



# California Regulatory Notice Register

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Dated  
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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. FAIR EMPLOYMENT AND HOUSING COMMISSION**

*Editorial Note: Some of the footnotes in this notice make reference to various Exhibits. Due to space considerations, the Exhibits are not being printed. They are available for viewing at the Department (see address below) or at their website at: [www.fehc.ca.gov](http://www.fehc.ca.gov).*

**TITLE 2, SECTIONS 7293.5–7294.4  
DISABILITY DISCRIMINATION**

The California Fair Employment and Housing Commission (“Commission”) proposes to amend existing sections 7293.5–7294.1, entitled “Disability Discrimination,” and adopt sections 7294.2–7294.4, after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARINGS**

The Commission will hold two public hearings:

- In **Los Angeles**, starting at **1 p.m. on Tuesday, April 17, 2012**, at the Auditorium located on the ground floor of the Ronald Reagan State Office Building at 300 South Spring Street, Los Angeles, California. The Auditorium is wheelchair accessible.
- In **San Francisco**, starting at **1 p.m. on Thursday, April 19, 2012**, at the Auditorium located in the basement of the Hiram Johnson State Building at 455 Golden Gate Avenue, San Francisco, California. The Auditorium is wheelchair accessible.

At each hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests, but does not require, that persons who make oral comments at the hearing also submit a written copy and an electronic copy in Word of their testimony at the hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the

proposed regulatory action to the Commission. The written comment period closes at **5 p.m. on April 19, 2012**. The Commission will consider only comments received at the Commission offices, delivered in person to Commission personnel at either public hearing referenced above, or through Commission email by that time. **The Commission’s preference is to receive comments electronically, in Word, via the email address given below. The Commission appreciates suggested alternate language to the current proposed revisions in comments it receives.**

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or

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Fair Employment and Housing Commission  
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**AUTHORITY AND REFERENCE**

Government Code section 12935, subdivision (a), authorizes the Commission to adopt the proposed regulations, which would implement, interpret, or apply changes to the Fair Employment and Housing Act (Gov. Code § 12900, et seq., “FEHA”) to conform to changes in law covering disability discrimination in employment made by the following sources:

- The Prudence Kay Poppink Act of 2000 (Stats. 2000, c. 1049(A.B. 2222), § 6, Kuehl (PKP Act); Gov. Code, §§ 12926, 12926.1 & 12940);
- The California Supreme Court’s decision in *Green v. State of California* (2007) 42 Cal. 4th 254 (Green); and
- The Genetic Information Non–discrimination Act of 2008 (GINA) (Stats. 2008, c. 10 (A.B. 1543), § 13) (Pub. Law 110–233).<sup>1</sup>

<sup>1</sup> The Commission adopted these proposed amended disability regulations on October 3, 2011, before new amendments to the FEHA covering genetic characteristics and genetic information went into effect. (See Stats. 2011, c. 261 (S.B. 559), referred to as “Cal–GINA” and modeled after the federal Genetic Information Non–discrimination Act of 2008 (GINA)). The Commission intends to incorporate any changes necessitated by S.B. 559 into subsequent amendments to these regulations after considering public comments it receives on this issue.

For ease of reference, this Notice of Proposed Rulemaking and the Commission’s Initial Statement of Reasons reference the current, 2012 Government Code subsection numbers listed in section 12926, rather than the subsection numbers in effect when the Commission adopted these regulations in 2011.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

The Commission proposes to amend its disability regulations to provide guidance and clarity to employers, other covered entities, applicants, and employees on changes in disability discrimination law in California under the FEHA. These proposed changes include the Statement of Purpose, Definitions, Establishing Disability Discrimination, Defenses, Reasonable Accommodation, Pre-employment Practices, and Employee Selection. In addition, the Commission proposes to adopt new regulations on the Interactive Process, Undue Hardship, and Medical Examinations.

These proposed changes conform to changes in disability discrimination law referenced above: the PKP Act, the *Green* decision and the federal enactment of GINA. In addition, the Commission proposes to make numerous amendments to its regulations to conform, where possible, with amendments to the federal Americans with Disabilities Act Amendment Act of 2008 (ADAAA) (Public Law 110-325) (S 3406)), 42 U.S.C. § 12101, et seq., and to the EEOC’s recently revised ADAAA interpretative regulations (29 C.F.R. pt. 1630, et seq., eff. May 24, 2011).

The PKP Act affirmed the Legislature’s intent that the FEHA provide wider coverage and greater protection than the Americans with Disabilities Act (ADA) (Public Law 101-336) (42 U.S.C.A. § 12101 et seq.). At the time of the passage of the PKP Act, a number of federal cases had steadily narrowed the definitions of “disability” and California courts often cited these ADA cases also to narrow the definitions of disability under California law. This 2000 legislation required the definition of physical and mental disability and medical condition to be broadly construed, regardless of interpretations of “disability” under the ADA. The PKP Act also clarified that the definition of physical and mental disabilities: (1) included chronic and episodic conditions and perceived disabilities, (2) required only a limitation or potential limitation of a major life activity (rather than the “substantial limitation required by the ADA), and (3) that the limitation be determined without regard to any mitigating measures, unless the mitigating measure itself limited a major life activity. The 2000 legislation also defined the “working” limitation more broadly than the ADA, and affirmed the importance of the interactive process in determining reasonable accommodation for an applicant or employee with a disability. The 2000 legislation stated that the ADA provided the “floor of protection” but not the ceiling for a person with a disability, and adopted the EEOC’s interpretative guidance on the interactive process.

With the enactment of the PKP Act, the disability provisions of the FEHA differed substantially from the

ADA. Thereafter, in 2008, Congress amended the ADA which now much more closely resembles the PKP Act provisions covering disability. Accordingly, these regulations conform, to the extent permitted by California law, to the ADA, as amended by the ADAAA<sup>2</sup> and to the EEOC’s recently revised ADAAA interpretative regulations,<sup>3</sup> to ensure that the FEHA at least meets their “floor of protection,” and to allow employers, other covered entities, employees, and applicants to deal with familiar, consistent provisions wherever possible.

BENEFITS OF REGULATIONS AND  
EVALUATION OF INCONSISTENT OR  
INCOMPATIBLE EXISTING STATE  
REGULATIONS

Government Code section 11346.5, subdivision (a)(3)(C) requires the Commission to state the specific benefits anticipated by the proposed regulations, including nonmonetary benefits such as prevention of discrimination against persons with disabilities or perceived disabilities. In addition, Government Code section 11346.5, subdivision (a)(3)(D) requires the Commission to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. A statement of the benefits of these regulations and evaluation of inconsistency with existing state regulations follows below after “Consideration of Alternatives.”

**Relevant sections of the Fair Employment and Housing Act interpreted by these regulations include:**

**Government Code section 12926, subdivision (i)**, definition of “medical condition” was expanded to include, in addition to cancer, genetic characteristics.

**Government Code section 12926, subdivision (j)**, definition of “mental disability” was expanded to clarify that a mental or psychological disorder or condition needed to merely limit (rather than substantially limit as the ADA required) a major life activity and that this limitation was to be determined without regard to mitigating measures, such as medication, unless the mitigating measure itself limited a major life activity. Further, major life activities were to be broadly construed and included physical, mental and social activities and working.

**Government Code section 12926, subdivision (l)**, definition of “physical disability” was expanded to clarify that a physical disability, like a mental disability, must only limit a major life activity, mitigating measures do not determine this limitation and major life ac-

<sup>2</sup> Americans with Disabilities Act Amendments Act of 2008 (ADAAA) (PL 110-325 (S 3406)), 42 U.S.C. § 12101, et seq.

<sup>3</sup> 29 C.F.R. § 1630, et seq., eff. May 24, 2011.

tivities are to be broadly construed and include working.

**Government Code section 12926.1, subdivision (a)** affirms that the ADAAA provides a “floor of protection” for a person with a disability, and that the FEHA has always provided additional, independent protections.

**Government Code section 12926.1, subdivision (b)** requires the FEHA’s broad definitions of physical disability, mental disability, and medical condition to be construed to protect applicants and employees from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

**Government Code section 12926.1, subdivision (c)** provides examples of the wider coverage and broader protections provided by the FEHA. This subdivision includes chronic or episodic conditions as physical or mental disabilities, and provides some clarifying examples. It rejects the ADAAA’s requirement that a physical or mental disability substantially limit a major life activity, and finds a “limitation” sufficient under the FEHA. (See Gov. Code § 12926.1, subd. (c).) It states that whether a condition limits a major life activity is to be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity. (*Ibid.*) It also states that “working” is a major life activity regardless of whether the actual or perceived working conditions implicate a particular employment or a class or broad range of employments. (*Ibid.*)

**Government Code section 12926.1, subdivision (d)** provides that, notwithstanding any interpretation in law in *Cassista v. Community Foods, Inc.* (1993) 5 Cal. 4th 1050, the Legislature intends (1) for the FEHA to be independent of the ADA, (2) to require a “limitation” rather than a “substantial limitation” on a major life activity, and (3) for Government Code section 12926, subdivisions (i)(4) and (k)(4) to protect an individual from discrimination based on an erroneous or mistaken belief that the person has a disability.

**Government Code section 12926.1 subdivision (e)** affirms the importance of the interactive process, as described in the Equal Employment Opportunity Commission’s interpretative guidelines to the ADAAA.

**Government Code section 12940, subdivision (n)**, added a separate cause of action for failure to engage in the interactive process.

**GINA** prohibits discrimination based on genetic characteristics, and provides additional supporting authority for the inclusion of “genetic characteristics” in the definition of “medical condition,” stated in Government Code section 12926, subdivision (h)(2).

*Green v. State of California*, *supra*, 42 Cal. 4th at 263 shifted the burden of proving that the applicant or em-

ployee was “qualified” for the position held or desired from the employer to the applicant or employee.

As amended, the Commission’s regulations on disability discrimination provide the following:

**Section 7293.5, subdivision (b)**, amends the “Statement of Purpose” to include those purposes identified by the bill’s author, former Assembly Member Sheila Kuehl, in the Assembly Judiciary Committee’s Comments of April 11, 2000 regarding A.B. 2222.

**Section 7293.6** defines terms used in Government Code sections 12926, 12926.1, and 12940 and in these regulations, including, inter alia: “Assistive Animal,” “CFRA,” “Disability,” “Disorder,” “Essential Job Functions,” “Family Member,” “FMLA,” “Health Care Provider,” “Interactive Process,” “Major Life Activity,” “Medical Examination,” “Mitigating Measure,” “Qualified Individual,” “Reasonable Accommodation,” “Sexual Behavior Disorders,” and “Undue Hardship.”

The Commission considered but rejected the Civil Code section 54.1 definition of animals allowed in the workplace (limited to guide, signal and service dogs) and expanded the definition to include “service animal” and “support animals” to conform both to the EEOC’s interpretative guidance on the ADA that references “service animal” and to California case law. (The EEOC’s Appendix to Part 1630 — *Interpretative Guidance on Title I of the ADA*, 29 C.F.R. pt. 1630.2, subd. (j)(5), app. § 1630.2, subd. (j)(i)(vi) [“. . . use of a *service animal*, job coach, or personal assistant would certainly be considered types of mitigating measures.”]; the EEOC’s *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA* (Notice 915.02) (10/17/02) at Question No. 16 [“An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to: . . . training a service animal (e.g., a guide dog).”]; *Auburn Woods I Homeowners’ Assn. v. Fair Empl. & Hous. Com.* (2004) 121 Cal.App.4th 1578, [a companion animal may be a reasonable accommodation for a mental disability].) The Commission welcomes public comment both on its definition and on requirements for assistive animal behavior in the workplace.

The Commission initially proposed an “obesity” exception to the definition of “disability” provided in section 7293.6, subdivision (c)(9)(C) to conform to the California Supreme Court’s decision in *Cassista v. Community Foods, Inc.* (1993) 5 Cal.4th 1050, 1065 (“[A]n individual who asserts a violation of the FEHA on the basis of his or her weight must adduce evidence of a physiological, systemic basis for the condition”). The Commission subsequently omitted the proposed “obesity” exception to conform both to the EEOC’s interpretative regulations of the ADA, which do not ex-

clude obesity as a disability, and to the EEOC guidance on the ADAAA, which includes “severe obesity” as a disability. (ADAAA interpretative regulations, at 29 C.F.R. pt. 1630.3; EEOC’s *Section 902 Definition of Disability*, § 902.2, subd. (c)(5)(ii).) The Commission, however, would welcome further public comment on whether “obesity” should be excluded as a “disability.”

**Section 7293.7** provides guidance on how to establish disability discrimination. The Commission amended this section to conform to the California Supreme Court’s decision in *Green v. State of California* (2007) 42 Cal. 4th 254 that shifted the burden of proving that the applicant or employee was “qualified” for the position held or desired from the employer to the applicant or employee.

**Section 7293.8** provides affirmative defenses to employment discrimination because of disability or medical condition. The Commission renumbered the subdivisions to accommodate rescinding the “Inability to Perform” affirmative defense from section 7292.8, subdivision (b) in light of the California Supreme Court’s decision in *Green v. State of California* (2007) 42 Cal. 4th 254.

**Section 7293.8, subdivision (a)**, provides a cross-reference to the affirmative defenses to employment discrimination. The Commission amended the cross-reference to specify that these are set forth in California Code of Regulations, title 2, section 7286.7.

**Section 7293.8, subdivision (b)**, provides the “Health or Safety to the Individual with a Disability” affirmative defense. The Commission amended this subdivision to conform to Government Code section 12926.1, subdivision (e), by specifying that fulfillment of the interactive process duties is an essential element of this affirmative defense.

**Section 7293.8, subdivision (c)**, provides the “Health or Safety to Others” affirmative defense. The Commission amended this subdivision to conform to Government Code section 12926.1, subdivision (e), by specifying that fulfillment of the interactive process duties is an essential element of this affirmative defense.

**Section 7293.8, subdivision (d)**, provides the “Future Risk” affirmative defense. The Commission amended this subdivision by eliminating the element “. . . and the individual is able to safely perform the job over a reasonable length of time.” The Commission found this provision confusing.

**Section 7293.8, subdivision (e)**, provides a non-exhaustive list of factors for consideration for these affirmative defenses in subparts (1)–(4).

**Section 7293.8, subdivision (e)(1)**, includes limitations of the disability as a factor.

**Section 7293.8, subdivision (e)(2)**, includes the length of the training period for the position compared with the employee’s anticipated tenure as a factor.

**Section 7293.8, subdivision (e)(3)**, includes time spent performing the job as a factor.

**Section 7293.8, subdivision (e)(4)**, includes normal workforce turnover as a factor.

**Section 7293.8, subdivision (f)**, provides a definition of “essential functions.”

**Section 7293.8, subdivision (f)(1)**, provides the factors for consideration of whether a function is “essential.”

**Section 7293.8, subdivision (f)(1)(A)**, includes the reason the position exists is to perform the function as a factor.

**Section 7293.8, subdivision (f)(1)(B)**, includes the limited number of employees to assume the function as a factor.

**Section 7293.8, subdivision (f)(1)(C)**, includes the need for highly specialized expertise to perform the function as a factor.

**Section 7293.8, subdivision (f)(2)**, provides a non-exhaustive list of evidence that may be used to show whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(A)**, includes the covered entity’s judgment as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(B)**, includes the job description as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(C)**, includes the time spent doing the function as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(D)**, includes the consequences of non-performance of the function as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(E)**, includes the collective bargaining agreement terms as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(F)**, includes the past incumbents’ experience in the job as evidence of whether a function is “essential.” The Commission would welcome public comments whether this subpart has been interpreted as meaning *any* past work experiences of past incumbents, rather than only those experienced while performing the job at issue.

**Section 7293.8, subdivision (f)(2)(G)**, includes the current incumbents’ experience in similar jobs as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(2)(H)**, includes references to the function in prior performance reviews as evidence of whether a function is “essential.”

**Section 7293.8, subdivision (f)(3)**, provides a definition of “marginal functions.”

**Section 7293.9** provides guidance on reasonable accommodation.

**Section 7293.9, subdivision (a)**, requires an employer, or other covered entity, to provide reasonable ac-

commodation for an applicant's or employee's known disability unless doing so would impose an undue hardship.

**Section 7293.9, subdivision (b)**, provides measurement standards for determining whether a provision is effective, and thus constitutes an "accommodation," expanded in subparts (1)–(3) for clarity and ease of reference.

**Section 7293.9, subdivision (b)(1)**, includes modifications that enable an applicant to compete equitably for a job as an accommodation.

**Section 7293.9, subdivision (b)(2)**, includes modifications that enable an employee to perform the essential functions of the job held or desired as an accommodation.

**Section 7293.9, subdivision (b)(3)**, includes modifications that enable an employee to enjoy equal benefits and privileges of employment as an accommodation.

**Section 7293.9, subdivision (c)**, clarifies that an employer, or other covered entity, does not need to lower its production standards, but requires an employer, or other covered entity, to provide accommodation that enables an employee to meet its production standards.

**Section 7293.9, subdivision (d)**, provides a non-exhaustive list of examples of types of accommodation.

**Section 7293.9, subdivision (d)(1)**, includes accessibility measures as an accommodation.

**Section 7293.9, subdivision (d)(1)(A)**, includes accessible non-work station spaces at work as an accessibility measure.

**Section 7293.9, subdivision (d)(1)(B)**, includes modifying furniture, equipment, or devices as accessibility measures.

**Section 7293.9, subdivision (d)(1)(C)**, includes allowing assistive animals at work as an accessibility measure.

**Section 7293.9, subdivision (d)(1)(D)**, includes transfer to an accessible worksite as an accessibility measure.

**Section 7293.9, subdivision (d)(1)(E)**, includes providing qualified readers or interpreters as an accessibility measure.

**Section 7293.9, subdivision (d)(2)**, includes job restructuring measures as an accommodation.

**Section 7293.9, subdivision (d)(2)(A)**, includes redistribution of non-essential job functions as a job restructuring measure.

**Section 7293.9, subdivision (d)(2)(B)**, includes part-time or modified work schedules as a job restructuring measure.

**Section 7293.9, subdivision (d)(2)(C)**, includes altering when and how an essential function is performed as a job restructuring measure.

**Section 7293.9, subdivision (d)(2)(D)**, includes modifying tests, training materials, or policies as a job restructuring measure.

**Section 7293.9, subdivision (d)(2)(E)**, includes other similar actions as a job restructuring measure.

**Section 7293.9, subdivision (d)(2)(F)**, excludes excusing performance of an essential job function or permanent job restructuring as job restructuring measures.

**Section 7293.9, subdivision (d)(3)**, includes paid or unpaid leave as an accommodation.

**Section 7293.9, subdivision (d)(4)**, includes reassignment to a suitable, vacant position as an accommodation under the circumstances listed in subparts (A)–(H).

**Section 7293.9, subdivision (d)(4)(A)**, requires reassignment if the employee cannot perform his or her own position with accommodation.

**Section 7293.9, subdivision (d)(4)(B)**, requires reassignment if accommodating the employee in his or her own position creates an undue hardship.

**Section 7293.9, subdivision (d)(4)(C)**, requires reassignment if the employee requests it to gain access to medical treatment for his or her disability.

**Section 7293.9, subdivision (d)(4)(D)**, permits reassignment to a lower paid position if no comparable position is available.

**Section 7293.9, subdivision (d)(4)(E)**, permits an employee to accept or reject temporary reassignment to a temporary position during the interactive process without affecting the employee's right to an actual accommodation.

**Section 7293.9, subdivision (d)(4)(F)**, requires non-competitive placement of the employee in the reassigned position.

**Section 7293.9, subdivision (d)(4)(G)**, clarifies that reassignment as an accommodation does not require the employer to create a new position.

**Section 7293.9, subdivision (d)(4)(G)**, clarifies that, absent special circumstances, reassignment as an accommodation does not require the employer to ignore its seniority system.

**Section 7293.9, subdivision (d)(5)**, requires the employer to consider first any requested accommodations, then any and all other accommodations, before selecting the most appropriate, reasonable accommodation.

**Section 7293.9, subdivision (e)**, requires an employer, or other covered entity, to provide reasonable accommodation, such as leave to attend monitoring medical appointments, for a past disability with no current limitations.

**Section 7293.9, subdivision (e)**, provides accessibility standards.

**Section 7294.0** provides guidance on the undue hardship affirmative defense.

**Section 7294.0, subdivision (a)**, provides that an employer, other covered entity, is excused from providing reasonable accommodation to an applicant or employee if the employer or other covered entity proves that providing the accommodation would create an undue hardship.

**Section 7294.0, subdivision (b)**, provides a definition of undue hardship.

**Section 7294.0, subdivision (b)(1)**, includes the accommodation's cost as an undue hardship factor.

**Section 7294.0, subdivision (b)(2)**, includes the facility's resources as an undue hardship factor.

**Section 7294.0, subdivision (b)(3)**, includes the employer's resources as an undue hardship factor.

**Section 7294.0, subdivision (b)(4)**, includes the type of operation as an undue hardship factor.

**Section 7294.0, subdivision (b)(5)**, includes the location and relationship of any and all facilities as an undue hardship factor.

**Section 7294.1** provides guidance on the interactive process.

**Section 7294.1, subdivision (a)**, requires an employer, or other covered entity, to engage in a timely, good faith, interactive process with the applicant or employee with a known disability to determine whether accommodation is needed, and if so, then what accommodation, if any, is reasonable.

**Section 7294.1, subdivision (b)**, provides that an employer, other covered entity, must initiate the interactive process under the circumstances listed in subparts 1–3.

**Section 7294.1, subdivision (b)(1)**, provides that an employer, other covered entity, must initiate the interactive process when an applicant or employee requests accommodation for a limitation.

**Section 7294.1, subdivision (b)(2)**, provides that an employer, or other covered entity, must initiate the interactive process when the employer, or other covered entity, becomes aware of an applicant's or employee's possible need for accommodation.

**Section 7294.1, subdivision (b)(3)**, provides that an employer, or other covered entity, must initiate the interactive process when the employer, or other covered entity, becomes aware of the possible need for accommodation after the employee has exhausted other leave provisions, yet has requested further accommodation. This subpart clarifies that, under these circumstances, an offer to engage in the interactive process does not violate California Code of Regulations, Title 2, section 7297.4, subdivisions (b)(1) & (b)(2)(A)(1), prohibiting inquiry into the medical information underlying the need for medical leave other than certification that it is a "serious medical condition."

**Section 7294.1, subdivision (c)**, provides the employer's, or other covered entity's, duties during the interactive process, as listed in subparts (1)–(8).

**Section 7294.1, subdivision (c)(1)**, requires an employer, or other covered entity, to grant an accommodation request immediately or to initiate the interactive process.

**Section 7294.1, subdivision (c)(2)**, requires an employer, or other covered entity, to ask the applicant or employee to produce a list of any limitations that need accommodation if the applicant or employee fails to do so.

**Section 7294.1, subdivision (c)(3)**, prohibits an employer, or other covered entity from asking about the underlying cause of the disability, and cross-references section 7294.3 that provides the scope of medical information that the employer, or other covered entity, may require the applicant or employee to produce.

**Section 7294.1, subdivision (c)(4)**, requires an employer, or other covered entity, to specify any clarifications or additional information needed, and allow the applicant or employee a reasonable time to produce this supplemental documentation.

**Section 7294.1, subdivision (c)(5)**, requires an employer, or other covered entity, to determine the essential functions of the job held or desired.

**Section 7294.1, subdivision (c)(6)**, requires an employer, other covered entity, in consultation with the employee, to identify potential reasonable accommodations and assess the effectiveness of each.

**Section 7294.1, subdivision (c)(7)**, requires an employer, or other covered entity, to consider any requested accommodations before selecting and implementing the most appropriate, reasonable accommodation.

**Section 7294.1, subdivision (c)(8)**, clarifies that, if reassignment is considered as an accommodation, then the employer may ask the employee to produce a resume to help find a suitable position.

**Section 7294.1, subdivision (d)**, requires the applicant or employee to cooperate in good faith with the employer during the interactive process, as stated in subparts (1)–(10).

**Section 7294.1, subdivision (d)(1)**, requires an applicant or employee requesting accommodation to produce "required medical information" to the employer, or other covered entity, on demand.

**Section 7294.1, subdivision (d)(2)**, requires an employee requesting reassignment as an accommodation to produce a copy of his or her resume to the employer, or other covered entity, to help the employer, or other covered entity, to search for a suitable, alternate position.

**Section 7294.1, subdivision (d)(3)**, clarifies that an applicant's or employee's mental or physical inability

to engage in the interactive process does not constitute a breakdown of the process.

**Section 7294.1, subdivision (d)(4)**, encourages, but does not require, an applicant or employee to communicate directly with the employer, or other covered entity, during the interactive process.

**Section 7294.1, subdivision (d)(5)**, provides the scope of the medical information that an employer, or other covered entity, may require an applicant or employee to produce if the need for accommodation is not obvious.

**Section 7294.1, subdivision (d)(5)(A)**, includes the name, medical credentials, and any specialty of the applicant's or employee's health care provider as "required medical information."

**Section 7294.1, subdivision (d)(5)(B)**, includes the health care provider's opinion that the applicant or employee has a disability, any limitations, and how each limitation affects an applicant's ability to compete fairly for a job or an employee's ability to perform the essential functions of the job held or desired as "required medical information." It also prohibits an employer, or other covered entity, from asking for an applicant's or employee's complete medical records.

**Section 7294.1, subdivision (d)(5)(C)**, requires the employer to specify any deficiencies in the medical information that the employee produced, and allows the employee a reasonable time to produce supplemental documentation, before requiring the employee to visit a company-provided doctor. This subpart also encourages, but does not require, an employer, or other covered entity, to consult with the employee's health care provider (with the employee's narrowly tailored written consent) before resorting to company-ordered medical examination.

**Section 7294.1, subdivision (d)(5)(C)(1)**, clarifies that medical documentation is insufficient if it fails to describe the functional limitations due to the disability.

**Section 7294.1, subdivision (d)(5)(C)(2)**, provides other factors that might make the medical documentation insufficient.

**Section 7294.1, subdivision (d)(6)**, excuses an employer, or other covered entity, from providing accommodation unless or until the applicant or employee provides sufficient medical documentation.

**Section 7294.1, subdivision (d)(7)**, requires a company-ordered medical examination to be "job-related" and "consistent with business necessity," and provides definitions of these terms.

**Section 7294.1, subdivision (d)(8)**, requires an employer, or other covered entity, to pay all costs and wages associated with a company-ordered medical examination.

**Section 7294.1, subdivision (d)(9)**, requires an employee, who requests intermittent or reduced schedule

leave for planned medical treatment as an accommodation, to produce medical documentation establishing the medical necessity for the leave and the estimated frequency and duration of the episodes of incapacity.

**Section 7294.1, subdivision (d)(10)**, requires an employee, who requests intermittent or reduced schedule leave for a disability that may result in unforeseeable episodes of incapacity as an accommodation, to produce medical documentation establishing the medical necessity for the leave and the estimated frequency and duration of the episodes of incapacity.

**Section 7294.1, subdivision (e)**, requires an individualized assessment of an employee's ability to perform the essential functions of the job held or desired, and prohibits 100% healed policies.

**Section 7294.1, subdivision (f)**, provides guidance on the documentation that an employer, or other covered entity, may require the employee to produce when the employee requests permission to bring an assistive animal into the workplace.

**Section 7294.1, subdivision (f)(1)**, includes medical documentation specifying any limitations that require the presence of an assistive animal in the workplace as a permitted requirement.

**Section 7294.1, subdivision (f)(2)**, includes certification by one or more professional animal trainers that the animal is well-behaved and performs each required assistive task as trained as a permitted requirement.

**Section 7294.2** provides guidance on pre-employment practices.

**Section 7294.2, subdivision (a)**, provides guidance on recruitment and advertising.

**Section 7294.2, subdivision (a)(1)**, prohibits employers, and other covered entities, from discriminating against an applicant with a disability during recruiting, unless such discrimination is excused by a permissible defense.

**Section 7294.2, subdivision (a)(1)**, prohibits advertising or publicizing an employment benefit that discourages, or is designed to discourage, an applicant with a disability.

**Section 7294.2, subdivision (b)**, provides guidance regarding the application process.

**Section 7294.2, subdivision (b)(1)**, prohibits an employer, or other covered entity, from discriminating against an applicant with a disability.

**Section 7294.2, subdivision (b)(2)**, prohibits inquiries on a disability or designed to elicit information on a disability during the application process, and provides examples of prohibited inquiries in subparts (A)–(E).

**Section 7294.2, subdivision (b)(3)**, permits inquiries as to whether the applicant can perform the essential job functions and as to whether the applicant requires reasonable accommodation.

**Section 7294.2, subdivision (c)**, requires an employer, or other covered entity, to provide reasonable accommodation to an applicant with a disability.

**Section 7294.3** provides guidance on medical examinations.

**Section 7294.3, subdivision (a)**, prohibits pre-offer medical examinations.

**Section 7294.3, subdivision (b)**, permits job-related post-offer medical examinations under the conditions listed in subparts (1)–(3).

**Section 7294.3, subdivision (b)(1)**, includes subjecting all entering employees to a medical examination as a condition for permitting medical examinations.

**Section 7294.3, subdivision (b)(2)**, includes allowing a medically rejected entering employee to submit independent medical opinions before determining whether to disqualify the entering employee as a condition for permitting medical examinations.

**Section 7294.3, subdivision (c)**, provides that an employer may withdraw an offer of employment based on medical examination results only if it is determined that the applicant cannot perform the essential job functions or endangers the health or safety of the applicant or of others.

**Section 7294.3, subdivision (d)**, provides guidance on medical examination and disability inquiries during employment.

**Section 7294.3, subdivision (d)(1)**, permits disability-related inquiries and medical examinations that are job-related and consistent with business necessity.

**Section 7294.3, subdivision (d)(1)(A)**, defines “job-related.”

**Section 7294.3, subdivision (d)(1)(B)**, defines “consistent with business necessity.”

**Section 7294.3, subdivision (d)(1)(C)**, places the burden of proof that a medical examination was both “job-related” and “consistent with business necessity” on the employer, or other covered entity.

**Section 7294.3, subdivision (d)(2)**, requires an employer, or other covered entity, to ensure that a fitness for duty examination is limited to the employee’s ability to perform the essential job functions.

**Section 7294.3, subdivision (d)(3)**, permits an employer, or other covered entity, to conduct tests to enforce anti-drug and anti-alcohol work rules if the employer has a reasonable belief that the employee is under the influence of drugs or alcohol at work.

**Section 7294.3, subdivision (d)(3)(A)**, permits inquiries about an employee’s current use of medical marijuana or illegal drugs.

**Section 7294.3, subdivision (d)(3)(B)**, prohibits inquiries about an employee’s past addiction to illegal drugs.

**Section 7294.3, subdivision (d)(4)**, provides further guidance on permissible disability-related inquiries

and medical examinations of employees in subparts (A)–(C).

**Section 7294.3, subdivision (d)(4)(A)**, provides guidance on Employee Assistance Programs.

**Section 7294.3, subdivision (d)(4)(B)**, permits disability-related inquiries and medical examinations mandated by state or federal law, and provides some clarifying examples.

**Section 7294.3, subdivision (d)(4)(C)**, provides guidance on Voluntary Wellness Programs.

**Section 7294.3, subdivision (d)(5)**, requires medical information to be maintained on separate forms in a separate file, and kept confidential, except for the permitted disclosures stated in subparts (A)–(B).

**Section 7294.3, subdivision (d)(5)(A)**, permits an employer, or other covered entity, to inform supervisors and managers of an employee’s job-related limitations and accommodations.

**Section 7294.3, subdivision (d)(5)(B)**, permits an employer, or other covered entity, to inform first aid and safety personnel of an employee’s condition that might require emergency treatment.

**Section 7294.4**, regulates employee selection.

**Section 7294.4, subdivision (a)**, prohibits an employer, or other covered entity, from discriminating against an applicant or employee based on a prospective need for reasonable accommodation of a disability.

**Section 7294.4, subdivision (b)**, provides guidance on qualification standards, tests, or other selection criteria.

**Section 7294.4, subdivision (b)(1)**, prohibits an employer, or other covered entity, from using qualifications, tests, or other selection criteria to screen out applicants with a disability, unless these are job-related and consistent with business necessity.

**Section 7294.4, subdivision (b)(2)**, prohibits an employer, other covered entity, from using qualifications, tests, or other selection criteria based on an applicant’s uncorrected vision, unless these are job-related and consistent with business necessity.

**Section 7294.4, subdivision (b)(3)**, prohibits an employer, other covered entity, from using qualifications, tests, or other selection criteria based on an applicant’s uncorrected hearing, unless these are job-related and consistent with business necessity.

**Section 7294.4, subdivision (b)(4)**, prohibits an employer, other covered entity, from using any testing criterion that discriminates against applicants or employees with disabilities, except under both conditions listed in subparts (A)–(B).

**Section 7294.4, subdivision (b)(4)(A)**, the test score or other selection criterion used is shown to be job-related for the position in question; and

**Section 7294.4, subdivision (b)(4)(B)**, non-discriminatory job-related testing criterion is unavailable.

**Section 7294.4, subdivision (b)(5)**, prohibits non-job-related tests of physical ability and strength.

**Section 7294.4, subdivision (b)(6)**, requires an employer, or other covered entity, to provide reasonable accommodation to an applicant or employee with a disability undertaking employment testing, and provides clarifying examples in subparts (A)–(G).

**Section 7294.4, subdivision (b)(6)(A)**, requires the test site to be accessible.

**Section 7294.4, subdivision (b)(6)(B)**, provides examples of accommodations for blind or visually impaired applicants or employees.

**Section 7294.4, subdivision (b)(6)(C)**, provides examples of accommodations for applicants or employees who are quadriplegic or have spinal cord injuries.

**Section 7294.4, subdivision (b)(6)(D)**, provides examples of accommodations for hearing impaired applicants or employees.

**Section 7294.4, subdivision (b)(6)(E)**, provides an example of accommodations for applicants or employees who have disabilities that impair their ability to read, process, or communicate.

**Section 7294.4, subdivision (b)(6)(F)**, clarifies that alternate tests may be appropriate, but cautions the employer to seek competent advice about the validity of the test.

**Section 7294.4, subdivision (b)(6)(G)**, provides that permitting the use of readers, interpreters, or similar supportive persons or instruments might be a reasonable accommodation.

**Section 7294.4, subdivision (c)**, prohibits testing for genetic characteristics, unless job-related or required by state or federal law.

**Section 7294.5** prohibits disability discrimination by conditioning an employment benefit on a waiver of any fringe benefit.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

*The Commission 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.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The Commission estimates that the total statewide costs that businesses may incur to comply with these amended regulations over a five year period would be **\$8,491,500**. The proposed regulations clarify sections 12926, 12926.1, and 12940 and impose no further costs. The Commission arrived at this figure with the following calculations, assumptions and estimates:

All businesses with five or more employees are covered by these regulations. This would be **382,383** businesses in California. Provisions regarding persons characterized as disabled do not differ substantially from those found to be covered under the ADAAA, and thus applicants and employees with disabilities are entitled to request needed reasonable accommodations under that statute, regardless of the changes to the FEHA. California employers with 15 or more employees must abide by the ADAAA requirements, so the new FEHA changes would additionally affect only smaller businesses with 5–14 employees who are not covered by the ADAAA.

Based on 2009 third quarter California Employment Development Department data,<sup>4</sup> 6.8% of California employees work at businesses with 5–9 employees and 9.8% of employees work for employers with 10–19 employees. If we assume that half of that 9.8% work in businesses with 10–14 employees, or 4.9%, then 11.7% (6.8% plus 4.9%) of California’s employees would be covered under the FEHA (employers with 5–14 employees) but not the ADAAA, representing the actual increase of California businesses covered by the more expansive definition of disability enacted in the 2000 revisions to the FEHA. This gives us **353,808** (3,024,000 new eligible employees times 11.7%) employees with disabilities now covered by the FEHA but not the ADAAA.

The EEOC’s final regulations utilized a conservative estimate of 16% to represent the number of these newly eligible people who would request an accommodation at work in order to do their job.<sup>5</sup> Applying this 16% to

<sup>4</sup>“Table I,” [CA EDD Data](#) (last checked 11/4/11), included in Fiscal Impact Statement, Exhibit 2.

<sup>5</sup> [EEOC Final Disability Regulations](#), page 16992, included in Fiscal Impact Statement, as Exhibit 3.

the estimates to people newly categorized as disabled we get **56,609** new requests for accommodations in California under the FEHA.<sup>6</sup>

The EEOC final regulations then found that **\$150** was an appropriate estimation of the cost to an employer on a per accommodation basis.<sup>7</sup> It also assumed that the requests for accommodation would not come all at once, but over an estimated five years. Therefore the calculation for the **range of costs** for accommodations per year in California is:

**11,322** new accommodations annually (56,609 over 5 years) x \$150 = **\$1,698,300** per year, or a lifetime cost of **\$8,491,500**.

These costs would affect smaller employers, with 5–14 employees, as large employers, including state and local governments, were already required under the ADAAA to provide these accommodations so there is no additional cost.

Administrative Costs

Like the EEOC, the Commission anticipates that administrative costs for employers to modify their employee handbooks on disability will be minimal. The Commission expects that it and the DFEH will provide extensive free training seminars and free training materials on its website for small and large employers once its regulations are final to minimize the need for other, paid training to comply with the regulations.

Legal Costs

The Commission, like the EEOC, is unable to estimate any increased litigation costs from its revised regulations. The Commission notes that the more expansive definition of disability under the FEHA has now been in effect for 11 years and thus, these regulations are not expanding, but merely clarifying the existing law. In 2010, 25.5% of the Department of Fair Employment and Housing’s employment discrimination accusations were on the basis of disability.<sup>8</sup>

The Commission assumes that increased clarity in the law and its regulations will result in benefits which cancel out costs including a simplified reasonable accommodation process for employers, litigation efficiencies,

and fuller employment, non–discrimination and other intrinsic benefits for persons with disabilities.

The proposed regulations do not impose any additional costs beyond the statute.

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.

The benefits of these regulations are listed below.

Significant effect on housing costs: None.

*Small Business Determination*

The Commission has determined that the proposed regulations will affect all businesses with five or more employees, including, potentially, 331,668 businesses with 5 to 50 employees.<sup>9</sup>

RESULTS OF ECONOMIC IMPACT ASSESSMENT

To summarize, the average cost to a business to comply with these regulations would be \$150 per accommodation, for a **\$1,698,300** per year cost, or a lifetime cost of **\$8,491,500**. The benefits of the regulations, as detailed more fully below, would be increased clarity in the law regarding disability discrimination and the interactive process, simplifying the reasonable accommodation process for employers, litigation efficiencies, fuller employment for persons with disabilities, and increasing diversity, understanding, and fairness in the workplace.

CONSIDERATION OF ALTERNATIVES

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

The Commission has discussed alternatives it considered, and why it chose the proposed revisions it selected, in its Initial Statement of Reasons.

In these regulations, in considering all alternatives, the Commission consistently opted for regulations

<sup>6</sup> EEOC Final Disability Regulations, page 16992, included in Fiscal Impact Statement, as Exhibit 3. The EEOC acknowledged that its 16% estimate was probably high, as many persons with obvious disabilities, such as persons using wheelchairs, who might need reasonable accommodations such as wider doorways and ramps, would have been covered by the ADA, even without the amendments to that law. The EEOC assumed that most of the costlier accommodations, such as modifications for persons in wheelchairs, would have already been covered under the ADA before the 2008 amendments to the Act.

<sup>7</sup> EEOC Final Disability Regulations, page 16994, included in Fiscal Impact Statement, as Exhibit 3.

<sup>8</sup> Pie Chart Showing 2010 Employment Accusations Filed by DFEH by Protected Basis, included in Fiscal Impact Statement as Exhibit 6.

<sup>9</sup> Table 1 from California Employment Development Department (last checked on 11/4/11), included in Fiscal Impact Statement, as Exhibit 2.

which were consistent with the ADA, where possible with California law. The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

**BENEFITS OF PROPOSED REGULATIONS**

As required by Government code section 11346.5, subdivision (a)(3)(D), the Commission has evaluated the specific benefits anticipated by the proposed regulations including the nonmonetary benefits such as the prevention of discrimination against persons with disabilities or perceived disabilities.

In its most recent survey of employers, the Job Accommodation Network (JAN) found that the following percentage of respondents reported the following benefits from accommodations they had provided to employees with disabilities:

<b>Direct Benefits</b>	<b>%</b>
Retained a valued employee	89%
Increased the employee’s productivity	71%
Eliminated costs associated with training a new employee	60%
Increased the employee’s attendance	53%
Increased diversity of the company	43%
Saved workers’ compensation or other insurance costs	39%
Hired a qualified person with a disability	13%
Promoted an employee	10%
<b>Indirect Benefits</b>	<b>%</b>
Improved interactions with co-workers	68%
Increased overall company morale	63%
Increased overall company productivity	59%
Improved interactions with customers	47%
Increased workplace safety	45%
Increased overall company attendance	39%
Increased profitability	32%
Increased customer base	18% <sup>10</sup>

<sup>10</sup>Job Accommodation Network (JAN), “Workplace Accommodations: Low Cost, High Impact,” Updated September 1, 2011, page 5 (available at <http://askjan.org/media/LowCostHighImpact.doc>), included in Fiscal Impact Statement as Exhibit 7.

The Commission agrees with the EEOC that, while it is not possible to state unequivocally that the benefits of increased clarity in the law and its regulations will always result in benefits which cancel out costs, it is apparent from surveys conducted of both employers and employees that there are significant direct and indirect benefits to providing accommodations that may potentially be commensurate with the costs.

The Commission also notes that there are potential additional benefits regarding the provision of accommodations made by the FEHA as explained by these regulations. Specifically:

Reasonable Accommodation Process Simplified for Employers

The legislative changes made to the FEHA clarifying what is or is not a disability and the guidance given on the interactive process by the Legislature and by the proposed regulations should make the reasonable accommodation process simpler for employers to understand and to follow. For example, to the extent employers may have spent time before reviewing medical records to determine whether a particular individual’s diabetes or epilepsy satisfied the legal definition of a limiting impairment, there may be a cost savings in terms of reduced time spent by front-line supervisors, managers, human resources staff, and even employees who request reasonable accommodation. Further, by clarifying that employers and employees must work together cooperatively to determine an effective reasonable accommodation, the Commission believes that it has increased informal and satisfactory resolutions of potential conflicts short of litigation.

Efficiencies in Litigation

The amendments to the FEHA and the Commission’s regulations will make it clearer to employers and employees what their rights and responsibilities are under the statute, thus decreasing the need for litigation regarding the definition of disability, the interactive process and reasonable accommodation. To the extent that litigation remains unavoidable in certain circumstances, the amendments to the FEHA and the Commission’s regulations reduce the need for costly experts to address “disability” and streamline the issues requiring judicial attention.

Fuller Employment

In November 2011, the Bureau of Labor Statistics released employment figures which documented that 21.3% of persons with disabilities participated in the civilian labor force in the United States compared to

69.6% of the comparable non-disabled work force. The unemployment rate for persons with disabilities is 13.2% compared to 8.3% of the general population.<sup>11</sup>

Fuller employment of individuals with disabilities will provide savings to the state and local governments and to employers by potentially moving individuals with disabilities into the workforce who otherwise are or would be collecting Social Security Disability Insurance (SSDI) from the government, or collecting short or long-term disability payments through employer-sponsored insurance plans.

Further, fuller employment of individuals with disabilities will stimulate the economy to the extent those individuals will have greater disposable income and enhance the number of taxpayers and resulting government revenue.

Non-discrimination and other intrinsic benefits

The Commission agrees with the EEOC that a “wide range of qualitative, dignitary, and related intrinsic benefits [also] must be considered . . . such as equity, human dignity, and fairness.” These benefits include:

- “Provision of reasonable accommodation to workers who would otherwise have been denied it benefits workers and potential workers with disabilities by diminishing discrimination against qualified individuals and by enabling them to reach their full potential. This protection against discrimination promotes human dignity and equity by enabling qualified workers to participate in the workforce.”
- “Provision of reasonable accommodation to workers who would otherwise have been denied it reduces stigma, exclusion, and humiliation, and promotes self-respect.”
- “Interpreting and applying the [FEHA] will further integrate and promote contact with individuals with disabilities, yielding third-party benefits that include both (1) diminishing stereotypes often held by individuals without

disabilities and (2) promoting design, availability, and awareness of accommodations that can have general usage benefits and also attitudinal benefits.<sup>12</sup>

- Provision of reasonable accommodation to workers who would otherwise have been denied it benefits both employers and coworkers in ways that may not be subject to monetary quantification, including increasing diversity, understanding, and fairness in the workplace.
- Provision of reasonable accommodation to workers who would otherwise have been denied it benefits workers in general and society at large by creating less discriminatory work environments.

The Commission concludes that the amendments to the FEHA and these regulations interpreting those provisions will have extensive quantitative and qualitative benefits for employers, government entities, and individuals with and without disabilities. Regardless of the number of accommodations provided to additional applicants or employees as a result of the FEHA and these regulations, the Commission believes that the resulting benefits will be significant and could be in excess of the projected costs annually. Although it cannot quantify the benefits, the Commission believes that the benefits (quantitative and qualitative) of these regulations exceed and justify the costs.

EVALUATION OF WHETHER THESE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

As required by Government Code section 11346.5, subdivision (a)(3)(D), the Commission considered these disability regulations in relationship to its proposed revised pregnancy regulations, and to the California Family Rights Act (CFRA) (Gov. Code §§ 12945.1 & 12945.2) and the existing CFRA regulations (Cal. Code Regs., tit. 2, § 7297.0, et seq.) to evaluate the disability regulations for inconsistency or incompatibility. As a result, the Commission:

- Conformed its definition of a “health care provider” in both these disability regulations (§ 7293.6(h)) and in its proposed, revised pregnancy regulations (§ 7291.2(m)).

<sup>11</sup> BLS National Jobs Report based on October 2011 Data, “The Employment Situation — October 2011, “Table A-6. Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted” (last checked on 11/4/11), included in Fiscal Impact Statement as Exhibit 8.

It should be noted that BLS defines a “person with a disability” as someone who “has at least one of the following conditions: is deaf or has serious difficulty hearing; is blind or has serious difficulty seeing even when wearing glasses; has serious difficulty concentrating, remembering, or making decisions because of a physical, mental, or emotional condition; has serious difficulty walking or climbing stairs; has difficulty dressing or bathing; or has difficulty doing errands alone such as visiting a doctor’s office or shopping because of a physical mental, or emotional condition.”

<sup>12</sup> EEOC Final Disability Regulations, pages 16997-8, Exhibit 3, citing Elizabeth Emens, *Integration Accommodation*, 156 U. Pa. L. Rev. 839, 850-59 (2008) (explaining a wide range of potential third-party benefits that may arise from workplace accommodations), included in Fiscal Impact Statement as Exhibit 9.

- Conformed requirements that medical certifications for reasonable accommodations for disabilities are discretionary (§ 7294.1(d)(5)) for internal consistency with similar requirements under the new proposed pregnancy regulations (proposed § 7291.7(c)) or to take a California Family Rights Act leave (Cal. Code Regs., tit. 2, § 7297.4(b)).
- Conformed the requirement that the employer affirmatively notify the employee of job openings (§ 7293.9(d)(4)) with a similar requirement in the proposed revised pregnancy regulations (proposed § 7291.10(c)(2)(A)).
- Conformed language in these regulations stating that “direct notice” to the employer from the employee rather than from a third party regarding the employee’s need for reasonable accommodation, transfer, or pregnancy disability leave is preferred, but not required (§ 7294.1(d)(4)) with comparable provisions in the proposed pregnancy regulations (proposed § 7291.17(a)(7)).

**CONTACT PERSON**

Inquiries concerning the proposed administrative action may be directed to:

Ann M. Noel, Executive and Legal Affairs Secretary  
or  
Caroline L. Hunt, Administrative Law Judge  
Fair Employment and Housing Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102  
Telephone: (415) 557-2325  
Facsimile: (415) 557-0855  
[regs@fehcc.ca.gov](mailto:regs@fehcc.ca.gov)

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

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

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the economic impact analysis document. Copies may be obtained by contacting Ann M. Noel at the address or phone number listed above, or by downloading copies from the Commission’s website at

[www.fehc.ca.gov](http://www.fehc.ca.gov). In compliance with the spirit of AB 410, Swanson (Stats. 2011, ch. 495), the Commission has attempted to make all documents accessible, where at all possible, by reading software used by the visually impaired in this rulemaking action.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After holding the hearings and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this Notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ann M. Noel at the address indicated above. The modified text will also be available on the Commission’s website at [www.fehc.ca.gov](http://www.fehc.ca.gov). The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT  
OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Noel at the above address or on the Commission’s website at [www.fehc.ca.gov](http://www.fehc.ca.gov).

**AVAILABILITY OF DOCUMENTS ON  
THE INTERNET**

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

**TITLE 2. FAIR EMPLOYMENT AND  
HOUSING COMMISSION**

*Editorial Note: Some of the footnotes in this notice make reference to various Exhibits. Due to space considerations, the Exhibits are not being printed. They are available for viewing at the Department (see address below) or at their website at: [www.fehc.ca.gov](http://www.fehc.ca.gov).*

**TITLE 2. SECTIONS 7291.2-7291.17  
SEX DISCRIMINATION: PREGNANCY,  
CHILDBIRTH OR RELATED  
MEDICAL CONDITIONS**

The California Fair Employment and Housing Commission (“Commission”) proposes to amend existing

sections 7291.2–7291.16, “Sex Discrimination: Pregnancy, Childbirth or Related Medical Conditions,” to sections 7291.2–7291.17, after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARINGS**

The Commission will hold two public hearings:

- In **Los Angeles**, starting at **10 a.m. on Tuesday, April 17, 2012**, at the Ronald Reagan State Office Building Auditorium, 300 South Spring Street, ground floor, Los Angeles, California. The Auditorium is wheelchair accessible.
- In **San Francisco**, starting at **10 a.m. on Thursday, April 19, 2012**, at the Hiram Johnson State Building Auditorium at 455 Golden Gate Avenue, basement level, San Francisco, California. The Auditorium is wheelchair accessible.

At each hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests, but does not require, that persons who make oral comments at the hearing also submit a written copy and an electronic copy in Word of their testimony at the hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5 p.m. on April 19, 2012**. The Commission will consider only comments received at the Commission offices, delivered in person to Commission personnel at either public hearing referenced above, or through Commission email by that time. **The Commission’s preference is to receive comments electronically, in Word, via the email address given below. The Commission appreciates suggested alternate language to the current proposed revisions in comments it receives.**

[regs@fehcc.ca.gov](mailto:regs@fehcc.ca.gov)

or

Ann M. Noel  
 Executive and Legal Affairs Secretary  
 Fair Employment and Housing Commission  
 455 Golden Gate Avenue, Suite 10600  
 San Francisco, CA 94102

**AUTHORITY AND REFERENCE**

Government Code section 12935, subdivision (a), authorizes the Commission to amend the proposed regulations, which would implement, interpret, or make specific sections 12926, 12940, 12943 and 12945 of the Government Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Commission proposes to amend existing sections 7291.2–7291.16 in Title 2 of the California Code of Regulations (CCR) regarding Sex Discrimination: Pregnancy, Childbirth or Related Medical Conditions to sections 7291.2–7291.17.

The purpose of the proposed amended regulations is to update the Commission’s regulations on pregnancy to conform to statutory changes to the Fair Employment and Housing Act. These proposed regulations are responsive to legislative revisions passed.

- In 1999, A.B. 1670<sup>1</sup> amended Government Code section 12945, to require employers to reasonably accommodate female employees affected by pregnancy, childbirth or related medical conditions. (Former Gov. Code § 12945, subd. (c)(1), now at Gov. Code § 12945, subd. (a)(3)(A).) Pre-A.B. 1670, Government Code section 12945 had required employers to provide transfers to less strenuous or hazardous positions and to provide pregnancy disability leaves of up to four months, but lesser reasonable accommodations were not required. A.B. 1670 required that other reasonable accommodations, such as more frequent rest breaks, allowing snacking to avoid nausea or providing a stool were also required. The A.B. 1670 amendment was characterized as minor by the author and by all legislative bill analysts, with no fiscal impact to employers.<sup>2</sup> As detailed below and in the Commission’s Fiscal Impact Statement (Form 399), the Commission estimated that an employer would spend an average of \$527 per pregnant employee for her to attend 9–12 prenatal visits during her pregnancy.

<sup>1</sup> Exhibit 1: Stats. 1999, c. 591 (A.B. 1670, § 9).

<sup>2</sup> See:

- Exhibit 2: Assembly Committee on the Judiciary, May 11, 1999 hearing, A.B. 1670 analysis prepared by Drew Liebert, Assembly Judiciary Committee;
- Exhibit 3: Assembly Committee on Appropriations, May 26, 1999 hearing, A.B. 1670 analysis prepared by Chuck Nicol, Appropriations;
- Exhibit 4: Senate Judiciary Committee, August 17, 1999 hearing, A.B. 1670 analysis prepared by “DLM”; and
- Exhibit 5: Senate Appropriations Committee, August 30, 1999 hearing, A.B. 1670 analysis prepared by Lisa Matocq.

- In 2004, A.B. 2870<sup>3</sup> amended Government Code section 12945 to eliminate distinctions between employers with 15 or more employees covered by Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (42 U.S.C. § 2000e, et seq.) and employers with 5 to 14 employees, covered only by the Fair Employment and Housing Act (FEHA)(Gov. Code § 12900, et seq.).

Previously, Government Code section 12945 had provided three exceptions for “small employers” with 5–14 employees: 1) for “normal” pregnancies, small employers needed to provide only six weeks of pregnancy disability leave; 2) small employers did not have to provide health care coverage for pregnancy regardless of whether they provided coverage for other temporary disabilities; and 3) small employers did not need to select a pregnant employee for a training program if the training program could not be completed more than three months before the woman’s expected departure date for her pregnancy disability leave.

A.B. 2870 eliminated these three exceptions and these regulations reflect those changes. The A.B. 2870 amendment was also characterized as minor by the author and by all bill analysts, with no fiscal impact to employers.<sup>4</sup>

- In 2011, S.B. 299<sup>5</sup> passed and, as of January 1, 2012, requires employers to maintain group health plan coverage for employees taking pregnancy disability leave. Previously employers were required in providing group health care benefits to pregnant employees to be consistent with coverage for other temporary disabilities (if the employer provided a continuation of coverage for other temporary disability leaves, then it needed also to continue health coverage for employees taking pregnancy disability leave). If an employer did not provide for continuation of health care coverage for medical leaves, however, it was not required to do so for employees taking pregnancy disability leave.

S.B. 299 explicitly requires employers to continue group health plan coverage regardless of their policies regarding such coverage for other

temporary disabilities. These revised regulations reflect the change in the law.

The Commission has determined that the number of small businesses affected by S.B. 299 is limited in several ways. S.B. 299 affects only those small businesses that provide health care benefits to its employees, and impacts those only for the short duration of pregnancy disability leave. Most pregnant employees want to work as much as possible, and only one in three takes leave prior to delivery. Post-delivery, the California Family Rights Act (CFRA), Government Code sections 12945.1 and 12945.2, already requires small businesses with 50 or more employees to pay the health care premium during bonding or medical leave.<sup>6</sup>

- In 2011, A.B. 592<sup>7</sup> passed and, as of January 1, 2012, made it an unlawful practice for an employer to interfere with an employee’s rights to be reasonably accommodated, transfer or take pregnancy disability leave because of pregnancy. The author and all analysts of this bill have stated that A.B. 592 codified existing law,<sup>8</sup> notwithstanding one unpublished court of appeal decision which had questioned whether there was a cause of action for interfering with an employee’s right to take pregnancy disability leave.<sup>9</sup> Thus, this 2011 legislation did not add any adverse impact on small businesses or create any additional costs to employers of any size.

These proposed amended regulations also provide more clarity and guidance to employers and employees regarding preventing discrimination based on pregnan-

<sup>6</sup> The Commission adopted these proposed amended pregnancy regulations on November 1, 2011, after the two 2011 bills referenced above had been signed into law but before they were to take effect on January 1, 2012: **Exhibit 10** — Stats. 2011, c. 510 (S.B. 299) § 1.5 [group health plan coverage] and **Exhibit 11** — Stats. 2011, c. 678 (A.B. 592), § 1.5) [interference with a woman’s pregnancy rights to reasonable accommodation, transfer and pregnancy disability leave]. The Commission intends to incorporate any changes necessitated by these bills into subsequent amendments to these regulations after considering public comments it receives on these issues.

Other non-pregnancy related FEHA 2011 legislation (**Exhibit 12** — Stats. 2011, c. 261 (S.B. 559), covering genetic information, affected the numbering of FEHA’s definitional section 12926 subsection numbers.

For ease of reference, the proposed amended pregnancy regulations, this Notice of Proposed Rulemaking and the Commission’s Initial Statement of Reasons reference the now current, 2012 Government Code subsection numbers listed in section 12926, rather than the subsection numbers in effect when the Commission adopted these regulations in 2011.

<sup>7</sup> **Exhibit 11**: Stats. 2011, c. 678 (A.B. 592, § 1.5).

<sup>8</sup> **Exhibit 11**: *Id.* at § 3.

<sup>9</sup> *Harris v. CashCall, Inc.* (2011) 2011 WL 1085116, at \*4.

<sup>3</sup> **Exhibit 6**: Stats. 2004, c. 647 (A.B. 2870, § 5).

<sup>4</sup> See:

**Exhibit 7**: Assembly Committee on Labor and Employment, April 21, 2004 hearing, A.B. 2870 analysis prepared by Ben Ebink, Labor & Employment Committee;

**Exhibit 8**: Assembly Committee on Appropriations, May 5, 2004, A.B. 2870 analysis prepared by Stephen Shea, Appropriations; and

**Exhibit 9**: Senate Committee on Labor and Industrial Relations, June 23, 2004 hearing, A.B. 2870 analysis prepared by Frances Low.

<sup>5</sup> **Exhibit 10**: Stats. 2011, c. 510 (S.B. 299, § 1.5).

cy, childbirth or related medical conditions and reasonable accommodation, transfer and disability leave for women affected by pregnancy, childbirth or related medical conditions, as mandated by Government Code sections 12940, 12943 and 12945. To the extent consistent with the FEHA, these regulations provide interpretations of terms and provisions of law consistent with other federal and state laws, such as the Americans with Disabilities Act Amendment Act of 2008 (ADAAA)<sup>10</sup> and to the EEOC's recently revised ADAAA interpretative regulations<sup>11</sup>; the California Family Rights Act (CFRA),<sup>12</sup> and CFRA interpretative regulations,<sup>13</sup> and the Family and Medical Leave Act (FMLA)<sup>14</sup> and its FMLA interpretative regulations.<sup>15</sup>

### BENEFITS OF PROPOSED REGULATIONS

The Commission has determined specific benefits anticipated by the proposed adoption of these regulations, including nonmonetary benefits preventing discrimination against employees or applicants on the basis of pregnancy, childbirth or related medical conditions. Those benefits are discussed below, following an analysis by the Commission of alternatives to these regulations.

### EVALUATION OF WHETHER THESE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

As required by Government Code section 11346.5, subdivision (a)(3)(D), the Commission has made an evaluation of whether the proposed pregnancy regulations are inconsistent or incompatible with existing state regulations. That analysis is given below, following the Commission's analysis of benefits of these proposed pregnancy regulations.

**Relevant sections of the Fair Employment and Housing Act interpreted by these regulations include:**

**Government Code section 12935, subdivision (a),** authorizes the Commission to adopt regulations to implement, interpret and make specific these requirements.

**Government Code section 12926, subdivision (n),** provides in relevant part that protection against sex discrimination includes protection against the perception

that someone possesses a characteristic of sex, including that the individual is pregnant or has a related medical condition.

**Government Code section 12926, subdivision (o),** provides a definition of reasonable accommodation.

**Government Code section 12926, subdivision (q),** provides in relevant part that the definition of "sex" includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth.

**Government Code section 12940, subdivision (a),** prohibits, in relevant part, sex discrimination in hiring, employing, training, firing, or in terms or conditions of employment.

**Government Code section 12940, subdivision (b),** prohibits, in relevant part, labor organizations from discriminating on the basis of sex in union membership, which would include discrimination on the basis of pregnancy, childbirth or related medical conditions.

**Government Code section 12940, subdivision (c),** prohibits, in relevant part, sex discrimination in the selection or training of an individual in any apprenticeship training program or other program leading to employment, which would include discrimination on the basis of pregnancy, childbirth or related medical conditions.

**Government Code section 12940, subdivision (d),** prohibits, in relevant part, sex discrimination in the advertising of jobs or in any other way in the employment process, which would include discrimination on the basis of pregnancy, childbirth or related medical conditions.

**Government Code section 12940, subdivision (h),** prohibits, in relevant part, retaliation for opposing sex discrimination, which would include opposing discrimination on the basis of pregnancy, childbirth or related medical conditions.

**Government Code section 12940, subdivision (i),** makes unlawful, in relevant part, aiding, abetting, inciting, compelling, or coercing the doing of any of the acts forbidden by the FEHA, or to attempt to do so.

**Government Code section 12940, subdivision (j),** forbids, in relevant part, harassment on the basis of sex, including harassment on the basis of pregnancy, childbirth or related medical conditions.

**Government Code section 12940, subdivision (k),** makes it an unlawful employment practice for employers, labor organizations, employment agencies, apprenticeship training programs, or any training program leading to employment to fail to take all reasonable steps to prevent discrimination and harassment from occurring, including discrimination on the basis of pregnancy, childbirth or related medical conditions.

**Government Code section 12943** prohibits school districts from discriminating against employees on the basis of pregnancy in hiring, training program selec-

<sup>10</sup> PL 110-325 (S. 3406), 42 U.S.C. § 12101, et seq.

<sup>11</sup> 29 C.F.R. § 1630, et seq., eff. May 24, 2011.

<sup>12</sup> Gov. Code § 12945.1 & 12945.2.

<sup>13</sup> California Code of Regulations, title 2, § 7297.0, et seq.

<sup>14</sup> Pub. Law 103-3; 29 U.S.C. § 2601 et seq.

<sup>15</sup> 29 C.F.R. Part 825.

tion, firing, or in terms, conditions or privileges of employment.

**Government Code section 12945, subdivision (a)**, provides that in addition to the provisions governing pregnancy, childbirth or related medical conditions in sections 12926 and 12940, it is an unlawful employment practice unless based on a bona fide occupational qualification to do any of the actions listed in the various subdivisions of 12945, subdivision (a).

**Government Code section 12945, subdivision (a)(1)**, provides that it is an unlawful employment practice for an employer to refuse to allow a female employee disabled by pregnancy, childbirth or related medical conditions to take a pregnancy disability leave of up to four months, for the period of time that the employee is disabled, and thereafter return to work. An employer may require an employee who plans to take a leave to give the employer reasonable notice of the beginning and duration of the leave.

**Government Code section 12945, subdivision (a)(2)(A)**, provides that it is an unlawful employment practice for an employer who provides its employees with group health plan coverage, as defined in Internal Revenue Code section 5000(b)(1), to fail to maintain those health benefits for an employee taking a pregnancy disability leave.

**Government Code section 12945, subdivision (a)(2)(B)**, provides that if the employee is a state agency, the collective bargaining agreement governs the continued receipt by an eligible female employee of health care coverage.

**Government Code section 12945, subdivision (a)(3)(A)**, provides that it is an unlawful employment practice for an employer to fail to reasonably accommodate an employee for conditions related to pregnancy, childbirth or related medical conditions, if she so requests, with the advice of her health care provider.

**Government Code section 12945, subdivision (a)(3)(B)**, provides that it is an unlawful employment practice for an employer who has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability to refuse to transfer a pregnant female employee who so requests.

**Government Code section 12945, subdivision (a)(3)(C)**, provides that it is an unlawful employment practice for an employer to refuse to transfer temporarily a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. The employer is not required to create additional employment that the employer would not have otherwise created, to discharge another employee, to transfer another em-

ployee with more seniority, or promote any employee who is not qualified to perform the job.

**Government Code section 12945, subdivision (a)(4)**, provides that it is an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under section 12945 (reasonable accommodation, transfer or pregnancy disability leave).

**Government Code section 12945, subdivision (b)**, states that section 12945 is not to be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish the coverage of pregnancy, childbirth or medical conditions related to pregnancy or childbirth under any other provisions of the FEHA, including section 12940, subdivision (a).

As amended, the Commission's regulations on pregnancy, childbirth or related medical conditions provide the following:

**Section 7291.2, subdivision (a)**, defines terms used in Government Code sections 12926, 12940, 12943 and 12945 and these regulations, including, inter alia: "affected by pregnancy," "because of pregnancy," "CFRA," "covered entity," "eligible female employee," a woman "disabled by pregnancy," "employer," "employment in the same position," "employment in a comparable position," "FMLA," "four months," "group health plan," "health care provider," "intermittent leave," "medical certification," "perceived pregnancy," "pregnancy disability leave," "reasonable accommodation," "reduced work schedule," "related medical condition," and "transfer."

**Section 7291.3** provides that it is an unlawful employment practice for an employer to harass an employee or applicant because of pregnancy or perceived pregnancy.

**Section 7291.4** provides that there is no eligibility requirement before an employee affected or disabled by pregnancy is eligible for reasonable accommodation, transfer or disability leave. This provides guidance for employers and distinguishes rights to take pregnancy disability leave from California Family Rights Act (CFRA) leave, Government Code section 12945.2, subdivision (a), where there are eligibility requirements.

**Section 7291.5** provides that unless a permissible defense applies, discrimination because of pregnancy or perceived pregnancy by any covered entity other than employers constitutes discrimination because of sex under the Fair Employment and Housing Act.

**Section 7291.6, subdivision (a)(1)**, sets forth responsibilities of employers prohibiting discrimination because of pregnancy or perceived pregnancy in

- (A) hiring;
- (B) training programs selection;
- (C) promotion;

- (D) firing;
- (E) employment terms;
- (F) harassment;
- (G) retaliation;
- (H) involuntary transfer; or
- (I) other discrimination on the basis of sex.

**Section 7291.6, subdivision (a)(2)**, sets forth responsibilities for any employer, because of the pregnancy of an employee, delineating that it is an unlawful employment practice to refuse:

- (A) to provide employee benefits for temporary disabilities;
- (B) to maintain and pay for group health plan coverage during an employee's pregnancy disability leave;
- (C) to provide reasonable accommodation for an employee affected by pregnancy;
- (D) to transfer the employee affected by pregnancy;
- (E) to grant the employee disabled by pregnancy a pregnancy disability leave; or
- (F) to interfere with any of the employee's rights provided at Government Code section 12945.

**Section 7291.6, subdivision (b)**, discusses permissible defenses.

**Section 7291.7** provides for reasonable accommodation for employees affected by pregnancy, childbirth or related medical conditions. The Commission considered but ultimately rejected the alternative of including an "undue hardship" defense because it is not explicitly provided for in Government Code section 12945, there is no legislative history supporting its inclusion, and reasonable accommodation for pregnant employees is usually minor and of limited duration.

**Section 7291.8** provides for transfer for employees affected by pregnancy.

**Section 7291.9** provides for pregnancy disability leave for employees disabled by pregnancy.

**Section 7291.10** provides for reinstatement from pregnancy disability leave.

**Section 7291.11** provides for terms of pregnancy disability leave.

**Section 7291.12** covers the relationship between pregnancy disability leave and the federal Family and Medical Leave Act (FMLA), Pub. Law 103-3; 29 U.S.C. § 2601 et seq.

**Section 7291.13** covers the relationship between pregnancy disability leave and the California Family Rights Act (CFRA), Government Code sections 12945.1 and 12945.2.

**Section 7291.14** discusses the relationship between pregnancy disability leave and leave of absence as a reasonable accommodation for physical or mental disability.

**Section 7291.15** covers remedies for violating Government Code sections 12940, 12943 and 12945.

**Section 7291.16** provides the requirements for employers to give notice to their employees of their rights and obligations for reasonable accommodation, transfer and pregnancy disability leave.

**Section 7291.17** provides for employee requests for reasonable accommodation, transfer or pregnancy disability leave, advance notice, medical certification and employer response to these requests.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

(All exhibits referenced in this document are available on the Commission's website at [www.fehc.ca.gov](http://www.fehc.ca.gov).)

*The Commission has made the following initial determinations:*

Legislative history for both 1999 legislation, A.B. 1670,<sup>16</sup> and 2004 legislation, A.B. 2870,<sup>17</sup> amending provisions covering pregnancy discrimination, indicate that the Legislature did not believe that either legislation had any fiscal impact for employers. See Assembly Committee on Appropriations, May 26, 1999 hearing, A.B. 1670 analysis prepared by Chuck Nicol, Appropriations,<sup>18</sup> and the Senate Appropriations Committee, August 30, 1999 hearing, A.B. 1670 analysis prepared by Lisa Matocq.<sup>19</sup> Neither of these analyses noted any costs attributable to employers for the portion of the legislation amending FEHA's pregnancy provisions. Similarly, the Assembly Committee on Appropriations, May 5, 2004, A.B. 2870 analysis prepared by Stephen Shea, Appropriations<sup>20</sup> did not note any costs attributable to employers. In its Form 399, Fiscal Impact Statement, the Commission estimated that the average cost to an employee accommodating an employee's average of 9-12 prenatal visits would cost employers \$527 per employee.

The Commission's preliminary analysis of 2011 legislation, S.B. 299,<sup>21</sup> mandating the continuation of group health plan coverage for employees taking pregnancy disability leave will have minor impacts on both small and large employers. The number of small businesses affected by S.B. 299 is limited in several ways. S.B. 299 affects only those small businesses that provide health care benefits to its employees, and impacts those only for the short duration of pregnancy disability leave. Most pregnant employees want to work as much

<sup>16</sup> **Exhibit 1**: Stats. 1999, c. 591 (A.B. 1670, § 9).

<sup>17</sup> **Exhibit 6**: Stats. 2004, c. 647 (A.B. 2870, § 5).

<sup>18</sup> **Exhibit 3**.

<sup>19</sup> **Exhibit 4**.

<sup>20</sup> **Exhibit 8**.

<sup>21</sup> **Exhibit 10**: Stats. 2011, c.510 (S.B. 299), § 1.5.

as possible, and only one in three takes leave prior to delivery.<sup>22</sup> Post-delivery, the California Family Rights Act already requires businesses with 50 or more employees to pay the health care premium during bonding or medical leave.

Other 2011 legislation, A.B. 592,<sup>23</sup> making an unlawful practice the interference with an employee's rights to be reasonably accommodated, to transfer to less strenuous or hazardous positions or to take pregnancy disability leave, codified existing law.<sup>24</sup> Thus, this 2011 legislation did not add any adverse impact on small businesses or create any additional costs to employers of any size.

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.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The Commission estimates that the total statewide costs that businesses may incur to comply with these amended regulations over a three year period would be **\$10,897,306**. The proposed regulations clarify sections 12926, 12940, 12943 and 12945 and impose no further costs. The Commission arrived at this figure with the following calculations, assumptions and estimates:

According to labor data obtained from the Employment Development Department, there are approximately 4,357,182 women between the ages of 16 and 44 that are employed in California.<sup>25</sup> General fertility rates for this population are 65.5 per thousand.<sup>26</sup> Approximately

<sup>22</sup> **Exhibit 13:** University of California Newsroom article, April 4, 2006: Few Women Take Pregnancy Leave in California. Study Finds.

<sup>23</sup> **Exhibit 11:** Stats. 2011, c. 678 (A.B. 592, § 1.5).

<sup>24</sup> **Exhibit 11:** *Id.* at § 3.

<sup>25</sup> **Exhibit 14:** "Sex By Age By Employment Status for the Population 16 Years and Over," Universe: Population 16 years and older, Data Set Census 2000 Summary File 4 (SF 4) — Sample Data (2000) available at <http://www.calmis.ca.gov/FILE/Census2000/LFbySexbyAge.xls>. [Cutting and pasting the url address above will provide the Excel table with the cited data.]

<sup>26</sup> **Exhibit 15.** California Department of Public Health TABLE 2-2. General Fertility Rates, Total Fertility Rates, and Birth Rates by Age and Race/Ethnic Group of Mother, California, 2005-2009.

285,395 (4,357,182 x .0655) of these women are expected to become pregnant in any given year with 52% of those women, or 148,405 (285,395 x 52%) continuing to work until they deliver.<sup>27</sup>

**Cost of average pregnancy reasonable accommodation: \$527**

Department of Public Health statistics indicate that the average number of prenatal visits is 9-12 visits.<sup>28</sup> It is assumed that each prenatal care visit would require 1-2 hours of leave time from work, which would result in an impact of 24 hours per pregnant employee receiving prenatal care that an employer would have to cover for while the pregnant employee is absent or accept reduced productivity due to the absence. According to a National Institute of Health study,<sup>29</sup> 83.6% or 124,067 (148,405 x 83.6%) women in California receive prenatal care.

According to the latest EDD Quarterly Wage Information report,<sup>30</sup> the average monthly wage for females in California for the three quarters leading up to, and including, the third quarter of 2010 was \$3,510.75. Assuming this compensation rate, the average impact to employers for employees receiving prenatal care is approximately \$527 per pregnant employee. ( $\$3,510.75 \div 4 \text{ weeks} \div 40 \text{ hours} \times 24 \text{ hours} = \$526.61$ , rounding up to \$527.)

A study conducted by University of California Berkeley researchers<sup>31</sup> reveals that one in three California women take advantage of pregnancy benefits prior to delivery. ( $124,067 \div 3 = 41,356$ ). The overall cost to California businesses to accommodate pregnant employees is estimated to be approximately \$21,794,612 annually. ( $\$527 \times 41,356$ .)

<sup>27</sup> **Exhibit 16:** Guendelman, Pearl, Graham, Angulo and Kharrazi, "Utilization of Pay-in Antenatal Leave Among Working Women in Southern California," *Maternal and Child Health Journal*, Vol. 10, No. 1, January 2006, p. 63, 66. Abstract of Utilization of Pay-in Antenatal Leave Among Working Women in Southern California: full article unavailable online without paying subscription.

<sup>28</sup> **Exhibit 17:** California Department of Public Health, Table 2-9. Number and Percent of Live Births by Number of Prenatal Visits and Race/Ethnic Group of Mother, California, 2006.

<sup>29</sup> **Exhibit 18:** Rittenhouse, Marchi, Braveman, "Improvements in Prenatal Care Utilization and Insurance Coverage in California: An Unsung Public Health Victory?" ABSTR ACAD HEALTH SERV RES HEALTH POLICY MEET. 2002; 19: 23. Family and Community Medicine & Institute for Health Policy Studies, University of California, San Francisco.

<sup>30</sup> **Exhibit 19:** LEHD State of California County Reports — Quarterly Workforce Indicators, Third Quarter, 2010, Age Group 14-99, Gender, Female, available at <http://www.labormarketinfo.edd.ca.gov/?pageid=127>. No more current data is available.

<sup>31</sup> **Exhibit 13:** University of California Newsroom article, April 4, 2006: Few Women Take Pregnancy Leave in California. Study Finds.

Assuming that approximately 50% of employers are already providing reasonable accommodations to pregnant employees and that half of the accommodations would result in employers allowing flexible scheduling to accommodate the increased time off,<sup>32</sup> the net impact to state employers would be approximately \$10,897,306 (1/2 of \$21,794,612). Spread across the approximately 384,398 businesses that employ 5 or more employees in California within child bearing age, this estimate would result in an impact of \$28.35 for each business. (\$10,897,306 ÷ 384,398.)

Legislative analysis of A.B. 1670 (the bill requiring “employers to provide reasonable and measured accommodations to pregnant employees”) indicates that the Legislature “intended to permit employers to allow pregnant employees to remain in their current positions for longer time periods without the need for transfer, while assuring that less costly and disruptive steps (such as simply permitting more frequent restroom breaks or rest periods) are taken for pregnant employees who do not want or need to be transferred from their current positions.”<sup>33</sup> Therefore, the Legislature’s understanding was that the cost of most accommodations provided for by the statute would be de minimus.<sup>34</sup>

The Legislature’s assumption that minor accommodations for employees affected by pregnancy or related medical conditions short of transfer or leave would be of no or little cost to employees is consistent with research conducted by the Department of Labor, Office of Disability Policy Job Accommodation Network (JAN) about the types of accommodations needed for a broad spectrum of disabled employees in the work place.<sup>35</sup> A JAN 2008–2009 survey of 559 employers found that 56% of all job accommodations for persons with disabilities resulted in no cost to the employer.<sup>36</sup>

In general, pregnancy accommodation can be expected to be less costly than average disability accommodations because no special equipment is usually needed to accommodate a pregnant woman and the accommodation is needed for a short, finite period of time. The Commission’s proposed pregnancy regulations amendments follow legislative changes to permit employers to implement minor accommodations that are less costly than transferring an employee or requir-

ing an employee to take a pregnancy disability leave: seven of the eight accommodations required by the proposed regulation will impose no additional cost on employers, as noted in the Commission’s Form 399, Fiscal Impact Statement.

**Initial cost for California employers to provide reasonable accommodations for 47,491 affected employees \$10,897,306 or \$0–\$527 per employer.**

**Cost over three years to provide reasonable accommodation \$10,897,306**

The Commission estimated an initial cost for California employers by multiplying \$527 (the approximate cost for an individual employer whose employee takes 9–12 prenatal visits) by 41,356 (the number of women taking prenatal visits in any given year) to reach \$21,794,612 divided by two because the Commission assumed that half of California employers were already providing reasonable accommodations to employers and half of the accommodations would result in employers allowing flexible scheduling to accommodate the increased time off. The Commission assumed that a fertile employee would be pregnant once in three years, so that the cost over three years would not exceed the initial estimate.

The proposed regulations do not impose any additional costs beyond the statute.

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.

Significant effect on housing costs: None.

*Small Business Determination*

The Commission has determined that the proposed regulations will affect all businesses with five or more employees, including, potentially, 333,179 businesses with 5 to 50 employees.<sup>37</sup>

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

To summarize, the Commission’s economic impact assessment has determined that the average cost to an employer to comply with these regulations to be \$527, the initial and three year costs to 47,491 employers to

<sup>32</sup> **Exhibit 20:** Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact”, p. 2, last updated September 1, 2011.

<sup>33</sup> **Exhibit 2:** Assembly Committee on the Judiciary, May 11, 1999 hearing, analysis prepared by Drew Liebert, Assembly Judiciary Committee, page 11.

<sup>34</sup> **Exhibit 2, Ibid.**

<sup>35</sup> **Exhibit 20:** Source: Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact,” p. 3, last updated September 1, 2011 and available at <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>.

<sup>36</sup> **Exhibit 20, Id.** at p. 4.

<sup>37</sup> **Exhibit 21:** Employment Development Department, Labor Market Information Division, Table 3A, Number of Businesses, Number of Employees, and Third Quarter Payroll by Size of Business, State of California, Third Quarter, 2010 available at <http://www.calmis.ca.gov/file/indsize/2010sfcoru.xls> [to download Excel spreadsheet]. Businesses with 5 or more employees were added to reach 384,398. Of this total, 86.6% were employers with 5–50 employees. More current data is not available.

comply with these regulations will be \$10,897,306. The benefits of these regulations, as set forth in detail below, will be increased clarity in the application of reasonable accommodation, transfer and pregnancy disability leaves; employment discrimination protections for applicants and employees who are pregnant or perceived to be pregnant, and efficiency for businesses in planning and utilizing their resources as applicants and employees utilize pregnancy-related protections under the California Fair Employment and Housing Act.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission, for each revision, must determine that no reasonable alternative it considered 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 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 than the proposal described in this Notice.

The Commission has discussed alternatives it considered, and why it chose the proposed revisions it selected, in its Initial Statement of Reasons.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

In considering alternatives, the Commission has opted to conform, wherever possible and consistent with legislative intent in the Fair Employment and Housing Act, with provisions covering comparable provisions in the California Family Rights Act (CFRA), Government Code sections 12945.1 and 12945.2 and the federal Family and Medical Rights Act (FMLA), Pub. Law 103-3; 29 U.S.C. § 2601 et seq.

### BENEFITS OF PROPOSED REGULATIONS

As required by Government Code section 11346.5, subdivision (a)(3)(C), the Commission has determined the following specific benefits from these proposed regulations, including nonmonetary benefits preventing discrimination on the basis of pregnancy, childbirth or related medical conditions:

**1. Benefits to employers and employees interpreting A.B. 1670, requiring employers to reasonably accommodate pregnant employees.**

The Job Accommodation Network survey of employers who have provided reasonable accommoda-

tions to employees with disabilities lists a variety of benefits derived from the accommodations.<sup>38</sup> The benefits included retention of a valued employee, elimination of the costs associated with training a new employee, an increase in the accommodated employee's attendance, a savings in workers' compensation or other insurance costs, increased diversity of the company, improved interactions with co-workers, increased overall company productivity, improved interactions with customers, increased workplace safety, increased overall company attendance, increased profitability, and an increased customer base.<sup>39</sup>

Perhaps the most striking benefits are the retention of valued employees and the elimination of costs associated with training a new employee. In a study of turnover costs in call centers, Hillmer, Hillmer, and McRoberts found that the vacancy of one employee costs "nearly as much as [the employee's] yearly salary."<sup>40</sup> This figure is echoed by the U.S. Chamber of Commerce's Institute for a Competitive Workforce, which reports that every worker who leaves her position costs her employer anywhere from \$3,000 to \$57,000, depending on the position.<sup>41</sup> The U.S. Census Bureau reports that women, who are allowed to sit during the day, have easy access to rest facilities and more flexible schedules are generally able to work longer into pregnancy than other women.<sup>42</sup> Therefore, accommodation of a pregnant employee which allows her to keep her job for the duration of her pregnancy (and after) will save businesses a great deal in turnover costs.

In addition to reduced turnover costs, accommodating pregnant employees will reduce pregnancy complications that could lead to high medical costs. The National Business Group on Health (NBGH) reports generally that good prenatal care and practices such as reducing stress and providing nutrition counseling for pregnant women save businesses money by reducing the risk of complications that result in decreased pro-

<sup>38</sup> **Exhibit 20.** Job Accommodation Network, "Workplace Accommodations: Low Cost, High Impact," pp.3-5, last updated September 1, 2011 and available at <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>.

<sup>39</sup> *Id.* at p. 5.

<sup>40</sup> **Exhibit 22.** Hillmer, Hillmer, and McRoberts, (2004) "The Real Costs of Turnover: Lessons from a Call Center," *Human Resource Planning*, Vol. 27 Issue 3, p. 34.

<sup>41</sup> **Exhibit 23.** U.S. Chamber of Commerce, Institute for a Competitive Workforce, (2007) "Recruitment and Retention of the Frontline and Hourly Wage Worker: A Business Perspective." p. 2 available at <http://www.uschamber.com/sites/default/files/reports/frontlinehourlywagepaper.pdf> (last visited October 31, 2011).

<sup>42</sup> **Exhibit 24.** U.S. Census Bureau, (2005) "Maternity Leave and Employment Patterns of First Time Mothers," p. 6, available at <http://www.census.gov/prod/2005pubs/p70-103.pdf> (last visited December 2, 2009).

ductivity and absenteeism.<sup>43</sup> The NBGH reports that “[t]he average cost to employers of lost productivity related to each premature birth is \$2,766 per employee.”<sup>44</sup> Caring for pregnant women will also reduce medical costs for employers who provide health insurance.<sup>45</sup> For example, caesarian delivery is approximately \$3,000 more expensive than a vaginal birth, and a baby born at a low birth weight costs approximately \$150,000 more than a baby born at a normal birth weight.<sup>46</sup> Therefore, employers who provide health insurance will benefit from the required accommodations by lowering their health care costs.

While employers will greatly benefit from this regulation, pregnant employees will also greatly benefit. With minimal accommodations, the employee will be able to work longer, and therefore be better able to offset the costs of pregnancy and childbirth. In addition, the pregnant employee, retaining her job, will retain her medical benefits, and avoid medical complications to her pregnancy. This regulation recognizes that the well being of the pregnant employee and the well being of the employer are intertwined; the reasonable accommodation for pregnancy prevents harm to the employee while keeping the employer’s costs low.

In addition to the benefits experienced by the pregnant employees and the employers, the State will benefit from this regulation. Should the failure of the State to accommodate a pregnant State employee result in the employee’s loss of her job, the State would be required to pay unemployment insurance. The minimal accommodations provided for in the regulation may prevent an employee from losing her job and ending up taking unemployment insurance or welfare if she is unable to find other employment.

The total statewide benefits to these amendments are difficult to quantify precisely because of the breadth of the regulations’ coverage, but the benefits will be felt by employers, employees, and the state. Employers will benefit through the elimination of the costs of training a new employee, lower medical costs if they provide insurance coverage, and increased employee morale. Employees will benefit through the ability to work longer into their pregnancy, thereby retaining a paycheck and benefits. The State will benefit because pregnant employees will not be forced to turn to the state for unem-

ployment compensation or other medical benefits if the State is the employer.

**2. Benefits to employers and employees interpreting A.B. 2870, eliminating small employers’ exceptions for pregnancy.**

These proposed regulations clarify existing law enacted by **A.B. 2870**.

**a. Clarification of Leave Requirements for Non-Title VII Employers: Proposed Amended § 7291.9.**

The current regulation<sup>47</sup> is confusing to employers because it seemed to provide that non-Title VII employers were not required to give their pregnant employees the full four months of leave if the employee required it.<sup>48</sup> The Commission has always interpreted the current regulation in a manner that is consistent with the proposed change by providing that women who needed longer leave for health reasons received the longer leave.<sup>49</sup> Therefore, the proposed regulation clarifies existing law without imposing any new requirements on non-Title VII employers.

**b. Removing the Exemption for Non-Title VII Employers to Cover Pregnancy Under Their Insurance Policies: Proposed Amended § 7291.6.**

Removing this exemption brings the regulation into conformity with the statute and therefore protects the employer against litigation. Indeed, when the Legislature passed the amendment initially, it was apprised of the Commission’s interpretation that failing to provide pregnancy benefits when health coverage is offered to male employees is sex discrimination in the terms and conditions of employment.<sup>50</sup>

**c. Ensuring that Employers Include Pregnant Employees in Trainings: Proposed Amended § 7291.6.**

Requiring that employers include their pregnant employees in trainings will benefit employers by ensuring that all of their employees are fully trained, and will benefit the pregnant employees by ensuring that their decision to have a family does not unnecessarily put them at a disadvantage in their professional life.

The total statewide benefits of these amendments eliminating small employer exemptions are difficult to quantify precisely, but employers will benefit from the removal of inconsistencies in the regulatory and statutory schemes; clarity and consistency in the regulations and the statute may help employers avoid litigation. Moreover, employees will benefit by having the full leave, the job training, and the health coverage to which

<sup>43</sup> **Exhibit 25.** National Business Group on Health, “Healthy Pregnancy and Healthy Children: Opportunities and Challenges for Employers: The Business Case for Promoting Healthy Pregnancy,” pp. 10–13 available at [http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/4\\_businesscase-pregnancy.pdf](http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/4_businesscase-pregnancy.pdf) (last visited February 17, 2012).

<sup>44</sup> *Id.* at p. 11.

<sup>45</sup> *Id.* at pp. 10–13.

<sup>46</sup> *Id.* at p. 4.

<sup>47</sup> Current Cal. Code Regs, tit. 2, §7291.11, subd. (b).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> **Exhibit 7: Assembly Committee on Labor and Employment, April 21, 2004 hearing, A.B. 2870 analysis prepared by Ben Ebink, Labor & Employment Committee, page 4.**

they are entitled under FEHA reflected in the regulations.

**3. Benefits to employers and employees interpreting S.B. 299, requiring employers to continue group health plan coverage to employees taking pregnancy disability leaves.**

These proposed regulations clarify existing law enacted by **S.B. 299**. Providing continuing health care benefits during pregnancy, and including during a pregnancy disability leave increases the likelihood of employees returning to full productivity following birth and reduces excess medical costs associated with pregnancy, postpartum and neonatal care. Health care benefits throughout pregnancy, childbirth and recovery from childbirth also can increase beneficiary utilization of preventative, prenatal and postpartum care, decreasing the chances for premature delivery, complications in childbirth and postnatal difficulties.<sup>51</sup>

**4. Benefits to employers and employees interpreting A.B. 592, making it an unlawful practice for an employer to interfere with an employee’s rights to be reasonably accommodated, transfer or take pregnancy disability leave because of pregnancy.**

This amendment provides the benefit of clarifying for employers and employees that employees who are denied the pregnancy-related benefits of reasonable accommodation, transfer to a less strenuous or hazardous condition or pregnancy disability leave will have a cause of action for interfering with an employee’s right to take pregnancy disability leave. The author and all analysts of this bill have stated that **A.B. 592** codifies existing law.

EVALUATION OF WHETHER THESE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

As required by Government Code section 11346.5, subdivision (a)(3)(D), the Commission has made an evaluation of whether the proposed pregnancy regulations are inconsistent or incompatible with existing state regulations covering sex discrimination and harassment (Cal. Code Regs., tit. 2, §§ 7287.6, 7288.0, 7290.6–7291.1) and to the regulations interpreting the California Family Rights Act (CFRA) (Gov. Code

§§ 12945.1 & 12945.2) (Cal. Code Regs., tit. 2, § 7297.0, et seq.). As a result, the Commission:

- Included a definition and reference to CFRA at 7291.2(c) because eligible employees may use CFRA leave to bond with a newborn.
- Conformed its definition of a “health care provider” in both these pregnancy regulations (§ 7291.2(m)) and in its proposed, revised disability regulations (§ 7293.6(h)).
- Gave a definition of “Intermittent Leave,” at § 7291.2(n) to be consistent as the term is used in the CFRA regulations at § 7297.3(c)(2) and (e)(1)–(e)(2).
- Conformed the definition of “reasonable accommodation” for pregnancy to that used in the FEHA for disability, at Government Code section 12926, subdivision (o), while at the same time distinguishing the pregnancy definition of “reasonable accommodation” not to include an assessment of undue hardship provided for disability reasonable accommodation at Government Code section 12926, subdivision (t), because of legislative intent in AB 1670 that pregnancy reasonable accommodations are de minimus.
- Provided that FEHA’s harassment provisions cover harassment on the basis of pregnancy (§ 7291.3).
- Distinguished that unlike CFRA, there are no eligibility requirements for an employee to take pregnancy disability leave (§ 7291.4).
- Made medical certifications discretionary (§ 7291.7(c)) for internal consistency with medical certification requirements for reasonable accommodation for a disability (proposed §7294.1(d)(5)) or to take a California Family Rights Act leave (Cal. Code Regs., tit. 2, § 7297.4(b)).
- Added the requirement that the employer affirmatively notify the employee of job openings at § 7291.10(c)(2)(A) to be consistent with a similar requirement under the proposed disability regulations (proposed § 7293.9(d)(4)).
- The Commission added a provision when an employee is laid off to track comparable language under the CFRA regulations at Cal. Code Regs., tit. 2, § 7297.2, subd. (c)(1)(A).
- Cross-referenced how pregnancy disability leave and CFRA leave interact. (§7291.13).
- Added a section distinguishing pregnancy disability leave from a reasonable accommodation leave for a disability (§ 7291.14).

<sup>51</sup> **Exhibit 25.** National Business Group on Health, “Healthy Pregnancy and Healthy Children: Opportunities and Challenges for Employers: The Business Case for Promoting Healthy Pregnancy,” pp. 10–13 available at [http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/4\\_businesscasepregnancy.pdf](http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/4_businesscasepregnancy.pdf) (last visited February 17, 2012).

- Added a provision stating that “direct notice” to the employer from the employee rather than from a third party regarding the employee’s need for reasonable accommodation, transfer, or pregnancy disability leave is preferred (§ 7291.17(a)(7)), but not required which conforms to comparable provisions in the disability regulations (proposed § 7294.1(d)(4)).

**CONTACT PERSON**

Inquiries concerning the proposed administrative action may be directed to:

Ann M. Noel  
Executive and Legal Affairs Secretary, or  
Caroline L. Hunt, Administrative Law Judge  
Fair Employment and Housing Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102  
Telephone: (415) 557-2325  
Facsimile: (415) 557-0855  
[regs@fehcc.ca.gov](mailto:regs@fehcc.ca.gov)

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

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

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies may be obtained by contacting Ann M. Noel at the address or phone number listed above, or by downloading copies from the Commission’s website at [www.fehcc.ca.gov](http://www.fehcc.ca.gov).

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

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

tions as revised. Please send requests for copies of any modified regulations to the attention of Ann M. Noel at the address indicated above. The modified text will also be available on the Commission’s website at [www.fehcc.ca.gov](http://www.fehcc.ca.gov). The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Noel at the above address or on the Commission’s website at [www.fehcc.ca.gov](http://www.fehcc.ca.gov).

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

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

**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

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

**CONFLICT-OF-INTEREST CODES AMENDMENT**

STATE: Department of Transportation  
MULTI-COUNTY: Marin/Sonoma Mosquito and Vector Control District  
Kings River Conservation District  
Consolidated Irrigation District

**ADOPTION**

MULTI-COUNTY: Desert Sands Public Charter, Inc.

A written comment period has been established commencing on March 2, 2012, and closing on April 16, 2012. Written comments should be directed to the Fair Political Practices Commission, Attention Cynthia Fisher, 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 16, 2012. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### COST TO LOCAL AGENCIES

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

#### EFFECT ON HOUSING COSTS AND BUSINESSES

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

#### AUTHORITY

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

#### REFERENCE

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

#### CONTACT

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

### TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning March 2, 2012 and ending at 5 p.m. April 16, 2012. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407 and 27531, Food and Agricultural Code, and to implement, interpret or make specific sections 27521, 27541, 27631, and 27644, of said Code, the Department proposes to amend sections 1351 and 1358.4 and adopt section 1352.4 of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations, as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

The Department of Food and Agriculture (Department) proposes to amend sections 1351 and 1358.4, and adopt new section 1352.4 of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations (CCR) for the purpose of clarifying uniform procedures for the regrading and repacking of shell eggs by California registered egg handlers, which include specifically as it pertains to this proposal, processing plants, producers, and wholesalers, and approved by the California Shell Egg Advisory Committee (SEAC) at its February 28, 2011 committee meeting.

Existing law, section 27531 of the Food and Agricultural Code (FAC), authorizes the Department to adopt regulations pertaining to the preparation for market and marketing of shell eggs. Specifically, as it pertains to this proposal, section 27531 authorizes the establishment of requirements for the packing and marking of eggs for retail sales, and for the collection and maintenance of data pertaining to egg production and processing.

Existing law, section 27571 of the FAC, authorizes the Department to establish an advisory committee to assist the Secretary in the administration of all matters pertaining to standards for shell eggs including egg quality and sampling, inspection, fee adjustment for administering and enforcement purposes, budget administration, regulation adoption, and voluntary food safety programs (FAC section 27573). Members of the California SEAC are appointed by and may hold office at the pleasure of the Secretary.

In compliance with sections 27531 and 27573, the Department proposes to amend section 1351 (Definitions — General Terms) to update the general terms and definitions used within the subchapter; to amend section 1358.4 (Records/Invoices) to specify recordkeeping requirements for entities regrading eggs; and to adopt section 1352.4 (Regraded and Repacked Eggs) to clarify procedures used by processing plants when regrading previously processed eggs, producers and wholesalers when repacking eggs, and egg handlers acting as a retailer when replacing eggs. The Department believes this proposal would benefit California's

shell egg industry, and would also benefit the public health and safety of California and national consumers purchasing eggs marketed by California processing plants, producers, and wholesalers. As a result, common and widely acceptable industry practices will be uniformly implemented throughout the State, and no longer be subject to interpretation. These uniform and prescribed procedures will help to ensure a consistent representation of eggs of the highest quality and marketing practices, and additionally include mechanisms for disease traceability in the event of a food borne illness outbreak.

Based on an initial evaluation, the Department does not believe that the proposed regulations are inconsistent or incompatible with existing state or federal 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: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact: The Department of Food and Agriculture has made an initial determination that the proposed regulatory action will not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that the proposed regulation does not impose new requirements on California registered egg handlers, including producers, processors, and wholesalers; rather it clarifies the practices and processes required should these entities choose to engage in the practice of regrading and repacking shell eggs. The anticipated compliance requirements are as follows:

- **Records/Invoices:** Egg handlers registered with the Department are required to keep certain records or invoices as specified in existing regulation section 1358.4. This proposal expands upon that requirement by adding that if egg handlers regrade eggs, they shall maintain records of the original plant where the eggs were first processed for not less than one year from the date of original processing. The Department believes this requirement does not adversely affect businesses or small businesses engaged in marketing eggs in California. The Department

believes the one-year requirement is necessary and is reasonable as any needed investigation into a food borne illness outbreak would require inquiry into records up to, but no longer than, the period of one year. This requirement is not anticipated to incur increased costs to businesses as record keeping is a standard business practice for persons marketing eggs in California. The maintenance of records will assist the Department in ensuring only safe and wholesome products are marketed in California.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Representative Private Persons or Businesses: The Department of Food and Agriculture is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.

This proposal does not impose new requirements on California registered egg handlers, including producers, processors, and wholesalers; rather it clarifies the practices and processes required should these entities choose to engage in the practice of regrading and repacking shell eggs. The anticipated compliance requirements are as follows:

- Records/Invoices: Egg handlers registered with the Department are required to keep certain records or invoices as specified in existing regulation section 1358.4. This proposal expands upon that requirement by adding that if egg handlers regrade eggs, they shall maintain records of the original plant where the eggs were first processed for not less than one year from the date of original processing. The Department believes this requirement does not adversely affect businesses or small businesses engaged in marketing eggs in California. The Department believes the one-year requirement is necessary and is reasonable as any needed investigation into a food borne illness outbreak would require inquiry into records up to, but no longer than, the period of one year. This requirement is not anticipated to incur increased costs to businesses as record keeping is a standard business practice for persons marketing eggs in California. The maintenance of records will assist the Department in ensuring only safe and wholesome products are marketed in California.

In making these determinations the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the

public to submit such proposals during the written comment period. Submissions may include the following considerations:

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

Effect on Housing Costs: None.

### ECONOMIC IMPACT ANALYSIS

The Department of Food and Agriculture (Department) has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not impose new requirements on shell egg processing plants, producers, and wholesalers; rather, it proposes to clarify the processes and procedures for repacking and replacing eggs should these entities choose to engage in those practices.

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

Small Businesses: The Department's proposal may affect small businesses; however the Department does not have nor does it maintain data to determine if any of its registered egg handlers (shell egg processing plants, producers and wholesalers) are "small businesses" as defined in Government Code Section 11342.610.

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

Occupations/Businesses Impacted: The Department has made an initial determination that this regulatory proposal will impact shell egg processing plants, producers, and wholesalers should they choose to engage in the practices of repacking and regrading eggs. As of

January 1, 2012, the Department had approximately 1,151 registered egg handlers consisting of 10 processing plants only, 608 both processing plants and producers, 202 wholesalers only, and 331 producers only that would not be affected by this proposal (producers do not (re)grade or process eggs.)

Business Reporting Requirement: The regulation does not require a report, which shall apply to businesses.

Comparable Federal Regulations: The United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS) administers a voluntary egg-quality grading program (9 CFR Part 56) for shell eggs paid for by processing plants. Cartons from these plants bear the USDA shield and grade mark on the carton which means that the eggs were graded for quality and checked for weight (size) under the supervision of a trained USDA grader and that the plant processing the eggs followed USDA's sanitation and good manufacturing processes. The voluntary grading program also establishes a basis for quality and price relationship and enables more orderly marketing. Consumers can purchase officially graded product with the confidence of receiving quality in accordance with the official identification. The USDA/AMS prohibits the repackaging of eggs packed under this voluntary grading program.

The Department monitors compliance with official U.S. standards, grades, and weight classes by California egg packers who do not use the USDA/AMS shell egg grading service pursuant to Food and Agricultural Code section 27532. Egg cartons from these plants will bear a grade mark however without the USDA shield.

Benefits: The purpose of the proposed regulatory changes will benefit the public and industry to ensure that shell egg processing plants, producers, and wholesalers registered with the Department as egg handlers who choose to regrade and repack eggs, do so in a uniform and prescribed manner to ensure consistent representation of eggs of the highest quality and marketing practices. Additionally, the regulatory changes include mechanisms for disease traceability that are critical to solving and ceasing food borne illness events which will protect the health and welfare of the public.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations:

- Minutes from the Department's Shell Egg Advisory Committee Meeting, February 28, 2011, Anaheim, CA
- Office of Legislative Counsel, Retail Egg Sales — # 20795
- STD. 399 w/attached Economic Impact Assessment for the Repacking and Regrading of Eggs

## CONSIDERATION OF ALTERNATIVES

The Department of Food and Agriculture must determine that no reasonable alternative considered or that has otherwise been identified and brought the attention of the Department 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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

## INITIAL STATEMENT OF REASONS AND INFORMATION

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

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained by contacting the persons named below or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

## 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 persons named below.

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

## CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations, or any written comments concerning this proposal are to be addressed to the following:

Tony Herrera, Program Supervisor  
 Egg Safety and Quality Management  
 Department of Food and Agriculture  
 Meat, Poultry, and Egg Safety Branch  
Mailing: 1220 N Street  
 Sacramento, CA 95814  
 (916) 900-5060  
E-mail: tony.herrera@cdfa.ca.gov

Comments must be submitted prior to 5:00 p.m. on April 16, 2012.

**INFORMATIVE DIGEST/POLICY STATEMENT  
 OVERVIEW**

The backup contact person is:

Thamarah Rodgers, Associate Analyst  
 Department of Food and Agriculture  
 Animal Health and Food Safety Services  
Mailing: 1220 N Street  
 Sacramento, CA 95814  
 (916) 698-3276  
E-mail: thamarah.rodgers@cdfa.ca.gov

The California Oil Substitution Act was enacted in 1931 (Stats 1931, Chapter 609). The provisions of that legislation are found in the Business and Professions Code (BPC), Division 5, Chapters 14, 14.5 and 15. The California Legislature determined that an act to prevent fraud or misrepresentation in the distribution and sale of gasoline and other motor fuels, distillate, kerosene and lubricating oil; regulating the distribution and sale of those products; regulating the advertising of gasoline or other motor vehicle fuels; and prescribing specifications for products sold or offered for sale was necessary for the safety of motorists within California. The Department's Division of Measurement Standards (Division) Petroleum Products Program (Program) was given the responsibility for establishing and enforcing the quality standards for gasoline, diesel fuel, alternative engine fuels, motor oil, gear oil, kerosene, brake fluid, automotive transmission fluid, and engine coolants sold in California. Products, produced and offered for sale, are sampled and tested in the Program's laboratories to verify that they meet the established quality, performance and driveability standards established in state law as well as advertising and labeling of products. For the last 80 years, the Program has overseen the quality of the petroleum and automotive products sold in California.

Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>

**TITLE 4. DEPARTMENT OF FOOD  
 AND AGRICULTURE**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 8, Motor Oil Fee.

The Department proposes to amend regulations contained in Title 4, Division 9, Chapter 8, to increase the motor oil assessment fee to \$0.04 per gallon and to modify the reporting, refund, and recordkeeping requirements for motor oil dealers.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95827. Comments may also be submitted to Kevin Batchelor, Branch Chief Enforcement Branch, by facsimile (FAX) at (916) 229-3026 or by e-mail at [DMS@cdfa.ca.gov](mailto:DMS@cdfa.ca.gov).

The Program has continually made an effort to keep costs to a minimum and obtain the greatest benefit for each dollar spent. In 1979, legislation was enacted that replaced the Motor Fuel Pump License funding for the Program with a fee assessed on each gallon of motor oil manufactured or imported into California. This system of funding was developed through a cooperative effort on the part of the motor oil industry. The maximum fee was set at two cents (\$0.02) per gallon with the provision that the Department could, by regulation, establish a lower rate when the funds collected were more than necessary for the administration and enforcement of Chapters 14 and 15 of Division 5 of the Business and Professions Code. The fee was initially set at \$0.014 per gallon and in 1996 the fee was increased to its maximum of \$0.02 per gallon. No General Fund monies have been allocated to the Program.

Even though the number of vehicles in operation in California has increased over the last ten years, the consumption of motor oil has remained constant due to smaller engines requiring fewer quarts of oil and extended oil change intervals.

Additional tasks have been delegated to the Program under the provisions of Chapters 14 and 14.5 without additional funding, that coupled with inflation have accelerated the depletion of the Program’s funds, i.e.

- Legislation passed in 1999 put in place the Provision for Air, Water and Pressure Gauges for service stations and required the Program to monitor and enforce. Originally the legislature provided general funds to enforce this program function, but these funds were removed during budget reductions in 2001. (BPC Section 13651)
- In 2002 the Program was tasked with oversight of the Developmental Engine Fuels Variance Program. (BPC Section 13405)

Thus, revenue has been unable to keep up with program costs.

Effective January 1, 2010 the fee cap was increased to \$0.05 per gallon and was immediately established at \$0.03 per gallon by legislation. The legislation allows the Department to amend the current regulations to re-establish the motor oil assessment fee amount (Stats 2010, Chapter 260). That \$0.01 increase partially mitigated the revenue shortfall but is not sufficient to maintain the Program.

The Department proposes to establish that fee at \$0.04 per gallon to maintain the current level of oversight and enforcement of the law and to provide for replacement of laboratory equipment that is outdated and for which parts are no longer available. Additionally, the Department is proposing to clarify and make more specific the reporting on Form 41–054 (Rev. 06/30/12), refund procedure, and recordkeeping requirements. The motor oil fee increase and other clarifications will allow the Program to continue its mandated responsibilities to verify the quality of petroleum and automotive products being sold to the motoring public and prevent fraudulent or misleading advertising of these products in the marketplace.

There is no comparable federal regulation or statute that regulates the quality, advertising or labeling of petroleum and automotive products necessary for the operation of a motor vehicle. The Department has determined that this proposal is not inconsistent or incompatible with existing state regulations.

## SECTIONS AMENDED

### Chapter 8

**The current Section 4300 is repealed and replaced with the following new Section 4300:**

**4300. Definition of “Motor Oil” and Other Terms for Purposes of Fee Responsibility.**

This section defines the terms “Motor Oil”, “Additive”, “Internal Combustion Engine”, “Motor Oil Deal-

er Permit Number”, “Date of Sale”, “Motor Oil Dealer”, “Quarter”, and “Export or Exported”.

**The current Section 4302 is repealed and replaced with the following new Section 4302:**

**4302. Fee Responsibility and Exemption.**

This section identifies who is responsible for payment of the motor oil fees, conditions under which a Motor Oil Dealer is to notify the Department upon ceasing operations dealing with motor oil and exemptions from payment of the motor oil fee.

**The current Section 4304 is repealed and replaced with the following new Section 4304:**

**4304. Fees and Returns.**

This section establishes the motor oil fee amount, payment schedule, due dates, payment return information requirements and provisions for annual payment for small volume sales or purchases of motor oil.

**New Section 4305 is established:**

**4305. Authority to Determine Compliance.**

This section clarifies the authority of the Department to audit, examine, review, inspect, or otherwise determine the compliance or noncompliance of any motor oil dealer.

**The current Section 4306 is repealed and replaced with the following new section 4306:**

**4306. Penalties.**

This section specifies the penalties for late or nonpayment of the motor oil fee at ten percent of the amount due. The one percent per month penalty for nonpayment beyond one year will be repealed.

**The current Section 4307 is repealed and replaced with the following new Section 4307:**

**4307. Refund of Fees Paid.**

This section clarifies the procedures for requesting a refund of motor oil fees paid on motor oil that was subsequently exported from California.

**The current Section 4308 is repealed and replaced with the following new Section 4308:**

**4308. Records.**

This section clarifies recordkeeping requirements for motor oil dealers.

**New Section 4309 is established:**

**4309. Motor Oil Fees Reimbursement.**

This section allows the motor oil dealers who have reported the motor oil fees to the Department to reimburse themselves from their customers. It also provides options to demonstrate that the motor oil was collected.

### COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that this proposal does not impose a mandate on local agencies or school districts.

The Department also has determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

**EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will not affect housing costs.

**SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT DIRECTLY  
AFFECTING BUSINESS**

The Department has made an initial determination that the proposal will have a statewide significant adverse economic impact affecting those businesses required to pay the Motor Oil Fee because the proposal raises the current fee by 33.3% (increasing from \$0.03 to \$0.04 per gallon).

The Department of Food and Agriculture has made an initial determination that the adoption and amendments of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department of Food and Agriculture has not considered proposed alternatives that would lessen any adverse economic impact on business and invites individuals to submit proposals. Submissions may include the following considerations.

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from regulatory requirements for businesses.

The Department has determined that businesses that first produce motor oil in California or first import motor oil into California would be affected by this regulatory proposal. This proposal will require businesses to report on a quarterly basis, on a form supplied by the Department, the gallons of motor oil produced or imported into California, multiplied by the motor oil fee and send the form along with the proper payment amount to the Department. The proposal also will re-

quire businesses requesting a refund of motor oil fees paid for motor oil transported outside of California, to submit to the Department the information specified in the regulation, i.e., a letter requesting the refund signed by the company owner, a ledger sheet tabulating purchases and exports, copies of invoices showing that the motor oil fee was paid, bills of lading or shipping documents showing the motor oil was shipped out of California. The proposal limits refunds to three years from the time of payment of the motor oil fee.

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

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

**RESULTS OF THE ECONOMIC  
IMPACT ASSESSMENT**

The Department has made an assessment that the proposed regulation will not: (1) create jobs within California; (2) create new businesses within California; or (3) affect the expansion of businesses currently doing business within California. The benefits of this regulation to the safety of California motorists are continued testing to ensure the quality of the products necessary to operate a motor vehicle, i.e., gasoline, diesel, motor oil, gear oil, automatic transmission fluid, engine coolant, and brake fluid, so that their vehicles will operate properly. It will also ensure the continued oversight of the advertising and labeling of these products.

**EFFECT ON SMALL BUSINESS**

The Department has made an assessment that the proposed regulations will not affect small business. The Department has determined that approximately 27% of the businesses that submit motor oil fee returns to it meet the proposed once-per-year reporting requirement for sales of 5,000 gallons per year or less. The effect would be a 75% reduction in reporting requirements by those businesses.

**BUSINESS REPORTING REQUIREMENT —  
FORMS; FINDING**

The Department is proposing to clarify and make more specific the reporting for the motor oil fee on Form 41-054 (Rev. 06/30/12), the refund procedure for return of motor oil fees paid on motor oil exported from California, and recordkeeping requirements for affected businesses.

The Department finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation which requires a report apply to businesses.

#### ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its the attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as 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.

Business and Professions Code, Division 5, Chapter 14, Article 4, Section 13432 states that the fees provided in Section 13431(\$0.05 per gallon) “are maximum fees and may be established at a lower rate by the director at any time the funds derived from such assessment are more than reasonably necessary to cover the cost of administration and enforcement of this chapter, including the maintenance of a reasonable reserve fund for such purposes.” Section 13433 directs the Department to “prescribe the frequency of payments of such assessments, the procedures for such payment, the procedures for refunds of payment, and penalties for late payment.” The Department must determine that this regulatory proposal is the only alternative effective for the purpose of carrying out those directives.

#### AUTHORITY

Pursuant to Business and Professions Code, Division 5, Sections 12027, 13431, 13432 and 13433.

#### REFERENCE

The Department proposes to amend the current regulations to implement, clarify and make specific the provisions of the Business and Professions Code, Sections 13430 through 13434.

#### CONTACT PERSON

Inquiries about the notice may be directed to Kevin Batchelor, Enforcement Branch, Branch Division of Measurement Standards at (916) 229-3050 or Kristin Macey, Director, Division of Measurement Standards at (916) 229-3000.

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

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons, and the proposed regulations in ~~strikeout~~ and underline form may be obtained upon request. The rulemaking file and all information on which the proposal is based are located at the Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department’s web site located at [www.cdfa.ca.gov/dms](http://www.cdfa.ca.gov/dms).

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differ from but are sufficiently related to the action proposed they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Kevin Batchelor, Enforcement Branch Chief, Division of Measurement Standards, at (916) 229-3050.

#### **TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

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

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

**PUBLIC MEETING:** On **April 19, 2012**, at 10:00 a.m. in the Council Chambers of the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from inter-

ested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **April 19, 2012**, following the Public Meeting, in the Council Chambers of the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

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

**BUSINESS**

**MEETING:** On **April 19, 2012**, following the Public Hearing, in the Council Chambers of the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

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

**DISABILITY ACCOMMODATION NOTICE**

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

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

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

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4

and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders, as indicated below, at its Public Hearing on **April 19, 2012**.

1. **TITLE 8:**     **GENERAL INDUSTRY SAFETY ORDERS**  
 Division 1, Chapter 4, Subchapter 7  
 Article 1, Section 3207  
 Article 20, Section 3558, and  
 Article 54, Section 4184  
**Guarding of Microtomes**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**     **GENERAL INDUSTRY SAFETY ORDERS**  
 Division 1, Chapter 4, Subchapter 7,  
 Article 1, Section 3207,  
 Article 20, Section 3558, and  
 Article 54, Section 4184  
**Guarding of Microtomes**

**INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

On August 19, 2010, the Occupational Safety and Health Standards Board (Board) granted Laboratory Corporation of America a variance from Title 8, GISO Section 4184, which contains standards addressing accidental contact with the hazardous point of operation of various types of machinery used for grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling mixing or similar processes. Microtomes use one or more of these mechanical actions to section off extremely thin slices of tissue for microscopy samples for observation under transmitted light or electron microscopy. Manual, semi and fully automatic models are manufactured. Manual and semi automatic models are operated by turning a handwheel located on the side of the machine, while automatic microtomes utilize an electric drive or a wheel to move the tissue block over a razor-sharp blade.

Accidental cuts to fingers and hands are not uncommon when using microtomes; however, these cuts are not reportable injuries. Amputation of fingertips, while rare, can occur. Generally microtome manufacturers do not provide point of operation guarding as required by Title 8, and there are no aftermarket point of operation guarding devices available. Microtomes are commonly found throughout the health care industry, academic institutions, research facilities and biological laboratory industry, to name a few, whenever tissue samples are

prepared for histological or pathological microscopic evaluation and observation. Given these circumstances, Board staff is initiating this rulemaking to address the need for reasonable and practical standards to protect workers from injuries related to the use of these machines. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at Subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirrors the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations, in that the federal regulations do not have specific provisions dealing with microtomes, but this difference is not significant for the following reason: the State’s general machine-guarding regulations are equivalent to the general Federal machine-guarding regulations, and in the Board’s variance proceeding identified as OSHSB File No. 09-V-140, provisions of the sort contained in the present proposal were held to provide a level of safety at least equivalent to the level of safety that would be achieved by adhering to those general provisions.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations are provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts.
- Is the least burdensome effective alternative. The issue of alternatives was encompassed in the variance proceeding identified as OSHSB File No. 09-V-140. Rather than generating sets of competing alternatives, that proceeding was synergistic and resulted in a set of variance conditions that may fairly be described as a consensus of the parties (the Board staff, the Division of Occupational Safety and Health and the Applicant, an employer whose business involves the use of microtomes). Those conditions are the basis of this proposal, the purpose of which

is to allow employers to use commercially-available microtomes without seeking variances and, at the same time, to ensure that the microtomes are used safely.

**Section 3207. Definitions.**

This section contains alphabetized definitions for terminology used in GISO standards. A definition for the term “microtome” is proposed and will clarify to the employer the application of the proposed microtome standards in Section 3558 of this rulemaking proposal and the proposed exception to Section 4184.

**Section 3558. Portable Power Driven Circular Saws (Class A). (Repealed).**

Section 3558 is proposed to be re-titled as “Microtomes (manual, semi-automatic and automatic).” It contains proposed microtome standards which address use, operation and maintenance in accordance with the manufacturer’s recommendations; a minimum clearance between any moving parts and the blade and the operator’s hands; the use of forceps or other tools (the proposal requires the use of forceps or tools to retrieve tissue sections) and the positioning of the foot pedal and guarding of the treadle to avoid inadvertent microtome activation. The proposal would require that adjustment, removal or replacement of microtome maintenance protocols comply with the control of hazardous energy requirements of GISO, Section 3314 and that only qualified employees, trained in accordance with the proposed requirements and Section 3203, Injury and Illness Prevention Program, requirements be permitted to operate a microtome.

The proposed amendments protect employees exposed to possible hand injury as a result of accidentally coming in contact with the microtome’s point of operation both during normal operation and whenever adjustment, replacement or maintenance activities are performed. These provisions were derived in part from conditions imposed in the Board’s variance decision regarding OSHSB File No. 09-V-140.

**Section 4184. Guarding Requirements.**

This section contains general requirements for the point-of-operation guarding of machinery covered by Title 8, Group 8 standards which exhibit various mechanical actions such as (but not limited to) grinding, shearing, punching, pressing, squeezing and cutting. This section requires such machinery to be guarded in one or a combination of the ways specified in the safety orders that follow or by other means or methods which will provide equivalent protection. This standard also states that any other type of machinery used in any industry or type of work not addressed by Group 8 standards shall also be guarded at the point of operation.

An amendment is proposed to provide an exception for microtomes when used in accordance with the re-

quirements of Section 3558 of the GISO. The proposed amendment will clarify to the employer that microtomes (defined in Section 3207), are excluded from the requirements set forth in Section 4184 so long as Section 3558 is followed.

COST ESTIMATES OF PROPOSED ACTION

**Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

**Impact on Housing Costs**

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

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

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal establishes standards for safe microtome use that are consistent with manufacturer’s recommendations and industry (end–user) practices, which, in turn, are consistent with Section 3203 Injury and Illness Prevention standards for employee training. Therefore, the Board believes the proposal will have insignificant, if any, adverse cost impact upon employer’s operations.

**Cost Impact on Private Persons or Businesses**

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

**Costs or Savings in Federal Funding to the State**

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

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

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

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

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

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do

not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

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

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

EFFECT ON SMALL BUSINESSES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed amendments may affect small businesses. However, no adverse economic impact is anticipated. The proposal would allow businesses, small or large, to use commercially–available microtomes without the necessity of obtaining a variance from general point–of–operation guarding requirements. For this same reason, the adoption of this proposal will promote the creation of jobs, the creation of new businesses and the expansion of existing businesses in California; it will be easier and less costly for employers who want to use microtomes to do so. In addition, this regulatory proposal will enhance the health and welfare of California residents and will promote worker safety at places of employment in California by requiring that safe practices be followed in the operation of microtomes in places of employment.

ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise

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

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

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

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than April 13, 2012. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on April 19, 2012, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

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

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

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

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

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

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

File# 2012-0111-04  
**AIR RESOURCES BOARD**  
 Section 100 Correction for Cap and Trade Program

This action makes changes without regulatory effect to the Cap and Trade program regulations approved on December 13, 2011 in order to correct the presentation of the regulatory matter.

Title 17  
 California Code of Regulations  
 AMEND: 95802, 95833, 95841.1, 95852, 95852.1.1, 95852.2, 95870, 95891, 95892, 95914, 95920, 95971, 95974, 95975, 95977.1, 95979, 95980, 95981, 95981.1, 95985, 95986, 95987, 95990, 95993, 95994, 96021 REPEAL: 95893, 95943  
 Filed 02/15/2012  
 Agency Contact: Amy Whiting (916) 322-6533

File# 2012-0106-01  
**AIR RESOURCES BOARD**  
 LCFS Carbon Intensity Lookup Tables

This rulemaking action by the Air Resource Board (Board) amends the "Lookup Tables" of carbon intensity (CI) values contained in section 95486 of title 17 of the California Code of Regulations. Board staff developed two new CI pathways and evaluated a number of customized CI pathway applications submitted by other parties. Board staff also identified process fuels used for two existing corn ethanol pathways that were inadvertently omitted from the original Lookup Tables, and

added an alphanumeric, sequential “Pathway Identifier” column to the Lookup Tables to assist regulated parties and Board staff in cross-referencing a particular fuel pathway with its supporting documentation.

Title 17  
 California Code of Regulations  
 AMEND: 95486  
 Filed 02/21/2012  
 Effective 02/21/2012  
 Agency Contact: Amy Whiting (916) 322-6533

File# 2012-0104-01  
**BOARD OF PSYCHOLOGY**  
 Continuing Education Requirements

The Board of Psychology (Board) is amending several sections within Title 16 of the California Code of Regulations. These amendments remove the Mandatory Continuing Education for Psychologists Accrediting Agency (MCEPPA) as the accrediting agency for the Board. This rulemaking re-defines the Board’s continuing education provider approval system to make it consistent with other states. It removes any accrediting agency as the administrator of the Board’s continuing education program, including the approval of providers and individual courses. This rulemaking adds the California Psychological association, or its approved sponsors, to the list of approved providers of continuing education. It removes the American Board of Professional Psychology from the list of approved providers. Additionally it adds a \$10 fee paid to the Board for administration of the continuing education program and for the purpose of conducting compliance audits. Finally, this rulemaking removes the exemption from continuing education requirements due to residing in another country or state for at least one year.

Title 16  
 California Code of Regulations  
 AMEND: 1397.60, 1397.61, 1397.62, 1397.63, 1397.64, 1397.65, 1397.66, 1397.67, 1397.68, 1397.69, 1397.70, 1397.71  
 Filed 02/16/2012  
 Effective 03/17/2012  
 Agency Contact: Linda Kassis (916) 263-0712

File# 2012-0124-01  
**CALIFORNIA GAMBLING CONTROL COMMISSION**  
 Designation of Precedential Decisions

In this “changes without regulatory effect” filing, the California Gambling Control Commission amends its

regulation pertaining to “Precedential Decisions” pursuant to Government Code section 11425.60.

Title 4  
 California Code of Regulations  
 AMEND: 12572  
 Filed 02/16/2012  
 Agency Contact: James Allen (916) 263-4024

File# 2012-0111-02  
**CALIFORNIA SCHOOL FINANCE AUTHORITY**  
 State Charter School Facilities Incentive Grants Program

This regulatory action amends regulations for implementation of the State Charter School Facilities Incentives Grant Program, which is a federal grant from the U.S. Department of Education. These amendments clarify terms, revise eligible costs, delete the Overcrowded School District preference category, add an Overcrowded School Site preference point category and revise driving distance impacts on preference points.

Title 4  
 California Code of Regulations  
 AMEND: 10176, 10177, 10178, 10182, 10188  
 Filed 02/22/2012  
 Effective 03/23/2012  
 Agency Contact:  
 Katrina Johantgen (213) 620-2305

File# 2012-0202-01  
**CENTRAL VALLEY FLOOD PROTECTION BOARD**  
 Title 23 Waters, Division 1, Central Valley Flood Protection Board

This rulemaking action is a re-submittal of OAL file number 2011-1213-05S, which was withdrawn from OAL review on January 27, 2012, by the Central Valley Flood Protection Board (Board). On October 28, 2011, the Board voted unanimously to adopt regulations under Title 23 that promote efficient administration of flood management by delegating various duties of the Board. Specifically, these new rules define encroachments that do not significantly affect the State Plan of Flood Control and authorize Board staff to consider these permit applications. The rules also provide authority for the Executive Officer to issue Cease and Desist Orders in certain situations. Further, enforcement actions that may be taken by the Board to obtain compliance with flood control laws and regulations are described.

Title 23  
California Code of Regulations  
ADOPT: 20, 21, 22, 23, 24, 25, 26, 27 AMEND: 4, 5, 5.1, 9, 10, 11, 12, 13, 14, 16, 17, 23 (re-numbered to 28), 103, 109, 110, Appendix A REPEAL: 20, 21, 22  
Filed 02/15/2012  
Effective 02/15/2012  
Agency Contact: Curt Taras (916) 709-0519

File# 2012-0120-01  
**CORRECTIONS STANDARDS AUTHORITY**  
Standards and Training for Corrections

The Corrections Standards Authority proposed this rulemaking action to amend section 173 of title 15 of the California Code of Regulations. The amendment will increase the number of hours for the core course for a probation officer from 174 hours to 196 hours.

Title 15  
California Code of Regulations  
AMEND: 173  
Filed 02/22/2012  
Effective 03/23/2012  
Agency Contact: Barbara Fenton (916) 323-8620

File# 2012-0111-01  
**DEPARTMENT OF HEALTH CARE SERVICES**  
Dental Services

This action updates the Manual of Criteria (MOC) for Medi Cal authorization of dental services that is incorporated by reference in the Department's regulations. The updated MOC includes changes made to coding necessary to conform to current dental terminology (CDT) for billing and transmission of claims and updates the MOC's references to the Handicapping Labio-Lingual Deviation (HLD) Index California Modification Score Sheet.

Title 22  
California Code of Regulations  
AMEND: 51003  
Filed 02/21/2012  
Effective 04/02/2012  
Agency Contact: Ben Carranco (916) 440-7766

File# 2012-0113-03  
**DEPARTMENT OF INSURANCE**  
California Low Cost Automobile Insurance Rates — 2011

This file/print action amends existing provisions establishing the incorporated-by-reference "California Low Cost Automobile Insurance Low Cost Program Plan of Operations" by updating the "Exhibit E Private Passenger Automobile Liability Rates" by county. The California Automobile Insurance Low Cost Program

Plan of Operations is the statutorily required plan for equitable apportionment of eligible low cost auto insurance purchased among insurers required to participate in said plan. The updated rates show an overall decrease of 4.0% for 2011.

Title 10  
California Code of Regulations  
AMEND: 2498.6  
Filed 02/16/2012  
Effective 04/16/2012  
Agency Contact: Bryant W. Henley (916) 492-3558

File# 2012-0113-01  
**DEPARTMENT OF TOXIC SUBSTANCES CONTROL**  
Amend Ignitability Characteristics for Hazardous Waste Identification

This regulatory action adopts regulatory changes made by the U.S. EPA pertaining to the ignitability characteristic of hazardous waste identification. The current regulation also contains wrong cross references to federal regulations which are being corrected. This matter has been deemed a nonsubstantive change without regulatory effect for the purposes of Section 100 of Title 1 of the California Code of Regulations pursuant to Health and Safety Code section 25159.1.

Title 22  
California Code of Regulations  
AMEND: 66261.21(a)(3), 66261.21(a)(4)  
Filed 02/21/2012  
Agency Contact: Krysia Von Burg (916) 324-2810

File# 2012-0203-02  
**DIVISION OF JUVENILE JUSTICE**  
Parole Violation Process, Detention Revocation, Hearings, and Appeals

This regulatory action amends some sections and adopts some sections in Title 15 of the California Code of Regulations. This rulemaking is in response to a lawsuit that resulted in a stipulated agreement. In L.H. vs. Schwarzenegger, Case No. 2:06-CV-02042-LKK0GGH, the United States District Court, Eastern District of California issued a stipulated order of permanent injunctive relief. Utilizing this stipulated order these regulations adopt and amend regulations in Title 15 to change juvenile parole revocation procedures to comply with the Constitution and the ADA. The law suit alleged that juvenile parolees' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Rehabilitation Act, and the Americans with Disabilities Act were violated. This rulemaking revises the process for juvenile parole violation, detention, and revocation; addressing the timelines of hearings and other due process proceedings

in regard to parole revocation; clarifying the youth appeals process; adding and revising definitions related to the parole revocation process; and establishing a process for parole violations. This rulemaking also adds information regarding reasonable accommodation for parolees.

Title 15  
 California Code of Regulations  
 ADOPT: 4845, 4849, 4853, 4854, 4939.5, 4961.1, 4977.5, 4977.6, 4977.7, 4983.5 AMEND: 4846, 4847, 4848, 4848.5, 4850, 4852, 4900, 4925, 4926, 4927, 4928, 4929, 4935, 4936, 4937, 4938, 4939, 4940, 4977, 4978, 4979, 4980, 4981, 4982, 4983  
 Filed 02/22/2012  
 Effective 03/23/2012  
 Agency Contact: Sonja A. Dame (916) 445-2180

File# 2012-0210-05  
**FAIR POLITICAL PRACTICES COMMISSION**  
 Required Recordkeeping for Slate Mailer Organizations

This action without regulatory effect corrects a typographical error in the Authority citation for California Code of Regulations, title 2, section 18401.1.

Title 2  
 California Code of Regulations  
 AMEND: 18401.1  
 Filed 02/16/2012  
 Effective 02/16/2012  
 Agency Contact:  
 Virginia Latteri-Lopez (916) 322-5660

File# 2012-0120-05  
**OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**  
 Airborne Contaminants

This rulemaking action amends section 5155 of Title 8 of the California Code of Regulations to reduce the employee Permissible Exposure Limits of four airborne contaminants (carbon disulfide, hydrogen fluoride, sulfuric acid, and toluene) at all places of employment in the state.

Title 8  
 California Code of Regulations  
 AMEND: 5155  
 Filed 02/16/2012  
 Effective 03/17/2012  
 Agency Contact: Marley Hart (916) 274-5721

File# 2012-0118-02  
**OFFICE OF THE STATE FIRE MARSHAL**  
 Fire Extinguishers Vehicle Signage

This rulemaking action adopts a new section 560.4 and amends section 557.19 in Title 19 of the California Code of Regulations so as to require the marking of vehicles used in the business of fire extinguisher inspection and maintenance with the name and license and telephone numbers of the business. The requirement of vehicle marking is intended to enable consumers and local government fire officials to easily determine the affiliation of technicians and eliminate the fraudulent business practice of misrepresenting affiliation of a business with a local fire department.

Title 19  
 California Code of Regulations  
 ADOPT: 560.4 AMEND: 557.19, renumber 560.4, 560.5, and 560.6 as 560.5, 560.6, and 560.7, respectively  
 Filed 02/16/2012  
 Effective 03/17/2012  
 Agency Contact: Diane Arend (916) 324-9592

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN September 28, 2011 TO  
 February 22, 2012**

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

- Title 2**  
 02/16/12 AMEND: 18401.1  
 02/13/12 AMEND: 18943  
 01/31/12 ADOPT 260.1, 261.1 AMEND 258, 260, 262  
 01/31/12 AMEND 640  
 01/26/12 AMEND 37000  
 01/23/12 ADOPT: 1880  
 01/23/12 ADOPT: 18940.1, 18942.2, 18942.3 AMEND: 18940, 18940.2, 18941, 18942, 18942.1, 18943, 18944.1, 18944.2, 18944.3, 18945, 18945.1, 18945.2, 18946, 18946.1, 18946.2, 18946.3, 18946.4, 18946.5 REPEAL: 18941.1, 18943, 18945.3, 18946.5  
 01/18/12 AMEND: Div. 8, Ch. 35, Sec. 52400  
 01/10/12 AMEND: 18423, 18539, 18550  
 01/05/12 ADOPT: 18404.2  
 01/05/12 ADOPT: 18227.5, 18247.5 REPEAL: 18247.5

**CALIFORNIA REGULATORY NOTICE REGISTER 2012, VOLUME NO. 9-Z**

12/28/11 AMEND: 1859.76  
12/21/11 AMEND: 1859.90.2, 1859.81  
12/07/11 ADOPT: 18316.6, 18361.11 AMEND:  
18360, 18361, 18361.4  
11/22/11 AMEND: 559  
11/08/11 ADOPT: 18421.31  
10/27/11 AMEND: 18404.1  
10/26/11 ADOPT: 18237  
10/18/11 AMEND: 1859.166.2  
10/17/11 AMEND: 25001  
10/12/11 AMEND: 59690  
10/05/11 ADOPT: 649.21

**Title 3**

02/13/12 AMEND: 3591.2(a)  
02/06/12 AMEND: 3435(b)  
02/02/12 AMEND: 3423(b)  
01/23/12 ADOPT: 588  
01/18/12 ADOPT: 3591.25  
01/06/12 AMEND: 3591.2(a)  
12/29/11 AMEND: 3280  
12/20/11 AMEND: 3407(e)  
12/05/11 AMEND: 1408.6  
11/29/11 AMEND: 3591.15(a)  
11/14/11 AMEND: 3437(b)  
11/10/11 AMEND: 6000, 6361, 6400, 6460, 6464,  
6470, 6502, 6512, 6524, 6560, 6562,  
6564, 6625, 6626, 6625, 6632, 6728,  
6761, 6780  
11/10/11 AMEND: 3589(a)  
10/26/11 AMEND: 1430.142  
10/19/11 AMEND: 3423(b)  
10/12/11 AMEND: 3906  
10/10/11 ADOPT: 3591.25  
10/10/11 AMEND: 3423(b)  
09/29/11 AMEND: 3434(b)(8)  
09/28/11 AMEND: 3425(b)

**Title 4**

02/22/12 AMEND: 10176, 10177, 10178, 10182,  
10188  
02/16/12 AMEND: 12572  
02/14/12 AMEND: 1844  
02/14/12 AMEND: 1843.3  
02/08/12 AMEND: 66  
02/03/12 AMEND: 5000, 5052  
12/30/11 ADOPT: 4000.1, 4000.2, 4000.3  
12/21/11 ADOPT: 12349  
12/09/11 ADOPT: 5205 AMEND: 5000, 5054,  
5144, 5170, 5190, 5200, 5230, 5350,  
5370 REPEAL: 5133  
12/07/11 AMEND: 1433  
12/05/11 AMEND: 10325(c)(8)  
11/28/11 AMEND: 1632  
11/07/11 AMEND: 8070, 8072, 8073, 8074

11/03/11 AMEND: 10152, 10153, 10154, 10155,  
10157, 10159, 10160, 10161, 10162  
REPEAL: 10156, 10158, 10164

10/04/11 AMEND: 1658  
09/30/11 AMEND: 12100, 12101, 12200.3,  
12200.5, 12200.6, 12200.9, 12200.10B,  
12200.14, 12202, 12205.1, 12218,  
12218.7, 12218.8, 12220.3, 12220.5,  
12220.6, 12220.14, 12222, 12225.1,  
12233, 12235, 12238, 12300, 12301.1,  
12309, 12350, 12354, 12358, 12359,  
12362, 12400, 12404, 12463, 12464  
09/28/11 ADOPT: 8035.5

**Title 5**

02/09/12 ADOPT: 19824.1, 19841, 19851.1,  
19854.1 AMEND: 19816, 19816.1,  
19824, 19850, 19851, 19854  
02/09/12 ADOPT: 27100, 27101, 27102, 27103  
01/10/12 AMEND: 9510, 9510.5, 9511, 9512,  
9513, 9514, 9515, 9516, 9517, 9517.1,  
9519, 9520, 9521, 9524, 9525, 18533,  
18600  
12/19/11 ADOPT: 30001.5  
12/16/11 AMEND: 53309, 53310  
12/14/11 AMEND: 55150, 55151, 55154, 55155  
REPEAL: 55152, 55153  
11/16/11 ADOPT: 11968.5.1, 11968.5.2,  
11968.5.3, 11968.5.4, 11968.5.5  
AMEND: 11960, 11965, 11969  
(renumbered 11968.1), 11969.1  
10/27/11 ADOPT: 4800, 4800.1, 4800.3, 4800.5,  
4801, 4802, 4802.05, 4802.1, 4802.2,  
4803, 4804, 4805, 4806, 4807, 4808  
10/24/11 ADOPT: 11966.4, 11966.5, 11966.6,  
11966.7 AMEND: 11967, 11967.5.1  
10/18/11 ADOPT: 10120.1, 10121

**Title 8**

02/16/12 AMEND: 5155  
02/08/12 AMEND: 1675, 3276, 3278  
02/08/12 ADOPT: 374.2 AMEND: 350.1, 371,  
371.1, 376  
02/01/12 AMEND 1504, 1591, 1597  
01/24/12 AMEND: 5155  
01/19/12 ADOPT: 9708.1, 9708.2, 9708.3, 9708.4,  
9708.5, 9708.6  
01/18/12 ADOPT: 1615.3 AMEND: 1532.1, 3361,  
5042, 5044, 5045, 5047, 5049, 5144,  
5191, 5198, 5209, 8355  
01/05/12 AMEND: 4188  
12/29/11 AMEND: 3276, 3287  
12/29/11 ADOPT: 32802, 32804 AMEND: 32380,  
32603, 32604  
12/27/11 AMEND: 343

- 12/13/11 ADOPT: 8351, 8356, 8376.1, 8378.1, 8387, 8391.1, 8391.2, 8391.4, 8391.5, 8391.6, 8397.6 AMEND: 5194.1, 8354, 8376, 8378, 8384, 8391, 8391.3, 8397.2, 8397.3, 8397.4, 8397.5
- 12/12/11 AMEND: 1541.1
- 12/07/11 ADOPT: 16450, 16451, 16452, 16454, 16455 AMEND: 16423, 16433 REPEAL: 16450, 16451, 16452, 16453, 16454, 16455
- 11/07/11 AMEND: 6051
- 10/27/11 ADOPT: 2320.10, 2940.10 AMEND: 1512, 3400
- 10/17/11 AMEND: 230.1(a)
- 10/17/11 ADOPT: 207.1 AMEND: 201, 202, 203, 207
- Title 9**
- 10/04/11 ADOPT: 7016.1, 7019.6, 7025.7, 7028.7, 7179.7 AMEND: 7098, 7179.1, 7181.1
- Title 10**
- 02/16/12 AMEND: 2498.6
- 02/13/12 AMEND: 2202
- 02/08/12 AMEND: 2222.12
- 02/08/12 ADOPT: 5358.5, 5358.6, 5358.7, 5358.8, 5358.9, 5358.10, 5358.11 AMEND: 5350, 5353, 5357.2
- 02/03/12 AMEND: 2699.6700, 2699.6709, 2699.6721, 2699.6725
- 01/24/12 AMEND: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8, 2548.9, 2548.10, 2548.11, 2548.12, 2548.13, 2548.14, 2548.15, 2548.16, 2548.17, 2548.18, 2548.19, 2548.20, 2548.21, 2548.22, 2548.23, 2548.24, 2548.25, 2548.26, 2548.27, 2548.28, 2548.29, 2548.30, 2548.31
- 01/11/12 AMEND: 260.204.9
- 01/09/12 AMEND: 2699.6707
- 12/19/11 AMEND: 2498.5
- 12/19/11 AMEND: 2498.4.9
- 12/19/11 AMEND: 2498.6
- 12/09/11 AMEND: 2698.302
- 12/09/11 AMEND: 2699.301
- 11/21/11 ADOPT: 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596
- 10/20/11 AMEND: 2222.12
- Title 11**
- 01/03/12 ADOPT: 999.24, 999.25, 999.26, 999.27, 999.28, 999.29 AMEND: 999.10, 999.11, 999.14, 999.16, 999.17, 999.19, 999.20, 999.21, 999.22
- 12/28/11 AMEND: 101.1
- 12/27/11 AMEND: 4001, 4002, 4003, 4004, 4005, 4006, 4016, 4017, 4018, 4019, 4021, 4022, 4023, 4024, 4030, 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4039, 4040, 4041, 4045, 4046, 4047, 4048, 4049, 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4057, 4058, 4059, 4060, 4061, 4062, 4063, 4064, 4065, 4066, 4067, 4068, 4069, 4070, 4071, 4072, 4073, 4074, 4075, 4080, 4081, 4082, 4083, 4084, 4085, 4086, 4087, 4090, 4091, 4092, 4093, 4094, 4095, 4096, 4097, 4098, 4099, 4100, 4101, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4109, 4125, 4126, 4127, 4128, 4129, 4130, 4131, 4132, 4133, 4134, 4135, 4136, 4137, 4138, 4139, 4140, 4141, 4142, 4144, 4145, 4146, 4147, 4148, 4149, 4150, 4151, 4152, 4153, 5455, 5459, 5469, 5470, 5471, 5473, 5480, 5482, 5483, 5484, 5495, 5499 REPEAL: 4020, 4038, 4088, 4089, 4143, 5472, 5481, 5470, 5471
- 12/15/11 AMEND: 101.2
- 12/08/11 ADOPT: 117.1
- 11/14/11 AMEND: 1008
- 11/01/11 AMEND: 1009
- 10/25/11 AMEND: 1005, 1007, 1008
- 10/07/11 ADOPT: 999.24, 999.25, 999.26, 999.27, 999.28, 999.29 AMEND: 999.10, 999.11, 999.14, 999.16, 999.17, 999.19, 999.20, 999.21, 999.22
- 10/06/11 AMEND: 30.14
- 10/06/11 ADOPT: 30.16
- 09/28/11 AMEND: 1081
- 09/28/11 AMEND: 1005
- Title 13**
- 02/13/12 REPEAL: 158.00
- 12/14/11 AMEND: 2025
- 12/14/11 AMEND: 2449, 2449.1, 2449.3 (renumbered to 2449.2), 2775, 2775.1, 2775.2 REPEAL: 2449.2
- 12/05/11 AMEND: 553.70
- 11/22/11 AMEND: 1956.8
- 11/17/11 AMEND: 1233
- 11/09/11 AMEND: 2027
- 11/08/11 AMEND: 1
- 10/07/11 ADOPT: 345.03, 345.75, 345.76, 345.77
- Title 13, 17**
- 10/27/11 AMEND: 2299.2, 93118.2
- Title 14**
- 02/13/12 AMEND: 29.17, 127
- 02/08/12 AMEND: 1257

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01/31/12	AMEND 29.15	12/09/11	AMEND: 3000, 3006, 3170.1, 3172.1, 3173.2, 3315, 3323
01/26/12	ADOPT 18940, 18941, 18942, 18943, 18944, 18945, 18945.1, 18945.2, 18945.3, 18946, 18947, 18948	12/05/11	ADOPT: 1712.1, 1714.1, 1730.1, 1740.1, 1748.5 AMEND: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788 REPEAL: 1757
01/25/12	AMEND: 18419	12/01/11	ADOPT: 3571, 3582, 3590, 3590.1, 3590.2, 3590.3 AMEND: 3000
01/23/12	ADOPT: 1665.1, 1665.2, 1665.3, 1665.4, 1665.5, 1665.6, 1665.7, 1665.8	11/14/11	AMEND: 3341.5, 3375.2, 3377.1
01/09/12	AMEND: 7.00, 7.50(b)(68)	11/10/11	ADOPT: 3359.1, 3359.2, 3359.3, 3359.4, 3359.5, 3359.6 AMEND: 3000
01/05/12	ADOPT: 749.7	10/25/11	ADOPT: 2240
01/05/12	AMEND: 895.1, 898.1, 1037.3, 1090.17, 1092.18	10/06/11	REPEAL: 3999.7
12/20/11	AMEND: 11900	<b>Title 16</b>	
12/20/11	ADOPT: 4970.24.2 AMEND: 4970.00, 4970.01, 4970.03, 4970.04, 4970.05, 4970.06.1, 4970.07, 4970.07.2, 4970.08, 4970.10.1, 4970.10.2, 4970.10.3, 4970.10.4, 4970.11, 4970.13, 4970.15.1, 4970.15.2, 4970.19, 4970.19.1, 4970.23.1, 4970.23.2, 4970.24, 4970.25.2, 4970.25.3	02/16/12	AMEND: 1397.60, 1397.61, 1397.62, 1397.63, 1397.64, 1397.65, 1397.66, 1397.67, 1397.68, 1397.69, 1397.70, 1397.71
12/09/11	AMEND: 15062, 15075, 15094, Appendix D and Appendix E	02/09/12	AMEND: 28 REPEAL: 30
12/08/11	AMEND: 632	02/08/12	ADOPT: 1018.05 AMEND: 1020
12/07/11	AMEND: 870.17, 870.19	02/01/12	ADOPT 3340.16.4 AMEND 3306, 3340.1, 3340.10, 3340.15, 3340.16.5, 3340.17, 3340.22, 3340.22.1, 3340.23, 3340.28, 3340.29, 3340.30, 3340.31, 3340.50, 3351.1 3340.16.4 3306, 3340.1, 3340.10, 3340.15, 3340.16.5, 3340.17, 3340.22, 3340.22.1, 3340.23, 3340.28, 3340.29, 3340.30, 3340.31, 3340.50, 3351.1
11/22/11	AMEND: 791.7, 870.17	01/19/12	ADOPT: 1379.40, 1379.42, 1379.44, 1379.46, 1379.48, 1379.50, 1379.52, 1379.54, 1379.56, 1379.58, 1379.68, 1379.70, 1379.72, 1379.78
11/17/11	AMEND: 163, 164	01/17/12	ADOPT: 1707.6 AMEND: 1707.2
11/15/11	AMEND: 700.4, 701, 705 REPEAL: 704	01/11/12	AMEND: 109, 117, 121
10/05/11	AMEND: 913.4, 933.4, 953.4, 959.15 REPEAL: 939.15	01/10/12	AMEND: 12, 12.5, 98 REPEAL: 9, 11.5
10/05/11	AMEND: 913.4, 933.4, 953.4, 959.15 REPEAL: 939.15	01/10/12	AMEND: 2328.1
10/04/11	AMEND: 29.15	01/06/12	ADOPT: 3340.38
09/28/11	AMEND: 11900	12/28/11	AMEND: 1399.157, 1399.160, 1399.160.3, 1399.160.6
09/22/11	AMEND: 565, 565.4, 566, 566.1, 569, 570, 571, 572, 573, 576, 583, 593, 598.60, 599	12/22/11	ADOPT: 601.6, 601.7, 601.8, 601.9, 601.10 AMEND: 600.1
09/22/11	AMEND: 7.50(b)(1.5), 27.65, 29.80	12/12/11	AMEND: 1361
<b>Title 15</b>		11/22/11	ADOPT: 858, 858.1, 858.2, 858.3, 858.4, 858.5, 858.6, 858.7, 858.8, 858.9
02/22/12	AMEND: 173	11/16/11	AMEND: 950.1, 950.4, 950.5 REPEAL: 962.3, 962.4, 962.5, 962.6
02/22/12	ADOPT: 4845, 4849, 4853, 4854, 4939.5, 4961.1, 4977.5, 4977.6, 4977.7, 4983.5 AMEND: 4846, 4847, 4848, 4848.5, 4850, 4852, 4900, 4925, 4926, 4927, 4928, 4929, 4935, 4936, 4937, 4938, 4939, 4940, 4977, 4978, 4979, 4980, 4981, 4982, 4983	11/01/11	ADOPT: 3392.2.1, 3392.3.1, 3392.4, 3392.5.1, 3392.6.1 AMEND: 3340.1, 3340.16, 3340.16.5, 3340.41, 3392.1, 3392.2, 3392.3, 3392.5, 3392.6
01/19/12	ADOPT: 3076.4, 3076.5 AMEND: 3076, 3076.1, 3076.2, 3076.3	10/25/11	REPEAL: 929
01/11/12	REPEAL: 3999.8		
01/05/12	AMEND: 3140		
12/22/11	AMEND: 3052, 3062		
12/20/11	AMEND: 3040.1, 3043, 3043.6, 3044, 3045.1		
12/13/11	ADOPT: 3504.1, 3504.2		

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10/17/11 AMEND: 2300, 2302, 2303, 2304, 2311, 2315, 2320, 2321, 2322, 2324, 2326, 2326.1, 2327, 2328, 2328.1, 2329, 2330, 2331, 2332, 2336, 2337, 2338, 2339, 2340, 2351, 2370, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388

10/12/11 ADOPT: 1070.6, 1070.7, 1070.8  
AMEND: 1070, 1070.1, 1070.2, 1071  
REPEAL: 1071.1

10/10/11 AMEND: 2450, 2451

10/06/11 ADOPT: 1399.507.5, 1399.523.5, 1399.527.5 AMEND: 1399.503, 1399.523

10/04/11 AMEND: 972

09/29/11 AMEND: 1398.26.1

**Title 17**

02/21/12 AMEND: 95486

02/15/12 AMEND: 95802, 95833, 95841.1, 95852, 95852.1.1, 95852.2, 95870, 95891, 95892, 95914, 95920, 95971, 95974, 95975, 95977.1, 95979, 95980, 95981, 95981.1, 95985, 95986, 95987, 95990, 95993, 95994, 96021 REPEAL: 95893, 95943

01/26/12 AMEND 6540

01/17/12 AMEND: 50602, 50604, 50607, 50612, 54326

12/27/11 ADOPT: 54311 AMEND: 54302, 54310, 54314, 54320, 54326, 54332, 54370

12/15/11 AMEND: 6020, 6035, 6051, 6065, 6070, 6075

12/14/11 ADOPT: 95116, 95117, 95118, 95119, 95120, 95121, 95122, 95123, 95129, 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157 AMEND: 95100, 95101, 95102, 95103, 95104, 95105, 95106, 95107, 95108, 95109, 95110, 95111, 95112, 95113, 95114, 95115, 95130, 95131, 95132, 95133 REPEAL: 95125

12/13/11 ADOPT: 95801, 95802, 95810, 95811, 95812, 95813, 95814, 95820, 95821, 95830, 95831, 95832, 95833, 95834, 95840, 95841, 95841.1, 95850, 95851, 95852, 95852.1, 95852.1.1, 95852.2, 95853, 95854, 95855, 95856, 95857, 95858, 95870, 95890, 95891, 95892, 95910, 95911, 95912, 95913, 95914, 95920, 95921, 95922, 95940, 95941, 95942, 95970, 95971, 95972, 95973, 95974, 95975, 95976, 95977, 95977.1, 95977.2, 95978, 95979, 95980, 95980.1, 95981, 95981.1, 95982, 95983, 95984, 95985, 95986, 95987, 95988, 95990,

95991, 95992, 95993, 95994, 95995, 96010, 96011, 96012, 96013, 96014, 96020, 96021, 96022

12/12/11 ADOPT: 95312 AMEND: 95300, 95301, 95302, 95303, 95304, 95305, 95306, 95307, 95308, 95309, 95310, 95311

11/17/11 REPEAL: 901

11/10/11 AMEND: 94508, 94509, 94510, 94512, 94515

**Title 18**

02/07/12 AMEND: 1807, 1828

01/11/12 AMEND: 1616

01/09/12 AMEND: 1532, 1533.1, 1534, 1535

12/27/11 AMEND: 1570

10/10/11 AMEND: 3020, 3301, 4500, 4504, 4507, 4508, 4509, 4600, 4609, 4700

**Title 19**

02/16/12 ADOPT: 560.4 AMEND: 557.19, renumber 560.4, 560.5, and 560.6 as 560.5, 560.6, and 560.7, respectively

**Title 22**

02/21/12 AMEND: 51003

02/21/12 AMEND: 66261.21(a)(3), 66261.21(a)(4)

02/08/12 AMEND: 66261.33, 66268.40

02/06/12 AMEND: 80001, 80075, 83000, 83001, 84001, 84061, 86001, 88001

01/31/12 ADOPT 126010, 126020, 126030, 126040, 126042, 126050, 126055, 126060, 126070, 126072, 126074, 126076, 126090 126010, 126020, 126030, 126040, 126042, 126050, 126055, 126060, 126070, 126072, 126074, 126076, 126090

01/26/12 AMEND 50273

12/28/11 AMEND: 97232, 97240, 97247

12/27/11 AMEND: 51516.1

12/20/11 ADOPT: 69401, 69401.1, 69401.2, 69402, 69402.1, 69402.2, 69402.3, 69402.4, 69402.5, 69402.6, 69403, 69403.1, 69403.2, 69403.3, 69403.4, 69403.5, 69403.6, 69403.7, 69403.8, 69403.9, 69403.10, 69403.11, 69403.12, 69403.13, 69403.14, 69403.15, 69403.16, 69403.17, 69404, 69404.1, 69404.2, 69404.3, 69404.4, 69404.5, 69404.6, 69404.7, 69404.8, 69404.9, 69404.10, 69405, 69405.1, 69405.2, 69405.3, 69405.4, 69405.5, 69405.6, 69405.7, 69405.8, 69406, 69406.1, 69406.2, 69406.3, 69407, 69407.1, 69407.2

12/06/11 AMEND: 40741

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11/21/11 AMEND: 66260.11, 66260.12, 12/29/11 ADOPT: 862  
66262.53, 66262.56, 66263.32, 12/20/11 ADOPT: 3929.8  
66264.12, 66264.71, 66264.72, 12/19/11 ADOPT: 3939.40  
66265.12, 66265.71, 66265.72 11/03/11 ADOPT: 3949.8  
09/29/11 AMEND: 72516, 73518 11/01/11 AMEND: 3937  
**Title 22/MPP** 10/20/11 AMEND: 1062, 1064, 1066  
11/10/11 AMEND: 35000, 35001, 35325, 35326, 10/19/11 ADOPT: 2200.7 AMEND: 2200, 2200.6  
35329, 35331, 35333, 35334, 35337, **Title 25**  
35339, 35341, 35343, 35344, 35345, 02/06/12 ADOPT: 597, 597.1, 597.2, 597.3, 597.4  
35351, 35352, 35352.1, 35352.2, 02/02/12 ADOPT: 3968  
45-801, 45-802, 45-803, 45-804, **Title 27**  
45-805, 45-806, 45-807 REPEAL: 01/25/12 AMEND: 27001  
35327, 35347, 35352.3 01/09/12 AMEND: 25705  
09/29/11 AMEND: 86500, 86501 11/28/11 AMEND: 25903(c)  
**Title 23** 10/12/11 AMEND: 25703(a)(6)  
02/15/12 ADOPT: 20, 21, 22, 23, 24, 25, 26, 27  
AMEND: 4, 5, 5.1, 9, 10, 11, 12, 13, 14, **Title MPP**  
16, 17, 23 (re-numbered to 28), 103, 109, 10/31/11 AMEND: 31-502.42  
110, Appendix A REPEAL: 20, 21, 22 10/24/11 AMEND: 44-111.61