.1 million life years lost from PM<sub>2.5</sub> exposure and approximately 36,000 life years lost from ozone exposure. Among the 10 most populous counties, the percentage of deaths attributable to PM<sub>2.5</sub> and ozone ranges from 3.5% in San Jose to 10% in Los Angeles. These results show that despite significant improvements in air quality in recent decades, recent levels of PM<sub>2.5</sub> and ozone still pose a nontrivial risk to public health."

These recent studies suggest that, although California air quality has improved, additional reductions to smog-forming pollutants are necessary. Revisions to the number of permissible unmet OBD readiness monitors will likely increase the Smog Check failure rate. Further, by developing alternative inspection procedures for vehicles currently incompatible with the

<sup>8</sup>[http://www.arb.ca.gov/research/health/fs/pm\\_ozone-fs.pdf](http://www.arb.ca.gov/research/health/fs/pm_ozone-fs.pdf)

BAR-97 EIS, BAR will actually be able to inspect these vehicles as part of the Smog Check Program. Each of these actions will help contribute to an overall reduction in pollution.

#### CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

BAR has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10949 North Mather Blvd., Rancho Cordova, California, 95670.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file. Further, the express terms, Initial Statement of Reasons, and information upon which the proposed regulations are based is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

#### CONTACT PERSON

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

Greg Coburn  
Bureau of Automotive Repair  
10949 North Mather Blvd.  
Rancho Cordova, California, 95670  
Telephone: (916) 403-0154  
E-mail: greg.coburn@dca.ca.gov

**The backup contact person is:**

Paul Hedglin  
Bureau of Automotive Repair  
10949 North Mather Blvd.  
Rancho Cordova, California, 95670  
Telephone: (916) 403-0223  
E-mail: paul.hedglin@dca.ca.gov

#### WEB SITE ACCESS

Materials regarding this proposal can also be found on BAR's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).

<b>GENERAL PUBLIC INTEREST</b>
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#### DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public  
Interest Notice  
For Publication January 4

#### PROPOSED RESEARCH ON FULLY PROTECTED SPECIES

Conduct Los Angeles Department of Power and  
Water Flood Maintenance Division's Soft-bottom  
Channel Maintenance Program

The Department of Fish and Game ("Department") received a research proposal from Carl Demetropoulos of BonTerra Consulting is requesting authorization to conduct fishery surveys that involve the capturing and handling of unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), a Fully Protected Fish, for research purposes, consistent with the protection and recovery of the species.

The applicant is required to have a Fully Protected Species Memorandum of Understanding (FPSMOU) to take protected species of fish. Permit conditions also require that the holder of a State research MOU obtain special authorization from the Department for research on Fully Protected Species. The applicant has the re-

quired State MOU for research in the project area and has applied for a Fully Protected Species Memorandum of Understanding to permit him to collect the unarmored threespine stickleback, a Fully Protected Species, in addition to the work outlined in the standard State research MOU already issued.

Under the annual Channel Emergency Clearing Biological Monitoring being conducted by BonTerra Consulting for Los Angeles County Department of Public Works (LACDPW), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) are surveyed for presence/absence (Scheduled for August–October, 2013). This will occur at about 100 soft–bottom channel reaches spread throughout Los Angeles County from the Santa Clarita area east along the base of the San Gabriel Mountains to Azusa. Yearly preconstruction presence/absence surveys are being conducted for UTS in order to avoid potential impacts from repair activities during debris removal and/or river diversion activities. Survey teams will consist of 2–3 people with at least 1 permitted biologist per team. Methods for capturing fish will utilize a 10 x 5–foot 1/8–inch woven mesh seine, small hand nets, and minnow traps. Minnow traps will be left to soak overnight and cleared out each morning. Locations for minnow trapping will be sampled for crayfish prior to gear deployment. If crayfish are present minnow traps will not be used. Sampling locations will be selected based on the presence of typically suitable habitat coupled with construction activities. At each sample site, the stream will be sampled for fish and general habitat characteristics will be recorded. Any fish present will be identified along with other special–status aquatic wildlife species observed. No fish will be relocated outside of the reach, no clearing activities would be performed if the unarmored threespine stickleback are found or, in the case of Reaches 71 and 82 under the Biological Opinion File No. 98–0002701–AOA, no clearing activities will be performed unless delaying these activities is not possible. Then the LACDPW can perform the clearing activities, but only by hand and allowing a 10–foot buffer of vegetation to remain. Further, the hand clearing will be monitored by Carl Demetropoulos.

Only experienced personnel will conduct sampling. The Department intends to issue, under specified conditions, a Fully Protected Species MOU that would authorize the applicant to carry out the proposed activities. Detailed prescriptions for sampling and handling the rough sculpin are included in the applicant’s Fully Protected Species MOU. Additional locations and/or methods may be authorized by the Department for future projects.

Pursuant to California Fish and Game Code (FGC) Section 5515(a)(1), the Department may authorize take of Fully Protected Fish after 30 days’ notice has been

provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 5515 for take of Fully Protected Fish, it would issue the authorization on or after March 1, 2013 for an initial term of one year.

Contact: Fisheries Branch, Nongame Native Fish Program, 830 S Street, Sacramento, CA 95811, Attn.: Daniel Kratville.

## DEPARTMENT OF FISH AND GAME

Department of Fish and Game —  
Public Interest Notice  
For Publication January 4, 2013  
PROPOSED RESEARCH ON FULLY  
PROTECTED SPECIES

Lost River Sucker, Modoc Sucker and Shortnose  
Sucker in Modoc and Siskiyou Counties

The Department of Fish and Game (Department) received a project proposal from Nolan Banish of U.S. Fish and Wildlife Service (Service) requesting authorization to conduct research capturing Lost River sucker (*Deltistes luxatus*), Modoc sucker (*Catostomus microps*) and shortnose sucker (*Chasmistes brevirostris*), Fully Protected Fishes, to conduct surveys and research, and ultimately improve survival of these fish, consistent with the protection and recovery of the species.

The applicant has a valid United States Fish and Wildlife Service (Service) Section 10 recovery permit for research on Lost River sucker, shortnose sucker, and Modoc sucker (suckers), Fully Protected Species. The proposed research is being conducted by the Service in support of the ongoing study for the recovery of the endangered suckers in the Klamath Basin. The applicant proposes to use trammel nets, electrofishing, snorkeling, dip netting, seines, cast or drop nets, weir and catch boxes, or rotary traps to capture suckers in Modoc and Siskiyou counties. Suckers may be reared in cages for studying the effects of water quality, and studies on reproduction and pathology.

Adult and juvenile suckers will be identified, measured, enumerated and scanned for Passive Integrated Transponder (PIT) tags. If no PIT tag is present, one will be implanted so that recruitment into the adult spawning population can be monitored in future years. External radio tags may also be used. Tissue samples may be collected for genetic analysis. Specimens may be collected for laboratory identification, water quality and pathology activities.

Only experienced personnel will conduct sampling. Detailed prescriptions for sampling and handling suck-

ers will be included in the applicant’s Fully Protected Species MOU, if issued. Additional locations and/or methods may be authorized by the Department for future projects.

Pursuant to California Fish and Game Code (FGC) Section 5515(a)(1), the Department may authorize take of Fully Protected Fish after 30 days’ notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 5515 for take of Fully Protected Fish, it would issue the authorization in the form of an MOU on or after February 4, 2013 for an initial term through December 31, 2014, when the current Federal Section 10 permit expires. This MOU may be renewed as long as the Federal Section 10 permit is renewed and the State research MOU permit is current.

Contact: Region 1, 1625 S. Main Street Yreka, CA 96097, Attn: Jennifer Bull.

**DEPARTMENT OF FISH AND GAME**

Department of Fish and Game —  
Public Interest Notice  
For Publication January 4, 2013  
PROPOSED RESEARCH ON FULLY  
PROTECTED SPECIES  
American Peregrine Falcon

The Department of Fish and Game (“Department”) received a proposal on November 26, 2012, from Joel Pagel (“Applicant”), with the U.S. Fish and Wildlife Service, requesting authorization to take (capture, band, and relocate) American peregrine falcons (*Falco peregrinus anatum*) (peregrine), a Fully Protected subspecies, for the purpose of assisting with recovery of the California least tern (*Sternula antillarum browni*) (least tern), a Fully Protected subspecies and western snowy plover (*Charadrius alexandrinus nivosus*) (plover), a Federally Threatened species. This work would be conducted in the counties of San Diego, Orange, Los Angeles, Ventura, Santa Barbara, Monterey, Imperial, Riverside, and Santa Cruz. Additionally, the applicant’s proposal requests authorization to monitor peregrines throughout the state including capture, nest entry, banding, blood and feather sampling, collection of addled eggs and egg fragments, and collection of prey remains.

The applicant is in the process of obtaining the required Scientific Collecting Permit (SCP). Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The proposed activities will be conducted with standardized methods authorized by the

Department. Capturing, handling, banding, and relocation of peregrines are not likely to have any adverse effects on the species, and will contribute to recovery of the plover and least tern. The proposed research is consistent with protection and recovery of the least tern and plover because it helps to identify, assess, and alleviate threats from predators. The additional research is consistent with conservation of the peregrine and will facilitate a better understanding of its life history and possible threats. The Department may issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize the applicant to carry out the proposed activities.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected Birds after 30 days’ notice has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after February 3, 2013, for an initial term of two years. The term may be extended with Department authorization. Contact: Wildlife Branch, 1812 9th Street, Sacramento, CA 95811, Attn.: Carie Battistone.

**DEPARTMENT OF FISH AND GAME**

CALIFORNIA ENDANGERED SPECIES ACT  
CONSISTENCY DETERMINATION NO.  
2080–2012–015–06

**Project:** Meridian Business Park Project  
**Location:** Riverside County  
**Applicant:** March Joint Powers Authority (JPA)  
**Notifier:** Best Best & Krieger, LLP

**Background**

March Joint Powers Authority (Applicant) proposes to construct the Meridian Business Park Project (Project) by widening Van Buren Boulevard from 28 feet to 65 feet (ft.), constructing a 9.5-acre detention basin, constructing an outlet structure and culvert under Van Buren Boulevard, and constructing the commercial/industrial build-out of the south campus area. The Project also includes the relocation and enhancement of the riparian drainage adjacent to Van Buren Boulevard (2.3 acres), the restoration of a historic drainage onsite (1.9 acres), and the restoration of riparian habitat (0.06 acres) within a drainage damaged during grading activities. The Applicant will preserve and provide long-term management of approximately 187 acres of resto-

ration areas, riparian drainage areas, and upland buffer areas through the recordation of two conservation easements. Construction activities are anticipated to be completed within 3 years of receiving the U.S. Army Corps of Engineers (Corps) individual permit pursuant to section 404 of the Clean Water Act (404 permit) and the Department of Fish and Game (DFG) Streambed Alteration Agreement.

The Project activities described above are expected to incidentally take<sup>1</sup> least Bell's vireo (*Vireo belli pusillus*) (vireo) and Stephens' kangaroo rat (*Dipodomys stephensi*) (SKR). Vireo is designated as an endangered species pursuant to the federal ESA (16 U.S.C. § 1531 *et seq.*) and an endangered species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See Cal. Code Regs., tit. 14, § 670.5, subd. (a)(5)(I)). SKR is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and a threatened species pursuant to the CESA (Fish & G. Code, § 2050 *et seq.*). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(6)(C).)

The Project activities described above are expected to result in incidental take of vireo due to the direct loss of breeding, sheltering, and/or foraging areas. Additionally, displaced vireo may experience decreased fitness due to the increased energy and time spent competing for and/or finding new territories. This displacement may delay nest building, result in fewer nesting attempts, reduce clutch size, and result in an overall reduction in reproductive output. The Project activities are additionally expected to result in incidental take of SKR as a result of grading, site preparation, and ultimate development of occupied and suitable habitats within and adjacent to the proposed project areas.

Vireo surveys identified nine breeding territories in 2007 and 13 territories in 2008. Because of the documented vireo breeding territories and the presence of approximately 79 acres of suitable vireo habitat within the Project site, the United States Fish and Wildlife Service (Service) determined that vireo is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of vireo. According to the Service, the Project will result in the temporary loss of 0.5 acre and the permanent loss of 3.0 acres of vireo breeding, sheltering, and/or foraging habitat.

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

The Project is a continuation of the Applicant's 1999 Disposal and Reuse of March Air Force Base project (Reuse Plan) that was postponed due to fluctuations in the economy. During the delay in construction, site conditions changed and vireo was discovered within the Project site. Because the Reuse Plan was expected to result in incidental take of a species designated as endangered under the federal Endangered Species Act (ESA), the Corps consulted with the Service. On November 9, 1999, the Service issued a biological opinion (Service Ref. No. 1-6-99-F-13) (1999 BO) to the Corps addressing impacts to SKR associated with the Reuse Plan. The 1999 BO describes the Reuse Plan and requires the Applicant to comply with terms of the 1999 BO, its related incidental take statement (ITS), and incorporated additional measures.

On December 13, 1999, the Director of DFG received a notice from Best Best and Krieger, LLP, on behalf of the Applicant, requesting a determination pursuant to Fish and Game Code section 2080.1 that the 1999 BO and related ITS were consistent with the California Endangered Species Act (CESA) for purposes of the Reuse Plan and SKR. On January 12, 2000, DFG determined that the 1999 BO and its related ITS were consistent with CESA for purposes of the Reuse Plan (DFG Ref. No. 2080-1999-056-06).

Because the Applicant applied for a new 404 permit for the Project (Reuse Plan 404 permit expired in 2006), and new information revealed the Project was expected to result in incidental take of vireo, a species designated as endangered under the federal ESA, the Corps reinitiated consultation with the Service. On October 14, 2009, the Service issued a biological opinion (Service Ref. No. FWS-WRIV-09B0221-09F1185) (2009 BO) to the Corps. The 2009 BO describes the Project, including conservation measures developed to minimize impacts to vireo, requires the Applicant to comply with terms of the 2009 BO and its related ITS, and sets forth measures to mitigate impacts to vireo and its habitat.

On November 21, 2012, the Director of DFG received a notice from Best Best and Krieger, LLP, on behalf of the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the 2009 BO and its related ITS are consistent with CESA for purposes of the Project and vireo. (Cal. Reg. Notice Register 2012, No. 49-Z, p. 1774.)

### Determination

DFG has determined that the 1999 BO and 2009 BO and the respective related incidental take statements are consistent with CESA as to the Project and the anticipated incidental take of SKR and vireo because the mitigation measures contained in the 1999 BO and 2009 BOs and respective related incidental take statements meet the conditions set forth in Fish and Game Code

section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species.

This determination supersedes and replaces the prior consistency determination (DFG Ref. No. 2080-1999-056-06) issued by DFG on January 12, 2000. Specifically, DFG finds that: (1) take of SKR and vireo will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the 1999 BO and 2009 BO and respective related incidental take statements will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of SKR or vireo. The mitigation measures contained in the 1999 BO and 2009 BO and respective related incidental take statements include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Applicant will ensure the successful establishment of 4.2 acres of vireo habitat within mitigation areas. Applicant will record a conservation easement over 187 acres to ensure the long-term protection of the restored riparian habitats, existing occupied vireo habitat, and adjacent upland buffers. Conservation easement areas will be managed in perpetuity by an appropriate managing entity.
- Applicant shall submit draft conservation easements to Carlsbad Fish and Wildlife Office (CFWO), Corps, and DFG for review and approval. The conservation easements will be recorded prior to impacts to riparian habitat and waters of the U.S., excluding the concrete channel within Meridian Unit 4. Copies of the recorded conservation easements will be provided to the CFWO, Corps, and DFG within 5 days of recordation.
- Applicant will conduct all vegetation clearing outside of the vireo breeding season (March 1 through April 15), to avoid direct take of eggs and chicks.
- Applicant will ensure construction activities associated with the widening of Van Buren Boulevard and all lots adjacent to occupied vireo habitat will be restricted during the vireo breeding season in order to avoid indirect impacts to vireo from increased noise levels. In the event that construction activities must occur during the breeding season, sound reduction measures (e.g. noise walls or berms) and sound monitoring by qualified biologists will be implemented.

- The managing conservancy will be responsible for the placement and monitoring of two brown-headed cowbird (*Molothrus ater*) traps within the conservation easement areas and ensure maximum effectiveness. Results of the brown-headed cowbird trapping will be submitted to the CFWO and DFG for review and approval as part of the management plan for the Meridian easements.
- A biological monitor will be present during habitat clearing and construction within waters of the U.S. and riparian areas to ensure that activities are performed in accordance with terms and conditions of the 2009 BO, 404 permit, and final streambed alteration agreement as amended by DFG.
- Applicant will conduct any maintenance of the headwall/culvert underneath Van Buren Boulevard outside the vireo breeding season.

Monitoring and Reporting Measures

- A qualified biologist will provide a report to the Service reporting the level of incidental take of vireo. No later than 30 days following the removal of riparian habitat for each phase of the Project, a qualified biologist will provide a report to the Service documenting that the Project resulted in no more than 3.0 acres of permanent and 0.5 acres of temporary impacts to vireo habitat and that vegetation clearing activities were completed outside of the vireo breeding season. Although not a condition of the 2009 BO, DFG requests a copy of each report as well.
- Consultation will be reinitiated and the reasonable and prudent measures described in the 1999 BO will be reviewed with the Service if, during the course of the Reuse Plan, more than 105 acres of SKR habitat needs to be taken. Although not a condition of the 1999 BO, DFG requests to be notified as well.
- Applicant will provide notice to the Service that offsetting measures for SKR impacts on the open space area have been implemented prior to ground-disturbing activities associated with the Reuse Plan. Although not a condition of the 1999 BO, DFG requests a copy of this notice as well.

Financial Assurances

- Applicant will provide a draft Property Analysis Report (PAR) for determining management costs, funding mechanism, and the identity of the long-term biological management entity to the Corps, CFWO, and DFG for review and approval prior to initiating impacts to riparian habitat and

waters of the U.S., with exception of the concrete channel within Meridian Unit 4. In compliance with a condition of the 2009 BO, the Applicant submitted the PAR to the Corps, CFWO, and DFG in a letter dated August 23, 2012. The results of the PAR indicate the initial and capital costs are \$46,634 and in order to provide annual costs of \$39,342 to perpetually manage the 187-acre conservation areas, the Applicant is responsible for establishing a non-wasting endowment for \$1,124,048.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of vireo and SKR, provided the Applicant implements the Project as described in the 1999 BO and 2009 BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the 1999 BO and 2009 BO and respective related incidental take statements.

If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces either BO or ITS, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from DFG (See generally Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)). This determination replaces DFG's prior determination (DFG Ref. No. 2080-1999-056-06) issued by DFG on January 12, 2000.

**DISAPPROVAL DECISION**

**DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS**

Printed below are the summaries of Office of Administrative Law disapproval decisions. The full text of disapproval decisions is available at [www.oal.ca.gov](http://www.oal.ca.gov) under the "Publications" tab. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225 — FAX (916) 323-6826. Please request by OAL file number.

**VETERINARY MEDICAL BOARD**

**State of California  
Office of Administrative Law**

**In re: Veterinary Medical Board**

**Regulatory Action: Title 16**

**California Code of Regulations**

**Adopt sections: 2030.05, 2030.3, 2032.05, 2032.15, 2032.25, 2032.35**

**Amend sections: 2030, 2030.1, 2030.2, 2032.1, 2032.2, 2032.3, 2032.4, 2037**

**DECISION OF DISAPPROVAL OF REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL File No. 2012-1026-01 S**

**SUMMARY OF REGULATORY ACTION**

The Veterinary Medical Board (Board) proposed this regulatory action to adopt six regulations and to amend eight regulations pertaining to the practice of veterinary treatment of animals under title 16 of the California Code of Regulations. The proposed action was intended to update the minimum standards of practice to accommodate changes in technology and veterinary practice, as well as provide additional protection to consumers in areas not covered in the existing regulations.

Among other things, the proposed action would provide general cleanup of existing regulations to enhance clarity, enhance communications between veterinarians and clients, including the communication of the availability of emergency veterinarian services, and improve sanitary conditions of various premises where veterinarians treat or perform surgery on animals. The proposed action would also establish provisions for the responsibility of a registered licensee-manager over veterinary premises activities and conditions, provisions for small animal vaccination clinics, a provision for humane treatment of animals under anesthesia, and provisions that would allow an animal owner to obtain continued animal treatment or fill prescriptions for animals, as specified, in the absence of the originally treating veterinarian. Finally, the proposed action would provide that the use of a dental scaler on an animal's teeth constitutes a "dental operation" as used in Business and Professions Code section 4826(d).

**CONCLUSION**

OAL has disapproved the Board's rulemaking action because it failed to meet the necessity and clarity standards of Government Code section 11349.1, and the final statement of reasons did not contain an adequate summary and response to each of the comments submitted to the Board during the regulatory action, as required by Government Code section 11346.9(a)(3).

Date: December 19, 2012 /s/ \_\_\_\_\_  
 Richard L. Smith  
 Senior Counsel  
 FOR: DEBRAM. CORNEZ  
 Director  
 Original: Susan Geranen  
 Copy: Ethan Mathes

**PROPOSITION 65**

**OFFICE OF ENVIRONMENTAL  
 HEALTH HAZARD ASSESSMENT**

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

**NOTICE TO INTERESTED PARTIES  
 JANUARY 4, 2013**

**DIENESTROL DELISTED EFFECTIVE  
 JANUARY 4, 2013  
 FROM THE LIST OF CHEMICALS KNOWN TO  
 THE STATE OF CALIFORNIA TO CAUSE  
 CANCER**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) is removing *dienestrol* [CAS No. 84–17–3] from the list of chemicals known to the state to cause cancer, for purposes of Proposition 65<sup>1</sup>. The delisting of *dienestrol* is effective **JANUARY 4, 2013**.

*Dienestrol*, a non-steroidal estrogen no longer prescribed for use in the U.S., was originally added to the Proposition 65 list on January 1, 1990 pursuant to Labor Code Section 6382(d), which is incorporated by reference as a Proposition 65 listing mechanism by Health and Safety Code Section 25249.8(a). Labor Code Section 6382(d) requires OEHHA to add chemicals known to cause cancer that are “within the scope of the federal

Hazard Communication Standard (29 CFR 1910.1200)” to the Proposition 65 list.

*Dienestrol* was listed based on its identification by the International Agency for Research on Cancer as a Group 2B chemical: *Possibly carcinogenic to humans* in 1982, based on limited evidence of carcinogenicity in humans and inadequate evidence in animals (IARC, 1982). IARC last reviewed *dienestrol* in 1987, finding there was *limited evidence* of carcinogenicity in animals (IARC, 1987).

OEHHA’s removal of this chemical from the Proposition 65 list is required by a recent decision by the Third District Court of Appeal in the *Styrene Information and Research Council v. The Office of Environmental Health Hazard Assessment*<sup>2</sup>. The Appellate court held that OEHHA may not list a chemical as causing cancer under Proposition 65 pursuant to Labor Code section 6382(d), solely on the basis of its identification by the International Agency for Research on Cancer (IARC) as being *possibly carcinogenic to humans (Group 2B)*, where that determination is based on less than sufficient evidence of carcinogenicity in humans and animals. Therefore, *dienestrol* is being removed from the list at this time. No other basis for listing has been identified by OEHHA.

A complete, updated chemical list is published on the OEHHA website at [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

**References**

International Agency for Research on Cancer (IARC, 1982). IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans. Chemicals, Industrial Processes and Industries Associated with Cancer in Humans. IARC Monographs, Volumes 1 to 29. IARC Monographs Supplement 4, pp. 16, 20, 183–184. IARC, Lyon France. Available at URL: <http://monographs.iarc.fr/ENG/Monographs/suppl4/index.php> [Accessed December 10, 2012].

International Agency for Research on Cancer (IARC, 1987). IARC Monographs on the Evaluation of the Carcinogenic Risks to Humans. Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42. Supplement 7, pp. 68, 278–279. IARC, Lyon France. Available at URL: <http://monographs.iarc.fr/ENG/Monographs/suppl7/index.php> [Accessed December 10, 2012].

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

<sup>2</sup> *SIRC v OEHHA* (Nov. 15, 2012) Westlaw No. 5834844.

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE TO INTERESTED PARTIES  
REGARDING CERTAIN IARC  
(INTERNATIONAL AGENCY FOR RESEARCH  
ON CANCER) 2B CHEMICALS**

**JANUARY 4, 2013**

The Third District Court of Appeal recently issued a decision in the *Styrene Information and Research Council v. The Office of Environmental Health Hazard Assessment* case<sup>1</sup>. The court held that the Office of Environmental Health Hazard Assessment (OEHHA) may not list a chemical as causing cancer under Proposition 65<sup>2</sup> pursuant to the Labor Code mechanism set out in Health and Safety Code section 25249.8(a), referencing Labor Code section 6382(d), solely on the basis of its identification by the International Agency for Research on Cancer (IARC) as being *possibly carcinogenic to humans* (Group 2B), where that determination is based on less than sufficient evidence of carcinogenicity in humans and animals.

<sup>1</sup> *SIRC v OEHHA* (Nov. 15, 2012) Westlaw No. 5834844

<sup>2</sup> Health and Safety Code section 25249.5 *et seq.*, commonly known as "Proposition 65."

The court's ruling does not affect OEHHA's duty to list chemicals identified by IARC as *possibly carcinogenic to humans*, where the determination is based on *sufficient* evidence of carcinogenicity in either humans or laboratory animals, nor does the ruling affect OEHHA's duty to list chemicals identified pursuant to other listing mechanisms. A copy of the court's decision is available on its website at:

<http://www.lexisnexis.com/clients/CACourts/>.

The language in the court's ruling applies to ten chemicals, including four chemicals that are on the Proposition 65 list and six chemicals that had been proposed for listing. The four chemicals on the Proposition 65 list are actinomycin D, chloramphenicol, dienestrol and phenacetin. Since these four chemicals were identified by IARC as "Group 2B" chemicals with *less than sufficient* animal and human evidence at the time they were listed, OEHHA is required to review the basis for listing these chemicals.

The Court's decision also applies to six chemicals that were previously proposed for listing on June 12, 2009: bleomycins, chlorophenoxy herbicides, marine diesel fuel, progestins, styrene and vinyl acetate. (See *California Regulatory Notice Register* No. 24-Z, page 924).

OEHHA is announcing that it will take the following actions on these chemicals based on the court's decision. Separate Notices for these actions are being issued concurrently with this notice.

CHEMICALS CURRENTLY ON THE PROPOSITION 65 LIST

CHEMICAL	CAS NUMBER	ACTION
Actinomycin D	50-76-0	Issue Notice of Intent to Change Basis for Listing to Formally Required to be Labeled or Identified as Causing Cancer based on the U.S. FDA-approved cancer warning.
Chloramphenicol	56-75-7	Remove from the list as there is no other basis for listing at this time.
Phenacetin	62-44-2	No change, as phenacetin is currently identified by the International Agency for Research on Cancer as a "Group 1" known human carcinogen.
Dienestrol	84-17-3	Remove from the list, as there is no other basis for listing at this time.

CHEMICALS PREVIOUSLY PROPOSED FOR LISTING

CHEMICAL	CAS NUMBER	ACTION
Bleomycins	---	Remove from consideration for listing via the Labor Code mechanism.
Progestins	---	Remove from consideration for listing via the Labor Code mechanism.
Chlorophenoxy herbicides	---	Remove from consideration for listing via the Labor Code mechanism.
Diesel fuel, marine	---	Remove from consideration for listing via the Labor Code mechanism.
Vinyl acetate	108-05-4	Remove from consideration for listing via the Labor Code mechanism.
Styrene	100-42-5	Re-issue Notice of Intent to List via Labor Code mechanism based on National Toxicology Program's listing in the Report on Carcinogens and finding of sufficient evidence of carcinogenicity in experimental animals.

For questions regarding this notice, please contact: Cynthia Oshita at (916) 445-6900 or email [Cynthia.oshita@oehha.ca.gov](mailto:Cynthia.oshita@oehha.ca.gov).

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE OF INTENT TO LIST STYRENE BY  
THE LABOR CODE MECHANISM**

**JANUARY 4, 2013**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) intends to list the chemical identified in the table below as known to the State to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986. The Act, commonly known as Proposition 65, is codified in Health and Safety Code section 25249.5 *et seq.* This action is being taken pursuant to the Labor Code mechanism contained in Health and Safety Code section 25249.8(a).

Chemical	CAS No.	Endpoint	Reference
Styrene	100-42-5	Cancer	NTP (2011)

**Background on listing by the Labor Code mechanism:** Health and Safety Code section 25249.8(a) incorporates California Labor Code sections 6382(b)(1) and 6382(d) into Proposition 65. Labor Code section 6382(d) incorporates chemicals or substances within the scope of the federal Hazard Communication Standards<sup>1</sup>. The federal regulations, in turn, identify the National Toxicology Program (NTP) as a source for identifying chemicals that cause cancer<sup>2</sup>. The NTP listing criteria and the process for report preparation and scientific peer review are described in the Report on Carcinogens<sup>3</sup>.

As the lead agency for the implementation of Proposition 65, OEHHA evaluates whether this chemical listing is required by Proposition 65.

<sup>1</sup> Title 29, Code of Federal Regulations section 1910.1200.

<sup>2</sup> Mandatory Appendix A, Title 29, Code of Federal Regulations section 1910.1200.

<sup>3</sup> National Toxicology Program, Report on Carcinogens, Twelfth Edition, U.S. Department of Health and Human Services, Public Health Service, 2011, pages 4, 8-10. Available online at: <http://ntp.niehs.nih.gov/ntp/roc/twelfth/roc12.pdf>.

**OEHHA's determination:** *Styrene* meets the requirements for listing as known to the state to cause cancer for the purposes of Proposition 65.

In 2011, NTP published the Twelfth Edition of its *Report on Carcinogens* (NTP, 2011). In that report, NTP concluded that styrene is “‘*reasonably anticipated to be a human carcinogen*’ based on limited evidence of carcinogenicity from studies in humans, sufficient evidence of carcinogenicity from studies in experimental animals, and supporting data on mechanisms of carcinogenesis.” Therefore, this substance meets the requirements of Labor Code section 6382(d). The proposed listing also meets the standard set out in the recent Court of Appeal decision in the *Styrene Information and Research Council v Office of Environmental Health Hazard Assessment* (3<sup>rd</sup> District, Nov. 15, 2012) case because the NTP conclusion is based on sufficient evidence of carcinogenicity in experimental animals.

**Opportunity for comment:** OEHHA is providing this opportunity to comment as to whether the chemical identified above meets the requirements for listing as causing cancer specified in Health and Safety Code section 25249.8(a). Because this is a ministerial listing<sup>4</sup>, comments should be limited to whether the NTP Report on Carcinogens has identified the specific chemical or substance as a human carcinogen or potential human carcinogen. Under this listing mechanism, OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by NTP when it identified this chemical and will not respond to such comments if they are submitted.

**OEHHA must receive comments by 5:00 p.m. on MONDAY, FEBRUARY 4, 2013.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov), and should include “NOIL for styrene” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below. A public workshop will be held only upon request. Such request must be made in writing within 10 days from the publication of this notice to Cynthia Oshita of OEHHA via email at [Cynthia.oshita@oehha.ca.gov](mailto:Cynthia.oshita@oehha.ca.gov) or to the attention of Cynthia Oshita at the address listed below:

<sup>4</sup> *Chamber of Commerce v OEHHA* (2011) 196 Cal App 4<sup>th</sup> 233, OEHHA has a ministerial duty to list carcinogens and reproductive toxins identified via Health and Safety Code section 25249.8(a).

**Mailing Address:** Ms. Cynthia Oshita  
Office of Environmental  
Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, California  
95812-4010  
**Fax:** (916) 323-8803  
**Street Address:** 1001 I Street  
Sacramento, California 95814

Any public comments received will be posted after the close of the comment period. If you have any questions, please contact Ms. Oshita at [Cynthia.Oshita@oehha.ca.gov](mailto:Cynthia.Oshita@oehha.ca.gov) or at (916) 445-6900.

**References**

National Toxicology Program (NTP, 2011). Report on Carcinogens, Twelfth Edition, U.S. Department of Health and Human Services, Public Health Service, NTP, Research Triangle Park, North Carolina, page 383. Available at URL: <http://ntp.niehs.nih.gov/ntp/roc/twelfth/profiles/Styrene.pdf>.

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE OF INTENT TO CHANGE THE BASIS  
FOR LISTING AS KNOWN TO THE STATE OF  
CALIFORNIA TO CAUSE CANCER:  
ACTINOMYCIN D**

**JANUARY 4, 2013**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to change the basis for the listing of *actinomycin D* as known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986<sup>1</sup>. *Actinomycin D* was originally added to the Proposition 65 list as causing cancer on October 1, 1989 via the Labor Code mechanism<sup>2</sup>. OEHHA intends to change the basis to the “formally required to be la-

beled or identified” listing mechanism<sup>3</sup>. OEHHA intends to take this action pursuant to a recent decision by the Third District Court of Appeal in the *Styrene Information and Research Council v. The Office of Environmental Health Hazard Assessment* case<sup>4</sup>. (See also OEHHA’s Notice to Interested Parties Regarding Certain IARC 2B Chemicals).

Chemical	CAS No.	Endpoint	Reference
Actinomycin D	50-76-0	Cancer	FDA (2012)

**Background on listing via the formally required to be labeled or identified mechanism:** A chemical must be listed under the Proposition 65<sup>5</sup> and its implementing regulations (Section 25902<sup>6</sup>) when a state or federal agency has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

According to Section 25902(b):

- “[F]ormally required’ means that a mandatory instruction, order, condition, or similar command, has been issued in accordance with established policies and procedures of an agency of the state or federal government to a person or legal entity outside of the agency. The action of such agency may be directed at one or more persons or legal entities and may include formal requirements of general application;”
- “[L]abeled’ means that a warning message about the carcinogenicity or reproductive toxicity of a chemical is printed, stamped, written, or in any other manner placed upon the container in which the chemical is present or its outer or inner packaging including any material inserted with, attached to, or otherwise accompanying such a chemical;”
- “[I]dentified’ means that a required message about the carcinogenicity or reproductive toxicity of the chemical is to be disclosed in any manner to a person or legal entity other than the person or legal entity who is required to make such disclosure”; and

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

<sup>2</sup> Actinomycin D was listed as causing cancer on October 1, 1989 pursuant to Labor Code Section 6382(d) which is incorporated by reference as a Proposition 65 listing mechanism by Health and Safety Code Section 25249.8(a), based on its identification by the International Agency for Research on Cancer (IARC) as a “Group 2B” carcinogen with less than sufficient animal and human evidence at the time of listing.

<sup>3</sup> See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25902. All further references are to sections of Title 27, unless indicated otherwise.

<sup>4</sup> *SIRC v OEHHA* (Nov. 15, 2012) Westlaw No. 5834844.

<sup>5</sup> See Health and Safety Code section 25249.8(b).

<sup>6</sup> All referenced sections are from Title 27 of the Cal. Code of Regulations.

- “[A]s causing cancer” means: “For chemicals that cause cancer, the required label or identification uses any words or phrases intended to communicate a risk of cancer or tumors.”

OEHHA is the lead agency for Proposition 65 implementation. After a state or federal agency has required that a chemical be labeled or identified as causing cancer or reproductive toxicity, OEHHA evaluates whether listing under Proposition 65 is required pursuant to the definitions set out in Section 25902.

**OEHHA’s determination:** *Actinomycin D* has been identified or labeled to communicate a risk of cancer in accordance with formal requirements by the U.S. Food and Drug Administration (FDA).

Language from the FDA-approved product label which meets the requirements of Section 25902 is quoted below:

***Actinomycin D***

**Cancer Endpoint** (*Under boxed WARNING and WARNINGS*)

Under boxed WARNING: “Due to the toxic properties of dactinomycin [actinomycin D] (e.g., corrosivity, carcinogenicity, mutagenicity, teratogenicity), special handling procedures should be reviewed prior to handling and followed diligently.”

Under WARNINGS: “Reports indicate an increased incidence of second primary tumors (including leukemia) following treatment with radiation and anti-neoplastic agents, such as COSMEGEN [actinomycin D]. Multi-modal therapy creates the need for careful, long-term observation of cancer survivors.”

**Request for comments:** OEHHA is requesting comments as to whether this chemical meets the criteria set forth in the Proposition 65 regulations for listings via the formally required to be labeled or identified mechanism (Section 25902). Because these are ministerial listings, comments should be limited to whether FDA requires that *Actinomycin D* be labeled to communicate a risk of cancer or reproductive harm. OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by FDA when it established the labeling requirement and will not respond to such comments if they are submitted.

In order to be considered, **OEHHA must receive comments by 5:00 p.m. on MONDAY, FEBRUARY 4, 2013.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov). Please include “actinomycin D” in the subject line. Comments sub-

mitted in paper form may be mailed, faxed, or delivered in person to the address below.

**Mailing Address:** Ms. Cynthia Oshita  
Office of Environmental  
Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, California  
95812-4010  
**Fax:** (916) 323-8803  
**Street Address:** 1001 I Street  
Sacramento, California 95814

Any public comments received will be posted after the close of the comment period. If you have any questions, please contact Ms. Oshita at [cynthia.oshita@oehha.ca.gov](mailto:cynthia.oshita@oehha.ca.gov) or at (916) 445-6900.

**Reference**

Food and Drug Administration (FDA, 2012). FDA approved labeling for the drug *Actinomycin D*. Approved by FDA in February 2012 and available at URL: [http://www.accessdata.fda.gov/drugsatfda\\_docs/label/2012/050682s029s030lbl.pdf](http://www.accessdata.fda.gov/drugsatfda_docs/label/2012/050682s029s030lbl.pdf).

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE TO INTERESTED PARTIES  
JANUARY 4, 2013**

**CHLORAMPHENICOL DELISTED EFFECTIVE  
JANUARY 4, 2013**

**FROM THE LIST OF CHEMICALS KNOWN TO  
THE STATE OF CALIFORNIA TO  
CAUSE CANCER**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) is removing *chloramphenicol* [CAS No. 56-75-7] from the list of chemicals known to the state to cause cancer, for purposes of Proposition 65<sup>1</sup>. The delisting of chloramphenicol is effective **JANUARY 4, 2013.**

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

Chloramphenicol was originally added to the Proposition 65 list on October 1, 1989 pursuant to Labor Code Section 6382(d), which is incorporated by reference as a Proposition 65 listing mechanism by Health and Safety Code Section 25249.8(a). Labor Code Section 6382(d) requires OEHHA to add chemicals known to cause cancer that are “within the scope of the federal Hazard Communication Standard (29 CFR 1910.1200)” to the Proposition 65 list.

Chloramphenicol was listed based on its identification by the International Agency for Research on Cancer as a Group 2B chemical: *Possibly carcinogenic to humans* in 1982, based on limited evidence of carcinogenicity in humans and inadequate evidence in animals (IARC, 1982).

OEHHA’s removal of this chemical from the Proposition 65 list is required by a recent decision by the Third District Court of Appeal in the *Styrene Information and Research Council v. The Office of Environmental Health Hazard Assessment*<sup>2</sup>. The Appellate court held that OEHHA may not list a chemical as causing cancer under Proposition 65 pursuant to Labor Code section 6382(d), solely on the basis of its identification by the International Agency for Research on Cancer (IARC) as being *possibly carcinogenic to humans* (Group 2B), where that determination is based on less than sufficient evidence of carcinogenicity in humans and animals. Therefore, chloramphenicol is being removed from the list at this time. No other basis for listing has been identified by OEHHA.

A complete, updated chemical list is published on the OEHHA website at [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

**Reference**

International Agency for Research on Cancer (IARC, 1982). IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans. Chemicals, Industrial Processes and Industries Associated with Cancer in Humans. IARC Monographs, Volumes 1 to 29. IARC Monographs Supplement 4, pp. 18, 79–80. IARC, Lyon France. Available at URL: <http://monographs.iarc.fr/ENG/Monographs/suppl4/index.php> [Accessed December 10, 2012].

**ACCEPTANCE OF PETITION  
TO REVIEW ALLEGED  
UNDERGROUND REGULATIONS**

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

**ACCEPTANCE OF PETITION TO REVIEW  
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the  
California Code of Regulations)**

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel  
Office of Administrative Law  
300 Capitol Mall, Ste. 1250  
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Bismark Martinez, T-94917  
Red Rock Correctional Center  
1752 East Africa Road  
Eloy, AR 85131

Agency contact:

Dr. Jeffrey Beard, Secretary  
Department of Corrections and Rehabilitation  
Regulations and Policy Management Branch  
P.O. Box 943883  
Sacramento, California 94283-0001

Please note the following timelines:

Publication of Petition in Notice Register: January 4, 2013

Deadline for Public Comment: February 4, 2013

Deadline for Agency Response: February 19, 2013

Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency’s response

Deadline for OAL Decision: May 6, 2013

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or [mmolina@oal.ca.gov](mailto:mmolina@oal.ca.gov).

<sup>2</sup> *SIRC v OEHHA* (Nov. 15, 2012) Westlaw No. 5834844

**PETITION TO THE OFFICE OF  
ADMINISTRATIVE LAW**

**RE:** Alleged Underground Regulation

**FROM:** Bismarck Martinez (Petitioner)

**DATE:** 10/16/2012

Use of this form is optional. It requests the information required by California Code of Regulations, title 1, section 260, for a petition challenging an alleged underground regulation. Although you are not required to use this specific form, the mandatory information required by California Code of Regulations, title 1, section 260, including the supporting documentation, must be included in your petition. If you create a separate petition, or if you use this form and need to add extra pages, be sure that each page is labeled clearly.

1. Identifying Information:

Your name: Bismarck Martinez, CDCR # T-94919

Your address: Red Rock Correctional Center, 1752 East Africa Road  
Eloy, Arizona 85131

Your telephone number (if you have one):

Your email (if you have one):

2. State agency or department being challenged:  
CDCR= California Department of Correction

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible. **“Copy Attached”**

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation. **“See the attached Declaration”**

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code AND that no express statutory exemption to the requirements of the APA is applicable.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulation:

Name of person in agency to whom petition was sent:  
Mathew Cate, secretary of CDCR

Agency: CDCR

Address: 1515 S. Street  
Sacramento, CA 95814

Telephone number:

I certify that all of the above information is true and correct to the best of my knowledge.

/s/

Signature of Petitioner

Date 10/16/2012

**DECLARATION OF BISMARCK MARTINEZ**

October 16, 2012

I Bismarck Martinez, declare that I am the petitioner in this matter, that I am a California inmate housed outside of the state of California.

That I am asking for a determination as to whether a Memorandum entitle “Priority Emdorsements For Camp Placement, Section Immigration and Customs Enforcement Warrants or Detainers” is an underground Regulation ? **See attach copy of the memorandum.**

I futher declare that the **CCI M. Brown** have used this memorandum to deny me placement on a level one facility or Camp. That she have also use the Memorandum to recomend that an administractive determinant or placement code, be place against me with the only purpose to denied me equal protection under the law.

You should take notice that I am a polical refugee from Cuba who have been in this country legally for more than 30 years, and evenknow I have a daitainer from Ice place on me, there is no deportation agreement between Cuba and The Federal Government.

I have been trying to be placed on a level one facility or camp for more than a year and the above mention memorandum is the only reason for the denial of my request.

I believe that the memorandum ignore the Department’s Regulations Implementing **section 5068 (Cal. Code Regs., Title 15 § 3375(a); §3375(b); §3375.2(4); 3379(I)(a); and §3375.2.**

The CDCR is also arbitraly inforcing this memorandum, they claim that inmates from Mexico cannot be placed or confined at Donovan Correctional Facility, Centinela State Prison, or Calipatria State Prison, How- ever this three mention facilities are full of mexican na-

tional this prove that the memorandum is been arbitrarily enforce.

The Memorandum also violate my civil right under the fourteenth amendment of the federal constitution because is discrimnate against me based on my race and place of origen.

Based on the above mentioned fact, I am requesting your help on whether or not the attached memorandum in an undergrond regulation.

I bismarck Martinez declare under penalty of perjury and the law of the United States that the above declaration is trut and correct.

Date: 10/16/2012

Sincerely,

/s/

Bismarck Martinez, T-94919, JC 54  
Red Rock Correctional Center  
1752 East Africa Road  
Eloy, AZ 85131

**Memorandum**

Date April 19, 2005

To Regional Administrators, Institutions  
Division Wardens  
Classification and Parole Representatives  
Correctional Counselor IIIs/Reception  
Centers  
Classification Staff Representatives

Subject: **PRIORITY ENDORSEMENTS FOR CAMPPLACEMENT**

The purpose of this memorandum is to reaffirm the priority need to classify and refer eligible and interested inmates to a Classification Staff Representative (CSR) for Camp placement. Please provide a copy of this memorandum to all Correctional Counselor (CC) staff.

In the past six months, the Department has experienced a significant decreasing trend in the Camp pipeline population. The reasons for the decline vary from incarceration diversion county programs, inmates who are received in the Department are often eligible for competing minimum custody programs (e.g., Minimum Support Facility [MSF], Restitution Center, Drug Treatment Furlough, Folsom Transitional Treatment Facility, Substance Abuse Program, Community Correctional Facility [CCF] and Modified CCF, etc.), additional Camp bed activations, etc.

As a result, **the Department has reiterated Camp placement as the priority endorsement for eligible inmates.** To ensure the Department’s priority placements are filled, the Classification and Parole Representatives (C&PR)/Reception Center (RC) CC–IIIs and CSRs shall comply with this memorandum.

Reception Center

The assigned CC–I shall document the inmate’s eligibility and interest (if eligible) for Camp placement in the Institution Staff Recommendation Summary (ISRS) or the California Department of Corrections (CDC) Form 816, *Reception Center Readmission Summary*. The assigned CC–I shall also complete the *Minimum Custody Screening Form* to determine the inmate’s Eligibility Status Finding (e.g., eligible, temporarily ineligible or ineligible).

If an inmate is eligible and interested in Camp placement, the **RC CC–III** shall ensure the inmate is recommended for Camp placement.

If an inmate is eligible and interested in Camp placement, the **CSR** shall endorse the inmate to a Camp program with a “CAM” administrative determinant and/or irregular placement on the CDC Form 128–G, *Classification Chrono*, and CDC Form 839, *CDC Classification Score Sheet*, or CDC Form 841, *CDC Readmission Score Sheet*.

When an inmate is temporarily ineligible (“L” Coded), the CSR shall enter “CAM” as an Administrative Determinant Code on the CDC Form 839 or 841 for tracking purposes to identify inmates who may be eligible in the future.

If the inmate has a prior “CAM” administrative determinant and/or irregular placement but no longer meets the Camp criteria, the CSR shall delete the “CAM” on the CDC Form 839 or 841.

General Population

The assigned CC–I shall document the inmate’s eligibility and interest (if eligible) for Camp placement in the CDC Form 128–G, *Classification Chrono*, at the Initial Classification, Annual Review, and Program Reviews for transfer.

If an inmate is eligible and interested in Camp placement, the **C&PR** shall ensure the inmate is referred to a CSR for transfer consideration to a Camp program.

If an inmate is eligible and interested in Camp placement, the **CSR** shall endorse the inmate to a Camp program with a “CAM” administrative determinant and/or irregular placement on the CDC Form 128–G and CDC Form 840, *CDC Reclassification Score Sheet*.

If the inmate has a prior “CAM” administrative determinant and/or irregular placement but no longer meets the camp criteria, the CSR shall delete the “CAM” on the CDC Form 840.

Immigration and Customs Enforcement Warrants or Detainers

As a reminder, foreign–born inmates with Active or Potential *Immigration and Customs Enforcement* warrants or detainers are eligible for Camp and MSF place-

ment with the exception of the following exclusionary criteria:

- Inmates identified with a prior deportation.
- Inmates from Cuba, Vietnam, Cambodia, and Laos with or without a prior deport.
- No family ties in California or no employment history (12 months cumulatively) in California.
- Placement in an institution near a bordering country of the inmate's origin (i.e., Mexican Nationals cannot be confined at Richard J. Donovan Correctional Facility, Centinela State Prison, or Calipatria State Prison).

Camp and Minimum Support Facility "Remaining Time-To-Serve" Eligibility Criteria

The following tables are provided to assist staff in determining an inmate's eligibility for Camp and MSF placement based on the "remaining time to serve" from the date of CSR endorsement.

A CSR who is endorsing an inmate out of a Camp center (because the inmate does not meet the criteria, i.e., MED, VIO, etc.) shall ensure the Camp (CAM) administrative determinant and/or irregular placement is deleted on the CDC Form 840.

Should you have any questions or concerns, please contact Ricky Lazaro, Facility Captain, CSU, at (916) 323-4224, or at [Ricky.Lazaro@corr.ca.gov](mailto:Ricky.Lazaro@corr.ca.gov) or Linda Rianda, Chief, CSU, at (916) 322-2544, or at [Linda.Rianda@corr.ca.gov](mailto:Linda.Rianda@corr.ca.gov).

*Original Signed by K. Dickinson for*

SUZAN L. HUBBARD  
Deputy Director (A)  
Institutions Division

cc: J. S. Woodford  
Renee Kanan M.D.  
Patrick Boyd  
Jackie Cervantes  
Linda Rianda  
John Dovey  
Dave Lewis  
Kathleen Keeshen  
Ombudsman's Office  
Ricky Lazaro  
Ernest C. Van Sant  
Sharon Planchon  
Ben Eason  
Glenn Lavin

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2012-1102-03  
Air Resources Board  
Mandatory Reporting, Fee Regulation, and Cap and Trade

This rulemaking by the Air Resources Board (ARB) adopts one new section and amends existing regulations governing mandatory reporting of greenhouse gas emissions (GHG) promulgated pursuant to the California Global Warming Solutions Act of 2006 (Stats. 2006, c. 488 (A.B. 32)). This rulemaking also makes corresponding conforming amendments to the definition sections of the A.B. 32 regulations regarding cost of implementation fees and cap and trade.

Title 17  
California Code of Regulations  
ADOPT: 95158 AMEND: 95101, 95102, 95103, 95104, 95105, 95111, 95112, 95113, 95114, 95115, 95119, 95120, 95121, 95122, 95123, 95130, 95131, 95132, 95133, 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157, 95202, 95802  
Filed 12/19/2012  
Effective 01/01/2013  
Agency Contact: Trini Balcazar (916) 445-9564

File# 2012-1116-04  
BOARD OF EDUCATION  
Interagency—Providing Services to Pupils with Disabilities

In this "changes without regulatory effect" filing, the State Board of Education, Department of Social Services, and Department of Health Care Services jointly repeal 10 regulations pertaining to "Interagency Responsibilities for Providing Services to Pupils with Disabilities." The regulations being repealed relate to men-

tal health services. The repeal of these regulations is required by Statutes 2012, chapter 575 (S.B. 1028), section 11.

Title 2

California Code of Regulations

REPEAL: 60020, 60025, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200

Filed 12/24/2012

Agency Contact: Cynthia Olsen (916) 319-0584

File# 2012-1212-04

**CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**

MCC/MRB Home Improvement/Rehab Program

The California Debt Limit Allocation Committee (CDLAC) adopted as an emergency sections 5342 through 5348 of title 4 of the California Code of Regulations providing for the Single Family Housing Home Improvement and Rehabilitation Program. This filing is deemed an emergency by the Legislature pursuant to section 8869.94 of the Government Code.

Title 4

California Code of Regulations

ADOPT: 5342, 5343, 5344, 5345, 5346, 5347, 5348

Filed 12/21/2012

Effective 12/21/2012

Agency Contact: Misti Armstrong (916) 653-3461

File# 2012-1105-03

**DEPARTMENT OF CORRECTIONS AND REHABILITATION**

Postrelease Community Supervision

This certificate of compliance makes permanent the prior emergency action (OAL file no. 2012-0606-07EON) filed by the Department of Corrections and Rehabilitation (Department) as an operational necessity pursuant to Penal Code section 5058.3 that adopted two sections and one form and amended three sections and three forms. This current rulemaking action implements AB 109 (Stats. 2011, ch. 15), which enacted the Postrelease Community Supervision Act of 2011. Under that act, inmates who have served a term in prison for certain felonies that are, among other things not serious or violent, shall be subject to, for a period not exceeding three years, community supervision provided by a county agency designated by that county's board of supervisors instead of being put on parole. The Postrelease Community Supervision (PRCS) program will allow eligible felons re-entering the community after serving a state prison term to participate in local community programs that provide community-based punishment, evidence-based rehabilitation practices, and local supervision

strategies. Part of the goal of AB 109 and these regulations is to help reduce overcrowding of state prisons, which the Department is required to do under several federal court decisions.

Title 15

California Code of Regulations

ADOPT: 3079, 3079.1 AMEND: 3000, 3075.2, 3075.3

Filed 12/20/2012

Effective 12/20/2012

Agency Contact: Sarah Pollock (916) 445-2266

File# 2012-1106-04

**DEPARTMENT OF FISH AND GAME**

Amend Regulation

This rulemaking by the California Department of Fish and Game (DFG) makes substantive changes to Title 14, Section 703, with regard to restricted species inspection fees and makes non-substantive changes to Forms FG 1312, 1312a, 1312b, 1313, 1313a, 1313b, to update the forms and bring them into consistency with the revised regulations and statutes.

Title 14

California Code of Regulations

AMEND: 703

Filed 12/20/2012

Effective 01/19/2013

Agency Contact: Nicole Carion (530) 357-3986

File# 2012-1108-02

**DEPARTMENT OF INSURANCE**

Annuity Nonforfeiture

This rulemaking by the Department of Insurance (DOI) is the adoption of new Article 10.2 to Title 10, Chapter 5, Subchapter 3 of the CCR, titled "Annuity Nonforfeiture." The regulations implement, interpret, and make specific the provisions of Insurance Code section 10168.25, which regulates annuity nonforfeiture amounts.

Title 10

California Code of Regulations

ADOPT: 2523, 2523.1, 2523.2, 2523.3, 2523.4, 2523.5, 2523.6

Filed 12/19/2012

Effective 12/19/2012

Agency Contact: Nancy Hom (415) 538-4144

File# 2012-1214-02

**DEPARTMENT OF TRANSPORTATION**

Affordable Rent Program

This emergency rulemaking action creates the Affordable Rent Program for low-income tenants of residential properties held by the Department of Transportation for future highway use.

Title 21  
 California Code of Regulations  
 ADOPT: 2653, 2654, 2655, 2656, 2657, 2658  
 Filed 12/24/2012  
 Effective 12/24/2012  
 Agency Contact:  
 Michael J. Rodrigues (916) 654-3536

Title 2  
 California Code of Regulations  
 ADOPT: 7294.0, 7294.2 AMEND: 7293.5, 7293.6,  
 7293.7, 7293.8, 7293.9, 7294.0 (renumbered to  
 7294.1), 7294.1 (renumbered to 7294.3), 7294.2 (re-  
 numbered to 7294.4)  
 Filed 12/26/2012  
 Effective 12/30/2012  
 Agency Contact: Ann Noel (415) 557-9419

File# 2012-1214-01  
**DIVISION OF WORKERS' COMPENSATION**  
 Workers' Compensation — Supplemental Job  
 Displacement Benefits

This emergency regulatory action makes changes to the Supplemental Job Displacement Benefit regulations to reflect the statutory changes made pursuant to SB 863 (Chapter 363, Statutes of 2012), which take effect on January 1, 2013. These regulations establish requirements for employers, employees and physicians regarding offers of work, notifications and vouchers for retraining.

Title 8  
 California Code of Regulations  
 ADOPT: 10133.31, 10133.32, 10133.33, 10133.34,  
 10133.35, 10133.36 AMEND: 9813.1, 10116.9,  
 10117, 10118, 10133.53, 10133.55, 10133.57,  
 10133.58, 10133.60 REPEAL: 10133.51, 10133.52  
 Filed 12/20/2012  
 Effective 01/01/2013  
 Agency Contact: George Parisotto (510) 286-0639

File# 2012-1107-01  
**SUPERINTENDENT OF PUBLIC INSTRUCTION**  
 TrustLine Registration to be an Eligible Provider

This is the resubmission of a disapproved submission that amends the provisions for awarding of funding for Childcare and Development Programs. Current California law requires that child care providers who are exempt from licensure and who are not the child's grandparent, aunt, or uncle, be TrustLine registered in order to be eligible to receive a child care subsidy payment. Existing CalWORKs Stage 2 and 3 regulations require this type of provider to apply for TrustLine registry or be TrustLine registered. These current regulations address the issue of TrustLine registration for applicable license-exempt providers of subsidized child care and development services administered by CDE. Specifically, they address eligibility for funding, application review, appeals process and the awarding of contracts.

Title 5  
 California Code of Regulations  
 ADOPT: 18224.6, 18227, 18227.1  
 AMEND: 18078, 18409, 18411, 18424, 18426  
 Filed 12/24/2012  
 Effective 01/23/2013  
 Agency Contact: Cynthia Olsen (916) 319-0584

File# 2012-1219-06  
**FAIR EMPLOYMENT AND HOUSING**  
**COMMISSION**  
 Disability Discrimination

This re-submittal of a previously withdrawn regulatory action (OAL no. 2012-1011-03) by the Fair Employment and Housing Commission (FEHC) updates FEHC's disability regulations (sections 7293.5-7294.4, title 2, CCR) to conform to changes in federal and state law covering disability discrimination in employment. Sources of these changes include *Green v. State of California* (2007) 42 Cal.4th 254, the *Prudence Kay Poppink Act of 2000* (A.B. 2222), the *Genetic Information and Non-discrimination Act of 2008* (A.B. 1543), and the *Americans with Disabilities Act Amendment Act of 2008* (Pub. L. No. 110-325). The amended regulations provide improved guidance to employers regarding disability definitions, the interactive process, reasonable accommodation, and when an employer may require testing or make inquiries during the application process and employment.

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN August 1, 2012 TO  
 December 26, 2012**

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

**Title 1**  
 11/13/12 AMEND: 1, Appendix A

**CALIFORNIA REGULATORY NOTICE REGISTER 2013, VOLUME NO. 1-Z**

**Title 2**

12/26/12 ADOPT: 7294.0, 7294.2 AMEND: 7293.5, 7293.6, 7293.7, 7293.8, 7293.9, 7294.0 (renumbered to 7294.1), 7294.1(renumbered to 7294.3), 7294.2 (renumbered to 7294.4)

12/24/12 REPEAL: 60020, 60025, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200

12/11/12 AMEND: 649.15

12/06/12 AMEND: 1859.2, 1859.90.2

11/30/12 ADOPT: 7291.4, 7291.7, 7291.14, 7291.18 AMEND: 7291.2, 7291.3, 7291.4 and renumber 7291.5, 7291.5 and renumber 7291.6, 7291.6 and renumber 7291.8, 7291.7 and renumber 7291.9, 7291.9 and renumber 7291.10, 7291.10 and renumber 7291.17, 7291.11, 7291.12, 7291.13, 7291.15, 7291.16 REPEAL: 7291.8, 7291.14

11/29/12 ADOPT: 558.1

11/28/12 AMEND: 54100

11/09/12 ADOPT: 599.945.4 AMEND: Article 27.5 heading

11/08/12 AMEND: 18723

11/06/12 REPEAL: 56600

11/06/12 REPEAL: 52000

11/06/12 REPEAL: 52300

11/01/12 ADOPT: 1859.95.1 AMEND: 1859.2, 1859.95

10/23/12 AMEND: 1859.2, 1859.71.6, 1859.77.4, 1859.107, 1859.193, 1859.194, 1859.197

10/22/12 ADOPT: 599.944, 599.946, 599.947

10/18/12 AMEND: 1575

10/18/12 ADOPT: 577, 578

10/17/12 AMEND: 20804

10/03/12 ADOPT: 18730.1

10/02/12 AMEND: 1859.2, 1859.71.4, 1859.78.1, 1859.79.2, 1859.82, 1859.83, 1859.106, 1859.125, 1859.125.1, 1859.145, 1859.163.1, 1859.163.5, 1859.193

09/20/12 ADOPT: 59730

09/19/12 AMEND: 1155.250, 1155.350

09/14/12 REPEAL: 52100

09/10/12 ADOPT: 59650

08/30/12 AMEND: 60000, 60010, 60300, 60310, 60323, 60325, 60330, 60400, 60550, 60560, 60600, 60610 REPEAL: 60020, 60025, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200

08/16/12 AMEND: 1859.2, 1859.61, 1859.74, 1859.77.1, 1859.79, 1859.79.2, 1859.79.3, 1859.83, 1859.104 REPEAL: 1859.70.3, 1859.71.5, 1859.78.9, 1859.93.2, 1859.93.3

08/13/12 ADOPT: 59720  
08/07/12 AMEND: 18640

**Title 3**

11/15/12 AMEND: 3435(b)

10/29/12 ADOPT: 1352.4 AMEND: 1351, 1358.4

10/23/12 ADOPT: 3639

10/23/12 ADOPT: 3439

09/21/12 AMEND: 3437(b) and (c)

09/18/12 AMEND: 6449.1, 6486.7

09/12/12 AMEND: 3700(c)

09/12/12 AMEND: 3435(b)

08/24/12 AMEND: 3406(b)

08/22/12 AMEND: 6800(b)

08/20/12 AMEND: 3435(b)

08/06/12 AMEND: 3435(b)

**Title 4**

12/21/12 ADOPT: 5342, 5343, 5344, 5345, 5346, 5347, 5348

12/13/12 AMEND: 12391(a)(2)

12/03/12 AMEND: 10032, 10033, 10034, 10035

11/27/12 ADOPT: 4305, 4309 AMEND: 4300, 4302, 4304, 4306, 4307, 4308

10/30/12 AMEND: 5000, 5052

10/29/12 ADOPT: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060

10/17/12 AMEND: 1656

10/16/12 ADOPT: 1581.2

10/10/12 AMEND: 1867

09/27/12 AMEND: 5000, 5170, 5200, 5230, 5370, 5500, 5540

09/12/12 ADOPT: 12391(a)(1), (3), (4), (b) & (c), 12392 AMEND: 12360

09/04/12 AMEND: 10032, 10033, 10034, 10035

08/30/12 ADOPT: 1489.1

08/29/12 ADOPT: 5205 AMEND: 5000, 5054, 5144, 5190, 5200, 5230, 5370, 5170, 5350 REPEAL: 5133

08/01/12 ADOPT: 5255, 5256 AMEND: 5170, 5230, 5250, 5560, 5580

08/01/12 AMEND: 5000, 5052

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12/24/12 ADOPT: 18224.6, 18227, 18227.1 AMEND: 18078, 18409, 18411, 18424, 18426

12/18/12 AMEND: 76120

12/13/12 AMEND: 40601

11/01/12 AMEND: 18407, 18422

10/31/12 ADOPT: 620, 621, 622, 623, 624, 625, 626, 627

09/27/12 ADOPT: 620, 621, 622, 623, 624, 625, 626, 627

09/27/12 AMEND: 3000, 3010, 3021, 3021.1, 3022, 3023, 3024, 3025, 3027, 3028,

3042, 3051.4, 3051.75, 3051.8, 3051.9,  
3051.12, 3051.13, 3051.17, 3051.18,  
3052, 3053, 3062, 3063, 3064, 3066,  
3067, 3069, 3080, 3082, 3083, 3084,  
3085, 3086, 3087, 3088, 3088.1, 3088.2,  
3089, 3090, 3091, 3092, 3093, 3094,  
3096, 3096.1, 3096.2, 3097, 3098,  
3098.1, 3098.2, 3099, 3100

09/06/12 AMEND: 1216.1  
08/09/12 AMEND: 40403  
08/09/12 AMEND: 59400, 59402, 59404, 59406,  
59408  
08/09/12 AMEND: 40500  
08/09/12 ADOPT: 40541  
08/09/12 AMEND: 40407.1  
08/08/12 ADOPT: 40540  
08/08/12 ADOPT: 19824.1, 19841, 19851.1,  
19854.1 AMEND: 19816, 19816.1,  
19824, 19850, 19851, 19854

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12/20/12 ADOPT: 10133.31, 10133.32, 10133.33,  
10133.34, 10133.35, 10133.36 AMEND:  
9813.1, 10116.9, 10117, 10118,  
10133.53, 10133.55, 10133.57,  
10133.58, 10133.60 REPEAL:  
10133.51, 10133.52

12/10/12 AMEND: 10210, 10211, 10212, 10214,  
10215, 10216, 10217, 10218, 10222,  
10223, 10225, 10228, 10229, 10232,  
10232.1, 10232.2, 10245, 10250.1,  
10252.1, 10253.1, 10270, 10271, 10273,  
10290, 10291, 10293, 10294.5, 10297

10/31/12 ADOPT: 6625.1 AMEND: 6505  
10/23/12 AMEND: 1593, 3650  
10/18/12 AMEND: 6325  
10/02/12 ADOPT: 1613.11, 1613.12 AMEND:  
1600, 1610.1, 1610.3, 1610.4, 1610.9,  
1611.1, 1612.3, 1613, 1613.2, 1613.10,  
1616.1, 1617.1, 1617.2, 1617.3, 1618.1,  
1619.1, 4885, 4999

10/02/12 AMEND: 4297  
09/25/12 AMEND: 2950, 3420, 3421, 3422, 3423,  
3424, 3425, 3426, 3427 REPEAL: 3428

09/05/12 AMEND: 1512, 2320.10, 2940.10  
09/04/12 AMEND: 5189, 5192(a)(3),  
5198(j)(2)(D)2., 1532.1(j)(2)(D)2.  
08/07/12 ADOPT: 3558 AMEND: 3207, 4184

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12/19/12 ADOPT: 2523, 2523.1, 2523.2, 2523.3,  
2523.4, 2523.5, 2523.6  
12/17/12 AMEND: 2248.14  
12/11/12 AMEND: 3780  
11/19/12 AMEND: 2698.401  
11/13/12 AMEND: 2498.4.9

08/30/12 AMEND: 2468.5  
08/27/12 AMEND: 260.204.9  
08/22/12 ADOPT: 2327, 2327.1, 2327.2  
08/03/12 ADOPT: 2561.1, 2561.2

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12/12/12 AMEND: 1081  
11/26/12 AMEND: 1001, 1003, 1004, 1005, 1006,  
1007, 1008, 1009, 1010, 1011, 1012,  
1013, 1014, 1015, 1016, 1018, 1019,  
1051, 1052, 1053, 1054, 1055, 1056,  
1057, 1058, 1060, 1070, 1071,  
1080, 1081, 1082, 1083, 1084, 1950,  
1951, 1952, 1953, 1954, 1955, 1956,  
1957, 1958, 1959, 1960  
11/15/12 AMEND: 1005, 1007, 1008  
11/15/12 AMEND: 1005  
09/18/12 AMEND: 410, 411, 415, 416, 417, 420,  
421, 425 REPEAL: 419, 419.1

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12/11/12 AMEND: 2403, 2404, 2407, 2412, 2421,  
2423, 2424, 2425, 2425.1, 2426, 2427,  
2433, 2447, 2783, 2784  
12/10/12 AMEND: 423.00  
11/13/12 AMEND: 1200, 1239  
11/06/12 ADOPT: 2210, 2211, 2212, 2213, 2214,  
2215, 2216, 2217, 2218  
10/15/12 ADOPT: 2477.1, 2477.2, 2477.3, 2477.4,  
2477.5, 2477.6, 2477.7, 2477.8, 2477.9,  
2477.10, 2477.11, 2477.12, 2477.13,  
2477.14, 2477.15, 2477.16, 2477.17,  
2477.18, 2477.19, 2477.20, 2477.21  
AMEND: 2477  
10/09/12 AMEND: 2260, 2261, 2264, 2265,  
2265.1, 2266, 2266.5, 2271 REPEAL:  
2258  
09/25/12 AMEND: 156.00, 156.01  
09/14/12 AMEND: 2479  
08/07/12 ADOPT: 1962.2 AMEND: 1962.1,  
1962.2 (renumbered to 1962.3)  
08/07/12 ADOPT: 1961.2, 1961.3 AMEND: 1900,  
1956.8, 1960.1, 1961, 1961.1, 1965,  
1968.2, 1968.5, 1976, 1978, 2037, 2038,  
2062, 2112, 2139, 2140, 2145, 2147,  
2235, 2317  
08/02/12 ADOPT: 426.00

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09/14/12 AMEND: 2299.2, 93118.2

**Title 14**

12/20/12 AMEND: 703  
11/19/12 AMEND: 632  
11/07/12 AMEND: 701  
11/06/12 ADOPT: 1052.5 AMEND: 895, 916.9,  
1052, 1052.1, 1052.2  
11/02/12 AMEND: 163, 164

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10/29/12 AMEND: 18660.5, 18660.6, 18660.7,  
18660.8, 18660.9, 18660.10, 18660.11,  
18660.12, 18660.13, 18660.15,  
18660.16, 18660.17, 18660.18,  
18660.19, 18660.20, 18660.21,  
18660.22, 18660.30, 18660.31,  
18660.32, 18660.33, 18660.34,  
18660.35, 18660.36, 18660.37,  
18660.38, 18660.39, 18660.41, 18660.43  
10/18/12 ADOPT: 1665.1, 1665.2, 1665.3, 1665.4,  
1665.5, 1665.6, 1665.7, 1665.8  
10/03/12 AMEND: 300  
10/02/12 AMEND: 632  
09/27/12 ADOPT: 1667.1, 1667.2, 1667.3, 1667.4,  
1667.5, 1667.6  
09/25/12 AMEND: 18660.40  
09/21/12 AMEND: 502  
09/12/12 AMEND: 18660.17, 18660.19, 18660.31  
09/07/12 AMEND: 300  
08/31/12 ADOPT: 671.8 AMEND: 671.1  
08/14/12 AMEND: 13055  
08/02/12 ADOPT: 2231, 2301 AMEND: 2000,  
2200, 2230, 2235, 2240, 2245, 2300,  
2305, 2310, 2320

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12/20/12 ADOPT: 3079, 3079.1 AMEND: 3000,  
3075.2, 3075.3  
10/25/12 ADOPT: 3999.14  
10/22/12 AMEND: 3019, 3044, 3091, 3120  
10/18/12 ADOPT: 3999.13  
10/17/12 ADOPT: 3375.6 AMEND: 3000, 3375  
10/04/12 ADOPT: 3352.3 AMEND: 3350.1, 3352,  
3352.1, 3352.2, 3354, 3354.2, 3355.1,  
3358  
09/25/12 ADOPT: 1712.1, 1714.1, 1730.1, 1740.1,  
1748.5 AMEND: 1700, 1706, 1712,  
1714, 1730, 1731, 1740, 1747, 1747.1,  
1747.5, 1748, 1751, 1752, 1753, 1754,  
1756, 1760, 1766, 1767, 1768, 1770,  
1772, 1776, 1778, 1788 REPEAL: 1757  
09/13/12 AMEND: 3162  
09/13/12 ADOPT: 3078, 3078.1, 3078.2, 3078.3,  
3078.4, 3078.5, 3078.6 AMEND: 3000,  
3043, 3075.2, 3097, 3195, 3320, 3323  
08/29/12 AMEND: 2606, 2635.1, 2646.1, 2733,  
2740, 2743, 2744  
08/20/12 AMEND: 1006, 1007, 1008, 1012, 1013,  
1024, 1032, 1044, 1046, 1051, 1055,  
1056, 1058, 1059, 1062, 1063, 1069,  
1072, 1080, 1081, 1083, 1084, 1100,  
1104, 1125, 1140, 1141, 1143, 1144,  
1145, 1146, 1147, 1148, 1149, 1151,  
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12/18/12 ADOPT: 37.5  
12/13/12 AMEND: 2615, 2620  
11/29/12 AMEND: 2524, 2579.10  
11/27/12 ADOPT: 1495, 1495.1, 1495.2, 1495.3,  
1495.4  
11/14/12 ADOPT: 1139, 1140, 1141, 1142, 1143,  
1144  
11/13/12 ADOPT: 2333  
11/07/12 ADOPT: 1023.15, 1023.16, 1023.17,  
1023.18, 1023.19  
10/31/12 AMEND: 1425  
10/29/12 ADOPT: 1065  
10/25/12 ADOPT: 2.8, 11, 11.1 AMEND: 9.2  
09/25/12 AMEND: 1514, 1525.1  
09/25/12 AMEND: 3340.15, 3394.6  
09/12/12 AMEND: 961 REPEAL: 933  
09/10/12 ADOPT: 4116, 4117, 4118, 4119  
09/07/12 AMEND: 4  
08/30/12 ADOPT: 2557, 2557.1, 2557.2, 2557.3,  
2595, 2595.1, 2595.2, 2595.3  
08/29/12 ADOPT: 4146, 4148, 4149, 4149.1  
AMEND: 4100, 4101  
08/20/12 ADOPT: 1333, 1333.1, 1333.2, 1333.3

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12/19/12 ADOPT: 95158 AMEND: 95101, 95102,  
95103, 95104, 95105, 95111, 95112,  
95113, 95114, 95115, 95119, 95120,  
95121, 95122, 95123, 95130, 95131,  
95132, 95133, 95150, 95151, 95152,  
95153, 95154, 95155, 95156, 95157,  
95202, 95802  
12/06/12 AMEND: 95920  
11/26/12 ADOPT: 95480.2, 95480.3, 95480.4,  
95480.5 AMEND: 95480.1, 95481,  
95482, 95484, 95485, 95486, 95488,  
95490  
11/14/12 AMEND: 6508  
11/02/12 AMEND: 100500  
10/30/12 AMEND: 100060, 100070  
10/03/12 AMEND: 95201, 95202, 95203, 95204,  
95205  
09/04/12 ADOPT: 30305.1, 30308.1, 30311.1  
08/30/12 AMEND: 95802, 95812, 95814, 95830,  
95831, 95832, 95833, 95834, 95856,  
95870, 95892, 95910, 95911, 95912,  
95913, 95914, 95920, 95021  
08/29/12 AMEND: 100800  
08/15/12 ADOPT: 54521, 54522, 54523, 54524,  
54525, 54526, 54527, 54528, 54529,  
54530, 54531, 54532, 54533, 54534,  
54535 AMEND: 54500, 54505, 54520

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08/13/12 AMEND: 100104, 100106, 100106.1,  
100113, 100115, 100119, 100120,  
100121, 100123, 100127

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12/18/12 ADOPT: 19089  
12/04/12 ADOPT: 2000  
10/23/12 AMEND: 313, 321  
08/07/12 AMEND: 1618

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12/17/12 ADOPT: 3949.9  
12/06/12 ADOPT: 3979.5  
11/14/12 AMEND: 1062, 1064, 1068  
11/13/12 ADOPT: 2924  
11/13/12 ADOPT: 3969.3  
09/06/12 ADOPT: 3959.5  
08/08/12 ADOPT: 3969.2

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12/17/12 AMEND: 2570.1, 2570.2, 2571, 2572.1,  
2572.2, 2573.1, 2573.2, 2573.3

**Title 25**

10/10/12 AMEND: 8201, 8205, 8212  
08/13/12 ADOPT: 7097 AMEND: 7054, 7056,  
7058, 7060, 7062, 7062.1, 7072, 7076,  
7078, 7104 REPEAL: 7064, 7066, 7074,  
7078.1, 7078.2, 7078.3, 7078.4, 7078.5,  
7078.6, 7078.7

**Title 20**

10/26/12 AMEND: 1601, 1602, 1604, 1605.1,  
1605.3, 1606, 1607

**Title 21**

12/24/12 ADOPT: 2653, 2654, 2655, 2656, 2657,  
2658  
08/28/12 AMEND: 6640, 6680

**Title 27**

12/17/12 AMEND: 25705  
11/19/12 AMEND: 25903  
10/10/12 AMEND: 25707  
09/20/12 AMEND: 25705(b)  
09/12/12 AMEND: 25403(a), 25603.3(a)

**Title 22**

12/10/12 AMEND: 926-3, 926-4, 926-5  
11/13/12 ADOPT: 2707.2-1 AMEND: 3302-1  
10/25/12 AMEND: 97005, 97019, 97041, 97052,  
97053, 97054  
10/18/12 AMEND: 97240  
10/15/12 ADOPT: 66273.80, 66273.81, 66273.82,  
66273.83, 66273.84, 66273.90,  
66273.91, 66273.100, 66273.101  
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66273.9, 66273.70, 66273.72, 66273.73,  
66273.74, 66273.75  
09/06/12 ADOPT: 66269.2  
08/20/12 AMEND: 87224

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09/06/12 ADOPT: 1300.74.73

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11/29/12 AMEND: 41-440, 42-716, 42-717,  
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11/19/12 AMEND: 31-003, 31-021, 31-501  
11/01/12 AMEND: 42-213, 44-211  
10/10/12 AMEND: 25707  
09/20/12 AMEND: 25705(b)  
09/12/12 AMEND: 25403(a), 25603.3(a)

