



# California Regulatory Notice Register

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**PROPOSED ACTION ON REGULATIONS**

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**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**

**ADOPTION**

MULTI-COUNTY AGENCY: School Insurance Group Northern Alliance I

**AMENDMENT**

MULTI-COUNTY AGENCY: Reclamation District #2093 Alta Irrigation District  
 STATE AGENCY: Managed Risk Medical Insurance Board California Conservation Corps Employment Development Department

A written comment period has been established commencing on **February 15, 2013** and closing on **April 1, 2013**. Written comments should be directed to the Fair Political Practices Commission, Attention Adrienne Tackley, 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 **April 1, 2013**. 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 Adrienne Tackley, 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 Adrienne Tackley, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 4. CALIFORNIA SCHOOL FINANCE AUTHORITY**

**Division 15, Article 3, Sections 10192, 10193, 10194, 10195, 10196, 10197 and 10198, California Code of Regulations**

NOTICE IS HEREBY GIVEN that the California School Finance Authority (CSFA or Authority), organized and operating pursuant to Sections 17170 through 17199.5 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than 5:00 p.m. on Monday, April 1, 2013. The CSFA Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal 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(s) designated in this notice as Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

**PROPOSED REGULATORY ACTION**

CSFA proposes to amend Sections 10192, 10193, 10194, 10195, 10196, 10197 and 10198 of Title 4 of the California Code of Regulations (Regulations). The Regulations implement CSFA's responsibilities related to the Charter School Facilities Credit Enhancement Grant Program (Program).

**AUTHORITY AND REFERENCE**

Authority: Sections 17179 and 17180, Education Code. Section 17179 provides CSFA with the authority to do all things reasonably necessary to carry out its responsibilities. Section 17180(a) of the Education Code provides CSFA the authority to adopt bylaws for the regulation of its affairs and the conduct of its business. Subdivision (d) provides CSFA with the authority to receive and accept grants from the federal government. Subdivision (o) allows CSFA with the authority to adopt guidelines for grants.

Reference: Sections 17173, 17180, 17199.4, 47600 et seq., 47605, and 47612.5 of the Education Code. The Regulations include a number of the requirements of the Program contained in the reference code provisions. They also rely on a number of provisions in the Charter School Act of 1992, commencing with section 47600 of the Education Code. Section 17180(d) provides CSFA with the authority to receive grants from the federal government.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

CSFA was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). CSFA is authorized to adopt bylaws for the regulation and conduct of its business, is vested with all powers reasonably necessary to carry out its powers and responsibilities, and may receive and accept grants from a federal agency (Education Code sections 17179 and 17180).

In 2010, the U.S. Department of Education approved a grant award of \$8,300,000 to CSFA pursuant to the Credit Enhancement for Charter School Facilities Program (CFDA #84.354A), authorized under Title V, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001. Program funds may be applied toward providing credit enhancement to facilitate the purchase, construction, and/or renovation of facilities for California public charter schools. Regulations implementing the Program must be in place to allow CSFA the ability to establish application and eligibility requirements, eligible uses of Program funds, criteria for evaluation and selection, and internal controls to ensure the integrity of the Program. In addition regulations are necessary to ensure uniformity and consistency in the process of review and selection of applicants for Program awards. These Regulations are critical in order to lower financing costs for the purchase, renovation, or construction of California public charter schools.

The eligibility for Program funds is based on certain factors, including, but not limited to, the charter school

having at least 50% of its pupils eligible for free/reduced priced meals as reported by the California Department of Education (CDE), the charter school being in compliance with the terms of its charter and in good standing with its chartering authority, and the charter school having conducted instructional operations for at least one academic year under its current County–District–School code and charter number issued by the CDE.

Upon determining eligibility, the selection of applicants for Program awards is based on certain additional factors, including, but not limited to, agreement to use the intercept method to repay debt pursuant to Education Code section 17199.4(a)(4), ability to demonstrate leveraging of Program funds at a minimum 8:1 ratio, and ability to secure private placement of debt with an investor or secure an investment grade credit rating from a national credit agency in conjunction with a public sale. The Regulations also allow for consideration of other factors in determining Program awards, including the charter school’s academic performance, an applicant’s commitment of substantial equity toward the project being financed, and an applicant’s having an award of tax–advantaged financing instruments.

The proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

The amendments to the Regulations are briefly summarized below and are intended to clarify the requirements.

Section 10192 — Purpose

- Capitalizes the first letters of the words “charter schools” for consistency with the definition set forth in Section 10193.

Section 10193 — Definitions

- Subsection (b): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.
- Subsection (c): Capitalizes the word “application” for consistency with the definition set forth in Section 10193.
- Subsection (d): Clarifies definition of Awardee and capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.
- Subsection (e): Capitalizes the first letter of the word “application” for consistency with the definition set forth in Section 10193.
- Subsection (f): Clarifies definition of Charter Authorizer by replacing reference from “Chartering Authority” to the more appropriate term, “Charter Authorizer.” Amendment was

made to prevent any confusion for stakeholders between the terms “Chartering Authority” and “Authority,” which is in reference to the California School Finance Authority.

- Subsection (g): Omitted because it was unnecessary to define “Classroom Based Instruction.”

Section 10194 — Applicant Eligibility Criteria

- Subsection (a): Capitalizes the first letter of the word “application” for consistency with the definition set forth in Section 10193.
- Subsection (b): Capitalizes the first letters of the words “charter school” and “application,” for consistency with the definitions set forth in Section 10193 and changes “Charter Authority” to “Charter Authorizer” for consistency with amended definition of “Charter Authorizer” set forth in Section 10193.
- Subsection (c): Changed eligibility of completion of “at least one school year of instructional operations” from “Charter School” to “Applicant” in order to provide first year schools with the opportunity to apply under an Educational Management Organization.
- Subsection (d): Corrects the description of classroom–based instruction criteria to align with the California Education Code.
- Subsection (e): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.
- Subsection (f): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.

Section 10195 — Eligible Use of Program Funds and Maximum Award

- Subsection (a): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.
- Subsection (b): Capitalizes the first letter of the word “Application” for consistency with the definition set forth at Section 10193 and references Section 10195(a) for further clarification on uses of Program funds.
- Subsection (d): Clarifies reference to “Program” instead of “Grant.”
- Subsection (e): Amended for sentence clarity.
- Subsection (f): Amended for sentence clarity.

Section 10196 — Application Review and Evaluation Criteria

- Subsection (b)(1): Amended for clarity.

- Subsections (b)(2): Changes “loan” to “project” and adds “For purposes of the leverage calculation, the project funds may include but not be limited to, loans, and capital and equity contributions” for purposes of consistency with the recognized standard used in the charter school finance industry wherein the leveraging ratio is for total project costs rather than the amount of the loan.
- Subsection (c)(1): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.
- Subsection (d): Corrects complex word Structure and capitalizes the first letter of the word “application” for consistency with the definition set forth at Section 10193.

Section 10197 — Content of Application

- Capitalizes the first letter of the word “application” for consistency with the definition set forth at Section 10193.
- Subsection (e): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.
- Subsections (l) and (m): Amended for clarity.

Section 10198 — Units and Conflicts of Interest

- Subsection (d): Capitalizes the first letters of the words “charter school” for consistency with the definition set forth in Section 10193.

**OTHER MATTERS PRESCRIBED BY STATUTES  
APPLICABLE TO THE SPECIFIC STATE  
AGENCY OR TO ANY SPECIFIC REGULATION  
OR CLASS OF REGULATIONS**

No other matters prescribed by statute are applicable to CSFA or to any specific Regulation or class of Regulations pursuant to Section 11346.5(a)(4) of the California Government Code pertaining to the proposed Regulations or CSFA.

**MANDATE ON LOCAL AGENCIES OR  
SCHOOL DISTRICTS**

CSFA has determined that the Regulations do not impose a mandate on local agencies or school districts.

**FISCAL IMPACT**

CSFA has determined that the Regulations do not impose any additional cost or savings to any state agency, any costs to any local agency or school district requiring reimbursement under Part 7 (commencing with Section

17500) of Division 4 of Title 2 of the Government Code, any other non-discretionary cost or savings to any local agency, or any cost or savings in federal funding to the State.

While CSFA will incur additional expenses in implementing and administering the Grant, the U.S. Department of Education provides that CSFA may charge such additional expenses for CSFA’s administrative costs against interest earned on the Program grant funds. Therefore, there is no fiscal impact on the State’s General Fund or requirement of additional appropriations by the Legislature. There will be no cost or savings to any State Agency pursuant to Government Code Sections 11346.1(b) or 11346.5(a)(6).

**INITIAL DETERMINATION REGARDING ANY  
SIGNIFICANT, STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESS**

CSFA has made an initial determination that the Regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES**

CSFA has determined that the adoption of the Regulations will not affect small business. The Program is a voluntary financing program available to charter schools to assist in the financing of charter school facilities.

**COST IMPACTS**

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

**ASSESSMENT OF EFFECT ON JOBS AND  
BUSINESS EXPANSION, ELIMINATION  
OR CREATION**

Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

**COST IMPACT ON HOUSING**

The Regulations will not have any effect on housing costs.

**RESULTS OF ECONOMIC  
IMPACT ASSESSMENT**

- a. The proposed regulations will unlikely have an impact on the creation or elimination of jobs within the State of California. The personnel employed or otherwise working on the implementation of Program awards are already in place. In addition, the Authority is unaware of any reason providing grant funds to awardees would result in the elimination of jobs. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that jobs would be created or eliminated as a result.
- b. The proposed regulations will unlikely have an impact on the creation or elimination of new businesses within the State of California. There are no provisions within the proposed regulations which place additional burdens, obligations, or expenses on existing businesses such that businesses would be created or eliminated as a result.
- c. The proposed regulations will unlikely have an impact on the expansion of businesses currently doing business within the State of California.
- d. To the extent that the awards benefit the long-term viability of charter schools, the Program and its proposed regulations have the potential to directly benefit economically vulnerable populations and communities throughout the State.

**REASONABLE ALTERNATIVES**

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

CSFA invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

**AGENCY CONTACT PERSON(S)**

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

Katrina Johantgen, Executive Director  
California School Finance Authority

at:

304 South Broadway, Suite 550  
Los Angeles, CA 90013-1224  
(213) 620-4467

or

915 Capitol Mall, Room 101  
Sacramento, CA 95814  
(916) 651-7710

or

[kjohantgen@treasurer.ca.gov](mailto:kjohantgen@treasurer.ca.gov)

or

[csfa@treasurer.ca.gov](mailto:csfa@treasurer.ca.gov)

The following person is designated as a backup Contact Person for inquiries only regarding the Regulations:

Mark Paxson, General Counsel  
State Treasurer's Office  
915 Capitol Mall, Room 110  
Sacramento, CA 95814  
(916) 653-2995

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the Regulations to CSFA. The written comment period on the Regulations will end at 5:00 p.m. on Monday, April 1, 2013. All comments to be considered by CSFA must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Regulations for 15 calendar days after the date on which such Regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations.

Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

**AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF PROPOSED REGULATIONS**

CSFA has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at CSFA's office at 915 Capitol Mall, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on CSFA's Web site at [www.treasurer.ca.gov/csfa](http://www.treasurer.ca.gov/csfa).

**PUBLIC HEARING**

No public hearing regarding the Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to CSFA at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Regulations for which the hearing is being requested.

**15-DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the written comment period ends and following a public hearing, if any is requested, CSFA may adopt the Regulations substantially as described in this Notice, without further notice. If CSFA makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through CSFA's Web site described above) for at least fifteen (15) calendar days before CSFA adopts the proposed Regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

CSFA is required to prepare a Final Statement of Reasons pursuant to Government Code Section 11346.9. Once CSFA has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on CSFA's Web site described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.

**TITLE 5. EDUCATION AUDIT APPEALS PANEL**

*Supplement to Audits of K-12 Local  
Education Agencies  
Fiscal Year 2012-13*

The Education Audit Appeals Panel (EAAP) proposes to amend the Audit Guide regulations as described below after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the written comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be addressed to Timothy Morgan.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at **5:00 p.m. on Monday, April 1, 2013**. EAAP will consider only written comments received by that time. Written comments for EAAP's consideration should be directed to:

Christine Pentoney, AGPA  
Education Audit Appeals Panel  
770 L Street, Suite 1100  
Sacramento, CA 95814

Fax: (916) 445-7626  
e-mail: [cpentoney@eaap.ca.gov](mailto:cpentoney@eaap.ca.gov)

**AUTHORITY AND REFERENCE**

Authority cited: Section 14502.1, Education Code.

Reference: Sections 14501, 14502.1, 14503, and 41020 of the Education Code.

**ARTICLE 3. STATE COMPLIANCE  
REQUIREMENTS: LOCAL EDUCATION  
AGENCIES OTHER THAN CHARTER SCHOOLS**

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

The regulations in Title 5 of the California Code of Regulations, Division 1.5, Chapter 3, constitute the audit guide required by Education Code sections 14502.1, 14503 and 41020. The audit guide provides guidance, through definitions of terms and specification of procedures, to auditors in the conduct of statutorily required financial and compliance audits of local education agencies.

The Controller, pursuant to Education Code Section 14502.1, has proposed amending the audit guide for fiscal year 2012–13. The proposal would make audit steps related to the public hearing requirements of Education Code Section 42605 inapplicable for audit year 2012–13. Conforming changes to definitional sections are also made.

The anticipated benefit of the proposed amendment is to eliminate the potential for auditor confusion, and for inconsistent audit approaches among the private accountants who audit most LEAs, with regard to LEA compliance with Education Code section 42605 in the form currently reflected in the audit guide and as later amended.

The proposed amendment is not inconsistent or incompatible with existing state regulations, because rather than changing LEAs’ compliance duties, the audit guide only specifies which duties must be audited and provides suggested procedures for doing so. The underlying law, Education Code section 42605, remains unchanged. Neither that law nor audit procedures addressing it conflict with other existing regulations, state or federal.

**TITLE 5, DIVISION 1.5  
CHAPTER 3. AUDITS OF CALIFORNIA K–12  
LOCAL EDUCATION AGENCIES**

**ARTICLE 2 AUDIT REPORTS**

Article 2 prescribes report components (Section 19815), provides definitions of terms (Section 19816), and specifies which sections of the audit guide are applicable to each audit year (Section 19816.1). Conforming amendments, to reflect the change in applicable years for the audit procedure set out in Section 19839, are proposed in Section 19816(h), and in subparagraph (a)(10) of Section 19816.

**19839. Public Hearing Requirement — Receipt of Funds**

This section directs the auditor to determine whether school districts and county offices of education complied with the public hearing requirements that Education Code Section 42605 makes a condition for receipt of funds. The section was not previously amended to reflect changes to those public hearing requirements effective March 24, 2011 (Stats. 2011, c. 7 (S.B. 70) and January 1, 2012 (Stats. 2011 c. 606 (A.B. 189)). This rulemaking would make section 19839 inapplicable to the 2012–13 Audit Guide.

**DISCLOSURES REGARDING THE  
PROPOSED ACTION**

1. Mandate on local agencies and school districts pursuant to Government Code Section 17500 et seq.: None.
2. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None.
3. Cost or savings to any state agency: None.
4. Other non–discretionary cost or savings imposed upon local educational agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Significant effect on housing costs: EAAP has made an initial determination that the proposed regulatory action would not affect housing costs.
7. Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
8. Results of the Economic Impact Assessment:
  - (a) Adoption of these regulations will not:
    - create or eliminate jobs within California;
    - create new businesses or eliminate existing businesses within California; or
    - affect the expansion of businesses currently doing business within California.
  - (b) Benefits of the regulation to the health and welfare of California residents: Adoption of these amendments will make an outdated and ambiguous requirement inapplicable to the Audit Guide for 2012–13.

9. Cost impact on a representative private person or business: EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
10. Business report (Gov. Code §§ 11346(a)(11), 11346.3(d)): None.
11. Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

#### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), EAAP must determine that no reasonable alternative it has considered or that has otherwise been identified and brought to the EAAP's 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.

EAAP invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the written comment period.

#### CONTACT PERSONS

Inquiries concerning the substance of the proposed action, requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, and other technical information upon which the rulemaking is based, and questions on the proposed administrative action may be directed to Timothy Morgan, Staff Attorney III, at (916) 445-7745 or by e-mail: [tmorgan@eaap.ca.gov](mailto:tmorgan@eaap.ca.gov). The back-up contact person for general inquiries is Mary C. Kelly, Executive Officer, at (916) 445-7745.

#### AVAILABILITY OF RULEMAKING FILE

The entire rulemaking file will be available for inspection and copying throughout the rulemaking process at EAAP's office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Economic Impact Assessment. A copy may be obtained by contacting Timothy Morgan at the above address. The bill analyses are also available online at [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html).

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the comment period, and a hearing, if requested, and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of Timothy Morgan at the address stated above. EAAP 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 completion of the Final Statement of Reasons, a copy may be obtained by contacting Christine Pentoney at the above address, or from EAAP's website.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, any changed or modified text, and the Final Statement of Reasons will be accessible through the EAAP website: [www.eaap.ca.gov](http://www.eaap.ca.gov).

### TITLE 8. DIVISION OF WORKERS' COMPENSATION

#### NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION

Subject Matter of Regulations:  
Qualified Medical Evaluator Regulations  
Disability Evaluation Unit

CALIFORNIA CODE OF REGULATIONS,  
TITLE 8. ARTICLES 1, 2, 2.6, 3, AND 10.5 OF  
CHAPTER 1  
AND SUBCHAPTER 1.6 OF CHAPTER 4.5

**NOTICE IS HEREBY GIVEN** that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code sections 53, 111, 122, 133, 139, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 5307.3,

5307.4 and 5703.5 has adopted regulations on an emergency basis to implement provisions of Labor Code sections 139.2, 4061, 4062, 4062.2, 4062.3, 4063, 4064, 4066 and 5502 as implemented by Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013).

The regulations amend section 10160 and adopt section 10159 in Subchapter 1.6 of Chapter 4.5, of Title 8, California Code of Regulations and amend sections 1, 11, 11.5, 14, 17, 30, 31.2, 31.7, 33, 35, 35.5, 36, 38, 100, 105, and 106 and adopt section 37 in Articles 1, 2, 3, and 10.5 of Chapter 1, of Title 8, California Code of Regulations.

This rulemaking also seeks to amend sections 31.3, 31.5, 32, 34, 104, 109, 110, 112 and 117 in Articles 1, 2, 3, and 10.5 of Chapter 1, of Title 8, California Code of Regulations and adopt Article 2.6, section 26 of Title 8, California Code of Regulations which were not adopted as part of the emergency regulations that became effective on January 1, 2013.

The emergency regulations became effective on January 1, 2013, and will remain in effect for a period of 180 days from January 1, 2013. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

#### FORMAT OF REGULATORY TEXT

**Text of Emergency Regulations Effective January 1, 2013:**

Deletions from the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single strike-through: ~~deleted language~~.

Additions to the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single underlining: added language.

**Additional Proposed Text Noticed for 45-Day Comment Period:**

Deletions from the emergency regulatory text noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~.

Additions to the original codified regulatory text and emergency regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-day comment period are indicated by double strike-through: ~~~~deleted language~~~~.

For sections that were not included in the adoption of the emergency regulatory text, deletions and additions from the original codified regulatory text are indicated

by single strike-through and single underlining, respectively.

#### PROPOSED REGULATORY ACTION

The Division of Workers' Compensation has adopted regulations on an emergency basis that amend section 10160 and adopt section 10159 in Subchapter 1.6 of Chapter 4.5, of Title 8, California Code of Regulations and amend sections 1, 11, 11.5, 14, 17, 26, 30, 31.2, 31.7, 32, 33, 34, 35, 35.5, 36, 38, 100, 105, and 106 and adopt section 37 in Articles 1, 2, 3, and 10.5 of Chapter 1, of Title 8, California Code of Regulations.

Section 10159	Time Period for Issuing a Summary Rating Determination Pursuant to Labor Code §4061(e)
Section 10160	Summary Rating Determinations. Comprehensive Medical Evaluation of Unrepresented Employee
Section 1	Definitions
Section 11	Eligibility Requirements for Initial Appointments as a QME
Section 11.5	Disability Evaluation Report for Writing Course
Section 14	Doctors of Chiropractic: Certification in Workers' Compensation Evaluation
Section 17	Fee Schedule for QME
Section 26	QME Office Locations and Changes of Office Locations
Section 30	QME Panel Requests
Section 31.2	QME Office Locations
Section 31.3	Scheduling Appointment with Panel QME
Section 31.5	QME Replacement Requests
Section 31.7	Obtaining Additional QME Panel in a Different Specialty
Section 32	Consultations
Section 33	Unavailability of QME
Section 34	Appointment Notification and Cancellation
Section 35	Exchange of Information and Ex Parte Communication
Section 35.5	Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines
Section 36	Service of Comprehensive Medical-Legal Evaluation Reports by Medical Evaluators Including Reports Under Labor Code section 4061

- Section 37 Request for Factual Correction of a Comprehensive Medical–Legal Report
- Section 38 Medical Evaluation Time Frames; Extension for QMEs and AMEs
- Section 100 The Application for Appointment as Qualified Medical Evaluator Form
- Section 104 The Reappointment Application as Qualified Medical Evaluator Form
- Section 105 The Request for Qualified Medical Evaluator Panel — Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney) and Form 105a for dates of injury on or after Jan. 1, 2013
- Section 106 The Request for Qualified Medical Evaluator Panel — Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case) and Form 106a for dates of injury on or after Jan. 1, 2013
- Section 109 The Qualified Medical Evaluator Notice of Unavailability Form
- Section 110 The Appointment Notification Form
- Section 112 The QME/AME Time Frame Extension Request Form
- Section 117 Qualified Medical Evaluator Course Evaluation Form

**TIME AND PLACE OF PUBLIC HEARING**

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed regulatory action, on the following date:

- Date:** April 4, 2013
- Time:** 10:00 a.m. to 5:00 p.m., or until conclusion of business
- Place:** Elihu Harris State Office Building — Auditorium  
1515 Clay Street  
Oakland, CA 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons

with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1–866–681–1459 (toll free), or through the California Relay Service by dialing 711 or 1–800–735–2929 (TTY/English) or 1–800–855–3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers’ Compensation. The written comment period closes at **5:00 p.m., on April 4, 2013**. The Division of Workers’ Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers’ Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
P.O. Box 420603  
San Francisco, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286–0687. Written comments may also be sent electronically (vial e–mail) using the following e–mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m., on April 4, 2013**.

**AUTHORITY AND REFERENCE**

Labor Code sections 53, 111, 122, 133, 139, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 5307.3, 5307.4, and 5703.5 authorize the Acting Ad-

ministrative Director to adopt, amend and repeal these proposed regulations. The proposed regulations implement, interpret, and make specific sections 139.2, 4061, 4062, 4062.2, 4062.3, 4063, 4064, 4066 and 5502.

Reference is to Labor Code sections 124, 139.2, 139.31, 139.4, 139.43, 3716, 4060, 4062.1, 4062.5, 4064.5, 4067, 4600, 4660, 4662, 4660–4664, 5307, and 5307.3.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

Senate Bill 863 has created substantial changes in procedure regarding injured workers’ medical treatment disputes. Qualified Medical Evaluators (hereinafter “QME”) will no longer be asked to comment on specific medical treatment disputes as of January 1, 2013 for injuries occurring on or after that date, and as of July 1, 2013; for all dates of injury. All disagreements regarding the necessity or appropriateness of a particular treatment request will be addressed through the Independent Medical Review (hereinafter “IMR”) process.

The regulations are mandated by Labor Code sections 133, 139.2, 4061, 4062, 4062.2, 4062.3, 4063, 4064, and 5502. Labor Codes section 133 provides that “The Division of Workers’ Compensation, including the administrative director and the appeals board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code. Labor Code section 4062.2(c) provides that “The administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection [of panel Qualified Medical Evaluators].”

The proposed regulations will ensure that the independent medical review process is the sole process for resolving disputes regarding ongoing or continuing medical treatment issues. The regulations also include implementing Senate Bill 863’s limitation of 10 QME offices for conducting comprehensive medical–legal evaluations, eliminating the option for a chiropractor to provide a certificate of completion of a post–graduate specialty program to obtain a QME certificate, amending the panel selection forms 105 and 106 for injuries on or after Jan. 1, 2013, providing a procedure and form to request a factual correction for an unrepresented panel. QME, requiring the QME to complete the Physician’s Return–to–Work & Voucher Report if the evaluator declares the injured worker permanent and stationary, and prohibiting an Agreed Medical Evaluator (AME) or QME from providing an opinion on any disputed medical treatment but allowing opinions about whether the injured worker will need future medical care.

The application for appointment as QME has been changed to make the form more user–friendly and reflects statutory changes regarding QMEs who are chiropractors.

The described regulations were adopted as emergency regulations, effective January 1, 2013. This rulemaking would make the regulations permanent. Changes made to the regulations after the adoption of the emergency regulations are indicated by italics. These regulations implement, interpret, and make specific sections 139.2, 4061, 4062, 4062.2, 4062.3, 4063, 4064, 4066 and 5502 of the Labor Code as follows:

**Item 1 — Section 10159. Time Period for Issuing a Summary Rating Determination Pursuant to Labor Code § 4061(e).**

- The administrative time frame to issue a summary rating determination is updated to allow for factual corrections.

**Item 2 — Section 10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.**

- Administrative procedures are updated to allow for factual corrections.

**Item 3 — Section 1. Definitions.**

- This section provides definitions for key terms regarding qualified medical evaluators.
- “Request for factual correction” and “future medical care” are added to ensure that its meaning, as used in the regulations, will be clear to the regulated public.
- Outdated terms are deleted.

**Item 4 — Section 11. Eligibility Requirements for Initial Appointment as a QME.**

- This section is amended to conform with amendments to Labor Code section 139.2(b)(4)(a) which amended the requirements for chiropractors to become QMEs. The option to complete a chiropractic postgraduate specialty program has been eliminated.

**Item 5 — Section 11.5. Disability Evaluation Report Writing Course.**

- This section is amended to conform to changes to Labor Code sections 4061(b) and (c) which now state that objections “to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for *future* medical care”; previously the statutes discussed “the need for *continuing* medical care.” These changes reflect that future medical care issues must be resolved by the independent medical review (IMR) process.
- Outdated terms are deleted.

**Item 6 — Section 14. Doctors of Chiropractic: Certification in Workers’ Compensation Evaluation.**

- This section is amended to conform to changes to Labor Code sections 4061(b) and (c) which now state that objections “to a medical determination made by the treating physician concerning the existence or extent of permanent impairment and limitations or the need for *future* medical care”; previously the statutes discussed “the need for *continuing* medical care.” These changes reflect that continuing medical care issues must be resolved by the independent medical review (IMR) process.

**Item 7 — Section 17. Fee Schedule for QME.**

- This section is amended to reflect the limitation of 10 QME offices for conducting comprehensive medical–legal evaluations.
- *To provide clarity, subdivision 17(b) is deleted and moved to Section 26 under Article 2.6 “QME Office Locations.”*

**Item 8 — Section 26. QME Office Locations and Changes of Office Locations.**

- *This section implements Labor Code section 139.2 by limiting QMEs to 10 offices for conducting medical–legal evaluations.*
- *This section sets forth the procedure for changing office locations.*

**Item 9 — Section 30. QME Panel Requests.**

- This section is amended to state that the party requesting a QME panel shall “attach a written objection indicating the identity of the primary treating physician, the date of the primary treating physician’s report that is the subject of the objection and a description of the medical dispute that requires a comprehensive medical–legal report to resolve” instead of “identify the disputed issue.”
- Subdivisions (d)(3) and (d)(4) are deleted.
- *To provide clarity, subdivision (a) is divided into subdivisions (a)(1) and (2).*
- *Subdivisions (a)(1) and (b)(1) include language that allow the parties to attach a request for examination to determine compensability under Labor Code section 4060.*
- *Subdivision (e) is amended to include the employer’s place of business in determining the geographic area of the QME panel selection when an employee does not reside in California.*

**Item 10 — Section 31.2. QME Office Locations.**

- *This section is deleted.*

**Item 11 — Section 31.3. Scheduling Appointment with Panel QME.**

- *The word “conferring” has been deleted in subdivision (d).*
- *Subdivision (e) has been added and sets forth the procedure for obtaining a replacement panel when the QME is unable to schedule an appointment within the required timeframe. Subdivision (e) was previously Section 33(e).*

**Item 12 — Section 31.5. QME Replacement Requests.**

- This section sets forth the basis for issuing a replacement QME.
- *Subdivision (d) has been added to include mandatory Form 31.5.*

**Item 13 — Section 31.7. Obtaining Additional QME Panel in a Different Specialty.**

- In represented cases, parties no longer need to attempt to agree upon an AME to obtain a subsequent panel. The parties can either obtain an order from a Workers’ Compensation Judge or request a subsequent panel by written agreement request.
- *Subdivision (2) has been amended to allow for an additional panel when an acupuncturist refers the parties to the additional panel because disability is in dispute.*
- *Subdivision (c) has been added to include mandatory Form 31.7.*

**Item 14 — Section 32. Acupuncture Referrals.**

- This section is amended to require that the acupuncturist notify the parties that another specialty is required to determine disability and refer the parties to the Medical Unit.
- Subdivisions (e) through (g) are deleted.

**Item 15 — Section 33. Unavailability of QME.**

- Subdivision (h) is added to state that the Medical Director shall designate a QME to be unavailable if on or after January 1, 2013 the QME has not notified the Medical Director of the 10 or fewer office locations where qualified medical evaluations will be conducted.
- *For clarity and consistency, subdivision (e) is moved to Section 31.3(e) and this section re–lettered.*
- *For consistency, subdivision (d) is amended to reflect that the 90 days of unavailability is for the calendar year and not fee period.*
- *Subdivision (h) is deleted.*

**Item 16 — Section 34. Appointment and Cancellation.**

- This section is amended to require the first medical–legal evaluation to take place only at the medical office listed on the panel selection form.
- This section is amended to allow subsequent evaluations to be performed at a different location if certain conditions are met.

**Item 17 — Section 35. Exchange of Information and Ex Parte Communications.**

- Subdivision (a)(4) is amended to limit the subdivision to evaluations conducted on or before June 30, 2013, for dates of injury prior to January 1, 2013.
- Subdivision (b) clarifies that Labor Code section 4062.3(f) allows oral or written communications with an AME physician or the physician’s staff relative to nonsubstantive matters such as the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, unless the appeals board has made a specific finding of an impermissible ex parte communication.
- *Subdivision (4) is amended to reflect that QMEs can comment on medical treatment disputes communicated to the requesting physician before June 30, 2013 for injuries that occurred before January 1, 2013.*

**Item 18 — Section 35.5. Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines.**

- Subdivision (c)(2) is added to provide that if the evaluator declares the injured worker permanent and stationary for all conditions and that the injury has caused permanent partial disability, the evaluator shall complete the Physician’s Return-to-Work & Voucher Report (DWC–AD Form 10133.36) [this new form is part of the Supplemental Job Displacement Voucher emergency regulations] and serve it on the claims administrator together with the medical report.
- Subdivision (g)(1) is amended to limit the subdivision to evaluations performed on or before June 30, 2013, for dates of injury prior to January 1, 2013.
- Subdivision (g)(2) is added to state for any evaluation performed on or after July 1, 2013, pursuant to Labor Code Section 4061, and regardless of the date of injury, an Agreed Medical Evaluator or Qualified Medical Evaluator shall

not provide an opinion on any disputed medical treatment issue, but shall provide an opinion about whether the injured worker will need future medical care to cure or relieve the effects of an industrial injury.

- *Subdivision (g)(1) is amended to address issues concerning injuries that occurred before January 1, 2013 regarding a dispute over a utilization review decision if the decision is communicated to the requesting physician on or before June 30, 2013.*

**Item 19 — Section 36. Service of Comprehensive Medical–Legal Evaluation Reports by Medical Evaluators Including Reports under Labor Code section 4061.**

- Administrative procedures are updated for factual corrections.
- *For clarity, this section is divided into subdivisions (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). This section is amended to require service and filing of documents with a separator sheet and simultaneous service on all parties.*

**Item 20 — Section 37. Request for Factual Correction of a Comprehensive Medical Report From a Panel QME.**

- This section is added to provide a procedure to request a factual correction of a comprehensive medical–legal report from a panel QME. An unrepresented employee or the claims administrator may request the factual correction of a comprehensive medical–legal report within 30 days of the receipt of a comprehensive medical report from a panel Qualified Medical Evaluator.
- A request for factual correction using the form in section 37(g) of title 8 of the California Code of Regulations shall be served on the panel Qualified Medical Evaluator who examined the injured worker, the party who did not file the request and the Disability Evaluation Unit office where the comprehensive medical–legal report was served. If the request for factual correction is served by the claims administrator, the injured worker shall have five (5) days after the service of the request for factual correction to respond to the corrections mentioned in the request. The injured worker’s response shall be served on the panel Qualified Medical Evaluator and the claims administrator. The statute specifies that either party may request a supplemental report within 30 days.

- If the request for factual correction is filed by the injured worker the panel. Qualified Medical Evaluator shall have ten days after service of the request to review the corrections requested in the form and determine if factual corrections are necessary to ensure the factual accuracy of the comprehensive medical–legal report. If the request for factual correction is filed by the claims administrator or by both parties, the time to review the request for correction shall be extended to 15 days after the service of the request for correction.
- At the end of the period for the panel QME to review the request for factual correction, the panel QME shall file a supplemental report with the DEU office where the original comprehensive medical–legal report was filed indicating whether the factual correction of the comprehensive medical–legal report is necessary to ensure the factual accuracy of the report and, where factual corrections are necessary, if the factual changes affect the opinions of the panel QME stated in the report.
- The form is also provided in this section.

**Item 21 — Section 38. Medical Evaluation Time Frames; Extensions for QMEs and AMEs.**

- Administrative procedures are updated to allow for factual corrections.

**Item 22 — Section 100. The Application for Appointment as Qualified Medical Evaluator Form.**

- This section is the form to apply for appointment as a QME. The affirmation section was clarified. The form’s formatting was changed to make the form more user–friendly. Non–substantive grammatical and other changes were made.
- *Section 1 has been amended to require the QME to use the physician’s licensing board address as the contact address used by the Medical Unit.*

**Item 23 — Section 104. The Reappointment Application Qualified Medical Form.**

- This section is the form to be used by a QME for reappointment. The affirmation section was clarified. The form’s formatting was changed to make the form more user–friendly.
- *Section 1 has been amended to require the QME to use the physician’s licensing board address as the contact address used by the Medical Unit.*

**Item 24 — Section 105. The Request for Qualified Medical Evaluator Panel — Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney).**

- This section is the form to request a QME Panel for unrepresented injured workers. Form 105a is added for injuries on or after January 1, 2013.
- *“a” is deleted from Form 105a and this form will replace the current Form 105 with an effective date of July 1, 2013.*

**Item 25 — Section 106. The Request for Qualified Medical Evaluator Panel — Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case).**

- This section is the form to request a QME Panel for represented injured workers. Form 106a is added for injuries on or after January 1, 2013.
- *“a” is deleted from Form 106a and this form will replace the current Form 106 with an effective date of July 1, 2013.*

**Item 26 — Section 109. The Qualified Medical Evaluator Notice of Unavailability Form.**

- This section is the form used by QMEs to advise the Medical Unit of his or her unavailability.
- *This form is revised to include a list of the status of all scheduled medical–legal evaluations and a list of offices that are unavailable if the QME chooses partial unavailability. Moved instructions to the top of the form.*

**Item 27 — Section 110. The Appointment Notification Form.**

- This section is the form used by QMEs to notify the parties of the scheduled evaluation date.
- *This form is revised to include an address where records may be sent to, attached a proof of service and made other minor changes. Moved instructions to the top of the form.*

**Item 28 — Section 112. The AME/QME Time Frame Extension Form.**

- This section is the form to be used when a QME or AME seeks an extension of time to serve the comprehensive medical–legal report.
- *Nonsubstantive formatting changes have been made to be more user–friendly. Eliminated a box for supplemental reports because it does not comply with the rule 38. Moved instructions to the top of the form.*

**Item 29 — Section 117. Qualified Medical Evaluator Course Evaluation Form.**

- *This form is amended to require postage when mailing the form back to the Administrative Director.*

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the proposed regulations is to ensure that the IMR process is the sole process for resolving disputes regarding ongoing or continuing medical treatment issues. Pursuant to Senate Bill 863, the reasonableness and necessity of all medical treatment is the exclusive domain of the IMR process. AMEs and QMEs will be prohibited from providing an opinion on any disputed medical treatment but will be allowed to provide opinions about whether the injured worker will need further medical care. The regulations also ensure that there is a limitation of ten QME offices for conducting comprehensive medical–legal evaluations. The regulations also update forms and create new forms. The panel selections forms will be amended for injuries on or after January 1, 2013, providing a procedure and form to request a factual correction for an unrepresented QME.

The proposed regulations will be beneficial to the health and welfare of California residents, worker safety, and the state’s environment by ensuring injured workers with dates of injury on or after January 1, 2013, of receiving quality medical care in the most efficient and effective manner possible. These regulations provide injured workers injured on or after January 1, 2013 procedures that conform to Senate Bill 863’s changes regarding QMEs’ changed roles and the issues to be handled by the IMR process.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Acting Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that concern Qualified Medical Evaluators.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Acting Administrative Director has made the following initial determinations:

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

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Statewide adverse economic impact directly affecting businesses and individuals: None. The proposed regulation changes are amended to conform to changes made by Senate Bill 863. QMEs will continue to issue reports to address causation determination and to evaluate an injured worker’s permanent disability. The limit on the number of QME offices should encourage more physicians to become QMEs, as the limit should make the panel selection process more equitable.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) unlikely the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely the proposal would cause the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Action: The benefit anticipated from the regulations is to provide quality medical care in the most efficient and effective manner possible.

Small Business Determination: The Acting Administrative Director has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Acting Administrative Director must determine that no reasonable alternative considered or brought to the Acting Administrative Director’s attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost–effective to affected private persons and

equally effective in implementing the statutory policy or other provision of law.

The Acting Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the public hearing.

#### CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94612  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)  
Telephone: (510) 286-7100

#### CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

James D. Fisher  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
Email: [jfisher@dir.ca.gov](mailto:jfisher@dir.ca.gov)  
Telephone: (510) 286-7100

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

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this Notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking com-

ments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the Qualified Medical Evaluator Regulations.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this Notice or may be accessed on the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov).

#### AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended, will appear in California Code of Regulations, Title 8, commencing with section 1. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).

**TITLE 8. DIVISION OF WORKERS' COMPENSATION**

**NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION**

**Workers' Compensation — Utilization Review and Independent Medical Review**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, has adopted regulations on an emergency basis to implement the provisions of Labor Code section 4610, 4610.5, and 4610.6 as amended or enacted by Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013).

The regulations amend Article 5.5.1 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9785, 9792.6, 9792.9, 9792.10, and 9792.12 and adopt Article 5.5.1 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, and 9792.10.9. The regulations implement, interpret, and make specific Labor Code sections 4610, 4610.5, and 4610.6.

The emergency regulations listed below became effective on January 1, 2013, and will remain in effect for a period of 180 days from January 1, 2013. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

**PROPOSED REGULATORY ACTION**

The Division of Workers' Compensation proposes to adopt and amend Article 5.5.1 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9785, 9792.6, 9792.9, 9792.10, and 9792.12 and adopt Article 5.5.1 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, sections 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, and 9792.10.9, relating to utilization review and independent medical review.

- Amend section 9785 Reporting Duties of the Primary Treating Physician
- Adopt section 9785.5 Request for Authorization Form, DWC Form RFA

- Amend section 9792.6 Utilization Review Standards — Definitions — For Utilization Review Decisions Issued Prior to July 1, 2013 for Injuries Occurring Prior to January 1, 2013
- Adopt section 9792.6.1 Utilization Review Standards — Definitions — On or After January 1, 2013
- Amend section 9792.9 Utilization Review Standards — Timeframe, Procedures and Notice Content — For Injuries Occurring Prior to January 1, 2013
- Adopt section 9792.9.1 Utilization Review Standards — Timeframe, Procedures and Notice — On or After January 1, 2013
- Amend section 9792.10 Utilization Review Standards — Dispute Resolution — For Utilization Review Decisions Issued Prior to July 1, 2013 for Injuries Occurring Prior to January 1, 2013
- Adopt section 9792.10.1 Utilization Review Standards — Dispute Resolution — On or After January 1, 2013
- Adopt section 9792.10.2 Application for Independent Medical Review, DWC Form IMR
- Adopt section 9792.10.3 Independent Medical Review — Initial Review of Application
- Adopt section 9792.10.4 Independent Medical Review — Assignment and Notification
- Adopt section 9792.10.5 Independent Medical Review — Medical Records
- Adopt section 9792.10.6 Independent Medical Review — Standards and Timeframes
- Adopt section 9792.10.7 Independent Medical Review — Implementation of Determination and Appeal
- Adopt section 9792.10.8 Independent Medical Review — Payment for Review
- Adopt section 9792.10.9 Independent Medical Review — Publishing of Determinations

Adopt section 9792.12 Administrative Penalty  
Schedule for Labor Code  
§4610 Utilization Review  
and Independent Medical  
Review Violations

#### TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

**Date:** April 4, 2013

**Time:** 10:00 a.m. to 5:00 p.m., or until conclusion of business

**Place:** Elihu Harris State Office Building—  
Auditorium  
515 Clay Street  
Oakland, California 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on April 4, 2013**. The Division of Workers' Compensation will consider only comments received at the Division

by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 p.m. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m., on April 4, 2013**.

#### AUTHORITY AND REFERENCE

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3.

Reference is to Labor Code sections 3209.3, 4061, 4061.5, 4062, 4600, 4604.5, 4610, 4610.5, and 4610.6.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Labor Code section 4610 requires utilization review for all requests for medical services to treat occupational injuries. Treatment requests, generally made by an injured worker's primary treating physician, must be reviewed to determine if the proposed treatment is medically necessary under the guidelines set forth in the Division of Workers' Compensation's (DWC) Medical Treatment Utilization Schedule (MTUS), which was adopted by the Administrative Director under Labor Code section 5307.27. Decisions to approve requests for treatment can be made by non-physician reviewers, such as claims adjusters, while decisions to delay, modify, or deny treatment requests must be made by a physician reviewer. A decision to delay treatment may be made if the physician reviewer has not received all information from the requesting treating physician that is necessary to make a decision, and such information has been requested but not yet provided. A decision to modify treatment may be made if the requested treatment is deemed necessary, but specific elements of the request are not within the guidelines of the MTUS or are not appropriate for the injured worker's condition. A

decision to deny may be made if the requested treatment is not medically necessary under the MTUS guidelines or if a legal basis exists upon which to deny treatment (i.e., the requested treatment is for a denied body part).

Currently, an injured worker seeking review of an adverse utilization review decision must select a Qualified Medical Evaluator (QME) under Labor Code section 4062. The QME must examine the injured worker and then issue a comprehensive medical report which rules on the propriety of the initial treatment request. Either the injured worker or the claims administrator may object to the QME decision by litigating the issue before a Workers' Compensation Administrative Law Judge (WCALJ). It is generally recognized that the procedure by which to challenge an adverse UR decision, selecting a QME with possible litigation afterward, is both complex and time-consuming.

Labor Code sections 4610.5 and 4610.6, as enacted in SB 863, implement an independent medical review (IMR) process which is similar in structure to that used by the Department of Managed Health Care. See California Health and Safety Code, sections 1370.4 and 1374.30 through 1374.36. As of January 1, 2013 for injuries occurring on or after that date, and as of July 1, 2013 for all dates of injury, IMR will be used to decide disputes regarding medical treatment in workers' compensation cases.

In order to ensure that IMR decisions will only address the question of medical necessity, Labor Code section 4610 was amended to allow claims administrators to defer utilization review on medical necessity decisions until other issues — such as those affecting liability — have been ultimately decided.

Under newly-enacted sections 4610.5 and 4610.6, IMR can only be requested by an injured worker following a denial, modification, or delay of a treatment request through the utilization review (UR) process. Employers and claims administrators cannot request review of treatment authorizations. With the adverse UR decision, the claims administrator must provide a form for the injured worker to request IMR. An injured worker can be assisted by an attorney or by his or her treating physician in the IMR process. Upon a finding that the request is eligible for IMR, i.e., has no unresolved liability issues, an assigned physician reviewer, selected under stringent standards by the contracted independent medical review organization, will review relevant medical records supplied by both parties and apply recognized treatment guidelines to determine if the requested medical treatment is appropriate for the injured worker's condition. Section 4610.5(c)(2) requires the application of a hierarchy of standards that are to be uti-

lized, headed by the MTUS adopted by the Administrative Director as the highest source for evaluating the appropriateness of medical treatment.

Under section 4610.6(d), the IMR process must be completed within 30 days following receipt of all records. IMR appeals will be considered by a workers' compensation judge. However, the IMR physician reviewer's decision on the medical necessity of the medical treatment cannot be overturned by a judge. A decision can only be overturned on the basis of fraud, conflict of interest, or mistake of fact.

The proposed regulations will provide the public with clear guidelines for the mandated IMR process and set forth the obligations that injured workers and claims administrators must meet in order for the process to work. The regulations will ensure that medical treatment decisions in workers' compensation cases will be made by a conflict-free medical expert applying sound medical decisions that are based on a hierarchy of evidence-based medicine standards.

The described regulations were adopted as emergency regulations, effective January 1, 2013. This rulemaking would make the regulations permanent. Changes to the text of the regulations that have been made after the adoption of the emergency regulations are shown in italics. These proposed regulations implement, interpret, and make specific the above sections of the Labor Code and Government Code as follows:

**Section 9785. Reporting Duties of Primary Treating Physician.**

- The section sets forth the reporting duties of the employee's primary treating physician. The section is amended to expressly provide that IMR is the procedure for disputing adverse medical treatment decisions, rather than the QME process of Labor Code sections 4061 and 4062.
- *Subdivisions (b)(3) and (4) have been updated to reflect the statutes providing dispute resolution procedures involving decisions of the primary treating physician.*
- The reference to repealed Labor Code section 4636 is deleted in subdivision (f)(6).
- Added subdivision (g) expressly provides that a written request for authorization of medical treatment for a specific course of proposed medical treatment, or a written confirmation of an oral request for a specific course of proposed medical treatment, must be set forth on the "Request for Authorization of Medical Treatment," DWC Form RFA, contained in section 9785.5.

- In compliance with Labor Code section 4658.7, and corresponding emergency regulations filed by DWC, added subdivision (i) provides that a primary treating physician, upon finding that the employee is permanent and stationary as to all conditions and that the injury has resulted in permanent partial disability, shall complete the “Physician’s Return-to-Work & Voucher Report” (DWC-AD 10133.36) and attach the form to a permanent and stationary medical report.

**Section 9785.5. Request for Authorization Form, DWC Form RFA.**

- This section is the form to be used by treating physicians to request the authorization of proposed medical treatment under Labor Code section 4610. The form contains identifying information regarding the injured worker, the provider, and the claims administrator, and requires specific information regarding the proposed treatment (i.e., diagnosis, frequency, duration, quantity). The form will assist in defining treatment requests and will promote communication between the provider and the claims administrator, thereby reducing disputes that could be subject to IMR.
- *The version of the DWC Form RFA (01/2013) that the Division seeks to adopt in this rulemaking differs from the version adopted as an emergency regulation (version 12/2012). The new version adopts a more user-friendly form.*

**Section 9792.6. Utilization Review Standards — Definitions — For Utilization Review Decisions Issued Prior to July 1, 2013 for Injuries Occurring Prior to January 1, 2013.**

- Based on Labor Code section 4610.5(a), the regulation is amended to provide that the definitions for an occupational injury or illness occurring prior to January 1, 2013 apply if the request is made prior to July 1, 2013.
- *The definitions of “dispute liability” and Medical Treatment Utilization Schedule” are added to conform with amendments to Labor Code section 4610 and to ensure that their meaning, as used in the regulations, will be clear to the regulated public. The section is re-lettered to accommodate the new additions.*

**Section 9792.6.1. Utilization Review Standards — Definitions — On or After January 1, 2013.**

- Based on Labor Code section 4610.5 (a), the regulation is added to provide definitions for key terms regarding utilization review (UR) standards

for either: (1) an occupational injury or illness occurring on or after January 1, 2013; or (2) where the request is made on or after July 1, 2013, regardless of the date of injury.

- Definitions that vary from section 9792.6 include “authorization,” which now specifies the completed “Request for Authorization for Medical Treatment,” DWC Form RFA, as contained in California Code of Regulations, title 8, section 9785.5 (subdivision (d)), “claims administrator,” which includes the Uninsured Employers Benefits Trust Fund (UEBTF) and any utilization review organization (subdivision (c)), “disputed liability,” which means an assertion by the claims administrator that a factual or legal basis exists that precludes compensability on the part of the claims administrator for an occupational injury, a claimed injury to any part or parts of the body, or a requested medical treatment (subdivision (h)), and “request for authorization,” which requires that a request be made on the DWC Form RFA (subdivision (s)).
- Definitions of “delay,” “deny,” and “modification” are added to ensure that their meaning, as used in the regulations, will be clear to the regulated public.
- *The section is amended to clarify that it applies where a request for authorization of medical treatment is made to the requesting physician on or after July 1, 2013, regardless of the date of injury.*
- *Definitions set forth in section 9792.10.1, as effective January 1, 2013, have been relocated to this section. The definitions include “disputed medical treatment,” “medically necessary” and “medical necessity,” and “utilization review decision.” The definition of “approval” has been deleted. The definition of “written” has been amended to provided that an employee’s health records shall not be transmitted via electronic mail. The section is re-lettered to accommodate the new additions/deletion.*

**Section 9792.7. Utilization Review Standards — Applicability.**

- *Subdivision(a)(3) was amended to conform with the amendment to Labor Code sections 4610(c) and (f)(2) regarding the application of the Medical Treatment Utilization Schedule to utilization review.*
- *Subdivision (b)(3) was amended to reference the added section 9792.9.1 in regard to non-physician reviewers.*

**Section 9792.9. Utilization Review Standards — Timeframe, Procedures and Notice — For Injuries Occurring Prior to January 1, 2013, Where the Request for Authorization is Made Prior to July 1, 2013.**

- *This section was amended to reflect its application to an occupational injury or illness occurring prior to January 1, 2013, where the Request for Authorization is Made Prior to July 1, 2013.*
- Subdivision (b) is added to conform to amended Labor Code section 4610(g)(7) and (8), which allows UR to be deferred if there is a dispute regarding liability. The subdivision sets forth the procedure by which to defer UR and, upon a determination regarding liability — *either by decision of the Workers' Compensation Appeals Board or by agreement between the parties* — when the UR procedure recommences. *Subdivision (b)(1) has been amended from the emergency regulations to provide that the written decision need not be sent if the requesting physician had previously been notified under the subdivision of the reasons for the deferral of utilization review for a specific course of treatment.*
- Renumbered subdivisions (h)(2) and (k) deletes references to obsolete forms.
- Subdivision (l) sets forth the requirements of a written UR decision modifying, delaying or denying treatment authorization, if the decision is sent on or after July 1, 2013. The letter must include the Application for Independent Medical Review, DWC Form IMR-1, with all fields, except for the signature of the employee, to be completed by the claims administrator. *The injured worker or their attorney must be provided with an addressed envelope for mailing the form.* This application is mandated under Labor Code section 4610.5(f). The mandatory language in subdivision (l)(8) is revised to be in plain language, as required by Labor Code section 138.4.
- Subdivision (o) is added to comply with Labor Code section 4610(g)(6), which mandates that, absent a change in material facts, a UR decision to modify, delay, or deny a request for authorization of medical treatment shall remain effective for 12 months from the date of the decision without further action by the claims administrator.
- *Subdivision (k) is amended to clarify its application to a written decision modifying, delaying or denying treatment authorization sent*

*when the decision is communicated prior to July 1, 2013.*

**Section 9792.9.1. Utilization Review Standards — Timeframe, Procedures and Notice — On or After January 1, 2013.**

- This section was added to apply to either: (1) an occupational injury or illness occurring on or after January 1, 2013; or (2) where a treatment request is made on or after July 1, 2013, regardless of the date of injury.
- This section sets forth UR timeframes and procedures in light of the changes mandated by SB 863. Significant changes include the required use of the “Request for Authorization for Medical Treatment (DWC Form RFA),” as contained in California Code of Regulations, title 8, section 9785.5. This form will assist in defining treatment requests so that disputes regarding ambiguous requests, or those that are not compliant with the MTUS, can be resolved prior to the initiation of the IMR process.
- *Subdivision (c)(2) is amended to provide that a DWC Form RFA may be returned to the provider by a non-physician reviewer or reviewer for resubmission if the form does not identify the employee or provider, does not identify a recommended treatment, or is not signed by the requesting physician. The claims administrator must either treat the form as complete and comply with the utilization review timeframes or return the form to the requesting physician for completion.*
- Subdivision (b) conforms to amended Labor Code section 4610(g)(7) and (8), which allows UR to be deferred if there is a dispute regarding liability. The subdivision sets forth the procedure by which to defer UR and, upon a determination regarding liability — *either by decision of the Workers' Compensation Appeals Board or by agreement between the parties* — when the UR procedure recommences. *Subdivision (b)(1) has been amended from the emergency regulations to provide that the written decision need not be sent if the requesting physician had previously been notified under the subdivision of the reasons for the deferral of utilization review for a specific course of treatment.*
- The timeframes in the proposed regulation match those of existing section 9792.9. However, they are restructured in a more logical order to match the type of UR decision that is being rendered by the claims administrator.

- Written decisions to delay, deny, or modify a UR request, the requirements of which are set forth in subdivision (e), include the Application for Independent Medical Review, DWC Form IMR–1. *The injured worker or their attorney must be provided with an addressed envelope for mailing the form.*
- *Subdivision (e)(5)(J) is amended to provide that a voluntary, internal utilization review appeal process neither triggers, delays, nor bars an employee’s recourse to IMR.*
- Subdivision (f) clarifies the procedure to follow when a claims administrator notifies the provider of an allowed extension of the UR timeframes (based on the lack of information submitted with the request or the need for an additional test or specialized consultation).
- Subdivision (h) is included to comply with Labor Code section 4610(g)(6), which mandates that, absent a change in material facts, a UR decision to modify, delay, or deny a request for authorization of medical treatment shall remain effective for 12 months from the date of the decision without further action by the claims administrator.

**Section 9792.10. Utilization Review Standards — Dispute Resolution — For Utilization Review Decisions Issued Prior to July 1, 2013 for Injuries Occurring Prior to January 1, 2013.**

- This section is amended to clarify its application to UR decisions issued prior to July 1, 2013 for occupational injuries occurring prior to January 1, 2013. References to obsolete forms are deleted in subdivision (a)(4).

**Section 9792.10.1. Utilization Review Standards — Dispute Resolution — On or After January 1, 2013.**

- This section applies to any request for authorization of medical treatment for either: (1) an occupational injury or illness occurring on or after January 1, 2013; or (2) *if the request is made on or after July 1, 2013, regardless of the date of injury.*
- *The definitions set forth in the emergency regulation effective January 1, 2013, have been deleted from this section and have been moved, if applicable, to section 9792.6.1. The section has been re-lettered to accommodate the deletion.*
- Subdivision (a) reaffirms Labor Code section 4610.5’s mandate that all treatment disputes must be resolved by the IMR procedure. Subdivision (b) now sets forth the timeframe in which to request IMR, the requirement that the Application for Independent Medical Review, DWC Form

IMR–1, be used, the parties who are eligible to seek review of a treating physician’s treatment recommendation, and requirement for a physician certification if an expedited review is sought.

- Subdivision (c) sets forth the timeframes for sending an IMR request if liability is disputed or if the claims administrator fails to provide the form with its adverse decision letter.
- Subdivision (d) provides that the employee may utilize the claims administrator’s internal appeal process to resolve treatment disputes. Any such internal appeal must be completed within 15 days of the UR decision.
- Subdivision (e) requires that medical care should not be discontinued in the case of concurrent review until a plan has been agreed upon. *The provision in the emergency text regarding notification of non-physician provider of goods of an adverse utilization review decision has been deleted.*

**Section 9792.10.2. Application for Independent Medical Review, DWC Form IMR–1.**

- This section is the form to be used by the employee to apply for IMR. The contents of the form are mandated by Labor Code section 4610.5(f). The form will be completed by the claims administrator and will accompany the adverse UR decision letter.
- *The version of the DWC Form IMR (01/2013) that the Division seeks to adopt in this rulemaking differs from the version adopted as an emergency regulation (version 12/2012).*

**Section 9792.10.3. Independent Medical Review — Initial Review of Application.**

- This section sets forth the process by which the Administrative Director determines, based on an initial review of the IMR application, whether the medical treatment dispute is eligible for IMR.
- Subdivision (a) sets forth several reasons why an application may be deemed ineligible, including an untimely filing, a duplicate filing, or one in which a liability determination must be made prior to the initiation of IMR.
- *Subdivision (a) is amended to provide that the Administrative Director shall determine, within 15 days following receipt of the application and all appropriate information to make a determination, whether the disputed medical treatment identified in the application is eligible for IMR. The definition of “disputed medical treatment” is deleted as the term is defined in section 9792.6.1.*

- *Subdivision (a)(4) is amended to provide that in making an eligibility determination, the Administrative Director must consider: any assertion by the claims administrator that a factual or legal basis exists that precludes liability on the part of the claims administrator for the requested medical treatment; and the employee's date of injury. The provision in the emergency regulation effective January 1, 2013 allowing the Administrative Director to consider other, unspecified reasons has been deleted.*
- Subdivisions (b) and (c) allow the Administrative Director to request, and the parties to submit, additional documentation addressing the issue of eligibility.
- Determinations of ineligibility are issued by the Administrative Director; such determinations are subject to appeal before Workers' Compensation Appeals Board within 30 days of receipt of the determination.

**Section 9792.10.4. Independent Medical Review — Assignment and Notification.**

- This section implements Labor Code section 4610.5(k) by setting forth the procedure by which the independent medical review organization (IMRO) notifies the parties that the IMR application is eligible for IMR review. The IMRO will advise the parties of: the IMRO contact information; the disputed medical treatment subject to review, with pertinent information such as provider name and UR decision date; whether the review is expedited; and the documents that must be provided by the parties to conduct a review.
- The claims administrator is advised that the failure to comply with the document production section — section 9792.10.5 — could result in the assessment of administrative penalties up to \$5,000.00 per day.
- Subdivision (g) provides that a regular IMR review could be converted into an expedited review if, subsequent to the receipt of the IMR application, the IMRO receives from the employee's treating physician a certification that the employee faces an imminent and serious threat to his or her health.

**Item 12 — Section 9792.10.5. Independent Medical Review — Medical Records.**

- This section sets forth the documents that must be provided by the claims administrator, and may be provided by the injured worker, in order to conduct IMR. The documents to be provided by the claims administrator are mandated by Labor Code section

4610.5(l) and (m). The documents to be provided by the employee are set forth at Labor Code section 4610.5(f)(3). The parties may also submit any newly developed or discovered relevant medical records.

- The parties are to submit the documents concurrently, within fifteen (15) days following the mailing of the IMRO assignment notification (12 days if the notification is sent by electronic mail), or, for expedited review, within (24) hours following receipt of the notification. *Subdivision (b)(1), applicable to the employee, has been amended so the language corresponds with the claims administrator's timeframes in subdivision (a)(1).*
- *Subdivisions (a)(2) and (c) have been amended to delete references to the service of documents. The list of documents or additional documents must be forwarded to other party; formal service is not required.*
- *Subdivision (a)(2) is further amended to provided that the claims administrator must submit a copy of all reports of the requesting physician relevant to the employee's current medical condition produced within six months prior to the date of the request for authorization. If the requesting physician has treated the employee for less than six months prior to the date of the request for authorization, the claims administrator must submit a copy of all relevant medical reports produced within the last six months by any prior treating physician or referring physician.*
- Subdivision (c) allows the IMRO to request additional documents or information necessary to make a determination that the requested treatment is medically necessary.

**Section 9792.10.6. Independent Medical Review — Standards and Timeframes.**

- This section sets forth the process by which a medical reviewer assigned by the IMRO reviews all necessary evidence and issues an IMR determination as to whether the disputed medical treatment is medically necessary based on the specific medical needs of the employee and the medical treatment guidelines. Subdivision (b) allows the IMRO, upon written approval of the Administrative Director, to use more than one reviewer if it is found that the employee's condition and the disputed medical treatment are sufficiently complex such that a single reviewer could not reasonably address all disputed issues.
- Subdivision (d) sets forth the required elements of an IMR determination.

- Subdivision (e) provides that the IMRO shall provide the Administrative Director and the parties with a final IMR determination. The final IMR determination shall include a description of the qualifications of the medical reviewer, the determination issued by the medical reviewer. The IMRO must, in compliance with Labor Code section 4610.6(f), keep the names of the reviewer confidential. Under subdivision (h) the final IMR determination is deemed to be the determination of the Administrative Director and is binding on all parties.
- Subdivision (g) sets forth the timeframes for the IMRO to issue a final IMR determination. For a regular review, the deadline is within thirty (30) days of the receipt of the IMR application and all supporting documents. For expedited review, the deadline is within three (3) days of the receipt of the IMR application and supporting documentation. The deadlines may be extended for up to three days in extraordinary circumstances or for good cause.

**Section 9792.10.7. Independent Medical Review — Implementation of Determination and Appeal.**

- This section applies Labor Code section 4610.6(j)'s mandate as to how and when final IMR determinations are implemented, and provides that a claims administrator is subject to administrative penalties for a failure to timely implement a decision.
- Subdivisions (c) and (d) provide and clarify the time and manner by which a claims administrator can appeal a final IMR determination to the Workers' Compensation Appeals Board (WCAB), as allowed by Labor Code section 4610(h).
- Subdivision (h) implements Labor Code section 4610.6(i) by providing the procedure for reassigning an IMR review should the WCAB reverse and remand the final IMR determination.

**Section 9792.10.8. Independent Medical Review — Payment for Review.**

- Labor Code section 4610.6 requires that the costs of IMR and the administration of the IMR system be borne by employers through a fee system established by the Administrative Director. The Administrative Director must establish a reasonable per-case reimbursement schedule to pay the costs of IMR reviews, which may vary based on the type of medical condition under review and on other relevant factors. This section sets forth the reasonable costs of the IMR process. The amounts were determined by the contracted IMRO, Maximus Federal Services, Inc., in

consultation with DWC. Factors considered in the fees were: whether the physician reviewer was a M.D. or a D.O.; whether the review was performed on a regular basis or was expedited; and whether the review was withdrawn.

- Subdivision (c) provides that the aggregate total fee owed by the claims administrator for IMR reviews conducted during the prior calendar month shall be paid to the IMRO within thirty (30) days of the billing. A 10 percent increase will be applied if the invoice is not paid within ten (10) days after it becomes due.
- Subdivision (d) provides that the IMR fee is non-refundable and not subject to discount or rebate. Any discount involving the fee will be submitted to the Administrative Director for informal resolution.

**Section 9792.10.9. Independent Medical Review — Publishing of Determination.**

- This section implements Labor Code section 4610.6(m), providing that the Administrative Director may publish the results of independent medical review determinations after removing all individually identifiable information, including, but not limited to, the employee, all medical providers, the claims administrator, any of the claims administrator's employees or contractors, or any utilization review organization.

**Section 9792.11. Investigation Procedures: Labor Code § 4610 Utilization Review Violations.**

- *Subdivisions(c)(1)(A) and (c)(2) have been amended to reference the added section 9792.6.1 regarding the definition of "request for authorization."*
- *Subdivision (j)(4) was amended to delete a duplicative reference to sections 9792.6(1) and 9792.7(b) of Title 8 of the California Code of Regulations.*
- *Subdivisions (o) and (p) were amended to reference the added section 9792.9.1 in regard to the timeline for filing and receiving documents.*

**Section 9792.12. Administrative Penalty Schedule for Utilization Review and Independent Medical Review Violations.**

- This section is amended to set forth the administrative penalties that may be assessed against claims administrators for violating their UR and IMR obligations. Mandatory penalties include:
- For the failure to timely communicate a written decision modifying, delaying, or denying a treatment authorization: \$250 per day, up to a maximum of \$5,000.

- For the failure to provide an IMR Application: \$2,000.
- For the failure to include in a written decision modifying, delaying, or denying a treatment authorization notification of the IMR process: \$2,000.
- For the failure to include in a written decision modifying, delaying, or denying a treatment authorization notification of the voluntary internal appeal process and that such a process is not a bar to pursuing IMR: \$2,000.
- For the failure to timely provide IMR information requested by the Administrative Director: \$100.00 for each day the response is untimely, up to a maximum of \$5,000.00.
- For the failure to timely provide all mandatory IMR information: \$250.00 for each day the response is untimely under section 9792.10.3(c), up to a maximum of \$5,000.00.
- For the failure to timely implement a final IMR determination of the Administrative Director: \$500.00 for each day up to a maximum of \$5,000.00.
- For the failure to timely pay a fee invoice sent by the IMRO: \$250.
- *Section (b)(5)(F) has been restored.*

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the regulations is to refine the procedure for requesting medical treatment under the utilization review mandate of Labor Code section 4610, and for establishing the independent medical review program mandated by Labor Code sections 4610.5 and 4610.6. The proposed regulations will benefit: (1) injured workers, who will have an adverse utilization review decision, those that either deny, delay, or modify a treatment recommendation made by the employee's treating physician, reviewed in a prompt and efficient manner by a non-biased medical expert; (2) claims administrator, who will experience significant cost savings by having medical treatment disputes resolved through IMR rather than the expensive and lengthy QME process with review through the WCAB; (3) medical providers, who can refine their medical treatment recommendation through access to IMR determinations published by the Division.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Acting Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has

concluded that these are the only valid regulations that implement the statutory mandate to transfer the dispute resolution procedure for medical treatment recommendations away from the now lengthy and costly QME procedures in Labor Code section 4062, with possible litigation before the WCAB, to an efficient review process before an independent physician review assigned independent review organization designated by the Administrative Director.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Acting Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: It is estimated that the proposed regulations will result in a savings of \$866,000 for the State Compensation Insurance Fund, a quasi-state agency, per year beginning in the Fiscal Year 2013-14. The Division may also experience unquantifiable savings based on a reduced number of litigated cases involving medical treatment dispute.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: It is estimated that the proposed regulations will result in a savings of \$3.25 million annually for local government.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The division is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small businesses, and individuals, the Acting Administrative Director concludes that the adverse economic impact, including the ability of California businesses to compete with business in other states, will not be significant.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) unlikely that the proposal will create any jobs within the State of California, outside of those created

by the independent review organization, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses with the State of California, (4) unlikely that the proposal will eliminate any existing businesses with the State of California, and (5) unlikely that the proposal would cause the expansion of the businesses currently doing business within the State of California.

**Benefits of the Proposed Action:** The proposed regulations will create a more efficient, less costly way of reviewing medical treatment decisions made by claims administrators. Under the existing system, an injured worker who seeks review of a claims administrator's decision to delay, deny, or modify a medical treatment recommendation by the worker's treating physician must invoke the tediously slow, expensive QME process with possible WCAB litigation afterward. The IMR process set forth in the regulations will allow a bias-free medical expert, using recognized treatment guidelines, to issue a medical necessity determination within a limited time frame, thereby ensuring that the worker receives quality medical care in the most efficient manner possible. The regulations have been drafted to streamline the IMR process while allowing the parties due process. The IMR system will produce at least \$21 million in system costs, allow independent medical experts to make medical treatment decisions, and allow injured workers to receive appropriate medical care in an expeditious and efficient manner.

**Small Business Determination:** The Acting Administrative Director has determined that the proposed regulations affect small business.

## CONSIDERATION OF ALTERNATIVES

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

The Acting Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

## PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment from December 3–7, 2012 through the Division's Internet website (the "DWC Forum").

## AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the Independent Medical Review link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

## CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [mgray@dir.ca.gov](mailto:mgray@dir.ca.gov)

The telephone number of the contact person is (510) 286-7100.

#### CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

George Parisotto  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
E-mail: [gparisotto@dir.ca.gov](mailto:gparisotto@dir.ca.gov)

The telephone number of this contact person is (510) 286-7100.

#### FORMAT OF REGULATORY TEXT

##### **Text of Emergency Regulations Effective January 1, 2013:**

Deletions from the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single underlining, thus: added language.

##### **Additional Proposed Text Noticed for 45-Day Comment Period:**

Additions to the original codified regulatory text and emergency regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text and emergency regulatory text noticed for the 45-day comment period are indicated by double strike-through: ~~~~deleted language~~~~.

#### AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Acting Administrative Director makes changes to the proposed regulations as a result of the public hear-

ing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov).

#### AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Acting Administrative Director's mailing list.

If adopted, the regulations as amended will appear in California Code of Regulations, title 8, section 9785, then commencing with section 9792.6. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).

### **TITLE 13. CALIFORNIA AIR RESOURCES BOARD**

#### NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CLEAN FUELS OUTLET REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting amendments to the Clean Fuels Outlet (CFO) Regulation.

DATE: June 27, 2013

TIME: 9:00 a.m.

PLACE: California Environmental Protection  
Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item may be considered at a two day meeting of the Board, which will commence at 9:00 a.m., June 27, 2013, and may continue at 8:30 a.m., on June 28, 2013. This item may not be considered until June 28, 2013. Please consult the agenda for the hearing, which will be available at least 10 days before June 27, 2013, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION  
AND POLICY STATEMENT OVERVIEW

**Sections Affected:**

Proposed amendments to California Code of Regulations, title 13, sections 2300, 2302, 2303, 2303.5, 2304, 2306, 2307, 2308, 2309, 2311, 2311.5, 2313, 2314, 2315, 2316, and 2318, and the deletion of sections 2310 and 2312.

**Documents Incorporated by Reference:**

The following documents are incorporated by reference:

Title 13, California Code of Regulations, section 1961 “California Exhaust Emission Standards and Test Procedures for 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles,” as last amended December 6, 2012.

Title 13, California Code of Regulations, section 1961.2 “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles,” as last amended December 6, 2012.

Title 13, California Code of Regulations, section 2302 “Society of Automotive Engineers standard SAE TIR J2601, “Fueling Protocols for Light Duty Gaseous Hydrogen Surface Vehicles” dated March 16, 2010.

**Background:**

The existing CFO regulation requires that certain owner/lessors of retail gasoline stations equip an appropriate number of their stations with clean alternative fuels. The regulation does not require these retail CFOs until the number of alternative fuel vehicles projected to be certified on that fuel reaches 20,000 in a given year.

Amendments to the CFO regulation were noticed on December 8, 2011; those amendments were approved by the board at its January 27, 2012 hearing following a 45-day comment period. Those CFO amendments were part of the Advanced Clean Cars regulatory proposal presented to the Board, which also included amendments to the Low Emission Vehicle (LEV) and Zero Emission Vehicle (ZEV) program regulations. The Board also approved staff’s proposed 15-day change language to incorporate a Memorandum of Agreement (MOA) that, if successfully executed, would have sunsetted the CFO regulation once 100 stations are operating in the State.

Subsequently, ARB did not submit the proposed amended CFO regulation to the Office of Administrative Law (OAL) by the December 7, 2012 statutory

deadline. Legislative proposals underway in California’s legislature, which would extend incentive funding programs that could provide for a non-regulatory avenue for alternative fuel stations, including hydrogen specifically, would eliminate the need for a CFO regulatory mandate if the legislation passes. However, in order to preserve a regulatory backstop should the legislation fail to pass, ARB is submitting this amended CFO regulatory proposal.

Except for lacking the MOA language described above, this regulatory proposal is largely the same as the amendments approved by the Board in January 2012.

ARB is currently engaging with a stakeholder coalition including environmental groups, local government agencies, technology developers, and relevant industry groups who are collectively supporting a legislative proposal currently being considered by California’s legislature to extend incentive funding programs that provide for alternative fuel stations including hydrogen. If the legislation passes and is signed by the Governor, funding for hydrogen infrastructure would be guaranteed and implementation of the provisions of the proposed regulation would not be necessary. In such a case, this proposal may be rescinded.

**Objectives and Benefits:**

Offering hydrogen fuel in commercial settings is critical to the successful launch of hydrogen zero emission vehicles. The proposed amended CFO regulation seeks to ensure that there will be an adequate hydrogen fueling infrastructure to support the introduction and growth of hydrogen fueled vehicles.

The proposed amendments will facilitate development of the needed hydrogen fueling infrastructure and so will assist in achieving California’s emission reduction goals. A more detailed discussion of the objectives and benefits of the proposed amendments may be found in the Initial Statement of Reasons.

**Proposed Regulatory Action:**

Amendments to the CFO regulation are being proposed to address the gap in hydrogen fueling infrastructure that may occur when government-funded and other hydrogen stations are not adequate to meet fuel demands of growing numbers of fuel cell vehicles (FCV) that automakers are producing to comply with the Zero Emission Vehicle mandate. The proposed amendments to CFO include:

- Changing the types of alternative fuel vehicles (AFV) captured under the regulation from those certified as low emission AFVs to only those certified as zero emission vehicles. As written, the regulation would initially pertain to hydrogen and FCVs. Plug-in electric vehicles are addressed in the proposed changes by adding a regulatory

review followed by recommendations for further actions.

- Changing the regulated party from owner/lessors of retail gasoline outlets to major refiner/importers of gasoline, and modifying how new CFOs are allocated among the regulated parties.
- Increasing from two to three years the FCV reporting requirements and compliance timeframe to provide regulated parties with more time to plan for and build hydrogen stations.
- Adding language that would allow the Executive Officer to adjust the required number of new CFOs downward if warranted by more recent vehicle projections.
- Adding a 10,000 vehicle activation trigger that would apply to an air basin before the statewide trigger of 20,000 is reached to complement auto manufacturers' early commercialization plans to marketing FCVs in regional clusters.
- Streamlining the compliance requirements so that they are less prescriptive and more like performance standards, giving the regulated party the flexibility to determine how best to meet the minimum requirements.
- Sunsetting the regulation when the number of CFOs equals 5 percent of the total number of retail gasoline outlets (the existing regulation sunsets at 10 percent).

The proposed changes would have the effect of requiring the construction of public hydrogen stations in geographic areas where automakers are marketing their FCVs.

#### CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The proposed amendments are neither inconsistent nor incompatible with existing state regulations.

#### COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations.

#### AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Proposed Amendments to the Clean Fuels Outlet Regulation.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on Wednesday, June 13, 2013.

#### Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

#### Agency Contact Persons

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Leslie Goodbody at (916) 323-2961 and Mr. Gerhard Achtelik at (916) 323-8973.

Further, the Agency representative and designated back-up contact persons, to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

#### Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2013/cfo2013/cfo2013.htm>

ARB maintains a website pertaining to the CFO regulation where people can obtain information on activities and workshops, as well as copies of notices, presentations, and other written materials and electronic files. <http://www.arb.ca.gov/fuels/altfuels/cf-outlets/cf-outlets.htm>

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action

would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. As detailed in the ISOR and Form 399, ARB staff believes businesses required to comply with this regulation would incur costs associated with installing and operating hydrogen fueling stations but would likely recoup any costs through the sale of fuel to drivers of hydrogen fuel cell vehicles. Additionally, a private person who owns or leases an FCV and purchases hydrogen fuel may be impacted positively or negatively depending on hydrogen price. If hydrogen is priced higher on a miles-per-gallon gasoline-equivalent basis, private persons would pay more for fuel compared to gasoline. Alternatively, if hydrogen is priced lower, private persons would pay less compared to gasoline.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. Staff expects the proposed amendments to increase jobs associated with station construction, hydrogen production, hydrogen delivery, station operation and maintenance. However, job losses may include those associated with the production, delivery and retail sale of gasoline. ARB analysis indicates job increases will more than offset job losses.

STATEMENT OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT PREPARED  
PURSUANT TO GOVERNMENT CODE  
SEC. 11346.3(b)

Effect on Jobs/Businesses:

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would affect the creation or elimination of jobs within the State of California and the expansion of businesses currently doing business within the State of California; however, the Executive Officer has determined that the proposed regulatory action would not likely affect the creation of new businesses or elimination of existing businesses within the State of California. An assessment of the economic im-

pacts of the proposed regulatory action can be found in the ISOR.

Benefits of the Proposed Regulation:

The proposed amendments will facilitate development of the needed hydrogen fueling infrastructure and so will assist in achieving California's emission reduction goals. A more detailed discussion of the benefits of the proposed amendments may be found in the Initial Statement of Reasons.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the regulated parties, major refiner/importers of gasoline, do not fall under the category of "small business." However, small businesses engaged in station construction, operation and maintenance, and fuel delivery would benefit from this regulation as discussed above.

HOUSING COSTS

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

BUSINESS REPORT

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

ALTERNATIVES

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board (which includes during preliminary workshop activities), would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmen-

tal Quality Act, Public Resources Code section 21080.5, ARB prepared an environmental analysis for the Advanced Clean Car Program (ACC EA). The ACC EA included comprehensive analysis of the CFO regulation; the current proposed regulatory action is essentially the same regulation. The ACC EA was certified when the ACC Program was adopted in March 2012. Appendix B of the ISOR provides staff's determination that no supplemental analysis is required. Appendix B also provides some additional information about air quality and hazards.

#### SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **Monday, February 18, 2013**. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after **Monday, February 18, 2013**, and received no later than **12:00 noon on Wednesday, June 26, 2013**, and must be addressed to the following:

Postal mail: Clerk of the Board,  
Air Resources Board  
1001 I Street,  
Sacramento, California 95814

Electronic submittal:  
<http://www.arb.ca.gov/lispub/comm/bclist.php>

**You can sign up online in advance to speak at the Board meeting** when you submit an electronic board item comment. For more information go to: <http://www.arb.ca.gov/board/online-signup.htm>.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

#### STATUTORY AUTHORITY AND REFERENCES

**This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 39667, 43013, 43018 and 43101; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975). This action is proposed to implement, interpret, and make specific sections 39000, 39001, 39002, 39003, 39500, 39515, 39516, 39667, 43000, 43013, 43018 and 43101; and *Western Oil and Gas Ass'n. v. Orange County Air Pollution Control District*, 14 Cal. 3d 411, 121 Cal. Rptr. 249 (1975).**

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

#### SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

**TITLE 16. CALIFORNIA ARCHITECTS BOARD**

NOTICE IS HEREBY GIVEN that the California Architects Board is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

2420 Del Paso Road, Sequoia Room  
 Sacramento, California, 95834  
 April 3, 2013 — 10:00 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 3, 2013 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 5578 of the Business and Professions Code, and to implement, interpret or make specific Section 480 of said Code and Section 11425 of the Government Code, the Board is considering changes to Division 2 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

Existing law authorizes the Board to appoint an Executive Officer.

Existing regulations delegate certain functions to its Executive Officer relative to actions taken in connection with the Administrative Procedure Act.

This regulatory proposal would delegate to the Executive Officer the authority to approve settlement agreements for the revocation or surrender of an architect license.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The Board’s highest priority is consumer protection. The primary methods by which the Board achieves this goal are: issuing architect licenses to eligible applicants; investigating complaints against licensed architects and disciplining licensees for violations of the Architects Practice Act, and monitoring licensed architects whose licenses have been placed on probation. In order to enhance its disciplinary function and strengthen its Enforcement Program to better achieve its public protection mandate, the Board is proposing the above change.

C. Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minor, if any, and will be absorbable in the Board’s existing budget. Delegating to the Executive Officer the authority to approve settlement agreements for license revocation or surrender should result in a minor savings of Board members’ time reviewing proposed default decisions and/or stipulated settlements to revoke a license.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact: The Board has made an initial determination that the proposed regulatory action would

have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with any disciplinary order imposed by the Board and legal fees if the individual is represented by legal counsel.

Effect on Housing Costs: None.

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The regulatory proposal affects licensed architects.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

##### Impact on Jobs/Businesses:

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

##### Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

It will enhance the Board's disciplinary function and strengthen its Enforcement Program to better achieve its public protection mandate.

#### CONSIDERATION OF ALTERNATIVES

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

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

#### INITIAL STATEMENT OF REASONS AND INFORMATION

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

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Contact Person named below.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

#### CONTACT PERSON

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

Name: Hattie Johnson  
Address: 2420 Del Paso Road, Suite 105  
Sacramento, CA 95834  
Telephone No.: (916) 575-7203  
Fax No.: (916) 575-7283  
E-mail Address: Hattie.Johnson@dca.ca.gov

The backup contact person is:

Name: Peter Merdinger  
Address: 2420 Del Paso Road, Suite 105  
Sacramento, CA 95834  
Telephone No.: (916) 575-7211  
Fax No.: (916) 575-7283  
E-mail Address: Peter.Merdinger@dca.ca.gov

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

#### TITLE 18. FRANCHISE TAX BOARD

As required by Government Code section 11346.4, this is notice that a public hearing has been scheduled to

be held at 10:00 a.m., April 18, 2013, at the Franchise Tax Board, 9646 Butterfield Way, Sacramento, California, to consider the addition of Section 17052.6 under Title 18 of the California Code of Regulations (“Regulation”), pertaining to the Child and Dependent Care Expenses (CDC) Credit.

An employee of the Franchise Tax Board (the “Board”) will conduct the hearing. Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action if any person makes such request in writing.

#### WRITTEN COMMENT PERIOD

Written comments will be accepted until 5:00 p.m., April 18, 2013. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

#### AUTHORITY AND REFERENCE

Section 19503 of the Revenue and Taxation Code (“RTC”) authorizes the Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with section 17001), Part 10.2 (commencing with section 18401), Part 10.7 (commencing with section 21001), and Part 11 (commencing with section 23001) of the RTC. The proposed regulatory action interprets, implements, and makes specific RTC section 17052.6.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### Summary of Existing Laws and Regulations

RTC section 17052.6 provides that a CDC tax credit shall be allowed for taxable years beginning on or after January 1, 2000 in an amount equal to a percentage (based on federal adjusted gross income) of the federal CDC credit determined in accordance with Section 21 of the Internal Revenue Code. The federal CDC credit is a tax credit based on qualifying expenses incurred for the care of a qualifying person which made it possible for a taxpayer to work or to seek employment.

For taxable years beginning prior to January 1, 2011, the California CDC Credit is refundable. For taxable

years beginning on or after January 1, 2011, the California CDC Credit is nonrefundable, so the credit cannot reduce tax liability below zero.

Treasury Regulation section 1.21-1(k) provides that a taxpayer claiming the CDC Credit must maintain adequate records or other sufficient evidence to substantiate the expenses “in accordance with section 6001 and the regulations thereunder.” However, the federal regulations under Internal Revenue Code section 6001 lack the specificity of appropriate verifying documentation which the Franchise Tax Board has determined would benefit both claimant taxpayers and the Franchise Tax Board in determining eligibility for the CDC Credit under RTC section 17052.6.

##### Objectives of and Anticipated Benefits from the Proposed Regulation

The objective of the proposed regulatory section is to provide clarity as to the records/documents that taxpayers can retain and provide upon request to establish entitlement to the CDC Credit. Through such clarity, the taxpayer will have the advantage of knowing what specific documents to obtain and retain, at the time that they are procuring their child or dependent care services, rather than at the time that they are later contacted by the Franchise Tax Board to provide such documentation, thus eliminating the challenge of retroactively collecting documentation sufficient to substantiate their claim for the CDC Credit.

##### Evaluation of Proposed Regulation with Respect to Existing State Regulations

The Franchise Tax Board has evaluated and determined that adoption of the proposed regulation is not inconsistent with or incompatible with existing state regulations. There are no other comparable existing state regulations.

##### Existing Comparable Federal Regulation

Treasury Regulation section 1.21-1(k) discusses records maintenance very generally by reference to Internal Revenue Code section 6001 and the regulations thereunder. This proposed regulation seeks to specifically identify the requirements for records and qualifying documentation for purposes of claiming the CDC credit as a means of assisting taxpayers and the Franchise Tax Board in verifying eligibility for the CDC Credit. These federal regulations under Internal Revenue Code section 6001 lack the specificity of appropriate verifying documentation which the Franchise Tax Board has determined would benefit both claimant taxpayers and the Franchise Tax Board in determining eligibility for the CDC Credit under RTC section 17052.6. The Franchise Tax Board has evaluated and determined that adoption of the proposed regulation is not inconsis-

tent with or incompatible with existing federal regulations.

SPECIFIC PROPOSAL

Subsection (a) of the regulation provides a general rule that a taxpayer must maintain adequate records to substantiate entitlement to the CDC Credit, as provided in the remainder of the regulation.

Subsection (b), made up of five subparts detailed individually below, provides a description of each legal requirement that the Franchise Tax Board looks to when verifying entitlement to the CDC Credit and specific documents that the taxpayer can provide to establish that each legal requirement is met.

- Subsection (b)(1) references the legal requirement that the care be provided to an individual, identified by a taxpayer identification number, that is the taxpayer’s “qualifying person.” As such, the qualifying person’s identity, taxpayer identification number, and age must be established by the taxpayer. The subsection indicates that the qualifying person’s birth certificate and Social Security Account Number card can establish that this legal requirement is met.
- Subsection (b)(2) references the legal requirement that the qualifying person be mentally or physically disabled if the qualifying person is thirteen or older. This subsection indicates that medical records that demonstrate the physical or mental incapacity of the qualifying person can establish that this legal requirement is met.
- Subsection (b)(3) references the legal requirement that the taxpayer establish their care provider’s identity and taxpayer identification number. This subsection references documents that can be provided to establish identity and documents that can be provided to establish the taxpayer identification number.
- Subsection (b)(4) references the legal requirement that the care be provided within California. This subsection indicates that the provider’s California driver’s license or identification card reflecting the provider’s California address or a utility bill in the provider’s name for the address at which the care was provided can establish that this legal requirement is met. The subsection exempts taxpayers from providing this information if the care is provided within their home.
- Subsection (b)(5) speaks to the legal requirement that the taxpayer substantiate their care expenses. This subsection indicates that proof of payment such as canceled checks/money orders, receipts,

invoices, or year–end statements can establish that this legal requirement is met.

Subsection (c) provides an alternative method of producing “other sufficient evidence” to establish compliance with the legal requirements set forth in subsection (b) when the taxpayer is unable to produce the specific documents identified in subsection (b).

Subsection (d) provides a standard for maintaining the specific records required by this regulation section through reference to Internal Revenue Code section 6001 and the regulations thereunder. Subsection (d) is consistent with the substantiation standard for claiming the federal CDC credit, set forth in Treasury Regulation section 1.21–1(k).

Subsection (e) provides that the taxpayer shall produce the records required by this regulation section upon the Franchise Tax Board’s request. Subsection (e) further provides that the CDC credit will be denied in the event that the taxpayer fails to produce such records.

Subsection (f) provides five examples illustrating scenarios in which evidence which is not identified in subsection (b) is provided by a taxpayer to attempt to satisfy the legal requirements referenced in subsection (b).

- The example in subsection (f)(1) illustrates a scenario in which the taxpayer paid her care provider, an individual, in cash and did not have receipts for her payments. The taxpayer submits a notarized statement, signed under penalty of perjury, from her provider which confirms the amounts paid by the taxpayer for childcare services. The example in subsection (f)(1) provides that such a statement may be sufficient evidence under subsection (c) to establish the proof of payment required by subsection (b)(5).
- The example in subsection (f)(2) illustrates a scenario in which the taxpayer paid her care provider, an individual, in cash and did not have receipts for her payments. The taxpayer submits a federal form W–10, Dependent Care Provider’s Identification and Certification, which is notarized and signed by the care provider, with a handwritten statement above the signature confirming the amounts paid by the taxpayer for childcare services. The example in subsection (f)(2) provides that while the W–10 may be sufficient evidence under subsection (c) to establish the provider’s identity and taxpayer identification number, it is not sufficient to establish proof of payment required by subsection (b)(5).
- The example in subsection (f)(3) illustrates a scenario in which the qualifying person’s care was provided in the child care provider’s home by an

individual care provider. The taxpayer submitted a notarized statement, signed under penalty of perjury, from the provider confirming the California address at which the care was provided. The example in subsection (f)(3) provides that such a statement may be sufficient evidence under subsection (c) to establish the physical location at which the care was provided, as required by subsection (b)(4).

- The example in subsection (f)(4) illustrates a scenario in which the qualifying person's care was provided at a location that the care provider, an individual residing outside of California, rents in California. The taxpayer submitted a notarized statement, signed under penalty of perjury, from the provider confirming the California address at which the care was provided. The example in subsection (f)(4) provides that such a statement may be sufficient evidence under subsection (c) to establish the physical location at which the care was provided, as required by subsection (b)(4).
- The example in subsection (f)(5) illustrates a scenario in which the qualifying person's care is provided by an organization. The taxpayer submitted a copy of the year-end statement from the care provider which is printed on the organization's letterhead. The example in subsection (f)(5) provides that the organization's letterhead may be sufficient evidence under subsection (c) to establish the physical location at which the care was provided, as required by subsection (b)(4).

Subsection (g)(1) provides that this regulation shall apply to records required to be maintained for taxable years beginning on or after January 1, 2013. Subsection (g)(2) provides that this regulation shall also apply when a taxpayer elects to submit the documentation required by this regulation for taxable years beginning prior to January 1, 2013.

#### DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

##### Mandate on Local Agencies and School Districts

The Board is not aware of any mandate on local agencies or school districts that would be created by reasonable compliance with the proposed regulation.

##### Cost or Savings to State Agencies, Local Agencies or School Districts, and Federal Funding

The adoption of proposed Regulation section 17052.6 will not have any fiscal impact on state government.

The Board is not aware of any cost or savings to any state agency, any cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the California Government Code, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state, that will result from the adoption of the proposed regulation.

##### Economic Impact on Business and the Ability of California Businesses to Compete

Since the proposed regulation will clarify the substantiation requirements for taxpayers, and compliance with the proposed regulation will require no more than 15 minutes of clerical time (per child/dependent) on the part of the care provider, the Franchise Tax Board has determined that there will be no adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.

##### Potential Cost Impact on Directly Affected Private Persons or Businesses

Since the proposed regulation only affects the documentation required to be supplied from existing care providers and taxpayers, the Board has made an initial determination that the adoption of the proposed regulation will not result in costs incurred by private persons or businesses for reasonable compliance with the proposed action. It is anticipated that the additional clerical time on the part of the care provider to supply identity documentation and proof of payment documentation as required under this proposed regulation will not exceed 15 minutes per child or dependent.

##### Effect on Jobs and Business in California

The Board is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state.

Since the proposed regulation only affects the documentation required to be supplied from existing care providers and taxpayers, the adoption of the proposed Regulation section 17052.6 would not have any impact on the number of jobs or businesses created or eliminated, or on the expansion of businesses currently doing business within the state.

##### Impact on Small Business

Since the proposed regulation only affects the documentation required to be supplied from existing care providers and taxpayers, the Board has made an initial determination that the adoption of the proposed regulation will not affect small businesses. It is anticipated that the additional clerical time on the part of the care provider to supply identity documentation and proof of payment documentation as required under this pro-

posed regulation will not exceed 15 minutes per child or dependent.

Impact on Housing Costs

The Board is not aware of any significant effect on housing costs that will be incurred by reasonable compliance with the proposed regulation.

RESULTS OF THE ECONOMIC  
IMPACT ANALYSIS

Pursuant to Government Code section 11346.3, subdivision (b), the Franchise Tax Board has determined in the economic impact analysis that since compliance with the regulation will require no more than 15 minutes of clerical time (per child/dependent) on the part of the care provider, there are no effects on the creation or elimination of jobs in the state and no effect on the creation of new businesses or elimination or expansion of existing businesses within the state. The proposed regulation will benefit taxpayers by providing direction as to the documentation that the taxpayer should obtain and retain to establish entitlement to the CDC Credit. In addition, the Franchise Tax Board will save resources by receiving adequate documentation as specified in this regulation rather than having to do an ad hoc analysis based on other possible evidence.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment: None.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual

basis for determining that the proposed regulatory action is necessary.

The express terms of the proposed text of the regulation, the initial statement of reasons and the rulemaking file are prepared and available upon request from the agency contact person named in this notice. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board’s website at [www.ftb.ca.gov/](http://www.ftb.ca.gov/).

CHANGE OR MODIFICATION OF ACTIONS

The proposed regulatory action may be adopted after consideration of any comments received during the comment period.

The regulation may also be adopted with modifications if the changes are nonsubstantial or the resulting regulation is sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulation should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter or sign language assistance should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: [Colleen.Berwick@ftb.ca.gov](mailto:Colleen.Berwick@ftb.ca.gov). In addition, all questions on the substance of the proposed regulation can be directed to Jaclyn Appleby; Telephone (916) 845-5712; E-Mail: [Jaclyn.Appleby@ftb.ca.gov](mailto:Jaclyn.Appleby@ftb.ca.gov). This notice, the initial statement of reasons and express terms of the proposed regulation are also available at the Franchise Tax Board’s website at [www.ftb.ca.gov](http://www.ftb.ca.gov).

**TITLE 18. FRANCHISE TAX BOARD**

INFORMATIVE DIGEST/PLAIN ENGLISH  
OVERVIEW

As required by section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 1:00 p.m., on April 4, 2013, at Franchise Tax Board, 9646 Butterfield Way, Town Center, Sacramento, California, to consider the following regulatory actions under Title 18 of the California Code of Regulations: a) adopt Regulation section 18662-0; b) amend Regulation sections 18662-1 through 18662-6; c) repeal existing Regulation section 18662-7 and reserve it for future use; d) repeal existing Regulation sections 18662-11 through 18662-14; and 3) amend and renumber Regulation section 25401b to Regulation section 19002 (Credit for Tax Withheld).

An employee of the Franchise Tax Board will conduct the hearing. Government Code section 15702, subdivision (b), provides for consideration by the three-member Franchise Tax Board of any proposed regulatory action, if any person makes such a request in writing. If a written request is received, the three-member Franchise Tax Board will consider the proposed regulatory action prior to adoption.

Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

**WRITTEN COMMENT PERIOD**

Written comments will be accepted until 5:00 p.m., April 4, 2013. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

**AUTHORITY AND REFERENCE**

Revenue and Taxation Code (RTC) section 19503 authorizes the Franchise Tax Board to prescribe regulations necessary to implement, interpret and make specific Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the RTC. Specifically, the authority for the proposed regulatory action to adopt Regulation section 18662-0, amend Regulation sections 18662-2 through 18662-6, repeal existing Regulation Section 18662-7 and to reserve it for future use, repeal existing Regulation sections 18662-11 through 18662-14, and amend and renumber Regulation section 25401b to section 19002 (Credit for Tax Withheld), is RTC section 19503. The reference for the proposed regulatory action stated above is RTC sections 18662, 18668, and 19002.

The proposed adoption, amendment, and repeal of the above regulations will provide clear, comprehensive guidance to taxpayers, tax practitioners, withholding agents, and the public as to the requirements for withholding of tax at source relating to California source income. Withholding of tax at source (termed, “withhold at source” or “withholding at source”) is an essential part of Franchise Tax Board’s Tax Gap compliance initiative. Withholding’s “pay as you go” process helps taxpayers by ensuring that tax is collected as income is received. It helps the state by ensuring that tax is paid as it is incurred on specific transactions, encouraging taxpayers to file returns at the end of the year.

Current Regulation Sections 18662-1 through 18662-14, and Section 25401b

California law requires the Franchise Tax Board to issue regulations to implement the withholding at source statutory requirements (RTC section 18662, subdivision (a).) In 1971, RTC sections 18805 and 26131 (renumbered in 1993 to RTC section 18662) were enacted to require “any person” to withhold on payments of California source income to nonresidents. Thereafter, the withholding regulations under RTC sections 18805 and 26131 were renumbered to correspond to RTC section 18662.

While withholding regulations remain in effect (California Code of Regulations, Title 18, Regulation (CCR) sections 18662-1 through 18662-14), these regulations have not been updated in over 20 years. The current withholding regulations do not reflect the changes that have been made as a result of enactment of more recent withholding laws. For example, statutory changes such as the addition of real estate withholding, the adoption of an alternative real estate withholding election, the inclusion of nonresident partnership withholding, and the use of different types of business entities, especially pass-through entities, are not addressed in the regulations. The current regulations are also not organized in a useful framework, given the number of legislative amendments and new statutes that have been adopted since the current regulations went into effect, and given the new processes adopted by Franchise Tax Board staff.

The Proposed Regulatory Action: Adopt Section 18662-0; Amend Sections 18662-1 through 18662-6; Repeal Existing Section 18662-7 and Reserve It for Future Use; Repeal Existing Sections 18662-11 through 18662-14; and Amend and Renumber Section 25401b to Section 19002

This rulemaking is necessary because the current Franchise Tax Board withholding regulations are not well-suited to piecemeal amendment but instead re-

quire a complete reorganization and restructuring. The new withholding regulations are designed to provide guidance consistent with the current statutory framework, reflect Franchise Tax Board’s current practices and procedures, and reflect changes determined to be necessary or desirable after consulting with taxpayers, tax practitioners, and other parties at the interested parties meeting held August 13, 2007 and July 14, 2011.

Beginning in 2008, Franchise Tax Board staff implemented a new quarterly withholding process, which changed due dates to report and remit withholding to match the estimated tax due date schedule, and required withholding agents to identify taxpayers for immediate posting of the credit to the taxpayers’ accounts. In 2008 and 2009, the Legislature adopted amendments to the real estate withholding statute (Stats. 2008, ch. 305), changed the withholding requirements regarding real estate installment sales (Stats. 2008, ch. 305), changed the maximum withholding rate (Stats. 2009 3rd Ex. Sess, ch.18), and enacted legislation dealing with modified backup withholding (Stats. 2009 4rd Ex. Sess, ch.18).

Since 2007, Franchise Tax Board staff has been working on the Withhold at Source System Project (WASS), a modernization project designed to integrate Franchise Tax Board withholding system into its other systems, implement greater security, and provide greater transparency for the taxpayer. For the past two years of its development, Franchise Tax Board staff has further refined the proposed regulations to ensure consistency with the new statutes, the WASS project forms

and practices, and other departmental changes (such as electronic banking and file processing) into the withholding process.

The Franchise Tax Board proposes to adopt, amend, repeal, and/or renumber the current withholding regulations in order to comprehensively replace the existing procedural rules with improved regulations that consistently, clearly, and fully describe Franchise Tax Board’s current withholding processes in a structurally integrated and logical framework. In this way, the Franchise Tax Board intends to provide additional clarity and transparency for taxpayers, tax practitioners, withholding agents, and the public. The new regulations also retain the flexibility to respond to individual circumstances and new or changed responsibilities.

The regulations are rewritten and reorganized into a simpler, more descriptive order. For example, the regulations contain a Table of Contents, definitions, and general rules applicable to all withholding at source. The regulations then provide specific guidance for major withholding areas that Franchise Tax Board administers (e.g., real estate withholding, nonresident withholding, nonresident independent contractors, entertainers, athletes, and pass-through entities), provide guidance on different types of California source income, set forth reporting and remitting obligations and penalties, and provide rules for the crediting of withheld amounts.

Below are general cross–references between the proposed regulatory section and the former section.

General Framework of Proposed Regulatory Action and Cross–References

<b>Proposed</b>	<b>Proposed Action</b>	<b>New Content or Derived From Former Sections</b>	<b>General Topics of Proposed Section</b>
18662–0	Adopt	New	Table of Contents
18662–1	Amend	18662–1 18662–2 18662–11 18662–13 25401b	General Application; areas not covered; notice to withhold; withholding on payments, reporting and remitting amounts, credit for tax withheld; notice to withhold; other conditions as may be required.
18662–2	Amend	18662–1 18662–2 18662–6 18662–11 18662–13	Definitions
18662–3	Amend	New	Real Estate Withholding, Rate, Alternative Election Method, Exclusions, Exemptions, Special Entities, Procedures

<b>Proposed</b>	<b>Proposed Action</b>	<b>New Content or Derived From Former Sections</b>	<b>General Topics of Proposed Section</b>
18662-4	Amend	18662-2 18662-3 18662-11 18662-12 18662-13	Withholding on Payments — General; Nonresident Persons and Non-California Business Entities, Rates, Optional Withholding, Withholding Exceptions, Persons and Entities Specifically Subject to Withholding, Exemption Certificates, Waivers, Filing Requirements
18662-5	Amend	18662-2 18662-3 18662-11 18662-12	Other Types of Payments and Withholding Obligations
18662-6	Amend	18662-2 18662-3 18662-11 18662-12	Nonresident Withholding, Entertainers, Athletes, and Speakers
18662-7	Repeal Text and Reserve Section		Nonresident Withholding — Domestic (U.S.) Pass-Through Entities
18662-8	Amend	18662-5 18662-6	Reporting and Remitting Amounts withheld; Penalties and Interest
19002	Amend/ Re-number	25401b 18662-5	Credit for Tax Withheld
18662-11	Repeal		Content incorporated into other sections.
18662-12	Repeal		Content incorporated into other sections.
18662-13	Repeal		Content incorporated into other sections.
18662-14	Repeal		Content not incorporated into other sections.

**CONTENT OF EXISTING REGULATIONS NOT INCORPORATED INTO THE PROPOSED REGULATIONS**

The following sections have not been incorporated into the proposed regulations:

Section 18662-4. This section (Withholding of Delinquent Taxes Due) is now addressed under other sections. The proposed amendment to Regulation section 18662-4 will operate to delete the content of the existing section in its entirety.

Section 18662-7. The proposed repeal of this section will operate to delete the content of the existing section in its entirety. The section will be reserved for rules applicable to domestic (U.S.) pass-through entities.

Section 18662-8. This section (Time and Place for Filing Returns of Tax Withheld) is now replaced by FTB forms and procedures as addressed in these regulations. The proposed amendment to Regulation section 18662-8 will operate to delete the content of the existing section in its entirety.

Section 18662-14. This section (Interpleader Action by Withholding Agent) is repealed. The repeal of Regulation section 18662-14 will operate to delete the content of the existing section in its entirety.

**IS THERE AN EXISTING, COMPARABLE FEDERAL STATUTE OR REGULATION?**

There is no existing, comparable federal statute or regulation.

**ANTICIPATED BENEFITS FROM THE  
PROPOSED REGULATION**

Statewide benefits are derived from the withholding statutes, not from the proposed regulations. However, nonmonetary benefits to taxpayers, tax practitioners, withholding agents, the public, and the state from the proposed regulations include the following:

- The proposed regulations revise outdated withholding regulations and bring the regulations up to current statutory laws and existing withholding procedures.
- The proposed regulations are intended to provide additional clarity and transparency for taxpayers, taxpayer practitioners, withholding agents, and the public.
- The new regulations retain the flexibility to respond to individual circumstances and new or changed responsibilities.
- The proposed regulations align with Franchise Tax Board’s newly modernized WASS.

**EVALUATION OF WHETHER THE PROPOSED  
REGULATION IS INCONSISTENT  
OR INCOMPATIBLE WITH EXISTING  
STATE REGULATIONS**

California law requires the Franchise Tax Board to issue regulations to implement the withholding at source statutory requirements. (RTC section 18662, subdivision (a).) The proposed regulations revise outdated withholding regulations and bring the regulations up to current statutory laws and existing withholding procedures. **The Franchise Tax Board has evaluated and determined that adoption of the proposed regulations is not inconsistent with or incompatible with existing state regulations. There are no other comparable existing state regulations.**

**IS THE PROPOSED REGULATION MANDATED  
BY FEDERAL STATUTE OR REGULATION?**

The proposed regulation is not mandated by federal statute or regulation.

**ARE THERE OTHER STATUTORY  
REQUIREMENTS IDENTIFIED IN THE NOTICE  
THAT ARE SPECIFIC TO THE AGENCY OR  
TYPE OF REGULATION?**

There are no other statutory requirements identified in the notice.

**MANDATE ON LOCAL AGENCIES AND  
SCHOOL DISTRICTS**

None.

**COST TO ANY LOCAL AGENCY OR SCHOOL  
DISTRICT WHICH MUST BE REIMBURSED  
UNDER PART 7, COMMENCING WITH  
GOVERNMENT CODE SECTION 17500, OF  
DIVISION 4**

None. There is no fiscal impact with the adoption of the proposed regulations. The proposed regulations revise outdated withholding regulations and bring the regulations up to current statutory laws and existing withholding procedures.

**COST OR SAVINGS TO ANY STATE AGENCY**

None. There is no fiscal impact with the adoption of the proposed regulations. The proposed regulations revise outdated withholding regulations and bring the regulations up to current statutory laws and existing withholding procedures.

**OTHER NON-DISCRETIONARY COST OR  
SAVINGS IMPOSED UPON LOCAL AGENCIES**

None.

**COST OR SAVINGS IN FEDERAL FUNDING TO  
THE STATE**

None.

**SIGNIFICANT EFFECT ON HOUSING COSTS**

None.

**WHETHER THERE IS A SIGNIFICANT  
STATEWIDE ADVERSE ECONOMIC IMPACT  
DIRECTLY AFFECTING BUSINESS INCLUDING  
THE ABILITY OF CALIFORNIA BUSINESSES  
TO COMPETE WITH BUSINESSES  
IN OTHER STATES**

The Franchise Tax Board has made an initial determination that the proposed regulations do not create a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

WHAT ARE THE FACTS, EVIDENCE, AND DOCUMENTS ON WHICH THE AGENCY RELIES TO SUPPORT AN INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES?

Franchise Tax Board staff has found no facts or evidence that the proposed regulations create a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The proposed regulations revise outdated regulations and bring the regulations up to current statutory laws and existing withholding procedures. Franchise Tax Board staff conducted two interested parties meetings and received detailed input from the public and interested parties, as detailed below. Staff received no comments from interested parties or the public that the proposed regulations create a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

In 2007, Franchise Tax Board staff began its project to revise the outdated withholding regulations. Staff determined that the proposed regulations were outdated and sought public input to bring the regulations up to current withholding laws and Franchise Tax Board procedures. Through interested parties meetings, staff considered the below alternatives and/or mitigation measures.

On June 27, 2007, Franchise Tax Board staff received approval from the three-member Franchise Tax Board to proceed with the first interested parties meeting on the proposed amendments to the withholding regulations. Staff included the first draft of the proposed regulations in the Board materials. Staff explained that it was necessary to begin to revise and update the withholding regulations and to bring them into conformity with then-current law and current withholding practice, in anticipation of the Withholding at Source System modernization system to be implemented over the next four years.

The first interested parties meeting was held on August 13, 2007. The following documents were provided to the public in advance of the meeting: a topic list, an outline of the history of California withholding, the first draft of the proposed regulations, and draft forms and instructions for 2008. Franchise Tax Board staff also invited questions and comments on the draft regulations.

For the Board meeting of November 28, 2007, Franchise Tax Board staff requested permission to proceed with the formal regulatory process, which was granted. The following materials were provided in advance of the meeting: a report of the first interested parties meeting; staff responses to comments received from the public; and the second draft of the proposed regulations showing revisions made as a result of the interested parties meeting.

During 2008 through 2009, the Legislature enacted a number of new laws, which substantially changed the withholding requirements. Some of these laws related to real estate installment sales (Stats. 2008, ch. 305), real estate withholding (Stats. 2008, ch. 305), the maximum withholding rate (Stats. 2008 3rd Ex. Sess, ch. 18), and backup withholding (Stats. 2009 4th Ex. Sess, ch. 18). As a result of these new laws, Franchise Tax Board staff prepared a third draft of the proposed regulations.

On July 14, 2011, Franchise Tax Board staff held the second interested parties meeting to solicit input on the third draft of the proposed regulations. Several documents were provided to the public in advance of the meeting: discussion topics; an overview of the purpose and scope of the regulations; revisions since 2007; a cross-reference chart of proposed regulations to existing regulations; and the third draft of the proposed regulations. Staff discussed that it planned to repeal the existing Regulation section 18662-7 and reserve this section for a future interested parties meeting relating to domestic (U.S.) pass-through entities as a separate regulatory action. Staff received comments and encouraged the submission of additional comments for an additional month, through August 12, 2011.

For the Board meeting of December 1, 2011, Franchise Tax Board staff requested permission to proceed with the formal regulatory process, which was granted. The following materials were provided in advance of the meeting: a report of the second interested parties meeting; a detailed response to the comments received and revisions implemented by staff as a result of public comments; and the fourth draft of the proposed regulations showing revisions made as a result of the interested parties meeting.

As a result of the above, in accordance with Government Code section 11346.5, subdivision (a)(13), the Franchise Tax Board has determined that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and businesses than the proposed regulatory action.

RESULTS OF THE ECONOMIC  
IMPACT ANALYSIS

Pursuant to Government Code Section 11346.3, subdivision (b), the results of the Economic Impact Analysis are shown below.

1. Impact on business and individuals:

See Item 2 below.

2. Total number of businesses impacted:

The types of businesses impacted are those businesses and individuals that are required to act as withholding agents in compliance with California's withholding at source laws.

The Franchise Tax Board estimates that approximately 105,000 businesses will be impacted by the proposed regulations. Of this amount, it is anticipated that approximately ninety percent (90%) of such businesses are small businesses. In addition, the proposed regulations address the process by which withholding credits are claimed by businesses and individuals on tax returns. Since the proposed regulations are revised to comply with current statutory withholding laws and existing withholding procedures, the Franchise Tax Board has concluded that there is no economic impact on businesses and individuals as a result of the adoption of the proposed regulations.

3. Number of businesses created or eliminated:

None. Since the proposed regulations are revised to comply with current statutory laws and existing withholding procedures, the Franchise Tax Board has concluded that no business will be created or eliminated as a result of the adoption of the proposed regulations.

4. Geographic extent of impacts:

Statewide. See Item 2 above.

5. Number of jobs created or eliminated:

Since the proposed regulations are revised to comply with current statutory laws and existing withholding procedures, Franchise Tax Board has concluded that no new jobs will be created or eliminated as a result of the adoption of the proposed regulations.

Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

No. See the above topic heading, "What Are The Facts, Evidence, And Documents On Which The Agency Relies To Support An Initial Determination That The Action Will Not Have A Significant Statewide Adverse Economic Impact On Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States?"

SECTION B. ESTIMATED COSTS TO  
BUSINESSES AND INDIVIDUALS

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime?

None. The proposed regulations revise outdated withholding regulations. There is no economic impact on businesses or individuals as the proposed regulations conform to current statutory laws and existing withholding procedures. In fact, the regulations as proposed reduce the burden on businesses by providing a more organized and up-to-date source of information.

2. Multiple Industries Impacted:

There is no economic impact on businesses as the proposed regulations conform to current statutory withholding laws and existing withholding procedures.

3. Reporting requirements:

Since the proposed regulations are revised to comply with current statutory laws and existing withholding procedures, a typical business will incur no additional costs in compliance with the proposed regulations.

4. Direct Impact to housing costs:

None.

5. Existence or absence of state or federal regulations:

There are no comparable federal regulations. California law requires the Franchise Tax Board to issue regulations to implement the withholding at source statutory requirements. (RTC section 18662, subdivision (a).) The proposed regulations revise outdated California withholding regulations and bring the regulations up to current statutory laws and existing withholding procedures.

SECTION C. ESTIMATED BENEFITS

1-3. What are the total statewide benefits from this regulation over its lifetime?

None. Statewide benefits are derived from the withholding statutes, not from the regulations. See the non-monetary benefits under the above topic heading, "Anticipated Benefits from the Proposed Regulation."

SECTION D. ALTERNATIVES TO  
THE REGULATION

1. List Alternatives.

See the above topic heading, "What Are The Facts, Evidence, And Documents On Which The Agency Relies To Support An Initial Determination That The Action Will Not Have A Significant Adverse Economic Impact On Business, including the Ability of California

Businesses to Compete with Businesses in Other States.”

2. List total statewide costs and benefits.

For statewide costs, see Item 1 in Section B. For statewide benefits, see Items 1–3 above in Section C.

3. Quantification of costs and benefits for the regulation or alternatives.

See Item 1 in Section D above.

4. Mandated Technologies.

The proposed regulations do not mandate any specific technologies or equipment.

#### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The types of businesses impacted are those businesses and individuals that are required to act as withholding agents in compliance with California’s withholding at source laws. The Franchise Tax Board estimates that approximately 105,000 businesses will be impacted by the proposed regulations. Of this amount, it is anticipated that approximately ninety percent (90%) of such businesses are small businesses. In addition, the proposed regulations address the process by which withholding credits are claimed by businesses and individuals on tax returns. Since the proposed regulations are revised to comply with current statutory withholding laws and existing withholding procedures, the Franchise Tax Board has concluded that there is no economic impact on businesses and individuals as a result of the adoption of the proposed regulations.

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

#### **REPORTING REQUIREMENTS IMPOSED BY THE REGULATION**

Since the proposed regulations are revised to comply with current statutory laws and existing withholding procedures, a typical business will incur no additional costs in compliance with the proposed regulations.

#### **EFFECT ON SMALL BUSINESS**

See the above topic heading, “Cost Impacts on Representative Private Persons or Businesses.”

#### **CONSIDERATION OF ALTERNATIVES**

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

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

The Franchise Tax Board has prepared an initial statement of the reasons for the proposed regulatory action. The express terms of the proposed regulatory action, the initial statement of the reasons for the regulatory action, and all the information upon which the proposed regulatory action is based, are available upon request from the agency officer named below. When the final statement of reasons is available, it can be obtained by contacting the agency officer named below, or by accessing the Franchise Tax Board’s website at [www.ftb.ca.gov](http://www.ftb.ca.gov).

#### **CHANGE OR MODIFICATION OF ACTIONS**

The proposed regulation may also be adopted with modifications if the changes are nonsubstantive or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulations as modified could result from that originally proposed. The text of the regulation as modified will be made available to the public at least 15 days prior to the date on which the regulations is adopted. Requests for copies of any modified regulation should be sent to the attention of the agency officer named below.

#### **ADDITIONAL COMMENTS**

If you plan to attend or make an oral presentation at the regulation hearing, please contact the agency officer named below. The hearing room will be accessible to persons with physical disabilities. Any person needing a language interpreter, including sign language, should contact the agency officer named below at least two weeks prior to any scheduled hearing so that the services of an interpreter can be arranged.

#### **CONTACT**

All inquiries concerning this notice or any request for a public hearing should be directed to Colleen Berwick

at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306 Fax: (916) 845-3648; E-Mail: [Colleen.Berwick@ftb.ca.gov](mailto:Colleen.Berwick@ftb.ca.gov). In addition, all questions on the substance of the adoption, revision, and/or repeal of the existing regulations, as outlined above, should be directed to Kenneth A. Davis, Tax Counsel III, Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3839; Fax: (916) 843-6146; E-Mail: [Kenneth.Davis@ftb.ca.gov](mailto:Kenneth.Davis@ftb.ca.gov). The notice, initial statement of reasons and express terms of the regulation are also available at the Franchise Tax Board's website at [www.ftb.ca.gov](http://www.ftb.ca.gov).

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF HEALTH CARE SERVICES**

THE DEPARTMENT OF HEALTH CARE SERVICES PROPOSES TO AMEND THE MEDICAID PROGRAM STATE PLAN TO UPDATE REIMBURSEMENT METHODOLOGY FOR MEDI-CAL CHILDHOOD LEAD POISONING PREVENTION CASE MANAGEMENT

This notice provides information of public interest with respect to a proposed change in the methods and standards for setting payment rates for case management services to Medi-Cal beneficiaries under the Childhood Lead Poisoning Prevention Program benefit established in chapter 5 of part 5 of division 103 of the Health and Safety (H&S) Code (section 105275) and, specifically, section 105290. The Department of Health Care Services (DHCS) intends to submit State Plan Amendment (SPA) 12-015 to the Centers for Medicare & Medicaid Services (CMS), consistent with H&S Code sections 105300, 105305, and 105310. Section 105310 imposes fees on manufacturers and others engaged in the stream of commerce of lead or products containing lead to fund the Childhood Lead Poisoning Prevention Program which provides services to children receiving Medi-Cal and non-Medi-Cal benefits.

Under an interagency agreement with DHCS, the Childhood Lead Poisoning Prevention Branch of the California Department of Public Health oversees and administers Medi-Cal case management services to reduce blood lead levels and remove lead toxicity for Medi-Cal (and non-Medi-Cal) beneficiaries under 21 years of age who have lead poisoning.

SPA 12-015 updates the Medi-Cal rate methodology by amending the State Plan to conform to the provisions of H&S Code section 105310, under which the program is funded using revenue generated from the fees described above (instead of State General Funds), and which requires the calculation of the annual budget for each jurisdiction's local health department based on that jurisdiction's time surveys in order to reimburse that jurisdiction for the full cost of providing the case management services to Medi-Cal beneficiaries. Amending the language in the State Plan, as proposed, will neither increase nor decrease annual aggregate expenditures made by the Childhood Lead Poisoning Prevention Program for services to Medi-Cal beneficiaries. It is expected that the effective date of the SPA will be February 18, 2013.

**Public Review and Comment**

The California statutes discussed above are available for public review at local county welfare offices throughout the State and at [www.leginfo.com](http://www.leginfo.com). Interested parties may submit written comments to, or request copies of the statutes or the draft SPA pages (when available) from: Janice Spitzer, Chief, Benefits Analysis Section; Medi-Cal Benefits Division; Department of Health Care Services; MS 4600; P.O. Box 997417; Sacramento, CA 95899-7417.

**PETITION DECISION**

**CALIFORNIA HORSE RACING BOARD**

NOTIFICATION OF RESPONSE TO GLOBAL BETTING EXCHANGE PETITION FOR ADOPTION OF ALTERNATE EXCHANGE WAGERING REGULATIONS

Pursuant to the requirements of Government Code section 11340.6 the California Horse Racing Board (Board) is providing response to a petition for the adoption of regulations governing the conduct of exchange wagering in California, as allowed under Business and Professions Code section 19604.5. Global Betting Exchange (GBE) petitioned the Board pursuant to Government Code section 11340.6 to consider the adoption of three proposed alternate exchange wagering regulations. The proposed regulations were submitted to the Board by GBE as alternates to be included in the proposed exchange wagering regulations which constituted Article 27, Exchange Wagering. Article 27 is

composed of 25 proposed regulations governing exchange wagering in California. The Board's proposed regulations are: Rule 2086, Definitions; 2086.1, Authorization for Exchange Wagering; 2086.5, Application for License to Operate Exchange Wagering; 2086.6, Operating Plan Required; 2086.7, Exchange Wagering Data; 2086.8, Monitoring Systems and Notification; 2086.9, Financial and Security Integrity Audits Required; 2087, Suspending Markets; 2087.5, Antepost Market; 2087.6, Cancellation of Matched Wagers; 2088, Non-Starters and Declared or Scratched Entries; 2088.6, Cancellation of Unmatched Wagers; 2089, Error in Payments of Exchange Wagers; 2089.5, Requirements to Establish an Exchange Wagering Account; 2089.6, Deposits to an Exchange Wagering Account; 2090, Posting Credits for Winnings from Exchange Wagers; 2090.5, Debits to an Exchange Wagering Account; 2090.6, Withdrawals by Account Holder; 2091, Closing an Inactive Exchange Wagering Account; 2091.5, Suspending an Exchange Wagering Account; 2091.6, Powers of the Board to Review and Audit Records; 2092, Exchange Wagers Placed After the Start of a Race; 2092.5, Prohibitions on Wagers to Lay a Horse to Lose; 2092.6, Suspension of Occupational License and Rule 2093, Certain Practices Related to Exchange Wagering. The proposed addition of Article 27 was being considered by the Board to implement the provisions of Business and Professions Code section 19604.5. The proposed alternate GBE regulations are: Rule 2084, Exchange Wagering Agreements; Rule 2085, Ensuring the Integrity of Exchange Wagering; and Rule 2086, Prohibitions on the Placing of Exchange Wagers. After considering the alternate exchange wagering regulations proposed by GBE the Board determined it would deny the petition, and at its November 2012 Regular Meeting it adopted the proposed addition of Article 27, Exchange Wagering, as presented.

**PROPOSED REGULATIONS**

Global Betting Exchange proposed the addition of:

**Rule 2084, Exchange Wagering Agreements.**

- (a) Prior to an Applicant accepting or otherwise facilitating any exchange wager from a California resident and/or on a horse race run in the State, an Exchange Wagering Agreement executed by the applicant, the applicable licensed racing association or racing fair, and the horsemen's organization responsible for negotiating purse agreements for the breed on which exchange wagers are accepted must be filed with the Board.
- (b) Such exchange wagering Agreement shall, at a minimum, include provisions setting forth the:

- (1) Precise Markets and types of exchange wagers to be facilitated.
  - (2) Economic terms under which exchange wagers may be taken or facilitated.
  - (3) Calculation of any and all amounts earned and payable to the applicable racing association or racing fair and horsemen's organization.
  - (4) Audit rights and conditions.
  - (5) Allocation of data formatting and processing expenses.
  - (6) Duration terms.
  - (7) Contractual remedies.
- (c) In addition to an executed Exchange Wagering Agreement, the entity licensed to facilitate exchange wagers must submit for review and approval by the Board a copy of the proposed terms, conditions, and rules under which it shall facilitate such wagers and offer such markets.

Under subsection (a) of the proposed alternative regulation 2084, Exchange Wagering Agreements, the applicant must file with the Board exchange wagering agreements with the applicable racing association or racing fair and the horsemen's organization. This requirement is detailed in Section 8 of the CHRB form 229 (New 05/12) Application for License to Operate Exchange Wagering, which is incorporated by reference in the proposed CHRB Rule 2086.5, Application for License to Operate Exchange Wagering. In addition, Section 8 of the form 229 provides that if the applicant has not completed the required agreements it must provide evidence of the status of the outstanding documents and the outstanding issues to be resolved, as well as an estimated completion date for each outstanding agreement. Subsection (b) of the proposed GBE alternative Rule 2084 provides a list of minimum provisions that must be included in the exchange wagering agreements. However, Section 8 of the form 229 provides the applicant with references to the appropriate Business and Professions Code sections that describe the minimum required contents of the agreements. Subsection (c) of the proposed GBE alternative Rule 2084 would require that in addition to the exchange wagering agreement, the applicant must provide the Board with a copy of the proposed terms, conditions, and rules under which it shall facilitate exchange wagers and offer markets. This is a requirement under Section 10 B of the CHRB form 229 (New 05/12) Application for License to Operate Exchange Wagering. In addition, the CHRB proposed Rule 2089.5, Requirements to Establish an Exchange Wagering Account, requires the exchange operator to provide such terms and conditions to account holders.

In deciding that it would not accept the petition by GBE to adopt the alternative regulation 2084 the Board determined that Rule 2084 duplicated provisions already contained in the Board's proposed exchange wagering regulations, and did not add to the regulations the Board proposed to adopt.

**2085, Ensuring the Integrity of Exchange Wagering.**

- (a) In addition to any other provision(s) deemed necessary or appropriate by an entity licensed to facilitate exchange wagers, every such entity licensed to facilitate such wagers shall contractually:
  - (1) Obligate each account holder to make the disclosures and written representations required by the Board before being permitted to place an exchange wager.
  - (2) Retain the discretionary right to refuse an account holder access to the exchange and/or the ability to place exchange wagers.
  - (3) Impose appropriate terms and conditions on account holder's access to and use of the exchange in a manner consistent with California law, and these Rules and Regulations.
  - (4) Clarify that the entity serves only as a facilitator of the exchange wagers between account holders, and that the entity has no financial interest in the outcome of the wager as otherwise permitted by law.
  - (5) Reserve the right to suspend markets and associated exchange wagers, and/or to close the Exchange at any time, in order to preserve orderly markets or for any other reason deemed necessary or appropriate by entity, or as ordered by the Board or its Executive Director.
  - (6) Reserve the right to correct errors of settlement.
  - (7) Reserve the right to recover from account holders any stakes paid in error.
  - (8) Require that the name and billing address for any credit card, debit card, bank account, or other payment method through which an account holder funds or transfers from an account shall be the same as the account holder's registered name and address.
  - (9) Prohibit third-party methods of payment by or for account holders.
  - (10) Limit account holder's ability to match wagers with an aggregate liability in excess of the current available balance in the account.

- (11) Clarify that any dispute relating to an account, market, or wager shall be submitted to the Board for review and resolution.
- (b) Sharing the interest in and desire to protect the integrity of exchange wagering as authorized by the State, those individuals seeking to engage in exchange wagering shall execute a writing representing and warranting that the account holder:
  - (1) Is a California resident, legally entitled to engage in exchange wagering. Is not seeking to engage in exchange wagering while a resident of a jurisdiction in which it is illegal.
  - (2) Will not engage in exchange wagering while located in any jurisdiction that prohibits such wagering.
  - (3) Is 18 years of age or older.
  - (4) Is not an agent acting on behalf of a third-party.
  - (5) Is the authorized user of any credit, debit, or other account the account holder intends to use to fund the account from which exchange wagers will be placed, and that account holder has never failed to honor a liability on a wager by attempting to charge back or otherwise dispute a payment account holder has previously made associated with any form of wagering.
  - (6) Will voluntarily provide definitive evidence of identity, including Biometric Identity data, and address if requested to do so by the entity licensed to facilitate exchange wagers or the Board.
  - (7) Acknowledges that they may be subject to an investigation of or check against the information provided in order to ensure the accuracy of such information, and that the entity licensed to facilitate exchange wagers or the Board may require such additional information/disclosures as necessary to verify all representations and/or warranties made by the account holder relating to exchange wagering.
  - (8) Agrees that should they misuse or attempt to misuse the exchange, directly or indirectly, as part of an effort to make or accept exchange wagers on behalf of any third party the account holder's funds will be frozen and account terminated.
  - (9) Understands that making and accepting exchange wagers is a form of gambling, and is an activity that is speculative in nature, containing a degree of financial risk.

- (10) Acknowledges that account holder is fully prepared financially to undertake the risks and withstand any losses incurred, and that account holder is able to sustain the total loss of any wagers account holder commits.
  - (11) Agrees to any other terms, conditions, or rules established by the entity licensed to facilitate exchange wagers or the maintenance of such accounts, as approved by the Board.
- (c) In order to protect the public's interest in the integrity of all pari-mutuel pools, including exchange wagering pools, every entity licensed to facilitate exchange wagers shall be required to obtain from those individuals seeking to place an exchange wager to lay an entrant in a horse race the following information and notarized written representations, executed under penalty of perjury, in addition to that required under subsection (b):
- (1) Board license numbers, if any.
  - (2) The name(s) of any relative of the Account Holder licensed by the Board.
  - (3) That the account holder:
    - (A) Has not been convicted of race fixing, bookmaking, or any crime involving gambling or moral turpitude in any jurisdiction, foreign or domestic.
    - (B) Is not, nor ever has been, an un-discharged bankrupt or presently involved in a voluntary bankruptcy proceeding.
    - (C) Has accurately and truthfully provided all information and will not take steps to conceal the account holder's true identity by using pseudonyms, false addresses, or by employing technical means to conceal one's identity, location, or effort to wager on behalf of a third-party.
    - (D) Shall not conspire or cooperate with any other individual(s) to ensure the success of an exchange wager to lay a horse.
    - (E) Shall not place an exchange wager to lay an entrant in a horse race where the account holder has obtained information directly or indirectly from that entrant's owner(s) or authorized agent, trainer, jockey, jockey's agent, driver, or stable employee, or any agent, representative, or relative thereof.
    - (F) Shall maintain a separate deposit of funds with the entity licensed to

facilitate exchange wagers in addition to those utilized for wagering purposes in an amount sufficient to ensure compliance with such representations and warranties, should the account holder's wager volume exceed \$1,000 of risk.

- (d) Every entity licensed to facilitate exchange wagers shall obtain from those individuals seeking to engage in exchange wagering the written representations and warranties required under subsection (b) and (c) above prior to the account holder being permitted to place any exchange wagers. Such entities shall also be required to maintain such documents as business records at all times the corresponding account holder maintains an account with the entity, and shall provide the Board or its authorized agents true and accurate copies of any such documents and/or access to the original documents, upon demand.

Global Betting Exchange submitted the proposed alternative regulation 2085, Ensuring the Integrity of Exchange Wagering. Subsection (a) of the GBE alternative regulation listed a number of provisions that entities licensed to facilitate exchange wagering must include in contracts with account holders. Subsection (a)(1) would obligate each account holder to make disclosures and written representations as required by the Board before placing exchange wagers. Such disclosures and representations are listed under the proposed Board Rule 2089.5, Requirements to Establish an Exchange Wagering Account. Under subsection (a)(2) of GBE's proposed alternative regulation 2085 the exchange operator has the right to refuse an account holder access to the exchange or the ability to place exchange wagers. This concept is provided for under subsections (d) and (f) of Board's proposed Rule 2089.5. Subsection 2085(a)(3) requires the exchange operator to impose appropriate terms and conditions. This concept is found under Board's proposed Rule 2089.5(h), which requires the exchange operator to provide the account holder with terms and conditions, and under Section 10 B of the CHRB form 229 (New 05/12) Application for License to Operate Exchange Wagering, which requires that the applicant provide its terms and conditions to the Board. Under subsection 2085(a)(4) of the GBE proposed alternative regulation the exchange operator is required to clarify that it only facilitates exchange wagers and has no financial interest in the outcome of such wagers. This concept is found under subsection (p) of the Board's proposed Rule 2086, Definitions. The proposed GBE alternative subsection 2085(a)(5) reserves the right of the exchange operator

to suspend markets and associated exchange wagers, or close the exchange, at any time, as provided. This concept is found in the Board's proposed Rule 2087, Suspending Markets, which provides that the exchange provider may suspend a market at any time. The Board's proposed Rule 2087.6, Cancellation of Matched Wagers, also allows the exchange operator to cancel or void a matched wager, as provided. The proposed GBE alternative subsection 2085(a)(6) provides that the exchange provider shall reserve the right to correct errors of settlement. This ability is provided for in the Board's proposed Rule 2089, Errors in Payments of Exchange Wagers, which states that the exchange operator may correct errors of settlement. The proposed GBE alternative subsection 2085(a)(7) reserves for the exchange operator the right to recover any stakes paid in error. This provision is found in the Board's Rule 2089, which allows the exchange operator to recover payments made in error. The proposed GBE alternative subsections 2085(a)(8) and (9) require that the name and billing address for the various methods of payments to an account be the same as the account holder's registered name and address, and that third-party methods of payment by or for account holders be prohibited. These provisions may be found in the Board's Rule 2089.6, Deposits to an Exchange Wagering Account. The proposed GBE alternative subsection 2085(a)(10) requires that account holders may not match wagers that create a liability in excess of their account balances. This provision is found in the Board's Rule 2090.5, Debits to an Exchange Wagering Account, which requires the exchange operator to determine there are sufficient funds in the account holder's wagering account to cover the maximum amount the account holder could be liable for based on his wagers. The proposed GBE alternative subsection 2085(a)(11) provides that any dispute relating to an account, market or wager shall be submitted to the Board for review and resolution. The Board's proposed Rule 2089, Errors in Payment of Exchange Wagers, and proposed Rule 2087.6, Cancellation of Matched Wagers, provide that the Board shall be the final arbitrator in any dispute over such matters. The proposed GBE alternative subsections 2085(b)(1) and (b)(3) and (b)(4) require the applicant for an account to conduct exchange wagering to attest that he is a California resident, is of a legal age to engage in exchange wagering, is not acting on behalf of a third party. These provisions are found in the Board's proposed Rule 2089.5, Requirements to Establish an Exchange Wagering Account. The proposed GBE alternative subsection 2085(b)(6) states that the applicant for an exchange wagering account will voluntarily provide definitive evidence of identity, including biometric identity data, if requested. The Board's proposed Rule 2089.5 requires the applicant to provide identifying information, and it

requires the exchange operator to electronically verify such information. There is nothing in the regulation prohibiting an exchange operator from asking for biometric identification. The proposed GBE alternative subsection 2085(b)(7) states the applicant must acknowledge he may be subject to an investigation of or check against the information provided. The Board's proposed Rule 2089.5 requires the exchange operator to perform electronic verification of the personal information provided by the applicant. The proposed GBE alternative subsection 2085(b)(8) states that the applicant shall agree that his account may be terminated if it is misused, as provided. The Board's proposed Rule 2089.5 allows the exchange operator to close a previously opened account at any time at its discretion. The proposed GBE alternative subsection 2085(b)(9) provides that the account holder must represent that he understands the exchange is a form of gambling that contains a degree of financial risk. While the Board's proposed regulations do not contain this exact requirement, the Board's proposed Rule 2086.6, Operating Plan Required, provides that the exchange operator must inform the Board of its programs for responsible wagering. The proposed GBE alternative subsection 2085(b)(10) provides that the account holder must acknowledge that he is prepared financially to undertake the risks and withstand losses incurred. The Board's proposed Rule 2090.5, requires that before an exchange wager may be placed the exchange operator must verify that the account holds funds to cover the maximum amount the account holder could be liable for. No wagers may be accepted unless the required funds are in the account.

The proposed GBE alternative subsection 2085(c) requires the exchange provider to obtain certain information and notarized written representations from account holders seeking to place an exchange wager to lay an entrant in a horse race. As any account holder may choose to lay a horse to lose, the exchange operator would have to gather the information required under this subsection from every applicant for an account. The proposed alternative subsection 2085(c) requires that the representations be written and notarized under the penalty of perjury. The information a prospective exchange wagering account holder would have to provide under this alternative regulation includes Board issued license numbers (if the applicant is a licensee) and the names of any relatives of the account holder who are licensed by the Board. Such information would serve no purpose for the exchange operator unless it had questions about the account holder's wagers. If questions were to arise, the Board can easily identify any persons who hold occupational licenses. Under the alternative subsection 2085(c) the prospective applicant is also required to inform the exchange provider if he has been

convicted of race fixing, bookmaking or any crime involving gambling or moral turpitude in any jurisdiction. Persons who have been convicted of any such crimes are prevented from participating in pari-mutuel wagering under Board Rule 1980, Persons Prohibited from Wagering. Therefore, such persons could not open an exchange wagering account. The alternative subsection 2085(c) requires persons who seek to lay a horse to represent that they have not been an un-discharged bankrupt or are not presently involved in a voluntary bankruptcy proceeding. One might question the wisdom of placing wagers while under personal bankruptcy, but it is not clear how an account holder's personal financial situation would affect his ability to place a wager to lay a horse to lose. Bankruptcy is a permissible and legal remedy. Additionally, under the exchange wagering regulations adopted by the Board, no exchange wager may be accepted by the exchange operator unless it has determined whether there are sufficient funds in the account holder's wagering account to cover the maximum amount the account holder could be liable for based on the wager (See Board Rule 2090.5, Debits to an Exchange Wagering Account.). The alternative subsection 2085(c) requires that any person who would lay a horse to lose to maintain a separate deposit of funds in addition to those utilized for wagering purposes in an amount sufficient to ensure compliance with the representations and warranties, should the account holder's wager volume exceed \$1,000 of risk. This provision does not state how much money must be maintained in the separate deposit, or why \$1,000 of risk is a tipping point. Further, there is no authority in the enabling statute for such a provision. The alternate subsection 2085(d) requires the exchange operator to obtain written representations and warranties required under subsections (b) and (c) prior to account holders being permitted to place any exchange wagers. The exchange operator is required to retain such documents, as provided, and to give the Board access upon demand. The Board's proposed Rule 2091.6, Powers of the Board to Review and Audit Records provides that the Board shall have access for review and audit, to all records and financial information of an exchange provider.

In reviewing the proposed GBE alternate regulation 2085, the Board determined that Rule 2085 duplicated provisions already contained in the Board's proposed exchange wagering regulations, and did not add to the regulations the Board proposed to adopt. At the November 2012 hearing for adoption, the Board adopted the proposed exchange wagering regulations that comprised the addition of Article 27, Exchange Wagering.

**2086, Prohibitions on the Placing of Exchange Wagers.**

(a) In addition to the prohibitions set forth in Rule 1970:

- (1) No owner, authorized agent, trainer, jockey, jockey's agent, driver, or stable employee shall place an exchange wager to lay any entrant in a horse race when a horse owned in whole or part by that owner or the owner represented by that authorized agent, trained by that trainer or by one employed or serving as a stable employee thereof, ridden by that jockey or the jockey represented by that jockey's agent, or driven by that driver is entered in the same race. The prohibition extends to lay wagers placed on horses running under an assistant and/or substitute trainer pursuant to Rule 1896, whether such horse is competing in a race run in or out of State.
- (2) No relative, employee, or representative of such owner, authorized agent, trainer, jockey, jockey's agent, driver, or stable employee shall place an exchange wager to lay any entrant in a horse race when a horse owned in whole or part by that owner or the owner represented by that authorized agent, trained by that trainer or stable employee, ridden by that jockey or the jockey represented by that jockey's agent, or driven by that driver is entered in the same race.
- (3) No owner, authorized agent, trainer, assistant or substitute trainer, jockey, jockey's agent, driver, or stable employee shall, nor shall a relative, employee, or representative of such be permitted to tout or otherwise recommend the placement of exchange wager to lay any entrant in a horse race when a horse owned in whole or part by that owner or the owner represented by that authorized agent, trained by that trainer or employed or serving as a stable employee thereof, ridden by that jockey or the jockey represented by that jockey's agent, or driven by that driver is entered in the same race.
- (4) Nothing herein is intended to otherwise alter the applicability or application of Rule 1970.

(b) No exchange wagers shall be placed on a market after the conclusion of a live race. Exchange wagering on previously run races is prohibited.

- (c) The use of automatic, quick-pick, or similar features to aid in the placing of an exchange wager is prohibited. The entity licensed to facilitate exchange wagers licensee shall require the account holder making the exchange wager to select the specific race and horse for any such wager.
- (d) The results of any such exchange wager shall not be displayed through the use of video or mechanical reels or other slot machine or casino game themes, including, but not limited to, dice games, wheel games, card games, and lotto, but shall not include any self-service terminal or kiosk.

To a large extent the GBE proposed alternate regulation 2086, Prohibitions on the Placing of Exchange Wagers, mirrors the Board’s Rule 2092.5, Prohibitions on Wagers to Lay a Horse to Lose. Both regulations identify classes of occupational license whose status — as owner — or whose occupation could cause such persons to have knowledge of the true condition of a horse entered to race. However, the Board’s proposed regulation goes beyond the proposed GBE alternative regulation and includes classes of license not found in the GBE proposed alternate regulation, and who should be prohibited from placing a wager to lay a horse to lose. Subsections 2086(a)(2) and (a)(3) of the GBE proposed alternative regulation provides lists of additional persons who may not place a wager to lay a horse to lose. The prohibitions are linked to such persons’ relationships with licensees associated with horses entered to race. In contrast, the Board’s proposed Rule 2092.5 prohibits persons prevented from wagering on a horse to lose from instructing another person to lay a horse to lose on their behalf or from receiving the whole or part of any proceeds of such a lay. During the hearings for adoption of Article 27, Exchange Wagering, the Board considered two versions of Rule 2092.5. One version was similar in content to the GBE proposed alternative regulation. At that hearing, the Board determined the proposed regulation went too far in its prohibitions and would not be workable. For similar reasons the Board did not accept the petition to add the GBE proposed alternate regulation 2086. Subsections 2086(b), (c) and (d) of the GBE proposed alternate regulation are duplicates of those found in the Board’s proposed Rule 2093, Certain Practices Related to Exchange Wagering.

In reviewing the proposed GBE alternate regulation 2086, the Board determined it would instead adopt the exchange wagering regulations that comprised the proposed addition of Article 27, Exchange Wagering.

Any persons wishing to obtain a copy of the GBE petition may do so by contacting:

Harold Coburn, Manager  
 Policy and Regulations  
 1010 Hurley Way, Suite 300  
 (916) 263-6397  
 haroldc@chr.ca.gov.

**SUSPENSION OF  
 ACTION REGARDING  
 UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW  
 SUSPENSION OF ACTION REGARDING  
 UNDERGROUND REGULATIONS

(Pursuant to Title 1, section 280, of the California Code of Regulations)

CTU2012-1203-01  
 CTU2012-1205-01

On December 3, 2012 and December 5, 2012, the Office of Administrative Law (OAL) received petitions challenging rules addressing exchange wagering adopted by the California Horse Racing Board as an alleged underground regulation.

On January 30, 2013, OAL received a certification from the California Horsing Racing Board that, it would not issue, use, enforce or attempt to enforce the rules prior to being approved as regulations by OAL and filed with the Secretary of State. Pursuant to Title 1, section 280 of the California Code of Regulations, therefore, OAL must suspend all action on this petition.

**CALIFORNIA HORSE RACING BOARD**

January 30, 2013  
 Kathleen Eddy, Esq.  
 Office of Administrative Law  
 300 Capital Mall, Suite 1250  
 Sacramento, California 95814

Re: Response to Petition of Global Betting Exchange  
 Re: Alleged Underground Regulation Certification of California Horse Racing Board To Not Issue, Use, Enforce or Attempt To Enforce Alleged Underground Regulations

Dear Ms. Eddy:

In response to the Petition filed by Global Wagering Exchange, through its counsel Drew J. Couto, Esq.,

Couto & Associates, 1312 Hymettus Avenue, Leucadia, California 92024, please be advised of the following:

The California Horse Racing Board (CHRB) hereby certifies that the alleged underground regulations [proposed CHRB Rule 2086.5 (Application for License to Operate Exchange Wagering), CHRB Rule 2086.6 (Operating Plan Required), CHRB 2089.5 (Requirements to Establish an Exchange Wagering Account) and CHRB Rule 2091.5 (Suspending an Exchange Wagering Account)] shall not be issued, used, enforced or attempted to be enforced prior to being approved by the Office of Administrative Law and filed with the Secretary of State.

By written delegation of authority, the Executive Director of the California Horse Racing Board Kirk E. Breed has authorized me to sign and submit this certification.

Proof of Service of this Certification on Petitioner Global Wagering Exchange, through its counsel Drew J. Couto, is attached.

Sincerely,

/s/ \_\_\_\_\_  
Robert B. Miller, Counsel  
California Horse Racing Board  
RMB:tbs

**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# 2013-0131-03  
BOARD OF EDUCATION  
Instructional Materials Mathematics Adoption

This regulatory action establishes procedures for the adoption new mathematics instructional materials based on entirely new academic content standards, the Common Core State Standards for mathematics. AB 1246 (Chapter 668, Statutes of 2012) stipulates that these must be adopted no later than March 30, 2014. This bill also requires that the publishers participating in this adoption process be assessed a fee and provides

that small publishers have a reduced fee. These regulations implement this provision.

Title 5  
California Code of Regulations  
ADOPT: 9517.3  
Filed 02/06/2013  
Effective 02/06/2013  
Agency Contact: Cynthia Olsen (916) 319-0584

File# 2012-1218-03  
BOARD OF FORESTRY AND FIRE PROTECTION  
Fire Safety Regulations Update, 2011

The Board of Forestry and Fire Protection amended nine title 14 sections of the California Code of Regulations, Section 1270 and Sections 1270.02 to 1270.09, pertaining to the administration of fire safety regulations in state responsibility areas. The amendments are intended to implement and further clarify Public Resources Code section 4290, promote greater consistency in the implementation of the regulations throughout the state, and address the scope of the fire safety regulations, the certification of local ordinances, inspection authority, and exceptions to the standard provisions.

Title 14  
California Code of Regulations  
AMEND: 1270, 1270.02, 1270.03, 1270.04, 1270.05, 1270.06, 1270.07, 1270.08, 1270.09  
Filed 01/31/2013  
Effective 04/01/2013  
Agency Contact: Eric Huff (916) 653-8031

File# 2012-1221-01  
BOARD OF PHARMACY  
Compounding Drug Products

This rulemaking action by the Board of Pharmacy amends sections 1735.1-1735.3 and 1751.2 of title 16 of the California Code of Regulations. The amendments relate to compounding of drug products and add a new labeling requirement, define a new term, and incorporate new drug storage standards by reference.

Title 16  
California Code of Regulations  
AMEND: 1735.1, 1735.2, 1735.3, 1751.2  
Filed 02/06/2013  
Effective 04/01/2013  
Agency Contact: Carolyn Klein (916) 574-7913

File# 2012-1220-01  
CALIFORNIA POLLUTION CONTROL  
FINANCING AUTHORITY  
California Capital Access Program for Small  
Businesses

The California Pollution Control Financing Authority (CPCFA) submitted this timely certificate of com-

pliance action to make permanent the emergency regulations in OAL File No. 2012-0615-01E. The emergency regulations amended five sections pertaining to the Capital Access Program for Small Businesses under title 4, division 11, article 7 of the California Code of Regulations. As a result of federal funding allocations to the program in 2011, CPCFA is developing a collateral support program that will be organized slightly differently than the current Capital Access Program. Clarification of the existing regulations is necessary to operate both programs harmoniously and ensure the functionality of the two programs.

**Title 4**  
 California Code of Regulations  
 AMEND: 8070, 8071, 8072, 8078, 8078.2  
 Filed 02/04/2013  
 Effective 02/04/2013  
 Agency Contact: Jillian Franzoia (916) 653-3993

File# 2013-0110-02  
**OFFICE OF ENVIRONMENTAL HEALTH  
 HAZARD ASSESSMENT**  
 Chemicals Known to the State to Cause Cancer or  
 Reproductive Toxicity

This File and Print action updates the listing of "Chemicals Known to the State to Cause Cancer or Reproductive Toxicity" contained in section 27001 of title 27 of the CCR. This update adds multiple chemicals to the list. The listing of chemicals is exempt from the APA per Health and Safety Code section 25249.8(e).

**Title 27**  
 California Code of Regulations  
 AMEND: 27001  
 Filed 02/06/2013  
 Effective 01/04/2013  
 Agency Contact: Cynthia Oshita (916) 322-2068

File# 2012-1228-03  
**VICTIM COMPENSATION AND GOVERNMENT  
 CLAIMS BOARD**  
 Removal of Subsection (c) in Rule 649.28

This change without regulatory effect by the California Victim Compensation and Government Claims Board amends Title 2, section 649.28, with regard to mental health service claims, by removing subdivision (c) and the reference to section 13957.9 in the authority note.

**Title 2**  
 California Code of Regulations  
 AMEND: 649.28  
 Filed 01/31/2013  
 Agency Contact: Geoff Feusahrens (916) 491-3863

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN September 12, 2012 TO  
 February 6, 2013**

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

- Title 1**  
 11/13/12 AMEND: 1, Appendix A
- Title 2**  
 01/31/13 AMEND: 649.28  
 01/09/13 ADOPT: 18756  
 01/08/13 AMEND: 18723, 18730  
 01/07/13 AMEND: 18545, 18703.4, 18940.2  
 01/07/13 AMEND: 18705.5  
 01/02/13 AMEND: 22500, 22501, 22502, 22503, 22505, 22506, 22508, 22509 REPEAL: 22504, 22507, 22510, 22511, 22512, 22513, 22514, 22515, 22516, 22517, 22518, 22519  
 12/31/12 ADOPT: 1859.97 AMEND: 1859.2, 1859.90.2  
 12/28/12 AMEND: 18410, 18425, 18435, 18465.1, 18550 REPEAL: 18539  
 12/27/12 AMEND: 649.7  
 12/26/12 ADOPT: 7294.0, 7294.2 AMEND: 7293.5, 7293.6, 7293.7, 7293.8, 7293.9, 7294.0 (renumbered to 7294.1), 7294.1(renumbered to 7294.3), 7294.2 (renumbered to 7294.4)  
 12/24/12 REPEAL: 60020, 60025, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200  
 12/11/12 AMEND: 649.15  
 12/06/12 AMEND: 1859.2, 1859.90.2  
 11/30/12 ADOPT: 7291.4, 7291.7, 7291.14, 7291.18 AMEND: 7291.2, 7291.3, 7291.4 and renumber 7291.5, 7291.5 and renumber 7291.6, 7291.6 and renumber 7291.8, 7291.7 and renumber 7291.9, 7291.9 and renumber 7291.10, 7291.10 and renumber 7291.17, 7291.11, 7291.12, 7291.13, 7291.15, 7291.16 REPEAL: 7291.8, 7291.14  
 11/29/12 ADOPT: 558.1  
 11/28/12 AMEND: 54100  
 11/09/12 ADOPT: 599.945.4 AMEND: Article 27.5 heading

**CALIFORNIA REGULATORY NOTICE REGISTER 2013, VOLUME NO. 7-Z**

11/08/12 AMEND: 18723  
11/06/12 REPEAL: 56600  
11/06/12 REPEAL: 52000  
11/06/12 REPEAL: 52300  
11/01/12 ADOPT: 1859.95.1 AMEND: 1859.2,  
1859.95  
10/23/12 AMEND: 1859.2, 1859.71.6, 1859.77.4,  
1859.107, 1859.193, 1859.194, 1859.197  
10/22/12 ADOPT: 599.944, 599.946, 599.947  
10/18/12 AMEND: 1575  
10/18/12 ADOPT: 577, 578  
10/17/12 AMEND: 20804  
10/03/12 ADOPT: 18730.1  
10/02/12 AMEND: 1859.2, 1859.71.4, 1859.78.1,  
1859.79.2, 1859.82, 1859.83, 1859.106,  
1859.125, 1859.125.1, 1859.145,  
1859.163.1, 1859.163.5, 1859.193  
09/20/12 ADOPT: 59730  
09/19/12 AMEND: 1155.250, 1155.350  
09/14/12 REPEAL: 52100

**Title 3**

11/15/12 AMEND: 3435(b)  
10/29/12 ADOPT: 1352.4 AMEND: 1351, 1358.4  
10/23/12 ADOPT: 3639  
10/23/12 ADOPT: 3439  
09/21/12 AMEND: 3437(b) and (c)  
09/18/12 AMEND: 6449.1, 6486.7  
09/12/12 AMEND: 3700(c)  
09/12/12 AMEND: 3435(b)

**Title 4**

02/04/13 AMEND: 8070, 8071, 8072, 8078,  
8078.2  
01/28/13 ADOPT: 10050, 10051, 10052, 10053,  
10054, 10055, 10056, 10057, 10058,  
10059, 10060  
01/24/13 ADOPT: 5255, 5256 AMEND: 5170,  
5230, 5250, 5560, 5580  
01/08/13 ADOPT: 5205 AMEND: 5000, 5054,  
5144, 5170, 5190, 5200, 5230, 5350,  
5370 REPEAL: 5133  
12/21/12 ADOPT: 5342, 5343, 5344, 5345, 5346,  
5347, 5348  
12/13/12 AMEND: 12391(a)(2)  
12/03/12 AMEND: 10032, 10033, 10034, 10035  
11/27/12 ADOPT: 4305, 4309 AMEND: 4300,  
4302, 4304, 4306, 4307, 4308  
10/30/12 AMEND: 5000, 5052  
10/29/12 ADOPT: 10050, 10051, 10052, 10053,  
10054, 10055, 10056, 10057, 10058,  
10059, 10060  
10/17/12 AMEND: 1656  
10/16/12 ADOPT: 1581.2  
10/10/12 AMEND: 1867

09/27/12 AMEND: 5000, 5170, 5200, 5230, 5370,  
5500, 5540  
09/12/12 ADOPT: 12391(a)(1), (3), (4), (b) & (c),  
12392 AMEND: 12360

**Title 5**

02/06/13 ADOPT: 9517.3  
01/17/13 ADOPT: 80053.1 AMEND: 80024.6,  
80053  
01/14/13 ADOPT: 80048.3.2 AMEND: 80048.3.1  
12/27/12 AMEND: 58108  
12/27/12 AMEND: 55000, 55023, 55040, 55041,  
55043, 58161, 58162, 58166 REPEAL:  
55030  
12/24/12 ADOPT: 18224.6, 18227, 18227.1  
AMEND: 18078, 18409, 18411, 18424,  
18426  
12/18/12 AMEND: 76120  
12/13/12 AMEND: 40601  
11/01/12 AMEND: 18407, 18422  
10/31/12 ADOPT: 620, 621, 622, 623, 624, 625,  
626, 627  
09/27/12 ADOPT: 620, 621, 622, 623, 624, 625,  
626, 627  
09/27/12 AMEND: 3000, 3010, 3021, 3021.1,  
3022, 3023, 3024, 3025, 3027, 3028,  
3042, 3051.4, 3051.75, 3051.8, 3051.9,  
3051.12, 3051.13, 3051.17, 3051.18,  
3052, 3053, 3062, 3063, 3064, 3066,  
3067, 3069, 3080, 3082, 3083, 3084,  
3085, 3086, 3087, 3088, 3088.1, 3088.2,  
3089, 3090, 3091, 3092, 3093, 3094,  
3096, 3096.1, 3096.2, 3097, 3098,  
3098.1, 3098.2, 3099, 3100

**Title 8**

01/28/13 ADOPT: 4993.1 AMEND: 1610.3,  
1616.3, 4885, 4999, 5001  
01/24/13 AMEND: 3210, 3900  
12/31/12 ADOPT: 10206, 10206.1, 10206.2,  
10206.3, 10206.4, 10206.5, 10206.14,  
10206.15, 10207, 10208 AMEND:  
10205, 10205.12  
12/31/12 ADOPT: 15209 AMEND: 15201, 15210,  
15210.1, 15475, 15477, 15481, 15484,  
15496, 15497  
12/31/12 ADOPT: 9792.5.4, 9792.5.5, 9792.5.6,  
9792.5.7, 9792.5.8, 9792.5.9, 9792.5.10,  
9792.5.11, 9792.5.12, 9792.5.13,  
9792.5.14, 9792.5.15 AMEND:  
9792.5.1, 9792.5.3, 9793, 9794, 9795  
12/31/12 ADOPT: 37, 10159 AMEND: 1, 11, 11.5,  
14, 17, 30, 31.2, 31.7, 33, 35, 35.5, 36, 38,  
100, 105, 106, 10160

**CALIFORNIA REGULATORY NOTICE REGISTER 2013, VOLUME NO. 7-Z**

- 12/31/12 ADOPT: 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, 9792.10.9  
AMEND: 9785, 9792.6, 9792.9, 9792.10, 9792.12
- 12/27/12 ADOPT: 9789.25 AMEND: 9789.20, 9789.21, 9789.22
- 12/27/12 ADOPT: 9789.39 AMEND: 9789.30, 9789.31, 9789.32, 9789.33, 9789.36, 9789.37, 9789.38
- 12/27/12 AMEND: 9795.1, 9795.3
- 12/20/12 ADOPT: 10133.31, 10133.32, 10133.33, 10133.34, 10133.35, 10133.36 AMEND: 9813.1, 10116.9, 10117, 10118, 10133.53, 10133.55, 10133.57, 10133.58, 10133.60 REPEAL: 10133.51, 10133.52
- 12/10/12 AMEND: 10210, 10211, 10212, 10214, 10215, 10216, 10217, 10218, 10222, 10223, 10225, 10228, 10229, 10232, 10232.1, 10232.2, 10245, 10250.1, 10252.1, 10253.1, 10270, 10271, 10273, 10290, 10291, 10293, 10294.5, 10297
- 10/31/12 ADOPT: 6625.1 AMEND: 6505
- 10/23/12 AMEND: 1593, 3650
- 10/18/12 AMEND: 6325
- 10/02/12 ADOPT: 1613.11, 1613.12 AMEND: 1600, 1610.1, 1610.3, 1610.4, 1610.9, 1611.1, 1612.3, 1613, 1613.2, 1613.10, 1616.1, 1617.1, 1617.2, 1617.3, 1618.1, 1619.1, 4885, 4999
- 10/02/12 AMEND: 4297
- 09/25/12 AMEND: 2950, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427 REPEAL: 3428
- Title 9**
- 01/17/13 AMEND: 7141.5, 7143, 7227, 7350, 7351, 7353.6, 7354, 7355, 7356, 7357, 7358
- Title 10**
- 01/17/13 ADOPT: 6410, 6420, 6422, 6424, 6440, 6442, 6444
- 01/11/13 AMEND: 2498.4.9, 2498.5, 2498.6
- 12/31/12 AMEND: 2695.8(f), 2695.8(g)
- 12/19/12 ADOPT: 2523, 2523.1, 2523.2, 2523.3, 2523.4, 2523.5, 2523.6
- 12/17/12 AMEND: 2248.14
- 12/11/12 AMEND: 3780
- 11/19/12 AMEND: 2698.401
- 11/13/12 AMEND: 2498.4.9
- Title 11**
- 12/12/12 AMEND: 1081
- 11/26/12 AMEND: 1001, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1018, 1019, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1060, 1070, 1071, 1080, 1081, 1082, 1083, 1084, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960
- 11/15/12 AMEND: 1005, 1007, 1008
- 11/15/12 AMEND: 1005
- 09/18/12 AMEND: 410, 411, 415, 416, 417, 420, 421, 425 REPEAL: 419, 419.1
- Title 13**
- 01/28/13 ADOPT: 426.00
- 01/24/13 AMEND: 425.01
- 01/07/13 AMEND: 553.70
- 12/31/12 AMEND: 1900, 1956.8, 1960.1, 1961, 1961.2, 1961.3, 1962.1, 1962.2, 1976
- 12/11/12 AMEND: 2403, 2404, 2407, 2412, 2421, 2423, 2424, 2425, 2425.1, 2426, 2427, 2433, 2447, 2783, 2784
- 12/10/12 AMEND: 423.00
- 11/13/12 AMEND: 1200, 1239
- 11/06/12 ADOPT: 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218
- 10/15/12 ADOPT: 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.6, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20, 2477.21 AMEND: 2477
- 10/09/12 AMEND: 2260, 2261, 2264, 2265, 2265.1, 2266, 2266.5, 2271 REPEAL: 2258
- 09/25/12 AMEND: 156.00, 156.01
- 09/14/12 AMEND: 2479
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- 09/14/12 AMEND: 2299.2, 93118.2
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- 01/31/13 AMEND: 1270, 1270.02, 1270.03, 1270.04, 1270.05, 1270.06, 1270.07, 1270.08, 1270.09
- 01/08/13 AMEND: 27.65, 28.30
- 12/27/12 ADOPT: 1.45, 5.91 AMEND: 1.77, 2.25, 2.30, 4.20, 5.00, 5.05, 5.10, 5.40, 5.60, 5.80, 5.81, 7.00, 7.50, 8.00, 27.85, 27.90, 27.91, 28.90, 28.95, 701
- 12/20/12 AMEND: 703
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- 11/07/12 AMEND: 701
- 11/06/12 ADOPT: 1052.5 AMEND: 895, 916.9, 1052, 1052.1, 1052.2
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12/20/12	ADOPT: 3079, 3079.1 AMEND: 3000, 3075.2, 3075.3			11/02/12	AMEND: 100500
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- 12/10/12 AMEND: 926-3, 926-4, 926-5
- 11/13/12 ADOPT: 2707.2-1 AMEND: 3302-1
- 10/25/12 AMEND: 97005, 97019, 97041, 97052,  
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- 10/15/12 ADOPT: 66273.80, 66273.81, 66273.82,  
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