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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. CALIFORNIA RESIDENTIAL MITIGATION PROGRAM

NOTICE OF INTENTION TO ADOPT A CONFLICT-OF-INTEREST CODE BY THE CALIFORNIA RESIDENTIAL MITIGATION PROGRAM

NOTICE IS HEREBY GIVEN that the California Residential Mitigation Program, pursuant to the authority vested in it by section 87300 of the Government Code, proposes to adopt a conflict-of-interest code. The purpose of this conflict-of-interest code adoption is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The California Residential Mitigation Program proposes to adopt a 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. Copies of the proposed conflict-of-interest code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed conflict-of-interest code by submitting them in writing no later than March 12, 2012, 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 conflict-of-interest code. If any interested person or the person's representative requests a public hearing, he or she must do so no later than February 24, 2012, by contacting the Contact Person set forth below.

The California Residential Mitigation Program has prepared a written explanation of the reasons for the proposed conflict-of-interest code and has available the information on which the amendments are based. Copies of the proposed conflict-of-interest code, the written explanation of the reasons, and the information

on which the designations and disclosure responsibilities are based may be obtained by contacting the Contact Person set forth below.

The California Residential Mitigation Program has determined that the proposed conflict-of-interest 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.

In adopting the proposed conflict-of-interest code, the California Residential Mitigation Program must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the conflict-of-interest code is proposed or would be as effective as and less burdensome to affected persons than the proposed conflict-of-interest code.

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

Niel Hall
801 K Street, Suite 1000
Sacramento, CA 95814
Telephone: (916) 325-3800
Email: halln@calquake.com

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: San Joaquin Valley Unified Air Pollution Control District
West Valley-Mission Community College District

ADOPTION

MULTI-COUNTY: CORE Placer Charter School

A written comment period has been established commencing on **January 27, 2012** and closing on **March 12, 2012**. Written comments should be directed to the Fair Political Practices Commission, Attention Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **March 12, 2012**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

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

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On March 15, 2012,
 at 10:00 a.m.
 in the Auditorium of the State Resources Building,
 1416 9th Street,
 Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **March 15, 2012**, following the Public Meeting, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS

MEETING: On **March 15, 2012**, following the Public Hearing, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, High-Voltage Electrical Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **March 15, 2012**.

1. **TITLE 8:** **HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5
Group 2, Article 38, Section 2950
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7,
Article 12
Sections 3420-3428
Tree Work, Maintenance or Removal

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5
Group 2, Article 38, Section 2950
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7,
Article 12
Sections 3420-3428
Tree Work, Maintenance or Removal

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated by a memorandum dated May 6, 2009, submitted to the Occupational Safety and Health Standards Board (Board) from the Division of Occupational Safety and Health (Division). The Division noted that several fatalities had occurred involving tree workers trimming palms when the palm frond skirts (dead growth under the palm canopy) had fallen on the workers suffocating them. The Division noted that some of the existing requirements related to tree work in general do not represent current safe work practices and equipment. Consequently, the Division recommended amendments to update many of the stan-

dards in the General Industry Safety Orders (GISO), Article 12, Tree Work, Maintenance or Removal.

The proposal was developed with the assistance of an advisory committee and adds a number of new definitions for clarity to existing and proposed standards. The proposal also includes, but is not limited to, provisions related to training, first aid, work practices and procedures, electrical hazards, the use of power saws, mobile equipment and the use of climbing equipment.

In addition, amendments are proposed for the High-Voltage Electrical Safety Orders (HVESO), Section 2950 that delineate the minimum approach distances to energized conductors for persons other than qualified line clearance tree trimmers and trainees.

This proposed rulemaking action also contains non-substantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. Editorial comments and notes included in brackets throughout the proposal are not part of the final text. They are provided to assist persons reviewing the proposal to identify the origin of the proposed text where available, and to identify provisions that have been relocated or moved within Article 12 to provide optimal formatting of the proposal.

This proposed rulemaking action is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterpart. The benefit of this regulatory proposal is to provide worker safety for employees engaged in tree work, maintenance and removal.

GISO Article 12. Tree Work, Maintenance or Removal

Section 3420. Scope and Definitions.

Subsections (a) and (b)

Subsection (a) provides the scope section for Article 12 which includes work performed and equipment used in tree maintenance and removal. An amendment is proposed that has the effect of clarifying that "ornamental palms" are included in the scope of the provisions. A new informational "Note 1" is proposed that states the requirements for fall protection in date palm operations and for ladders attached to date palms are provided in the GISO, Sections 3458 and 3458.1. The existing informational note is renumbered as "Note 2" with revisions that clarify line clearance tree trimming in prox-

imity to high voltage energized conductors is provided in the HVESO, Article 38.

Subsection (b). Definitions.

The proposal adds a significant number of new definitions for Article 12. The definitions were developed with the assistance of the Tree Care Industry Association (TCIA), the Division and members of the advisory committee. A number of the definitions are consistent with the American National Standards Institute (ANSI) Z133.1 consensus standards related to the safety requirements for arboricultural operations. The effect of these proposed definitions will be to provide clarity to existing requirements and the amendments proposed for Article 12.

Section 3421. General.

Existing Section 3421 contains general training and instructions required of the employer such as job briefings, inspection of equipment and safety devices, the use of vehicles and pedestrian traffic, first aid, cardiopulmonary resuscitation (CPR) and rescue procedures.

Subsection (a).

Minor editorial revisions are proposed in subsection (a) for clarity.

Subsection (c).

Existing subsection (c) requires general training in the hazards associated with employee job assignments and documentation of the training. This subsection includes amendments that state the training includes, but is not limited to, the specific provisions in new subsections (c)(1) through (c)(5). Proposed subsection (c)(1) is existing language with minor edits. Amendments to subsection (c)(2) would require the safe use of all equipment, including, but not limited to, safety equipment and personal protective equipment. Subsection (c)(3) is relocated from existing subsection (f) with only minor edits. Subsection (c)(4) specifies training and instruction in operations that include pesticide and fertilizer applications for employers whose employees are exposed to, or engage in such operations. Subsection (c)(5) requires training in the recognition and avoidance of electrical hazards. It also refers to more detailed training and instruction requirements provided in Section 3423 for tree work performed in proximity to energized power lines and conductors. The proposed amendments in subsection (c) will have the effect of addressing employee hazards that require training and instructions.

Subsection (d).

The existing provision requires the employer to certify that training has been completed prior to performing the job assignment. An amendment is proposed that acknowledges the trainee should be allowed to perform certain job assignments when there is oversight and ob-

ervation of a qualified person. The effect of this provision is to allow the qualified person to monitor and observe the trainee performing job tasks in a safe manner before the employee is allowed to independently perform the task.

Subsection (e).

New subsection (e) is proposed to require for certain situations that refresher or additional training be provided. These provisions are consistent with similar provisions in the GISO related to the operation of equipment and machinery such as power lawn mowers and industrial trucks (forklifts). The effect of these provisions is to require further training when employees have been observed performing a job task in an unsafe manner or receive a new job assignment that includes the use of equipment, machinery, tools or safety-related work practices that the employee is unfamiliar with.

Subsection (f).

Existing subsection (d) is proposed as subsection (f). The existing standard requires a job briefing before each work assignment begins. An amendment would clarify the job briefing shall include the description of the hazards unique to the work assignment, the appropriate work procedures to be followed, and the appropriate personal protective equipment needed. Also, an amendment requires additional job briefings when significant changes occur in the course of work which might affect the safety of employees. The effect of these amendments is to ensure that prior to the beginning of job assignments and tasks that employees are provided suitable protection and instructions for avoiding the hazards associated with their work.

Subsection (g).

Subsection (g) is moved from Section 3428(a)(1) with an amendment for clarity that replaces the term “qualified personnel” with a defined term “qualified person.”

Subsections (h) through (k).

The amendments in Sections 3421(h) through (k) are primarily editorial with the effect of providing clarity to the provisions and/or optimal formatting of the standard. A proposed amendment in subsection (h) provides that inspections be performed by a “qualified tree worker” which is a defined term in Article 12. Additional revisions for proposed subsection (j) are also editorial and rather than referencing “Article 11” the proposal references the specific sections located in Article 11 that relate to traffic control.

Subsection (l).

The existing provisions in subsection (j) are addressed in proposed subsections (l) and (m) with amendments. The existing subsection provides that the employer shall establish rescue procedures and provide

training for employees in first aid, CPR and aerial rescue. An amendment is proposed to clarify that in addition to training in emergency response, training in aerial rescue procedures shall be provided for employees whose job assignments may require them to perform aerial rescues. The effect of this amendment is to provide clarity to this subsection and that aerial rescue training is required for employees that may be required to perform such rescues.

Subsection (m).

Provisions related to first-aid training are provided in this subsection. The existing provisions state in part that the employer shall provide training in first aid and CPR. The existing standard can be interpreted to require that all employees on the job site must have the training. However, the standard lacks clarity as to when an employee must be trained and how many employees on a job site require the training. A proposed amendment requires for field work involving two or more persons at a work location that at least two persons trained in first aid and CPR shall be available.

An amendment states that new employees must be trained in first aid and CPR within 90 days of their hiring dates. First aid and CPR training must be performed by a certified instructor and be equal to that of the American Red Cross or the Mine Safety and Health Administration.

The effect of the amendments to subsection (m) will be to provide clarity to the provisions related to first aid and CPR training and to denote when new employees must have the training.

Section 3422. Tree Worker Saddles.

(Proposed as “Ropes and Tree Worker Climbing Equipment”)

Existing Section 3422 addresses tree worker saddles and requires that they be approved for their intended use. The scope of this section has been broadened to include standards for other tree worker climbing equipment including climbing ropes. Consequently, the title of this section is amended with the effect of accurately describing the provisions contained in Section 3422.

Subsection (a).

An amendment is added to the existing language proposed as subsection (a) that requires all load bearing components of a climbing system shall have a minimum tensile strength of 5,000 pounds. An exception to this requirement is proposed for equipment, such as a mechanical ascending device, provided that it is used with a secondary device that meets the minimum tensile strength requirements of this subsection. The requirement that components of a climbing system have a 5000 pound strength requirement will have the effect of providing consistency with other Title 8 safety orders that prescribe the strength requirements for components of

fall protection systems. Equipment, such as ascending devices, assist the tree worker in traveling up and down the climbing line safely. Some ascending devices are not rated for 5000 pounds strength. However, they are common tree worker equipment and are always used in combination with a back up device/climbing line that does meet the minimum 5000 pound strength requirement. The exception will have the effect of permitting the use of these necessary tree climbing devices.

Subsection (b).

This subsection requires that tree worker saddles, work positioning lanyards and climbing lines be designed by the manufacturer as suitable for tree climbing. This climbing equipment must not be altered in a manner that would compromise the integrity of the equipment. This amendment is consistent with similar provisions in the ANSI Z133.1 standards. Technical and product information from the manufacturer or their distributors is readily available from sources such as product literature, website technical and product information, or by phone contact to confirm that saddles, lanyards and climbing lines are suitable for tree climbing. The effect of this provision is to ensure that the equipment is appropriate and safe for its intended use.

Subsection (c).

This subsection specifies the strength requirements for climbing lines, the minimum diameter of climbing lines and the maximum working elongation for climbing lines. Existing language in Section 3426(c) addresses the breaking strength (2300 pounds), material (manila rope) and minimum diameter for climbing lines (1/2 inch). Manila rope is no longer used for climbing lines. These existing provisions are outdated and proposed for deletion. The proposed amendments will have the effect of providing consistency with current industry practices and criteria for the use and design of climbing lines.

Subsection (d).

This new subsection provides that prusik loops, split tails, and work-positioning lanyards [all defined terms in Section 3420(b)] used in a tree climbing system shall meet the minimum strength requirements for tree climbing lines. These amendments are primarily modeled from similar safety standards provided in the ANSI Z133.1 consensus standards. The effect of these amendments is to ensure that equipment used that supports or positions tree workers while aloft, provides the same level of strength required of climbing lines.

Subsections (e) through (h).

These subsections provide requirements related to the safe use of climbing ropes and equipment used to secure the tree worker in a tree or aerial lift. These amendments are primarily modeled from similar safety stan-

dards provided in the ANSI Z133.1 consensus standards and in the case of subsection (f), the requirements are relocated from existing Section 3426(c)(3). These amendments will have the effect of providing standards consistent with current industry practices and procedures.

Subsections (i), (j), and (k).

These subsections address the appropriate storage, transportation, inspection and/or repair of certain climbing equipment. New subsections (i) and (j) are consistent with similar ANSI Z133.1 standards, and subsection (k) is provided for equivalency with the federal standard in 29 CFR 1910.269(r)(7)(vi). These amendments will have the effect of providing standards consistent with current industry practices and procedures.

Subsection (l).

Subsection (l) is relocated from existing Section 3426(d)(1) for optimal organization of the proposal.

Section 3423. Electrical Hazards, General.

The existing standard addresses work that is performed in proximity to electrical equipment and conductors. The standard states that high voltage work shall be performed in accordance with the HVESO, Article 38. However, the existing standard does not address minimum clearances required for low voltage work (600 volts or less) and does not provide for specific instruction and training requirements for employees that may be exposed to such electrical hazards.

Subsection (a).

Existing subsection (a) is limited to employees engaged in tree maintenance and removal work. An amendment is provided to clarify that the provisions of this section are applicable to tree work operations such as, but not limited to, tree trimming, maintenance and removal work in proximity to energized equipment and conductors. Subsection (a)(1) is existing language. Subsections (a)(2) through (a)(4) require specific instructions regarding the nature of electrical hazards. These instructions are similar to provisions in the ANSI Z133.1-2006 standard and have the effect of ensuring all employees subject to these requirements receive adequate orientation about the hazards of electrical conductors. Language that is deleted from existing subsection (a) is revised and addressed in proposed subsections (b) and (c) for clarity.

Subsection (b).

Existing subsection (b) requires that tree work performed near high voltage conductors must be performed in accordance with Article 38 of the HVESO. The existing language is deleted in lieu of the amendments proposed in new subsections (b) and (c) discussed below, which address the requirements for tree

work near low voltage conductors and for high voltage line clearance work respectively.

Subsections (b)(1)–(b)(4).

Existing language in Section 3423(a) and (b), that is proposed for deletion, essentially states that employees shall not be permitted to work closer than 6 feet to electrical equipment and conductors energized in excess of 600 volts, unless they meet the requirements contained in Article 38 of the HVESO for such work. However, the federal standards in 29 CFR 1910.333(c)(3) and 29 CFR 1910.269 do not permit work in proximity to high voltage conductors within a minimum of 10 feet unless the worker is qualified as a line clearance tree trimmer. Therefore, the proposed amendments in subsections (b)(1) through (b)(4) provide the minimum clearances (for unqualified employees) from low voltage conductors that are equivalent to the federal standards and industry practices for such work.

Subsections (b)(1)–(b)(4) provide that a qualified tree worker is permitted to perform tree trimming activities within 10 feet, but no closer than 1 foot, of energized low voltage (600 volts or less) power lines and conductors, provided that the qualified tree worker is trained and competent in the areas specified in subsections (b)(1) through (b)(4). The proposed minimum clearance for low voltage tree trimming work is 1 foot in order to address federal standards in 29 CFR 1910.333(c)(3) that require qualified persons to maintain a 1 foot clearance from lower voltage type conductors energized over 300 volts to 750 volts. The provisions in subsections (b)(1) through (b)(4) have the effect of providing safe working distances from electrical hazards and providing instruction and training related to electrical hazards that are consistent with federal standards required of a qualified employee (qualified person) for work within the scope of 29 CFR 1910.269.

Subsection (c).

This subsection states that line clearance tree trimming operations as defined in Section 2700 of the HVESO (related to electrical equipment and conductors in excess of 600 volts) shall be conducted in accordance with Article 38 of the HVESO. Only qualified line clearance tree trimmers or trainees as defined in Section 2700 of the HVESO are permitted to perform such line clearance tree trimming work. This subsection is provided in lieu of deleted language in existing subsection (b) for clarity and will have the effect of ensuring that tree work subject to the HVESO meets the requirements of Article 38. An informational “Note” refers to the applicable HVESO sections that provide minimum approach distances and requirements for line clearance operations.

Subsection (d).

Proposed subsection (d) provides that metal core rope used in a climbing system shall not be used in proximity to energized electrical equipment and conductors. Metals are good electrical conductors and present hazards when used near energized conductors. The amendment will have the effect of prohibiting the use of metal core ropes for work in proximity to energized equipment and conductors.

Section 3424. Mobile Equipment.

Existing Section 3424 includes the requirements for mobile equipment such as aerial devices, and brush chippers.

Subsection (a) General.

Subsections (a)(1), (a)(2) and (a)(3).

Existing subsection (a) requires vehicles and equipment to be equipped and operated in accordance with the manufacturer’s recommendations and Title 8 safety orders. An amendment clarifies that the provisions pertain to “mobile equipment” and adds that the vehicles and equipment must also be “maintained” in accordance with the manufacturer’s recommendations. An editorial revision corrects the outdated reference to “the California Administrative Code.” Subsection (a)(2) would require daily visual inspections and operational checks. Subsection (a)(3) is relocated to this section with a minor edit for clarity.

These amendments will have the effect of providing clarity regarding vehicle and mobile equipment maintenance and inspection requirements.

Subsections (a)(4) and (a)(5).

Proposed subsection (a)(4) provides that the transportation of employees and materials shall be conducted in accordance with the provisions of GISO Article 27. Article 27 pertains to safe transport and use of equipment used for employee transportation. This subsection will have the effect of denoting and identifying for the employer the standards applicable to the transportation of employees. Subsection (a)(5) is relocated to Section 3424 from existing Section 3428(a)(7) for optimal organization of the proposal.

Subsection (b).

Existing subsection (b) provides the general requirements associated with the use of aerial devices. Several non–substantive editorial amendments are made in subsection (b)(1) for clarity within this standard. An amendment of subsection (b)(2)(A) is also proposed that acknowledges aerial device baskets are referred to as the “personnel” basket or “platform” depending on the type of aerial device used. The existing standard states that employees shall be “safely secured” to the tree. The term “safely secured” is deleted. Instead an amendment provides that the employees must be secured to the tree in accordance with the requirements in

Sections 3422 and 3427. These sections include provisions for climbing equipment and safe work procedures. The amendments will have the effect of ensuring that suitable climbing equipment and work procedures are used.

Subsection (c) Brush Chippers.

Subsection (c) includes the requirements for the safe use and operation of brush chippers which are power-driven machines used for cutting wood into chips.

Subsections (c)(7) and (c)(8).

Subsections (c)(7) and (c)(8) are relocated to Section 3424 from Section 3428(a)(3) and (a)(4) for the purpose and effect of consolidating the brush chippers requirements contained in Article 12.

Subsection (c)(9).

Proposed new subsection (c)(9) requires that climbing equipment, ropes, body belts, harnesses and lanyards not be worn while operating chippers. The effect of this provision, modeled after a similar ANSI Z133.1 standard, will be to prohibit the use of climbing equipment to be worn while operating machinery that could result in entanglement and being pulled into the point of operation of the chipper.

Subsection (c)(10).

Proposed subsection (c)(10) is relocated from Section 3428(a)(5) with an amendment. The amendment to the existing provision provides that, in addition to the discharge chute, the “cutter housing” shall not be opened or removed while the chipper is turning or moving. The effect of this amendment is to prevent potential contact with dangerous moving parts of the brush chipper.

Subsection (c)(11).

Proposed subsection (c)(11) is relocated from Section 3428(a)(6) with an amendment. This provision requires that material such as stones, nails, and similar debris shall not be fed into the brush chipper. The amendment deletes the word “sweepings” from the existing standard and replaces it with “similar debris” because sweepings often only include smaller branches and twigs which are appropriate for shredding in the brush chipper. The effect of this amendment is to add clarity and to reflect current industry practices.

Subsection (c)(12).

New proposed subsection (c)(12) requires chipper mounted winches to be used in accordance with the manufacturer’s instructions. Winches are used to assist the worker in moving larger branches or limbs up to the chipper’s point of operation. Care must be taken that the winch line is properly used in accordance with the manufacturer’s recommendations. The effect of this amendment is to promote the proper and safe use of these devices.

Section 3425. Portable Power Hand Tools.

This section contains requirements for the safe use of power saws and requires safety devices such as a constant pressure control that will return the saw to idling speed when released.

Subsection (a).

Existing subsection (a) is titled “Gasoline Engine Power Saws.” Some saw models are now operated by rechargeable batteries and more may be expected in the future based on experience with other types of power tools. Therefore, the name of this subsection is amended to read, “Power Saws.”

Subsection (a)(1).

Proposed subsection (a)(1) has the effect of requiring that power saws shall be operated and maintained in accordance with the manufacturer’s instructions.

Subsection (a)(2).

Existing provisions of this subsection state that power saws weighing more than twenty pounds (service weight) that are used in trees shall be supported by a separate line, except when working from an aerial–lift device or during topping or removing operations. Amendments are proposed that change the saw weight from twenty to fifteen pounds and that permit the use of a “tool lanyard” to support the saw. An additional amendment provides that the exception to supporting the saw with a separate line/lanyard during topping or removal operations is applicable where no supporting limb is available. These amendments are modeled after the ANSI Z133.1–2000 and 2006 consensus standards and will have the effect of providing consistency with industry specific standards and procedures.

Subsection (a)(5).

Proposed subsection (a)(5) is relocated with amendments from existing Section 3428(a)(8). The existing standard in part requires that saws be stopped when carried a distance greater than 100 feet. An amendment provides that chain brakes shall be engaged or the saw engine stopped when the saw is carried a distance greater than 10 feet. The effect of this amendment is to mitigate the potential hazard of contact with a rotating chain during travel with the saw.

Subsection (a)(6).

Proposed subsection (a)(6) is relocated with minor editorial revisions from existing Section 3428(a)(9) that change the word “practical” to “practicable” and change the term “manufacturer’s procedures” to “manufacturer’s instructions.” The amendments will have the effect of providing clarity to this provision.

Subsection (a)(7).

New proposed subsection (a)(7) provides that tree workers shall use a second point of attachment such as a work–positioning lanyard or double–crotched rope

when operating a chain saw in a tree, unless the employer demonstrates that a greater hazard is posed by using a second point of attachment while operating chain saws in that particular situation. This proposed subsection will have the effect of providing additional safety measures in the event the climbing line is accidentally damaged or cut by the chain saw.

Subsections (a)(8) and (a)(9).

The existing Section 3425 has a subsection (b) entitled “Backpack Units (Pruning, Clearing, Etc.).” This subsection has provisions for powered pole saws or brush saws. Stakeholders opined that the existing title of this subsection is confusing since these saws are not used as backpack units. Therefore, the reference to subsection (b) and its title are proposed for deletion to provide clarity. The existing provisions in this subsection have been renumbered as subsections (a)(8) and (a)(9) with amendments that have the effect of clarifying that these provisions pertain to powered pole saws or brush saws.

Section 3426. Hand Tools.

This section provides general requirements for the safe use of hand tools during tree work operations. An editorial correction is proposed for existing subsection (a)(1).

Subsection (a)(2).

Proposed subsection (a)(2) requires that when climbing into a tree, tree workers shall not carry tools and equipment in their hands unless they are tools used to assist them in their climbing. It also requires that tools other than ropes or throwlines shall not be thrown into a tree, out of a tree or between workers aloft. This provision is consistent with the ANSI Z133.1 standard and will have the effect of ensuring safe climbing procedures and practices for the use of hand tools.

Subsections (a)(3) through (a)(5).

These subsections are relocated from existing Section 3428 in order to provide optimal formatting and organization of the proposal. Subsections (a)(3) and (a)(4) are unchanged from the existing language. An amendment for subsection (a)(5) is proposed that differs from the existing language [Section 3428(a)(17)] in that the amendment has the effect of clarifying that chopping tools shall not be driven as wedges or used to drive metal wedges unless they are specifically designed to be driven or to be used to drive wedges.

Subsection (a)(6).

New proposed subsection (a)(6) provides that hand tools and equipment shall be properly stored or placed in plain sight out of the immediate work area when not in use. This amendment has the effect of mitigating the potential for inadvertent contact or interference with

work procedures from equipment or hand tools that are not being used.

Subsection (b).

This subsection contains standards related to pole pruners and saws. Subsection (b)(2) is relocated from existing Section 3428(a)(14) with no revisions.

Subsections (c) and (d).

The existing provisions in subsection (c) related to ropes are either deleted as outdated or are relocated to other sections in the proposal. Amendments to any text that has been modified are discussed in the sections where these provisions are relocated. The existing provisions of subsection (d) relating to climbing spurs are relocated to Section 3422(l) for optimal organization of the proposal.

Section 3427. Safe Work Procedures.

Section 3427 includes a broad range of safe tree work procedures including climbing and access into trees, pruning and trimming operations and felling of trees.

Subsection (a).

Subsection (a) has several provisions that are required prior to climbing the tree to ensure a safe method of entry. An amendment adds that the tree root collar must be visually inspected. An additional amendment provides that climbing lines, ropes, lanyards, and other climbing equipment shall be inspected in accordance with the provisions of Section 3422(j) of Article 12. The effect of these amendments is to ensure that climbing equipment and the tree are adequately inspected for potential hazards before the work is performed.

Subsection (a)(2).

Existing subsection (a)(2) requires the climbing line must be crotched as soon as practical after the employee is aloft and a taut line–hitch tied and checked. The existing language is deleted in lieu of proposed language that requires that employees when working aloft wear a tree worker’s saddle and have at least two other means of being secured, such as a climbing line and a work positioning lanyard. This proposed amendment is consistent with the ANSI Z133.1 standard. The effect of this amendment is to ensure that the tree worker has a means of fall protection at all times while aloft in the tree.

Subsections (a)(3)(A) and (B).

New subsection (a)(3)(A) requires employees to be tied in or secured while ascending the tree and remain tied in or secured until the work is completed and they have returned to the ground. This proposed subsection is similar to the ANSI Z133.1 standard. It has the effect of clarifying that fall protection is required while ascending the tree and must be used until the employee returns to the ground.

Subsection (a)(3)(B) provides that employees shall not work from or leave a ladder while elevated unless the employee is tied in or otherwise secured to the tree.

An exception to subsection (a)(3)(B) permits employees to work from a self-supporting ladder in accordance with the manufacturer's instructions. The effect of these amendments is to require fall protection when work is performed from a ladder with the exception of self-supporting ladders that are used in accordance with the manufacturer's instructions.

Subsection (a)(4).

This subsection consists of existing language from subsection (a)(3) that is renumbered as proposed subsection (a)(4). Editorial revisions for clarity are proposed for the first two sentences of this subsection that are nonsubstantive. The third sentence duplicates the first sentence and is proposed for deletion. The last sentence is unnecessary and unenforceable and is proposed for deletion. The overall effect of these amendments is to eliminate duplication and provide clarity to these provisions that are consistent with current industry practices.

Existing provisions in Section 3427(a)(4) and (a)(5) are deleted and the provisions of these standards are revised and covered in proposed Sections 3427(a)(2) and 3427(a)(3)(A) respectively. See the rationale under Sections 3427(a)(2) and 3427(a)(3)(A) for the effect of these amendments.

Subsection (b).

Existing subsection (b) is titled "Pruning and Trimming." This section contains provisions for the safe removal of branches and limbs and for the protection of workers below during tree work operations. The section also describes when a second employee is required on job sites to render assistance. The title of this subsection is amended to read, "Pruning, Trimming and Tree Removal Operations" in order to accurately reflect the contents of proposed subsection (b).

Subsection (b)(1).

Existing subsection (b)(1) requires employees to be instructed to give an audible warning before cut limbs are dropped from the tree. The existing language is deleted in lieu of amendments proposed that require a verbal or visual communication system be established and reviewed during the job briefing, prior to the start of pruning or removal operations. The effect of these amendments is to provide specific guidance to the employer for establishing communication methods similar to those in the ANSI Z133.1 standard,

Subsections (b)(2) and (b)(3).

New subsection (b)(2) requires the establishment of a "drop zone" [defined in Section 3420(b)] prior to the start of pruning or removal operations. New subsection (b)(3) provides that only qualified tree workers directly involved in the operation shall be permitted in the drop zone when a load is being suspended by a rigging sys-

tem. These amendments have the effect of keeping unnecessary personnel out of the work area and mitigating the hazards of overhead tree work operations to employees on the ground.

Subsections (b)(4) and (b)(5).

These new subsections address certain hazards associated with rigging, removing branches or sections of a tree, and tree removal operations. The proposed amendments are consistent with industry practice and have the effect of ensuring that these operations are evaluated and monitored by a qualified tree worker.

Subsection (b)(6).

New subsection (b)(6) requires that lowering devices such as block and tackle and ropes be used to control the direction and placement of trees during the removal process. The effect of this provision is to ensure that the removal of limbs and trees be controlled and performed in a manner that mitigates potential hazards inherent in such operations.

Subsection (b)(7).

Existing subsection (b)(2) is proposed as subsection (b)(7). Several editorial amendments are made to the existing language. One amendment has the effect of clarifying the requirement that separate ropes for lowering limbs shall be attached to limbs which cannot be dropped or are too heavy to be controlled by hand. The other amendment clarifies the requirement that climbing lines shall not be attached to the same crotch as ropes used for lowering limbs. There are no changes to existing language proposed as subsection (b)(8).

Subsection (b)(9).

Existing subsection (b)(4) is proposed as subsection (b)(9). The existing standard requires that a second employee be used at each work location to render immediate assistance, except for minor tree trimming. The existing standard lacks clarity, as the term "minor tree trimming" is not defined. Amendments are proposed that require a second employee to be present to render assistance when an employee is elevated above 12 feet in any tree work operations including climbing ladders, climbing into the tree or using an aerial device. The height of 12 feet is consistent with similar provisions in the ANSI Z133.1 standard. The effect of this amendment is to provide clarity to promote the safety of workers climbing trees and/or working at substantial heights.

Subsection (b)(10).

This proposed subsection addresses the hazards associated with the removal of dead fronds that lie below the crown/canopy of palm trees. This proposed subsection would require that "palm frond skirts" [defined in Section 3420(b)] be removed from the top down. Qualified tree workers performing this work must be supported by a climbing line and a false crotch attached above the frond skirt, or work from an aerial device.

There are situations, depending on the variety of the palm and how the dead fronds are spaced in relation to one another, arranged and attached to the trunk, where they can be effectively removed from below. An exception states that fronds may be trimmed from below the dead frond accumulation only when a qualified tree worker who is competent and experienced in palm tree work and the hazards associated with removing dead fronds makes a determination that this task can be safely performed from below. An informational note refers to the ANSI Z133.1–2006 standard regarding the hazards associated with attempting to remove frond skirts of three years or more growth when positioned below the work area while being supported by a lanyard. The effect of this amendment is to mitigate the hazards of trimming dead fronds from below.

Subsection (b)(11).

Proposed subsection (b)(11) requires that in dry conditions, smoking is not permitted in or near dead fronds and the chain saws are equipped with mufflers and spark arresters. The effect of this provision is to reduce potential fires that could be started from sources of ignition or heat.

Subsection (c). Felling.

Existing subsection (c) is related to the felling of trees that would typically be related to residential, municipal or commercial property tree care and must be removed for such reasons as aesthetics, poor condition of the tree, landscaping improvements and overgrowth, or deterioration of the tree with age or disease. The existing provisions include several subsections with requirements regarding establishment of a clear working area, provision of an escape route before cutting, use of notches and back cuts when felling trees over 10 inches in diameter and, use of audible warnings before the tree falls. A number of amendments that follow include more specific guidance to employers and employees involved in felling operations.

Subsections (c)(1) and (c)(2).

Existing subsection (c)(1) requires a clear work area and an escape route to be planned before any cutting is started. Amendments for clarity are made that divide the provisions into two subsections, (c)(1) and (2). An amendment for new subsection (c)(2) is proposed with the effect of clarifying that the escape route is required prior to cutting any standing tree or trunk.

Subsection (c)(3).

Existing subsection (c)(2) is proposed as subsection (c)(3) with amendments. The existing standard requires that a notch and backcut be used when felling trees over 10 inches in diameter. Tree industry stakeholders, including TCIA representatives, indicate that it has long been recognized that trees with a diameter of greater

than 5 inches present felling hazards that are reduced by the establishment of notches and back cuts. According to TCIA representatives, a number of serious and often fatal accidents result from improper notches and back cuts.

An amendment is proposed that changes the requirement to establish a hinge (notch and back cut) from a tree over 10 inches in diameter to a tree over 5 inches in diameter. The effect of this amendment will be to address similar felling hazards presented by smaller diameter trees. This will result in better planning and control of the direction and location where trees fall during felling operations.

Proposed new subsections (c)(3)(A) through (F) provide specific requirements that specify how to create appropriate notches and back cuts for safe felling operations. These provisions are consistent with similar ANSI Z133.1 standards and will have the effect of mitigating the hazards associated with felling operations.

Subsection (c)(4).

Existing subsection (c)(3) is proposed as subsection (c)(4). The existing provision requires that, just before the tree is ready to fall, an audible warning is given and that all personnel be safely out of range. An amendment is made to clarify that the provisions pertain to the felling of a tree or the tree trunk. In some felling operations, there may be (in addition to the sawyer) another employee assisting by driving wedges. Therefore, a clarification is proposed in subsection (c)(4) that all “non-involved” personnel in the vicinity of felling operations must be out of range before the tree falls. The amendments have the effect of clarifying the standards and reflecting current industry practices.

Subsection (c)(5).

This new subsection requires that, prior to the start of any tree felling or removal operations, hazards and relevant factors that pertain to the tree and the surrounding site conditions be identified, including those in subsections (c)(5)(A) through (c)(5)(I). The effect of these amendments is to provide the employer basic conditions and hazards that are to be evaluated for safe felling operations.

Subsections (d)(1), (2) and (3).

This subsection contains provisions relocated from existing Sections 3428(a)(18), (19) and (20) that are related to bucking and limbing operations. Non-substantive edits are proposed in subsections (d)(2) and (3) for clarity.

Subsection (e).

This new subsection consists of provisions that address “structural support systems” and “lightning protection systems.” These terms are both defined in proposed Section 3420(b). These provisions are modeled primarily from TCIA comments associated with

their assistance to the Board's advisory committee and their assistance to Virginia OSHA which has similar standards. The effect of these amendments will be to reduce the risks of injury associated with the installation of cabling between branches, installing rods or bracing and any other hardware or components associated with structural support systems and lightning protection systems.

Section 3428. Operational Rules.

The general operational rules and provisions of Section 3428 were deleted and in most cases, relocated and/or updated with revisions to appropriate sections of Article 12, or they were already covered elsewhere in the proposal. The effect of these amendments is to provide optimal formatting and organization of the provisions in Article 12 and to incorporate the operating rules into the required provisions of Article 12.

High Voltage Electrical Safety Orders (HVESO).

Article 38. Line Clearance Tree Trimming Operations.

Section 2950. Application.

Subsection (a).

The existing language, proposed as subsection (a), states that Article 38 applies to line clearance tree trimming operations performed in the vicinity of exposed energized overhead conductors and equipment where any part of the employee's body, tools or equipment being used, or parts of trees being worked upon, is likely to come within the distances specified in HVESO, Section 2946(b)(2).

Section 2946(b)(2), Table 1, requires a general clearance of 6 feet from energized overhead high-voltage conductors from 600 to 50,000 volts. Clearances for low voltage work (below 600 volts) is not addressed in Section 2946(b)(2), Table 1. However, the federal standards in 29 CFR 1910.269, Appendix A-3 and its reference back to electrical standards in Subpart S, require unqualified persons to maintain a clearance of 10 feet from energized overhead conductors. An amendment is proposed for subsection (a) to delete the reference to Section 2946(b)(2), and a new Table 1 (placed within Section 2950) is referenced in subsection (a). The amendment will have the effect of revising the provision for consistency with federal standards.

Subsection (b).

A new subsection (b) provides that minimum approach distances to energized conductors for persons other than qualified line clearance tree trimmers and trainees shall be maintained in accordance with Table 1. An exception permits a qualified tree worker who has been trained and meets the provisions outlined in GISO Section 3423 (related to electrical hazards) to perform tree trimming activities within 10 feet, but no closer

than 1 foot, of energized low voltage (600 volts or less) power lines and conductors.

The new Table 1, that follows subsection (b), is proposed for equivalency with counterpart federal standards and to establish a minimum clearance of 10 feet from energized conductors for unqualified persons. An informational Note 1 is added that states the minimum approach distances to energized conductors for qualified line clearance tree trimmers and trainees as defined in Section 2700 are provided in the provisions and references of HVESO Section 2951. An editorial correction is made to proposed Note 2. The effect of the amendments proposed in subsection (b), including the addition of new Table 1, is to provide the minimum clearances that must be maintained from energized conductors for persons that are not trained or qualified to perform such work.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. State agencies that are involved in tree work operations include the California Department of Parks and Recreation, the California Department of Transportation and Cal Fire. These agencies were included in the advisory committee invitations, deliberations and/or participated in additional discussions with Board staff to verify the information provided under the heading, "Specific Technology or Equipment." Also, see the rationale under the heading "Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete."

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Representatives from the Tree Care Industry Association (TCIA) were an integral part of the development of this proposal and participated in the advisory committee. TCIA is a trade organization that represents approximately 2,100 tree service and affiliated member companies nationwide. The ANSI Z133.1 standards provided the source for a significant portion of the proposal. These ANSI standards are listed in the "Documents Relied Upon" for

this proposal and reflect current industry practices and procedures.

The proposal includes clarifying and technical amendments related to tree work operations regarding such matters as instruction and training, first aid, work practices and procedures, electrical hazards, the use of power saws, hand tools, mobile equipment, and the use of climbing equipment. The advisory committee members that assisted with the development of this proposal represented a broad range of stakeholders that are involved in tree work operations.

Stakeholders confirmed that the proposed amendments, in large part, represent clarifications or updates that reflect current industry practices and/or the use of equipment and work procedures that in some cases have been included in the national consensus standards, ANSI Z133.1 — safety standards for arboricultural operations for more than a decade. As a result, it is not expected that this proposal will result in any significant costs to private or public employers.

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article

XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

This regulatory proposal is intended to provide worker safety at places of employment in California.

REASONABLE ALTERNATIVES CONSIDERED

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

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than March 9, 2012. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on March 15, 2012, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 16. BOARD OF CHIROPRACTIC EXAMINERS

NOTICE IS HEREBY GIVEN that the Board of Chiropractic Examiners (hereafter "Board") is proposing to add regulations described in the Informative Digest below. Any person interested may present statements or arguments relevant to the action proposed at a hearing

to be held at 2525 Natomas Park Drive, Suite 120 in Sacramento, CA 95833 at 10:30 a.m., on Tuesday, March 13, 2012. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Board of Chiropractic Examiners at its office no later than 5:00 p.m. on Monday, March 12, 2012.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 1000-4(b), 1000-4(e) and 1000-10 of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii) and to implement, interpret or make specific Sections 1000-4(b), and 1000-10(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p. 1xxxviii); the Board is considering changes to Title 16, Division 4, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1000 - 4(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p.1xxxviii) authorizes the Board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public.

This proposal would make regulatory changes to establish safety standards for the use of lasers by licensed chiropractors and any person under their direct or indirect supervision. These changes would increase the Board's enforcement authority over the use of lasers within the scope of chiropractic by defining a violation of this section as unprofessional conduct.

There are currently no state regulations governing the use of lasers by chiropractors; therefore, this proposal is not inconsistent or incompatible with existing state regulations.

The Board is proposing to make the following changes:

1. Add Section 302.5(a)(1)

This proposal would prohibit duly licensed chiropractors and any person under their direct or indirect supervision from using any laser in the practice of chiropractic which has not been properly approved or cleared by the United States Department of Food and Drug Administration.

2. Add Section 302.5(a)(2)

This subparagraph would prohibit a duly licensed chiropractor and any person under their direct or indirect supervision from marketing or advertising the use of a laser or using a laser for purposes other than treatment consistent with section 302 and the product's FDA approval or clearance.

3. Add Section 302.5(a)(3)

This subparagraph would require a duly licensed chiropractor and any person under their direct or indirect supervision to follow the manufacturer's specified guidelines for the safe use of laser.

4. Add Section 302.5(a)(4)

This subparagraph would require a duly licensed chiropractor and any person under their direct or indirect supervision to comply with all state and federal laws governing the use of lasers in clinical settings.

5. Add Section 302.5(b)

This section would assert that nothing in this section shall be construed to authorize the use of a laser by a chiropractor outside of the chiropractic scope of practice including, but not limited to, laser ablation or surgical procedures, and laser treatment of allergies in cases where there is a known risk of anaphylactic reaction to the individual being treated.

6. Add Section 302.5(c)

This section would define a violation of this section as unprofessional conduct which may subject the licensee to discipline by the Board.

FISCAL IMPACT ESTIMATES

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

Non-discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

The Board initially determined that the proposed regulation would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

There are no costs associated with the proposed regulatory action. This proposal only affects chiropractors who offer laser services in their practice.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

This proposal will only affect chiropractic licensees who choose to use lasers in their chiropractic practice for treatments within the scope of chiropractic and would not impose any additional costs to the licensee to comply with this provision.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None.

ECONOMIC IMPACT ANALYSIS

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not impose a new requirement on chiropractic licensees; rather, it would adopt safety standards for the safe use of lasers in chiropractic. Not all chiropractors choose to use lasers in their practice; therefore, this proposal would only affect licensees who choose to use lasers for chiropractic treatments.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, that it will not create or eliminate jobs or occupations, and the proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. The board's proposal does not impact multiple industries. The specific benefits anticipated by this proposal include greater protection of public health and safety, as well as improved worker safety and the state's environment by setting standards for the advertising and safe use of laser devices within the practice of chiropractic.

Small Businesses: The Board's proposal may affect small businesses; however, the board does not have nor does it maintain data to determine how many chiropractors utilize lasers in their practice. The Board has determined that this regulatory proposal will not impose a significant cost to small businesses.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of new or elimination of existing jobs, businesses or the expansion of businesses in the State of California.

Occupations/Businesses Impacted: This proposal would impact only those chiropractic licensees who choose to use laser devices in their practice for which the overall cost for compliance would be minimal to non-existent. The proposal would provide greater protection to the public and workers who administer laser treatments in chiropractic by establishing safety standards for laser devices used in chiropractic.

Reporting Requirements: None.

Comparable Federal Regulations: None.

Benefit(s) of Proposed Regulation:

Section 1000-4(b) of the Business and Professions Code (Chiropractic Initiative Act of California Stats. 1923 p.1xxxviii) authorizes the Board to adopt regulations as they may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public. Further, BPC section 1000-10(a) of the Chiropractic Initiative Act authorizes the Board to adopt, amend or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of professional service and the protection of the public. The specific benefits anticipated by this proposal include greater protection of public health and safety, as well as improved worker safety by setting standards for the advertising and safe use of laser devices within the practice of chiropractic.

The Board does not anticipate that this proposed regulation will impact the prevention of discrimination, the promotion of fairness or social equity, or an increase in openness and transparency in business and government.

CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine in the Final Statement of Reasons that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to af-

ected 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.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Dixie Van Allen, Program Analyst
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, California 95833
Telephone: (916) 263-5329
Fax: (916) 263-5369
E-mail: dixie.vanallen@CHIRO.ca.gov

The backup contact person is:

Name: Robert Puleo, Executive Officer
Address: 2525 Natomas Park Drive, Suite 260
Sacramento, CA 95833
Telephone: (916) 263-5355
Fax: (916) 263-5369
E-mail: chiro.info@chiro.ca.gov

Web Site Address: Materials regarding this proposal can be found at http://www.chiro.ca.gov/business_rulemaking.htm.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Dixie Van Allen at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Dixie Van Allen at the above address, or by accessing the Board’s website at http://www.chiro.ca.gov/business_rulemaking.htm.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1685.5, *Calculation of Estimated Use Tax — Use Tax Table*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 1685.5, *Calculation of Estimated Use Tax— Use Tax Table*. Regulation 1685.5 prescribes the manner in which the Board “shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table,” as required by RTC section 6452.1, as amended by section 1 of Senate Bill No. (SB) 86 (Stats. 2011, ch. 14). The proposed amendments update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income (AGI) and make such amounts available to the Franchise Tax Board (FTB) in the form of a use tax table for calendar year 2012 and subsequent years.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on March 20–22, 2012. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on March 20, 21, or 22, 2012. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1685.5.

AUTHORITY

RTC section 7051.

REFERENCE

RTC section 6452.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior Law

RTC section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the FTB in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley–Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

Current Law

SB 86 was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their AGIs for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person’s adjusted gross income and by July 30 of each calendar

year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

Regulation 1685.5

The Board adopted Regulation 1685.5 on July 26, 2011, to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their AGIs, prescribe the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI for calendar year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The California Taxpayers Association (CalTax) requested that the Board conduct interested parties meetings to discuss the methodology used to develop the proposed regulation before the Board voted to adopt Regulation 1685.5. The Board’s response to this request, as provided in the final statement of reasons for the adoption of Regulation 1685.5, was that:

“[T]he Board did not have adequate time to conduct interested parties meetings before initiating the formal rulemaking process to adopt proposed Regulation 1685.5 because:

- The use tax table provisions were added to RTC section 6452.1 on March 23, 2011;
- The Board needed to adopt a 2011 use tax table and forward it to the FTB for inclusion in the instructions to the FTB’s 2011 income tax returns by the July 30, 2011, deadline specified in RTC section 6452.1; and
- The FTB needs to know that the 2011 use tax table adopted by the Board has been approved by OAL by September 1 and will be effective for use with 2011 income tax returns so that the FTB can include the 2011 use tax table in the instructions to its 2011 income tax returns, which will be sent out for publication and incorporation into return preparation software on September 1, 2011.

However, the Board has already scheduled interested parties meetings to discuss whether the Board needs to amend Regulation 1685.5 before the July 30, 2012, deadline, in which it is required to estimate consumers’ 2012 use tax liabilities based upon their adjusted gross incomes and prepare a 2012 use tax table for transmission to the FTB.”

Proposed Amendments

Board staff met with interested parties on August 29, 2011, and October 11, 2011, to discuss whether it is necessary to amend Regulation 1685.5 to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s

AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. As a result of public comments, including comments from CalTax, Board staff recommended that the Board amend Regulation 1685.5 to:

- Clarify that the Board’s use tax tables are optional and may only be used to report estimated use tax for nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, as provided in RTC section 6452.1, subdivision (d)(2)(A)(i);
- Provide assurance to consumers that if they correctly report their estimated use tax liabilities for their eligible nonbusiness purchases in accordance with the Board’s use tax tables, then the Board may not assess the difference, if any, between the estimated use tax liabilities reported in accordance with the Board’s use tax tables and the consumers’ actual use tax liabilities, as provided in RTC section 6452.1, subdivision (g);
- Add seven additional AGI ranges to the Board’s use tax tables for calendar year 2012 and subsequent years and narrow the intervals between the AGI ranges in the Board’s use tax tables so that estimated use tax liabilities increase or decrease by smaller amounts between AGI ranges;
- Move the use tax liability factor calculation date from May 1 to June 1 beginning in calendar year 2012 because the United States Census Bureau typically publishes its electronic shopping and mail order house spending data during May of each year;
- Require the Board to make adjustments to the amount of spending at electronic shopping and mail order houses to arrive at total spending on taxable purchases;
- Require the Board to calculate the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases; and
- Require the Board to use the percentage of income spent on taxable purchases, rather than the percentage of income spent on all electronic and mail order house purchases, to calculate the use tax liability factors for calendar-year 2012 and subsequent years.

During its December 14, 2011, Business Taxes Committee meeting, the Board determined that staff’s recommended amendments are reasonably necessary to update the manner in which the Board shall annually calculate the estimated amount of use tax due according to a person’s AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years, and the Board voted to pro-

pose their adoption. The objectives of the proposed amendments are to clarify the purpose and use of the Board's use tax tables, help ensure that use taxes due on business purchases are not reported twice, help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years, improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range, and generally encourage consumers to use the Board use tax tables. The proposed amendments are anticipated to provide the following specific benefits:

- Clarify the purpose and use of the Board's use tax tables;
- Help ensure that use taxes due on business purchases are not reported twice;
- Help ensure that the Board uses the most current United States Census Bureau data possible to calculate the use tax liability factors for 2012 and subsequent years;
- Improve the overall precision of the Board's estimated amount of use tax due according to a person's AGI range; and
- Generally encourage consumers to use the Board use tax tables.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1685.5 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1685.5 is the only state regulation prescribing the manner in which the Board "shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table," as required by RTC section 6452.1, as amended by section 1 of SB 86.

There are no comparable federal regulations or statutes to Regulation 1685.5.

Note Regarding Assembly Bill No. (AB) 155 and the Use Tax Liability Factor

The proposed amendments to Regulation 1685.5, subdivision (b)(2), will require that the Board multiply the percentage of income spent on taxable purchases during the preceding year by 0.37, which represents the estimated percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers. AB 155 (Stats. 2011, ch. 313) expanded the use tax registration requirements so that they apply to some out-of-

state retailers, including Internet retailers, that were previously not required to register with the Board to collect and remit use tax on their sales of tangible personal property to California customers. However, section 6 of AB 155 provides that the new registration requirements will not be operative until either September 15, 2012, or January 1, 2013, and the Board is currently unable to determine whether the new registration requirements will reduce the percentage of California consumers' total purchases of tangible personal property for use in California from all out-of-state retailers that are made from out-of-state retailers that are not registered with the Board to collect use tax from their customers during 2012 or in subsequent years, and, if so, the extent of such reduction. Therefore, the Board is not proposing to amend Regulation 1685.5 to account for the new registration requirements imposed by AB 155 at this time. However, the Board is continuing to monitor the implementation of AB 155 and considering whether to propose sufficiently related changes to the original text of the proposed amendments to Regulation 1685.5 to account for the enactment of AB 155 or other events that may change the percentage of taxable purchases that California consumers make from unregistered out-of-state retailers during 2012 or subsequent years.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulation 1685.5 will update the manner in which the Board

shall annually calculate the estimated amount of use tax due according to a person's AGI and make such amounts available to the FTB in the form of a use tax table for calendar year 2012 and subsequent years. The proposed amendments will not impose any new taxes or change any exemptions or exclusions. Furthermore, the proposed amendments expressly provide that taxpayers are not required to use the Board's use tax tables to estimate and report their use tax liabilities. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulation 1685.5 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1685.5 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has prepared the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1). The Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1685.5 will not affect the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulation 1685.5 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identi-

fied and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on March 20, 2012, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulation 1685.5 during the March 20-22, 2012 Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1685.5. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikethrough version of the text of Regulation 1685.5 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the in-

formation on which the proposed amendments are based, including the economic impact analysis required by Government Code section 11346.3, subdivision (b)(1), are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the Initial Statement of Reasons are also available on the Board's Website at www.boe.ca.gov.

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

The Board may adopt the proposed amendments to Regulation 1685.5 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 1685.5, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —
Public Interest Notice
For Publication January 27, 2012
**PROPOSED RESEARCH ON FULLY
PROTECTED SPECIES**
Research on Population Dynamics of Golden Eagles

The Department of Fish and Game (Department) received a proposal on November 4, 2011 from Jeff

Smith, H.T. Harvey and Associates, requesting authorization to take the golden eagle (*Aquila chrysaetos*) (eagle), Fully Protected bird, for research purposes consistent with the protection and recovery of this species. The purpose of the research is to study population dynamics through inventories, monitoring, and radio-tracking, with detailed investigations on home range and flight dynamics statewide.

The applicant is in the process of obtaining the required Scientific Collecting Permit (SCP) to take protected species of wildlife. Permit conditions require that the holder of an SCP obtain special authorization from the Department for research on Fully Protected species. The proposed activities include surveys with the use of helicopters; nest monitoring; capturing, banding, auxiliary marking (including telemetry); and taking tissue samples such as blood and feathers. The Department intends to 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 27, 2012, for an initial and renewable term of two years. Contact: Wildlife Branch, 1812 9th Street, Sacramento, CA 95811, Attn.: Dale Steele.

**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# 2011-1202-01
BOARD OF EQUALIZATION
Federal Areas

The Board of Equalization adopted a new subdivision (d)(4)(G) in section 1616 of title 18 of the California Code of Regulations further prescribing the circumstances under which a sale of tangible personal property to, and the storage, use, or other consumption of tangi-

ble personal property by, the tribal government of an Indian tribe that is officially recognized by the United States is exempt from sales and use tax.

Title 18
California Code of Regulations
AMEND: 1616
Filed 01/11/2012
Effective 02/10/2012
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2012-0109-01
BOARD OF PHARMACY
Notice to Consumers

The Board of Pharmacy amended section 1707.2 and to adopt section 1707.6 to title 16 of the California Code of Regulations to require the posting and provision of specified notices to consumers of prescription drugs.

Title 16
California Code of Regulations
ADOPT: 1707.6 AMEND: 1707.2
Filed 01/17/2012
Effective 02/16/2012
Agency Contact: Carolyn Klein (916) 574-7913

File# 2011-1130-02
CALIFORNIA ARCHITECTS BOARD
IDP Guidelines Alignment

This rulemaking action updates the edition of the Internship Development Program Guidelines of the National Council of Architectural Registration Boards which architecture license candidates may follow to complete required internships prior to licensure. The rulemaking also clarifies and simplifies cross references to the various pre-licensure internship program options of candidates in related subsections and regulations of the California Code of Regulations.

Title 16
California Code of Regulations
AMEND: 109, 117, 121
Filed 01/11/2012
Effective 02/10/2012
Agency Contact: Timothy Rodda (916) 575-7217

File# 2012-0105-02
DEPARTMENT OF CORPORATIONS
Private Fund Adviser Exemption

This emergency rulemaking action readopts, for 90 days, the effectiveness of an expired federal-law Securities and Exchange Commission registration exemption for investment advisers who continue to rely upon and meet the criteria of that expired federal exemption.

Title 10
California Code of Regulations
AMEND: 260.204.9
Filed 01/11/2012
Effective 01/18/2012
Agency Contact: Karen Fong (916) 322-3553

File# 2011-1201-01
DEPARTMENT OF CORRECTIONS AND REHABILITATION
Pilot Program-Interim Care Facilities @ ASH, CMF, SVSP

This change without regulatory effect will remove section 3999.8 from CCR, title 15 because it has expired by its own terms and in accordance with Penal Code section 5058.1, subdivision (d).

Title 15
California Code of Regulations
REPEAL: 3999.8
Filed 01/11/2012
Agency Contact:
Trilochan Oberoi (916) 445-2227

File# 2011-1213-03
DEPARTMENT OF DEVELOPMENTAL SERVICES
Electronic Signatures and Documents

The Department of Developmental Services submitted this action to amend sections 50602, 50604, 50605, 50607, 50612 and 54326 of Title 17 of the California Code of Regulations. The amendments allow for electronic documentation and transactions to ensure that regional centers and vendors are maintaining the necessary documentation for services purchased for consumers.

Title 17
California Code of Regulations
AMEND: 50602, 50604, 50607, 50612, 54326
Filed 01/17/2012
Effective 02/16/2012
Agency Contact: Brian Winfield (916) 654-1569

File# 2011-1227-02
DEPARTMENT OF FOOD AND AGRICULTURE
Anastrepha Striata Eradication Area

The Department of Food and Agriculture submitted this timely Certificate of Compliance action to make permanent the emergency adoption of title 3, California Code of Regulations, section 3591.25 in OAL File No. 2011-1007-01E. The emergency action established San Diego County as an eradication area for the New World guava fruit fly, *Anastrepha striata*, listed 48 host plants and included as hosts any soil or planting media within the drip area of plants that produce host fruit, and established the means and methods that may be used for

eradication of the insect. The adoption of section 3591.25 provides authority for the state to perform specific detection, delimitation, control, and eradication activities against the New World guava fruit fly in San Diego County.

Title 3
 California Code of Regulations
 ADOPT: 3591.25
 Filed 01/18/2012
 Effective 01/18/2012
 Agency Contact:
 Stephen S. Brown (916) 654-1017

File# 2011-1219-06
 OCCUPATIONAL SAFETY AND HEALTH
 STANDARDS BOARD
 Federal Final Rule, Standards Completion Project—
 Phase III

The Occupational Safety and Health Standards Board submitted this file and print action, pursuant to Labor Code section 142.3(a)(3), to amend 12 sections and to adopt one section under title 8 of the California Code of Regulations. The board adopted regulations substantially the same as recent amendments to federal standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration addressing Standards Improvement Project, Phase III. The federal regulatory amendments were published on June 8, 2011 in Federal Register, Vol. 76, No. 110, pages 33590-33612 and became effective on July 8, 2011. This action addresses updated requirements in areas such as respiratory protection pertaining to the use and maintenance of breathing gas containers; safe operating practices for chain and wire rope slings including the labeling of chains, slings and shackles; employee lead exposure monitoring; medical removal protection; and construction industry material handling (rigging) equipment.

Title 8
 California Code of Regulations
 ADOPT: 1615.3 AMEND: 1532.1, 3361, 5042,
 5044, 5045, 5047, 5049, 5144, 5191, 5198, 5209,
 8355
 Filed 01/18/2012
 Effective 01/18/2012
 Agency Contact: Marley Hart (916) 274-5721

File# 2011-1215-01
 STATE COMPENSATION INSURANCE FUND
 Conflict-of-Interest Code

The State Compensation Insurance Fund is amending its conflict-of-interest code found at title 2, div. 8, ch. 35, sec. 52400, California Code of Regulations. The

changes were approved for filing by the Fair Political Practices Commission on December 14, 2011.

Title 2
 California Code of Regulations
 AMEND: Div. 8, Ch. 35, Sec. 52400
 Filed 01/18/2012
 Effective 02/17/2012
 Agency Contact:
 Joseph Gershaneck (415) 565-1184

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN August 24, 2011 TO
 January 18, 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 2
 01/18/12 AMEND: Div. 8, Ch. 35, Sec. 52400
 01/10/12 AMEND: 18423, 18539, 18550
 01/05/12 ADOPT: 18404.2
 01/05/12 ADOPT: 18227.5, 18247.5 REPEAL:
 18247.5
 12/28/11 AMEND: 1859.76
 12/21/11 AMEND: 1859.90.2, 1859.81
 12/07/11 ADOPT: 18316.6, 18361.11 AMEND:
 18360, 18361, 18361.4
 11/22/11 AMEND: 559
 11/08/11 ADOPT: 18421.31
 10/27/11 AMEND: 18404.1
 10/26/11 ADOPT: 18237
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