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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. VICTIM COMPENSATION
AND GOVERNMENT CLAIMS BOARD**

Title 2, §§ 649.50, 649.51, 649.53, 649.54,
649.56, 649.57

The Victim Compensation and Government Claims Board (Board) proposes to amend the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested individual, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on April 21, 2014. The Board will consider only comments received at the Board's office by that time. Submit written comments to:

Geoff Feusahrens, Regulations Analyst
Victim Compensation and Government Claims
Board
400 R Street, Suite 500
Sacramento, CA 95811

Comments may also be submitted by facsimile (FAX) at (916) 491-6441 or by e-mail to regulations@vcgcb.ca.gov.

AUTHORITY AND REFERENCE

Government Code sections 11400.20, 13920 and 13974 authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets and makes specific Government Code sections 13920, 13956 and 13974.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Government Code section 13950 requires the Board, through the California Victim Compensation Program (CalVCP), to "assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts." However, victims who sustain pecuniary losses while participating in a crime are generally ineligible for compensation. Victims who were involved in the events leading to the pecuniary loss may be ineligible for compensation. The proposed regulations clarify what conduct constitutes participation versus involvement, and delineate the consequences of each. The clarification benefits the public because the factors CalVCP considers when determining eligibility are more specifically defined and thus, the program is more transparent. In addition, as a matter of basic fairness, the public benefits when those clearly participating in criminal conduct are found to be ineligible for compensation. The public as a whole benefits when governmental programs are perceived to be fair and just.

The proposed regulations also clarify exceptions to the definition of participation and involvement and renumber the regulations. The revision benefits the public because the exceptions to the general rules disqualifying victims considered by CalVCP are more transparent. Finally, the proposed regulations eliminate unnecessary verbiage in the current regulations.

The Board has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After performing a review of any related regulations, CalVCP has concluded that these are the only regulations relating to victim compensation. Therefore, these proposed regulations are neither inconsistent, nor incompatible, with existing state regulations.

**RESULTS OF THE ECONOMIC
IMPACT ANALYSIS**

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.

It is not anticipated that these proposed regulations will appreciably increase or decrease the number of applications CalVCP processes because the main purpose behind the proposals is to clarify what conduct constitutes participation versus involvement, and delineate the consequences of each.

Furthermore, the clarification will not benefit the specific health of California residents, worker safety, or the state's environment. The clarification will, however, generally benefit the welfare of California residents by making CalVCP more transparent and fair.

Disclosures Regarding the Proposed Action. The Board 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 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 individual or business: 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.

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 Board has determined that the proposed regulations do not affect small businesses because the regulations only apply to individuals who apply to CalVCP.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board 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 individuals 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 Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Geoff Feusahrens
Victim Compensation and Government Claims Board
400 R Street, Suite 500
Sacramento, CA 95811
Telephone: (916) 491-3863

The backup contact person for inquiries concerning the proposed administrative action may be directed to:

Mary Lundeen
Victim Compensation and Government Claims Board
400 R Street, Suite 500
Sacramento, CA 95811
Telephone: (916) 491-3751

Please direct requests for copies of the proposed text 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 Geoff Feusahrens at the above address.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Geoff Feusahrens at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the

Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Geoff Feusahrens at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Geoff Feusahrens at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through our website at www.vcgcb.ca.gov.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE REGULATION TO REDUCE EMISSIONS OF DIESEL PARTICULATE MATTER, OXIDES OF NITROGEN AND OTHER CRITERIA POLLUTANTS FROM IN-USE HEAVY-DUTY DIESEL-FUELED VEHICLES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to the “Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles” (Truck and Bus regulation), title 13, California Code of Regulations (CCR), section 2025. This notice summarizes the specific amendments being proposed. The staff report: Initial Statement of Reasons (ISOR) presents the proposed amendments and information supporting the amendments of the regulation in greater detail.

DATE: April 24, 2014
 TIME: 9:00 a.m.
 PLACE: California Environmental Protection Agency
 Air Resources Board
 Byron Sher Auditorium
 1001 I Street
 Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., April 24, 2014, and may continue at 8:30 a.m., April 25, 2014. This item may not be considered until April 25, 2014. Please consult the agenda for the hearing, which will be available at least ten days before April 24, 2014, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)

Sections Affected: Proposed amendments to CCR, title 13, section 2025, Truck and Bus regulation.

Background and Effect of the Proposed Rulemaking:

The Truck and Bus regulation was approved by ARB on December 12, 2008, to reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NOx), and other criteria pollutants from about one million in-use diesel trucks and buses that operate in California. The regulation became effective in January 2010. In April 2010, due to the unanticipated economic recession that California and the nation were experiencing, the Board directed staff to update the emissions inventory from trucks to reflect the impact of the recession on emissions. The Board further directed staff to develop amendments to the Truck and Bus regulation that takes into account that emissions were lower as a result of the recession while continuing to meet air quality goals and obligations. The amended regulation was adopted by the Board on December 17, 2010, and became effective on December 14, 2011.

Despite the amendments, many fleet owners may not have fully recovered from the recession, especially fleet owners in rural areas, smaller fleets, and lower mileage fleets affected by the significant reduction in statewide construction activity. In addition, on January 17, 2014, Governor Brown declared a drought emergency in California which has and will continue to affect many industries, particularly agriculture.

The existing Truck and Bus regulation applies to nearly one million diesel vehicles that annually operate in California with a manufacturer’s gross vehicle weight rating (GVWR) greater than 14,000 pounds.

The regulation requires newer heavier trucks and buses to meet PM filter requirements starting January 1, 2012, and to replace all older vehicles starting January 1, 2015. The emission reductions will be achieved through three principal means: (1) installing verified diesel emission control strategies (VDECS), also referred to as PM filters, on existing engines; (2) replacing vehicles with newer ones that have cleaner engines; or (3) repowering vehicles with newer, cleaner engines. These emission reductions are necessary to meet State and federal ambient air quality standards, to reduce premature deaths attributable to exposure to fine particulate matter (PM_{2.5}) emissions, and to reduce exposure to carcinogenic diesel PM in support of the Diesel Risk Reduction Plan (DRRP) adopted by the Board on September 30, 2000 (ARB, 2000).

Objectives and Benefits of the Proposed Regulation:

At the Board’s October 2013 meeting, staff provided an update on the implementation of the Truck and Bus regulation. Stakeholders expressed concern regarding the ability of some fleets to make the needed upgrades to comply. These concerns specifically focused on small fleets, lower mileage fleets, and fleets in rural areas, all of which arguably continue to be impacted by the recession. Staff informed the Board that it intended to develop and propose amendments to the regulation that will help ensure that the air quality benefits originally envisioned by the regulation will be achieved, while providing the ability of these fleets with additional compliance flexibility.

In developing these amendments, staff focused on three objectives:

- Protecting emission reductions by providing lower cost compliance options to small fleets, low mileage fleets, and certain rural fleets.
- Providing new opportunities for fleets to access public incentive funds.
- Recognizing fleets that made early investments to comply.

Overall, these amendments would achieve about \$400 million dollars in cost savings (a 20 percent reduction in overall regulatory cost) for those affected by the amendments, while:

- Starting in 2020, ensuring emissions would be at the same level as the existing regulation.
- Continuing progress in reducing statewide exposure to diesel PM from vehicles covered by the regulation by 85 percent, in support of the DRRP.
- By 2023, providing the NO_x reductions from trucks necessary to meet State and federal air quality standards.

By 2023, the amended regulation would cumulatively achieve 93 percent of the PM_{2.5} and NO_x benefits, and similar benefits to reduce premature deaths attributable to exposure to PM_{2.5} emissions, as was envisioned in 2010. On balance, staff believes the proposed new flexibilities are reasonable and consistent with a rebalanced compliance approach for fleets still suffering from the impacts of the economic recession.

Proposed Amendments

To achieve these objectives and benefits, staff is proposing amendments to the Truck and Bus regulation that include:

- A longer–phase–in period for PM requirements in certain rural areas while continuing to ensure compliance with diesel risk reduction program goals.
- Additional time and a lower–cost pathway for small fleets to achieve compliance with PM requirements, while re–opening opportunities for these fleets to apply for and receive public incentive funding.
- A compliance pathway for owners currently unable to qualify for a loan to finance compliance.
- A longer compliance timeline for low–use and certain vocational or work trucks that travel fewer annual miles and are not competitive in obtaining incentive funding.
- Recognition of fleets that took early action to comply by providing additional useable life for retrofit trucks.

Additional detail and examples of how the individual amendments would affect fleets and the rationale is discussed in more detail in the Initial Statement of Reasons in Chapter VIII.

Providing Relief in Rural Areas with Cleaner Air

Staff is proposing changes to the compliance options for vehicles that are operated in NO_x Exempt Areas as defined in section 2025(d)(45) by expanding the regions that are in the definition and by extending compliance requirements contained in section 2025(p)(1) over a longer period of time. First, staff is proposing to amend the definition of “NO_x Exempt Areas” in section 2025(d)(45), to add the following counties: Amador, Butte, Calaveras, Eastern Kern, Inyo, Mariposa, Mono, Nevada, Northern Sutter, Tuolumne, and the portions of El Dorado and Placer that are within the Lake Tahoe Air Basin. These counties have made substantial progress towards cleaner air, hence creating an opportunity to provide additional time for realizing emission reductions. Second, staff is proposing to amend the compliance schedule for all vehicles, including out–of–state vehicles, that are operated solely within the NO_x Exempt Areas (section 2025(p)(1)).

The initial compliance deadline would be extended by one year and the final compliance deadline would be extended four years per the proposed schedule shown in Table 1.

Table 1: Proposed Compliance Schedule for NOx Exempt Area Fleets

Compliance Deadline as of January 1	Existing PM Filter Phase-In Requirement	Proposed Revised Requirement PM Filter Phase-In
2014	33%	0%
2015	66%	25%
2016	100%	40%
2017	—	55%
2018	—	70%
2019	—	85%
2020	—	100%

Small fleets with three or fewer vehicles that operate in the NOx Exempt Areas would have the option to add PM filters according to the schedule in Table 2.

Table 2: Proposed Compliance Schedule for Small Fleets in NOx Exempt Areas

Number of Trucks	Existing Rule PM Filter Required January 1	Proposed Revised Rule PM Filter Required January 1
One Truck	2015	2017
Two Trucks	2014, 2016	2015, 2019
Three Trucks	2014, 2015, 2016	2015, 2017, 2019

Staff is also proposing to amend section 2025(p)(1)(D) to clarify that vehicles that use the NOx Exempt Area Extension may travel outside of the designated NOx exempt areas for emergency operations, as defined in proposed section 2025(d)(23).

Additional Time and Lower-Cost Pathway for Small Fleets in Non-Attainment Areas

For small fleets (section 2025(h)) not operated exclusively in NOx exempt areas, staff proposes to defer the compliance requirements for the second and third truck in a small fleet, such that the second truck must have a PM filter installed by 2016 and the third truck must have a PM filter installed by 2018. The existing subsections 2025(h)(2), (3), (4) would be deleted because these sections refer to past reporting dates and are no longer needed. A new definition for “Small Fleet” would be added as amended section 2025(d)(54) for clarity, and the definition of “Fleet Size” in existing section 2025(d)(30) would be deleted because the fleet size definition is only needed to define small fleets. By providing this relief to the second and third trucks in small fleets, small fleet owners would be able to upgrade with lower-cost used trucks, and could be eligible for additional incentive funding.

Providing a Limited Compliance Extension for Owners that Cannot Currently Comply

Staff is proposing a new flexibility option through the addition of section 2025(p)(10) that waives the PM filter requirement for up to three vehicles in a fleet if they are upgraded to 2010 model-year engines or newer by January 1, 2018. To qualify, fleet owners must have been denied a loan for purposes of compliance after July 1, 2013 and opt-in by reporting no later than January 31, 2015. This proposed amendment would help ensure air quality benefits will be achieved by providing a compliance pathway for any fleet that is unable to fully comply with regulatory requirements because they were unable to obtain a loan and in doing so may make trucks in those fleets newly eligible for incentive funding. The amendment also potentially reduces compliance costs for fleets because they will be able to defer the purchase of a PM filter, and instead upgrade directly to a used compliant 2010 model-year engine, which would also result in NOx reductions earlier than currently required.

Adjusted Compliance Timeline for Low-Use Work Trucks

Staff is proposing several amendments to spread out compliance requirements for fleets with lower-use vehicles and dedicated work trucks. These amendments would ensure that air quality benefits are achieved by providing additional time for these vehicles to comply and providing a temporary exemption for the lowest use vehicles.

- Work Truck Extension

Staff is proposing to add a new option for a wide range of low-mileage trucks that is broader than the existing low-mileage construction truck option. Staff is proposing to replace the existing low mileage construction truck extension of section 2025(p)(2) with new language that applies to work trucks and provides an extended compliance schedule for work trucks that travel less than a total of 20,000 miles per compliance year, regardless of their weight or where the trucks are operated. The existing mileage limit for low mileage construction trucks is 20,000 miles per year for dump trucks and 15,000 miles per year for other construction trucks. The proposed schedule would phase in the PM filter requirements for low-mileage work trucks from January 1, 2015 to January 1, 2018, as shown in Table 3 below.

Table 3: Proposed Schedule for Work Trucks

Compliance Date	Minimum PM Filters
January 1, 2015	40%
January 1, 2016	60%
January 1, 2017	80%
January 1, 2018	100%

With this change, the definition for Low-Mileage Construction Truck of existing section 2025(d)(40) would be deleted and replaced with a new definition for Low-Mileage Work Truck in amended section 2025(d)(62). This amendment would provide a lower-cost pathway to compliance for vehicles and equipment that are deployed in specific vocations that demand application-specific configurations with substantial added cost.

- Expanding the Low-Use Vehicle Exemption Until 2020

Staff is proposing to amend the existing “Low-Use Vehicle” definition in amended section 2025(d)(40) to include vehicles that operate fewer than 5,000 miles total per compliance year until January 1, 2020. The definition would also be revised to remove the annual hourly limit for vehicles that use power take-off while stationary. This proposed amendment expands the low use exemption temporarily for the lowest use vehicles, and as a result both defers and reduces compliance costs for these vehicles and allows fleet owners to prioritize upgrades of higher use vehicles.

- Smoothing Phase-in Requirements for Low-Mileage Agricultural Vehicles

Staff is proposing to amend section 2025(m)(2) to allow agricultural vehicles that operate more than 10,000 miles per year, but less than the mileage thresholds

shown in Table 4, to continue using the extension past January 1, 2017.

Table 4: Existing Agricultural Vehicle Extension until January 1, 2017

Engine Model Year	Existing Annual Limit
2006 or newer	25,000 miles
1996 to 2005	20,000 miles
1995 and older	15,000 miles

The amendments would allow the extension to continue for vehicles that operate less than 15,000 miles per year from January 1, 2017 until January 1, 2020, and less than 10,000 miles per year from January 1, 2020 to January 1, 2023. Section 2025(m)(3) would be deleted to remove the requirement for a vehicle to continue to be covered by the extension and be able to operate past January 1, 2017, it must have operated less than 10,000 miles per year since 2011. Staff is also proposing to modify proposed section 2025(m)(6) and is proposing to add section 2025(m)(7) to clarify how eligibility is maintained when a vehicle is retired and how an extension may be used for a different vehicle in the fleet. This proposed amendment would reduce the annual compliance burden for agricultural trucks by allowing compliance requirements to be phased in over a greater length of time.

Staff is proposing to amend section 2025(m)(12) to allow log truck owners to make changes to the number of log trucks that are in the log truck phase-in option until January 31, 2015. This change would provide more flexibility to take advantage of other amended options that may be more favorable to the owner. In addition, staff is proposing to amend section 2025(m)(12)(B) by deleting the language about rounding that is already addressed in the regulation and replacing it with clarifying language on how log trucks that are counted towards the log truck phase-in option cannot be double counted when determining compliance with other compliance options.

- Providing Relief for Livestock Cattle Trucks

Staff is also proposing to amend existing section 2025(m)(11) to add livestock cattle trucks to the agricultural specialty truck extension while deleting language that is no longer needed to limit the number of agricultural specialty truck extensions that were initially approved. The language regarding the limits on the number of specialty trucks that could be approved in 2011 is no longer needed because the number of specialty truck extensions in a fleet cannot be increased from year to year. Staff is also proposing to allow livestock cattle truck owners to claim the extension by reporting prior to January 31, 2015, without limiting the number of livestock cattle trucks that can be added pro-

vided the other criteria to use the extension are met. Section 2025(d)(55)(F) was added to provide a new definition of livestock cattle truck. Livestock cattle trucks are owned by ranchers and a limited number of haulers that drive seasonally in and out of California; however most of these miles are driven in rural areas with cleaner air. This proposed change would recognize that while in-state and out-of-state livestock cattle haulers typically operate more miles than are permitted under the low-mileage agricultural vehicle provisions, as provided in section 2025(m)(2), they are being significantly impacted by current market conditions, and that mileage from these trucks in California is likely to be significantly depressed for several years.

- **Providing Flexibility for Heavy Cranes**

Staff is proposing to add section 2025(n)(2) to provide a new compliance option for heavy cranes. A new definition for “Heavy Crane” is proposed in section 2025(d)(33). The proposed schedule would require heavy cranes to be upgraded to 2010 model year or newer engines at a rate of 10 percent of the heavy cranes in the fleet per year from January 1, 2018 to January 1, 2027. Staff is also proposing to provide credit for heavy cranes that are equipped with a retrofit or original equipment PM filter before January 1, 2018, by counting such cranes towards meeting the proposed 2010 engine requirement. This credit would recognize crane owners that have already retrofitted or upgraded to newer cranes. These cranes would also be exempt from the replacement requirement. This option would recognize the high cost of replacing heavy cranes and the added complexity for retrofitting existing cranes and meeting crane safety certification standards.

- **Smoothing out Regulatory Compliance Requirements**

Staff is proposing to amend section 2025(f) to allow lighter vehicles with a GVWR of 26,000 pounds or less to use the amended phase-in option for vehicles operated exclusively in defined NOx Exempt Areas and the new Low-Mileage Work Truck Phase-in Option. Specifically, staff is proposing to amend section 2025(f)(3) to allow owners of lighter vehicles to use the amended “NOx Exempt Areas Phase-in Option” of section 2025(p)(1)(B) and the proposed “Work Truck Phase-in Option that is described in newly amended section 2025(p)(2). Staff is also proposing to delete the text of section 2025(f)(4) that is no longer needed and to replace it with language to add a new compliance option that would set an upper limit on the number of lighter vehicles that would need to be upgraded with a 2010 model-year engine each year starting January 1, 2015. Staff is proposing similar changes for heavier trucks in a new section 2025(g)(7). These changes would provide additional compliance options for fleet owners that

have a high percentage of older trucks, which tend to be lighter vehicles that would need to be upgraded in 2015.

Recognizing Early Actions Already Taken by Fleets to Comply

- **Extending the Use of Existing PM Filter Retrofits**

Staff is proposing to amend sections 2025(f)(2) and 2025(g)(4) to extend the compliance period from January 1, 2020 until January 1, 2023 for any engine that was retrofitted with a PM filter prior to January 1, 2014, provided that the owner reports by January 31, 2015 and the vehicle remains in the fleet. For clarity, the same language would be added in the Small Fleet Option section 2025(h) in a new subsection 2025(h)(7).

- **Extending the use of Credits with the PM Filter Phase-In Option**

Staff is proposing to amend the existing compliance option in section 2025(i) and associated sections in 2025(j) to extend the use of various compliance credits up to January 1, 2020. Staff is proposing to extend the use of fleet downsizing credits in existing section 2025(j)(1), credits for early PM retrofits in existing section 2025(j)(2)(A), and credit for early addition of original equipment PM filters in existing section 2025(j)(3) until January 1, 2018. Staff is also proposing to amend section 2025(j)(2)(B) to extend the credit for adding alternative fueled vehicles and pilot ignition engines until January 1, 2018, and to extend the use of credits until January 1, 2020 for “Advanced Technology Vehicles” that are newly defined in proposed section 2025(d)(4). The proposed changes would allow fleet owners that have not fully recovered from the recession to have more time to comply, would recognize the actions fleet owners took to comply early, and would continue to encourage owners to upgrade to alternative fueled or advanced technology vehicles.

- **Extending Compliance for PM Filters that Are Recalled**

Staff is proposing to add section 2025(q)(2)(C) to extend compliance for a retrofit PM filter that is recalled after the PM filter is installed and is not repaired or replaced by the manufacturer. The new section would allow vehicle owners that have installed a retrofit PM filter that becomes subject to a recall (as defined in Cal. Code Regs., tit 13, § 2701(a)(35)) to continue operating the vehicle in the appropriate configuration up to five years from the date of the recall. This amendment would recognize the efforts of fleet owners to comply on time.

Minor Changes

Staff is proposing amendments to section 2025(d), to modify existing definitions and to define new terms that are associated with the amendments outlined above.

Staff is also proposing to modify other sections to clarify existing requirements, improve enforceability of the regulation, and update reporting and recordkeeping requirements.

DETERMINATION OF INCONSISTENCY AND INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulatory action, ARB has conducted a search of any similar regulations on this topic, and has concluded that these regulations are neither inconsistent nor incompatible with state regulations.

COMPARABLE FEDERAL REGULATIONS

- **No Comparable Federal Regulations Exist**
Under the federal Clean Air Act (CAA), the United States Environmental Protection Agency (U.S. EPA) does not have authority to adopt in-use emission standards relating to the control of in-use motor vehicles or engines or in-use nonroad (off-road) engines used in vehicles or equipment. Thus, there are no federal regulations comparable to the Truck and Bus regulation to reduce emissions from in-use on-road diesel vehicles or vehicles that use off-road engines that operate in California.

- **Federal Waivers and Authorizations under the CAA**

Section 209(a) of the CAA preempts states from adopting emission standards for new motor vehicles and engines. However, section CAA 209(b) provides that the Administrator of the U.S. EPA shall grant California a waiver of preemption, unless certain specified findings can be made. The regulations proposed for amendment do not establish emission standards for new motor vehicles and engines, and thus no issue of federal preemption exists. Additionally, CAA section 209(e)(2) allows California, upon obtaining authorization from U.S. EPA, to adopt and enforce emission standards and other requirements related to the control of emissions for new and in-use off-road engines not expressly preempted (i.e., as set forth in CAA section 209(e)(1), new off-road engines under 175 horsepower used in farm and construction equipment and vehicles and new locomotives and locomotive engines). The Truck and Bus regulation has requirements for off-road engines used in yard-goats (for agricultural operations) and auxiliary engines of 2 engine sweepers that require waiver authorization from U.S. EPA for California to be authorized to enforce requirements on those vehicles. With the exception of these 2 vehicle types, no other vehicle types subject to the regulation require an autho-

zation. ARB requested that U.S. EPA grant authorization of a waiver for the 2 above-described types of vehicles on March 2, 2012, and on May 24, 2013 was granted the request for authorization of California's emission standards and accompanying enforcement procedures for in-use off-road yard trucks and auxiliary engines used in 2 engine sweepers as described in the Truck and Bus regulation. To the extent that the proposed amendments affect the previously granted authorization, ARB may submit a follow-up request to U.S. EPA for authorization action.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: ISOR for the proposed regulatory actions, which describes the basis of the proposed actions, and includes a summary of the economic and environmental impacts of the proposed amendments. The report is entitled: "Proposed Amendments to the Truck and Bus Regulation."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulation, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on March 5, 2014.

Final Statement of Reasons Availability

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

Agency Contact Persons

Inquiries concerning the substance of the proposed amendments to the Truck and Bus regulation may be directed to the designated agency contact persons, Ms. Beth White, Manager of the On-Road Compliance Assistance Section, at (916) 324-1704, or Ms. Jacqueline Johnson, Air Pollution Specialist, at (916) 323-2750.

Further, the agency representative to whom non-substantive inquiries concerning the proposed administrative action may be directed is Ms. Trini Balcazar, Regulations Coordinator, at (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2014/truckbus14/truckbus14.htm>.

DISCLOSURES REGARDING THE
PROPOSED REGULATION

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

Fiscal Impact/Local Mandate

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

Pursuant to Government Code section 11346.5(a)(8), the Executive Officer has made an initial determination that the proposed regulatory actions covering the affected regulation would not have a significant Statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In accordance with Government Code sections 11346.5(a)(10) and 11346.3(b), the Executive Officer has further determined that the proposed regulatory actions will decrease the elimination of jobs within — as well as outside of — the State of California, and decrease the elimination of existing businesses within — as well as outside — the State of California.

The amendments to the Truck and Bus regulation would reduce the compliance obligations for most fleets and businesses, both in–state and out–of–state, affected by the regulation over the next three years, and for some, until 2023. The extensions and expanded provisions included in the amendments would provide more time for the economy to continue to recover and would reduce the total compliance investments required of affected businesses.

These modifications could have a negative economic impact on retrofit manufacturers and installers and firms that provide repowers in the short term because orders would be spread out over the next several years, and affected fleets may opt to replace their vehicle with a newer compliant vehicle rather than installing a retrofit or performing an engine replacement.

An assessment of the economic impacts of the proposed regulatory action and its effect on California businesses can be found in the ISOR.

Cost Impacts on Representative Private Persons or Businesses

The determinations of the Board’s Executive Officer, pursuant to Government Code section 11346.5(a)(9), concerning the costs or savings necessarily incurred by representative private persons and businesses in reasonable compliance with the proposed amendments to the regulations are presented below.

Results of The Standardized Regulatory Impact Analysis/Assessment Prepared Pursuant to Gov. Code sec. 11346.3(c).

Effect on Jobs/Businesses:

The proposed amendments to the Truck and Bus regulation would reduce the overall cost of the regulation and would reduce the impact on employment by providing additional compliance options or by extending compliance periods that will reduce compliance costs for fleets. The amended regulation would defer some of the compliance costs for many vehicles for one to five years and would improve the ability of vehicle owners to raise the capital needed to make upgrades. This additional time would also give fleets additional opportunities to take advantage of declining used compliant truck prices and to apply for public incentive programs. The estimated costs of the amended Truck and Bus regulation would be about \$400 million lower than the existing regulation over the next 10 years.

Benefits of the Proposed Regulation:

These amendments would achieve \$400 million dollars in cost savings (a 20 percent reduction in overall regulatory cost) to those subject to these regulatory requirements, while achieving 93 percent of the PM2.5 and NOx benefits envisioned in 2010. Starting in 2020 emissions would be at the same level as the existing regulation.

The amendments do not result in any increase in emissions compared to existing environmental conditions and would continue to meet the goals that were established when the regulation was initially adopted. The regulation has already reduced diesel PM emissions by 39 percent and practically all trucks operating in California would still be equipped with a PM filter by 2020, meeting the goals of the DRRP. Staff also anticipates the amended regulations would achieve a 37 percent reduction in statewide NOx emissions in 2023, consistent with the current regulation. Table 5 compares the projected benefits of the existing regulation and the proposed amendments on key dates.

Table 5 — Statewide Emission Reductions of the Current Regulation Compared to the Proposed Amendments (tons per day)

Year	NOx Reductions		PM2.5 Reductions	
	Existing Regulation	Proposed Amendments	Existing Regulation	Proposed Amendments
2014	57	52	6.0	5.6
2017	83	62	6.1	5.0
2020	63	70	4.2	4.2
2023	95	94	2.9	2.9

Because the proposed amendments would defer and/or relax some requirements for businesses and some small fleets in the near term, staff projects there would be a temporary delay in emission benefits, until 2020, compared to emission benefits that may have been achieved absent the proposed amendments. Emissions of diesel PM, and NOx would continue to trend down from today and it would ultimately result in essentially the same projected emissions after 2020. A more detailed discussion of the effect on emissions is presented in the Initial Statement of Reasons, Chapter IV.

Please refer to “Objectives and Benefits of the Proposed Regulation” under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion earlier in this notice on page 412.

Effect on Small Business

Pursuant to Government Code section 11346.5(a)(7)(C), the Executive Officer has made an initial determination that the proposed regulatory action would have a net positive effect on small businesses that own trucks. The amendments reduce the impact on employment; however, the amendments could have a negative effect on businesses that aid in the making, distribution, cleaning, and maintenance of PM filters. Because the proposed amendments provide options to delay compliance with the PM requirements, the demand for retrofit PM filters will be extended longer and may ultimately be substantially lower if fleets chose to replace rather than retrofit their trucks. For some retrofit PM filter manufacturers and associated businesses that have invested capital based on original predictions of demand, there could be a delay in recovery of their capital investment, or an inability to fully recover that investment. However, the proposed modifications designed to ensure that fleets have an increased ability to comply could help mitigate potential impacts on retrofit businesses.

For the foregoing reasons, the Executive Officer has determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses.

Housing Costs

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

Business Reports

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

Alternatives

Before taking final action on the proposed regulatory actions, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, 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. Alternatives that staff considered are discussed in the ISOR.

Summary of any comments from Department of Finance on “major regulations” pursuant to Gov. Code sec. 11346.5(a)(10).

Summary of Comments from Department of Finance on Standardized Regulatory Impact Assessment (SRIA) Proposed Amendments to Truck and Bus Regulation and Air Resources Board Response to Comments

Department of Finance (DOF) conducted a review of the ARB’s Standardized Regulatory Impact Assessment for the proposed amendments. DOF’s comments are summarized and responded to below:

DOF Comment 1:

DOF concurred with the direct savings figure of at least \$621 million during the 2015 implementation year. This savings will be garnered by the regulated trucking businesses. DOF also agrees that the SRIA fulfills all the requirements set forth in Finance regulations, and therefore meets the guidelines promulgated by SB 617.

ARB Response: None needed .

DOF Comment 2:

DOF commented that confusion may result from using discounted values and suggested a methodology of annual disaggregated impacts. DOF suggests providing consistent numbers throughout the SRIA and other regulatory documents and/ or including both values indicated previously.

ARB Response: The SRIA was modified to include the following further explanation.

“Expenditures Vs. Compliance Costs/Savings

Table 5 shows annual changes in expenditures and compliance costs associated with the proposed Amendments. Expenditures represent changes in total capital costs and on-going costs that occur in each year while compliance costs represent changes in annualized capital costs and on-going costs that occur in each year. Annual expenditures are estimated for the purpose of the economic modeling while compliance costs are calculated for the purpose of estimating the cost-effectiveness. Cost-effectiveness is a ratio of annual compliance costs to annual emissions reductions. Since emissions occur annually, compliance costs need to be estimated on annual basis too in order to make a meaningful comparison of the costs and benefits of a regulation.

Compliance costs are estimated to spread out the costs that do not occur annually over the useful life of equipment using a capital recovery factor (CRF). For this amended regulation, we used a 7 percent discount rate and a useful life of 10 years to calculate the CRF. The 7 percent discount rate includes higher risk premium associated with affected businesses, which are 90 percent small business.

As shown in Table 5, the total expenditures and compliance costs attributed to the amendments are about \$406 and \$420 million lower in 2014 dollars than the existing regulation.”

DOF Comment 3:

DOF suggests modeling the alternatives with the same vigor as the regulation itself. Additionally, DOF suggests expanding the alternative analysis from the two alternatives that are less costly with less benefits to add a third alternative that has more cost and more benefits.

ARB Response:

The more costly alternatives would fall under ARB taking no action to postpone some of the requirements of the original Regulation. Such alternatives were deemed unreasonable because it was apparent to the ARB that some flexibility was needed to assure the long-term success of the Truck and Bus Regulations. It would have been unreasonable to continue the requirements that could have put many of the small firms out of business because of economic hardship. The flexibility provides time to the regulated community to comply, and in a few short years, the

foregone emission reduction due to the Amendments would be attained.

DOF Comment 4:

DOF suggests additional discussion of the health impacts of the proposed amendments, and that the health impacts of the original regulation be cross referenced.

ARB Response: The SRIA was modified to include the following further explanation.

The proposed amendments also would have little impact on the overall emissions benefits achieved; therefore, the health impacts are not expected to change significantly and are within the margin of error of the mortality calculations. As an example, over the life of the regulation, the proposed amendments cumulatively achieve 93 percent of the PM2.5 and NOx benefits, providing similar reductions in premature mortality (approximately 3,500 fewer deaths statewide attributable to PM2.5 exposure) as envisioned in the 2010 amendments, valued at billions of dollars in reduced health care costs. The proposed amendments result in an insignificant change in emissions compared to today’s existing environmental conditions and would continue to meet the goals that were established when the regulation was initially adopted.

Environmental Analysis

ARB, as the lead agency for the proposed regulatory action, has prepared an environmental analysis (EA) under its certified regulatory program (Cal. Code. Regs., tit 17, §§ 60000 through 60008) and the California Environmental Quality Act (Pub. Resources Code § 21080.5) to assess the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. Staff has determined that the proposed regulatory action would not result in any significant adverse impacts on the environment. The basis for reaching this conclusion is provided in Chapter V of the ISOR. Written comments on the EA, submitted as described below, will be accepted during a 45-day public review period starting on **March 7, 2014**, and ending at **5:00 p.m. on April 21, 2014**.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments relating to the proposed amendments orally or in writing at the hearing, and comments may be submitted by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on March 7, 2014. To be considered by the Board, written comments, not physically submitted at the hearing, must be submitted on or after March 7,

2014, and received **no later than 5:00 p.m.** on April 21, 2014, and must be addressed to the following:

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

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

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

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

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

AUTHORITY AND REFERENCE

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39002, 39003, 39500, 39600, 39601, 39602, 39602.5, 39650, 39656, 39658, 39659, 39665, 39666, 39667, 39674, 39675, 40000, 41511, 41513, 41752, 41754, 41755, 42400, 42400.1, 42400.2, 42402, 42402.2, 42410, 43000, 43000.5, 43013, 43016, 43017, 43018, 43018.2, 43023, and 43600. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 39600, 39601, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 40000, 41511, 41752, 41754, 41755, 42400, 42400.1, 42400.2, 42402.2, 42410, 43013, 43016, 43018, 43023, and 43600.

HEARING PROCEDURES

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

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language

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

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

At the Board meeting, the Board may direct staff to develop additional modifications to the regulation to be considered at a later Board hearing. If directed to do so, ARB will prepare a separate notice of proposed rule-making that will be published not less than 45 days before the scheduled hearing date.

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

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

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

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

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

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

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 4902, *Relief from Liability*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) sections 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 4902, *Relief from Liability*, which implements, interprets, and makes specific provisions for relief from special tax and fee liabilities due to reasonable reliance on written advice from the Board. The proposed amendments to Regulation 4902, subdivision (a), clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to “those persons.” The proposed amendments add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The proposed amendments also add language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on April 22–24, 2014. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as

the matter may be heard on April 22, 23, or 24, 2014. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 4902.

AUTHORITY

RTC section 8251, 9251, 30451, 32451, 40171, 41128, 43501, 45851, 46601, 50152 and 60601

REFERENCE

RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045 and 60210

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

The Board administers special taxes and fees under the Motor Vehicle Fuel Tax Law (RTC § 7301 et seq.), the Use Fuel Tax Law (RTC § 8601 et seq.), the Cigarette and Tobacco Products Tax Law (RTC § 30001 et seq.), the Alcoholic Beverage Tax Law (RTC § 32001 et seq.), the Energy Resources Surcharge Law (RTC § 40001 et seq.), the Emergency Telephone Users Surcharge Act (RTC § 41001 et seq.), the Hazardous Substances Tax Law (RTC § 43001 et seq.), the Integrated Waste Management Fee Law (RTC § 45001 et seq.), the Oil Spill Response, Prevention, and Administration Fees Law (RTC § 46001 et seq.), the Underground Storage Tank Maintenance Fee Law (RTC § 50101 et seq.), the Fee Collection Procedures Law (RTC § 55001 et seq.), and the Diesel Fuel Tax Law (RTC § 60001 et seq.) (hereafter, collectively referred to as special tax and fee laws). Each of the special tax and fee laws contains a statute, which defines “person” or incorporates a definition of “person.” (See RTC §§ 7329, 8606, 30010, 32002 (incorporating the definition of person from Bus. & Prof. Code, § 23008), 40004, 41003, 43006, 45006, 46020, 50102 (incorporating the definition of person from Health & Saf. Code, § 25299.25, which incorporates the definition of person from Health & Saf. Code, § 25281), 55002, and 60008.) The special tax and fee laws also contain RTC sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, which authorize the Board to grant a person relief under certain circumstances (hereafter, collectively referred to as the authorizing statutes).

Currently, under subdivision (a) of the authorizing statutes, if the Board finds that a person’s failure to

make a timely return or payment is due to the person's reasonable reliance on written advice from the Board, the person may be relieved of special taxes and fees and any penalties or interest added thereto. Currently, under subdivision (b) of the authorizing statutes, a person's failure to make a timely return or payment is due to reasonable reliance on written advice from the Board only if the Board finds that:

- The person submitted a written request to the Board for advice about whether a particular activity or transaction is subject to a special tax or fee and fully described the specific facts and circumstances of the activity or transaction in the request;
- The Board responded to the written request for advice in writing and stated whether or not the described activity or transaction is subject to the special tax or fee, or stated the conditions under which the activity or transaction is subject to the special tax or fee; and
- The special tax or fee liability due to the failure to make a timely return or payment applied to a particular activity or transaction which occurred before the Board rescinded or modified the written advice or the Board's earlier written advice ceased to be valid due to a change in the law.

Also, currently, subdivision (d) of the authorizing statutes generally provides that "[o]nly the person making the written request shall be entitled to rely on the [B]oard's written advice to that person."

Regulation 4902 implements, interprets, and makes specific the provisions of the authorizing statutes. As relevant here:

- Regulation 4902, subdivision (b)(1), currently requires that a representative's written request for advice identify the specific person for whom the advice is requested in order for the identified person to rely on the advice in the Board's written response to the representative for relief;
- Regulation 4902, subdivision (c) currently applies to audits, states that the "[p]resentation of [a] person's books and records for examination by an auditor shall be deemed to be a written request for the audit report," and prescribes the circumstances under which an audit report may be relied upon for relief; and
- Regulation 4902, subdivision (a), currently provides that "[w]ritten advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person."

Also, as relevant here, subdivision (e) of Regulation 4902 explains the circumstances under which a trade or industry association may request written advice on behalf of its members so that the members can rely on the written advice for relief. Subdivision (e) currently provides that:

A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

As a result, a person cannot generally obtain relief by relying on written advice the Board gave to another person, even if their activities or transactions are similar. However, Regulation 4902 does currently allow a person to obtain relief by relying on written advice the Board gave to the person's representative or trade or industry association under specified circumstances.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 4902

Need for Clarification

The Board's Property and Special Taxes Department's (PSTD's) special taxes and fees divisions are responsible for administering the Board's special tax and fee programs under the special tax and fee laws. Prior to the Board's adoption of Regulation 4902, the Board had adopted Regulations 1124, *Relief from Liability*, 1248, *Relief from Liability*, 1335, *Relief of Liability*, 1422, *Relief from Liability*, 2250, *Relief of Liability*, 2432, *Relief from Liability*, and 2570, *Relief from Liability*, which are applicable to relief under the authorizing statutes in the Motor Vehicle Fuel Tax Law, the Underground Storage Tank Maintenance Fee Law, the Use Fuel Tax Law, the Diesel Fuel Tax Law, the Oil Spill Response, Prevention, and Administration Fees Law, the Emergency Telephone Users Surcharge Act, and Alcoholic Beverage Tax Law, respectively. On February 5, 2003, the Board adopted Regulation 4902 to provide a single, detailed regulation with relief guidelines for all the special tax and fee programs administered by the Board's PSTD, under the special tax and fee laws. Regulation 4902 was specifically developed to mirror the relief provisions in Regulation 1705, *Relief From Liability*, because Regulation 1705 implements, interprets, and make specific RTC section 6596, which is substantially similar to the authorizing statutes. And, Regulation 4902 incorporates all of Regulation 1705's previous amendments made through February 5, 2003, including the 1999 amendments to Regulation 1705 extending relief to trade or industry association members when an association requests written advice on their behalf.

On February 5, 2003, the Board also adopted amendments to Regulations 1124, 1248, 1335, 1422, 2250, 2432, and 2570, which refer to the relief guidelines de-

scribed in Regulation 4902. And, the Board adopted Regulations 2303, 3021, 3302, 3502, and 4105, which are all called “Relief from Liability” or “Relief From Liability,” to provide specific regulations under the authorizing statutes in the Energy Resources Surcharge Law, the Hazardous Substances Tax Law, the Integrated Waste Management Fee Law, the Fee Collection Procedures Law, and the Cigarette and Tobacco Products Tax Law, respectively, that also refer to the relief guidelines in Regulation 4902.

During its October 23–25, 2012, Board meeting, the Board conducted a hearing regarding a sales and use tax appeal filed by a business entity (hereafter referred to as ABC). During the hearing, ABC indicated that it followed written advice provided during the Board’s prior audit of another business entity (hereafter referred to as XYZ). ABC stated that ownership of XYZ was similar to ABC, and that the two companies engaged in the same type of business in the same industry and shared a common accounting department. Also, records indicated that XYZ and ABC were related entities because XYZ owned more than 50 percent of ABC. Therefore, during the hearing, ABC argued that written advice provided to XYZ during its prior audit was indirectly provided to ABC as well, and that ABC should be permitted to rely on the written advice for relief under RTC section 6596. In response to ABC’s arguments, the Board referred the issue of whether relief from sales and use tax liabilities, under RTC section 6596, should only be available to the person who actually received the written advice from the Board or that person’s legal or statutory successor under certain circumstances, such as those presented in ABC’s appeal, to the Board’s Business Tax Committee (BTC) for further development.

At its August 13, 2013, BTC Meeting, the Board voted to propose amendments to Regulation 1705 to extend relief, under RTC section 6596, to a person who relies on advice provided in a prior audit of a person with shared accounting and common ownership because the Board determined that the amendments are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the facts of ABC’s appeal. During the same BTC meeting, the Board also recognized that there might be another issue if there are similar regulations to Regulation 1705 that apply to the special tax and fee programs and the other regulations are not amended to conform to the amendments to Regulation 1705. Therefore, the Board directed staff to recommend conforming amendments to any special tax and fee regulations that are similar to Regulation 1705. As a result, staff determined that Regulation 4902 was the only special tax and fee regulation

that was similar to Regulation 1705 and staff drafted amendments to Regulation 4902 to incorporate the language contained in the proposed amendments to Regulation 1705, in order to ensure that the Board’s programs are administered in a uniform manner.

December 17, 2013, BTC Meeting

Board staff subsequently prepared Formal Issue Paper 13–011, which recommended that the Board propose to add language to the end of the first sentence in Regulation 4902, subdivision (c), to clarify that the presentation of a person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report “by the audited person and any person with shared accounting and common ownership with the audited person.” The formal issue paper recommended that the Board propose to add the following language to the end of Regulation 4902, subdivision (c), to clearly prescribe the circumstances under which a person has shared accounting and common ownership with an audited person and require that a person have shared accounting and common ownership with an audited person during the periods that the person is entitled to rely on the audited person’s audit report for relief:

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - (A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
 - (B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.
 - (C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

The formal issue paper also recommended that the Board amend Regulation 4902, subdivision (a), to clarify that written advice provided under the circumstances described in subdivision (c) may be relied upon by the person audited “or a person with shared accounting and common ownership with the audited person” or by a legal or statutory successor to *that person*. And, during the December 17, 2013, BTC meeting, staff also recommended changing “that person” to “those persons” to make the amendments to subdivision (a) grammatically correct and fully consistent with a minor change to the proposed amendments to Regulation 1705 that staff would subsequently request and the Board would subsequently authorize later that same day.

Therefore, at the conclusion of the Board’s discussion of Formal Issue Paper 13–011 during the December 17, 2013, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 4902 recommended in the formal issue paper with the minor change recommended by staff. The Board determined that the proposed conforming amendments to Regulation 4902 are reasonably necessary to have the effect and accomplish the objective of addressing the issue presented by the amendments to Regulation 1705 (discussed above). (The Board also subsequently adopted the proposed amendments to Regulation 1705 on January 16, 2014, with the minor change authorized on December 17, 2013.)

The Board anticipates that the proposed amendments to Regulation 4902 will promote fairness and benefit taxpayers, Board staff, and the Board by clarifying that relief, under the authorizing statutes, can apply to a person who the Board would reasonably expect to rely on written advice provided by Board staff in a prior audit of another related person because the two persons are:

- In the same industry;
- Under common ownership; and
- Share accounting functions and accounting staff.

The Board has performed an evaluation of whether the proposed amendments to Regulation 4902 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are

not inconsistent or incompatible with existing state regulations because Regulation 4902 is the only regulation providing guidelines for relief under the authorizing statutes, and the proposed amendments make Regulation 4902 consistent with the amendments to Regulation 1705 discussed above. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1705 or the proposed amendments to Regulation 1705.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

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

The Board has determined that the adoption of the proposed amendments to Regulation 4902 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 4902 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 4902 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

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

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 4902 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 4902 will not affect the benefits of Regulation 4902 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

The adoption of the proposed amendments to Regulation 4902 will not have a significant effect on housing costs.

DETERMINATION REGARDING
ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Pamela Mash, Tax Counsel, by telephone at (916) 323-3248, by e-mail at Pamela.Mash@boe.ca.gov, or by mail at State Board of Equalization, Attn: Pamela Mash, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State

Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on April 22, 2014, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 4902 during the April 22-24, 2014, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 4902. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF
REASONS AND TEXT OF
PROPOSED REGULATION

The Board has prepared an underscored and strikethrough version of the text of Regulation 4902 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 4902, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 4902 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regula-

tion will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT
OF REASONS

If the Board adopts the proposed amendments to Regulation 4902, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

CESA CONSISTENCY DETERMINATION
REQUEST FOR
Elm Tree Fueling Station Project
(2080-2014-004-03)
Sonoma County

The Department of Fish and Wildlife (CDFW) received a notice on February 24, 2014, that Mangal Dhillon proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves subdividing the 0.98-acre project site into two parcels: Parcel 1 (31,143 square feet) is to be developed with a fueling station and small market; and Parcel 2 (11,600 square feet) is to provide a small park and picnic area. The proposed project will occur at 874 North Wright Road, Santa Rosa, Sonoma County, California.

The U.S. Fish and Wildlife Service issued a no jeopardy federal biological opinion (Service File No. 08ESMF00-2013-F0091-2)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on February 21, 2014, which considered the effects of the project on the state threatened and federally endangered California tiger salamander (*Ambystoma californiense*), and state and federally endangered Sebastopol meadowfoam (*Limnanthes vincularis*).

Pursuant to California Fish and Game Code section 2080.1, Mangal Dhillon is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed project. If the CDFW determines

the BO and ITS are consistent with CESA for the proposed project, Mangal Dhillon will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF FISH AND
WILDLIFE**

CESA CONSISTENCY DETERMINATION
REQUEST FOR
Fruit Growers Supply Company — HCP
(2080-2014-003-01)
Siskiyou County

The California Department of Fish and Wildlife (CDFW) received a notice on February 18, 2014, that Fruit Growers Supply Company (FGS) proposes to rely on a consultation with the U.S. Fish and Wildlife Service (Service) to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves timber operations and related management activities including, but not limited to timber harvest, yarding timber, loading and landing operations, fire prevention and suppression, salvage and transport of timber products, road construction and maintenance, extraction of rock, sand, and gravel from small borrow pits, silviculture, stand regeneration and improvement, and monitoring and reporting. The proposed project will occur on 152,178 acres of timberland in three company management units: the Klamath River, Scott Valley; and portions of the Grass Lake unit in Siskiyou County, California.

The Service issued an intra-service federal biological and conference opinion (Service File No. 81333-2011-F-0018)(BO) and incidental take statement (ITS) on April 20, 2012, for the Project pursuant to section 10(a)(1)(B) of the federal Endangered Species Act. The BO considered the effects of the project on the state candidate and federally threatened northern spotted owl (*Strix occidentalis caurina*) based on the following documents: (1) the FGS Habitat Conservation Plan (HCP), (2) the Final Environmental Impact Statement, and (3) the final Implementation Agreement (IA).

Pursuant to California Fish and Game Code section 2080.1, FGS is requesting a determination that the BO and ITS, which requires implementation of and compliance with the BO and its related ITS, IA and HCP, are consistent with CESA for purposes of the Project. If CDFW determines the BO and ITS are consistent with CESA for the proposed project, FGS will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF FISH AND
WILDLIFE**

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO.
2080–2014–001–01**

Project: Northern Spotted Owl Conservation Plan of the Pacific Lumber Company Habitat Conservation Plan

Location: Humboldt County, California

Applicant: Humboldt Redwood Company, LLC

Background

Humboldt Redwood Company, LLC (Humboldt Redwood) is currently implementing a fifty-year Habitat Conservation Plan (HCP) (Project) that covers forest management activities including timber operations on Humboldt Redwood's commercial timberlands. In 2008, Humboldt Redwood acquired all assets from Pacific Lumber Company (PALCO), including all permits and authorizations associated with forest management activities issued to PALCO. Humboldt Redwood's timberlands covered by the company's HCP encompass approximately 211,000 acres within Humboldt County, California.

The Project activities covered by Humboldt Redwood's HCP are timber operations and related management activities which include, but are not limited to: timber management; road and landing construction, reconstruction and upgrading, storm-proofing, inspections, maintenance, closure, decommissioning and use; water drafting; burning; development and operation of borrow pits; commercial rock quarry operations; and scientific surveys and studies.

The Project activities described above are expected to incidentally take¹ northern spotted owl (*Strix occidentalis caurina*; hereafter NSO), a species designated as threatened pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and as a candidate² for listing under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*).

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

² The species' status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species. (Cal. Code Regs., tit. 14, § 670. 1, subd. (e)(2).)

In particular, NSO could be incidentally taken as a result of the Project activities that cause direct or indirect mortality including engaging in timber harvesting within or near occupied NSO nest sites or activity centers, and removing or reducing the quality of occupied owl habitat which displaces NSO from suitable habitat into unsuitable or already occupied habitat. However, a portion of unoccupied but suitable NSO habitat has been and is projected to be available on the Humboldt Redwood ownership for displaced owls to occupy.

NSO individuals occupy the Project site and other unoccupied but suitable habitat occurs within the Project site. Because of the presence of NSO on site, dispersal and other movement patterns of the species, and the presence of other suitable habitat within the Project site, the United States Fish and Wildlife Service (Service) determined that Project activities are expected to result in the incidental take of NSO.

According to the Service, the Project will remove or modify the following acres of mid- and late-seral forests (including old-growth and residual Douglas-fir or redwood), by the following silvicultural prescriptions: clearcut — 18,474 acres; commercial thin — 3,232 acres; selection harvest — 20,032 acres; shelterwood removal — 400 acres; and shelterwood seed step — 105 acres. All canopy cover classes are included in this estimate; therefore, these data may overestimate the effect. Both mid- and late-seral forests are suitable habitat for NSO.

Because the Project was expected to result in take of a species designated as threatened under the federal ESA, PALCO prepared an HCP in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the ESA. On March 1, 1999, the Service issued ITP No. TE828950-0. The ITP requires full implementation of, and compliance with, all conservation measures listed in the HCP for avoidance, minimization, and mitigation for impacts to NSO, as well as compliance with the terms and conditions in the associated Implementation Agreement (IA), all of which were incorporated by reference as conditions of the ITP. On February 24, 1999, the Service issued a biological and conference opinion (Service Ref. No. 1-14-99-18) (BO) for the Project based on the following documents: (1) the 1999 PALCO Sustained Yield Plan (SYP) and HCP, (2) the 1999 Final Environmental Impact Statement/Environmental Impact Report for the Headwaters Forest Acquisition; and (3) the final IA signed by the Service, California Department of Fish and Wildlife (CDFW), and PALCO on February 26, 1999. The BO describes the Project, requires the Applicant to comply with terms of the BO and its associated incidental take statement (ITS), and incorporates additional measures.

As successor Permittee, Humboldt Redwood is required by the ITP to conduct timber harvesting and re-

lated operations in accordance with existing state and federal regulations, including the California Forest Practice Rules, the minor modification of the HCP (Minor Mod) issued by the Service on February 5, 2014 (Service Ref. No. AFW0-14B0117-14TA0026), and other operational and policy management actions currently being implemented by Humboldt Redwood, as well as the company's NSO HCP and ITP.

On February 11, 2014, the Director of CDFW received notification from Humboldt Redwood requesting a determination pursuant to Fish and Game Code section 2080.1, that the ITP, which requires implementation of and compliance with, the BO, IA, HCP, and Minor Mod is consistent with CESA for purposes of the Project and the anticipated incidental take of NSO.

Determination

CDFW has determined that the BO, its associated ITS, and ITP, which includes the requirement to fully implement the HCP, are consistent with CESA as to the Project and the anticipated incidental take of NSO. CDFW makes this determination because the mitigation measures contained in the HCP, the ITP, the IA, the conditions of the HCP, the timing of NSO surveys for new operations and adjusting surveys to maintain a high probability of detecting NSO during pre-project surveys as described in the Minor Mod, and other operational and policy management actions currently implemented by Humboldt Redwood, as well as the conditions in the environmental assessment and the associated finding of no significant impact (See 40 C.F.R. § 1508.13), meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of NSO will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITP and HCP will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of NSO. The mitigation measures in the ITP, IA, and HCP include, but are not limited to, the following:

- Humboldt Redwood will sell the Headwaters Forest, Owl Creek Reserve, and Grizzly Creek Reserve to the state and federal governments to ensure their functions as wildlife reserves in perpetuity.
- Humboldt Redwood will set aside, for the life of the HCP, some of the most valuable NSO and marbled murrelet nesting habitat in a series of Marbled Murrelet Conservation Areas (MMCA's).

- Humboldt Redwood will conduct a combination of night and daytime surveys and stand searches to locate both known, and any new, NSO activity sites.
- Humboldt Redwood will comply with the NSO Conservation Strategy, which relies upon other conservation elements of the HCP for the retention and recruitment of potential foraging, roosting, and nesting habitat in watersheds across the ownership throughout the HCP period.
- Humboldt Redwood will maintain a minimum of 108 NSO activity sites each year over the life of the HCP.
- Humboldt Redwood will maintain an average reproductive rate of at least 0.61 fledged young per pair, over a five-year period, for the minimum of 108 activity sites on the ownership.

Monitoring and Reporting Measures

- Humboldt Redwood shall conduct complete annual censuses to monitor all activity sites on the ownership and to determine numbers of pairs, nesting pairs, and reproductive rates. Humboldt Redwood may use a sampling methodology, rather than a complete census, if the sampling proposal has been reviewed by the Northern Spotted Owl Scientific Review Panel (NSOSRP) and approved by the Service and CDFW. Humboldt Redwood shall provide monitoring data annually to the NSOSRP, the Service, and CDFW.
- Humboldt Redwood shall survey the THP area and a 1,000-foot buffer for new operations, except site preparation, initiated in the period beginning February 21 and ending on or before August 31. Three survey visits, each separated by at least one week, shall occur prior to the start of operations, but after March 1. At least one visit shall occur on or after April 1. Survey efforts may be modified pursuant to HCP Section 6.2.3, Item 8 within the constraints of a minimum of three visits, and a maximum of six visits range.
- In 2014, and at five-year intervals thereafter, Humboldt Redwood shall conduct an analysis of NSO occupancy and detection probabilities using their accumulated survey data. The analysis shall include appropriate covariates for other factors that explain detectability. The Service and CDFW will review the appropriateness of the analysis methods. The results will be evaluated to determine the appropriate number of night and/or daytime survey visits necessary to maintain $\geq .90$ confidence interval, (e.g. $CI = 1 - (1 - P_{\text{survey}})^{n_{\text{surveys}}}$) to detect NSO, if present, for new operations initiated in the period beginning

February 21 and ending on or before August 31. Survey methods will be modified accordingly to maintain this confidence interval, with the constraints of a minimum of three visits, and a maximum of six visits range. Humboldt Redwood, the Service and CDFW, and/or the NSOSRP will meet to review the results and determine modifications, if necessary.

- By February 1 of each year, Humboldt Redwood will submit a report describing the activities undertaken, results of the Operating Conservation Program, and the proposed Operating Conservation Program activities for the next year for all lands covered by the HCP, including the MMCAs (the “Annual Report”), as described in the HCP’s Operating Conservation Program. As applicable, the Annual Report will contain the results of the surveying and data collection for those species that have multi-year reporting protocols.

Financial Assurances

- Prior to initiating Project activities, Humboldt Redwood will provide CDFW with a performance security in the form of a surety bond executed by an admitted surety insurer, irrevocable letter of credit, trust fund, or other form determined by CDFW, in the amount of \$2,000,000, as a financial assurance for implementation of the HCP.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of NSO, provided Humboldt Redwood implements the Project as described in the BO, ITS, ITP, IA, HCP, and Minor Mod, including adherence to all measures contained therein, and complies with the mitigation and other conditions described in the BO and its associated ITS, as well as the HCP and ITP. If there are any substantive changes to the Project (e.g., amendments replacements, or termination of the Service’s ITS, HCP, IA, or ITP as amended to date), Humboldt Redwood shall obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)).

By: /s/ Sandra Morey, Deputy Director
 Date: 2/21/14
 Ecosystem Conservation Division
 California Department of Fish and Wildlife

**OFFICE OF ENVIRONMENTAL HEALTH
 HAZARD ASSESSMENT**

**ANNOUNCEMENT OF SECOND
 PUBLIC COMMENT PERIOD**

Draft Technical Support Document on Proposed Updated Public Health Goals for Chlorobenzene, Endothall, Hexachlorocyclopentadiene, Silvex, and Trichlorofluoromethane in Drinking Water

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency is announcing the availability of the second draft technical support document for proposed updates of the Public Health Goals (PHGs) for chlorobenzene, endothall, hexachlorocyclopentadiene, silvex, and trichlorofluoromethane in drinking water. This draft document presents updates of these PHGs, originally published in 2003, 1997, 1999, 2003, and 1997, respectively. The updates consider recent toxicological literature and incorporate updated water consumption rates, and when appropriate, benchmark dose modeling, dermal and inhalation routes of exposure, and provisions to account for the most sensitive members of the population.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996¹ requires OEHHA to develop PHGs based exclusively on public health considerations.² PHGs published by OEHHA are considered by the California Department of Public Health in setting drinking water standards (Maximum Contaminant Levels, or MCLs).³

Pursuant to Health and Safety Code Section 57003(a), OEHHA is soliciting comments on the second draft technical document during a 30-day comment period. OEHHA solicited comments on the first draft technical document during a 45-day comment period (November 1–December 16, 2013) and held a public workshop on December 16, 2013 for receiving public input. No public comments were received.

¹ Codified at Health and Safety and Code section 116270 et seq.
² Health and Safety and Code section 116365(c).
³ Health and Safety and Code section 116365(a) and (b).

The document is posted on the OEHHA web site at <http://www.oehha.ca.gov/>. Written comments must be received at the OEHHA address below by 5:00 p.m. on April 7, 2014 to be considered. Comments may be submitted by email or mail. After any subsequent revisions, the final document will be posted on the OEHHA website along with responses to the major comments submitted during the public comment period. If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3170 or the address below.

Hermelinda Jimenez
(hermelinda.jimenez@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, California 94612
Attention: PHG Project

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

EXTENSION OF THE PUBLIC COMMENT PERIOD FOR NOTICE OF INTENT TO LIST: NITRITE IN COMBINATION WITH AMINES OR AMIDES

March 7, 2014

[NOTE: Posted on the OEHHA web site on
February 28, 2014]

On February 7, 2014, the California Environmental Protection Agency's (Cal/EPA) Office of Environmental Health Hazard Assessment (OEHHA) published a notice in the *California Regulatory Notice Register* (Register 2014, No. 6-Z) announcing its intent to list *nitrite in combination with amines or amides* as known to the State to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986.¹

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

The February 7 notice initiated a 30-day public comment period that was scheduled to close on March 10, 2014. OEHHA has received requests from the American Meat Institute and the North American Meat Association seeking an extension of the comment period. **OEHHA hereby extends the public comment period until 5 p.m., Thursday, May 8, 2014.**

We encourage you to submit comments via e-mail, rather than in paper form. Comments transmitted by e-mail should be addressed to P65PublicComments@oehha.ca.gov with "NOIL-nitrite in combination with amines or amides" in the subject line. Hard copy comments may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address: Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California
95812-4010
Fax: (916) 323-2265
Street Address: 1001 I Street
Sacramento, California 95814

Comments received during the public comment period will be posted on the OEHHA website after the close of the comment period. If you have any questions, please contact Ms. Oshita at cynthia.oshita@oehha.ca.gov or at (916) 445-6900.

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

NOTICE OF PUBLIC WORKSHOP TITLE 27. CALIFORNIA CODE OF REGULATIONS PROPOSITION 65 POTENTIAL AMENDMENTS TO ARTICLE 6 CLEAR AND REASONABLE WARNINGS

March 7, 2014

On April 14, 2014, the Office of Environmental Health Hazard Assessment (OEHHA) will hold a public workshop for the purpose of discussing a possible regulatory action to change the existing regulation governing Proposition 65¹ warnings. If a regulation is eventually adopted, it would replace the existing

¹ Health and Safety Code sections 25249.5 *et seq.*, the Safe Drinking Water and Toxic Enforcement Act of 1986, a voter initiative commonly known as Proposition 65. Current regulations can be found in Title 27, Cal. Code Regs., section 25601 *et seq.*

OEHHA regulation. A potential draft regulation and a potential draft Initial Statement of Reasons are available for public review on OEHHA's website. It is OEHHA's intent to make Proposition 65 warnings more informative and meaningful while providing certainty for businesses on the content and methods for providing warnings.

The workshop will take place from 10:00 a.m. to 2:00 p.m. in the Sierra Hearing Room at the Cal/EPA Headquarters Building, 1001 I Street, Sacramento, CA. The workshop will be webcast. The URL for the webcast (not active until the day and time of the workshop) is <http://calepa.ca.gov/Broadcast/>.

PLEASE NOTE: This is a pre-regulatory proposal. The potential regulation may change substantially prior to the eventual initiation of a formal regulatory proceeding. If OEHHA decides to formally propose changes to Section 25601, additional opportunities for public input will be provided during the formal process.

Background

OEHHA is the lead agency for implementation of Proposition 65. As part of its responsibilities, OEHHA administers the regulations implementing the Act. These regulations can be found in Title 27 of the California Code of Regulations, sections 25102 through 27001. The existing regulations concerning clear and reasonable warnings are codified in Article 6, section 25601, *et seq.* http://www.oehha.ca.gov/prop65/law/pdf_zip/RegsArt6.pdf.

OEHHA held a pre-regulatory workshop on July 30, 2013, for the purpose of gathering input from interested parties on potential changes to the existing regulation that would make Proposition 65 warnings more informative and meaningful. Written comments were received and posted on OEHHA's website at http://www.oehha.ca.gov/prop65/public_meetings/wrkshop070913.html.

Potential Regulation

OEHHA carefully considered the public comments and developed a potential draft regulation and a potential draft Initial Statement of Reasons. These two documents should be considered together as the Statement of Reasons explains the purpose and intent of the proposal. OEHHA is seeking public input concerning this potential regulation.

Written Comments

The public is encouraged to submit written comments via e-mail, rather than in paper form. Send e-mail comments to P65Public.Comments@oehha.ca.gov. Please include "P65 Warning Regulation" in the subject line. Hard-copy comments may be mailed, faxed, or delivered in person to the appropriate address below.

Monet Vela
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-323-2517
Fax: 916-323-2610
E-mail: P65Public.Comments@oehha.ca.gov

Written comments concerning this proposed action, regardless of the form or method of transmission, must be received by OEHHA by 5:00 p.m. on **May 14, 2014**, the designated close of the written comment period, in order to be considered during this pre-regulatory phase of the process. All comments received will be posted on the OEHHA website at the close of the public comment period.

Please be aware that OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address and e-mail may be provided to third parties upon request.

Special Accommodations

If you have special accommodations or language needs for the April 14 workshop, please contact Monet Vela by April 1, 2014, at (916) 323-2517, or by e-mail at monet.vela@oehha.ca.gov, or by mail to OEHHA, P.O. Box 4010, Sacramento, California 95812-4010. Fran Kammerer is a back-up contact person for inquiries concerning this workshop and is available at (916) 445-4693 or fran.kammerer@oehha.ca.gov.

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

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

**NOTICE OF CHANGE IN THE
IDENTIFICATION OF REPRODUCTIVE
TOXICITY ENDPOINTS IN THE LISTING OF
TOLUENE AS KNOWN TO CAUSE
REPRODUCTIVE TOXICITY UNDER
PROPOSITION 65**

March 7, 2014

Toluene, as identified in the table below, was originally added to the Proposition 65¹ list as causing reproductive toxicity on January 1, 1991, after consideration by the "state's qualified experts" at a public meeting held on October 19, 1990. The state's qualified experts

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code (HSC) section 25249.5 *et seq.*

determined that toluene was clearly shown, through scientifically valid testing according to generally accepted principles, to cause reproductive toxicity (developmental endpoint).

Chemical	CAS No.
Toluene	108-88-3

The additional endpoint of female reproductive toxicity was identified on August 7, 2009, pursuant to Labor Code Section 6382(d), which is incorporated by reference in Health and Safety Code Section 25249.8(a). Toluene was identified as causing female reproductive toxicity in the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs). The TLVs were previously incorporated by reference into the federal Occupational Health and Safety Administration (OSHA) Hazard Communication Standard (Title 29, Code of Federal Regulations [C.F.R.] section 1900.1200). The Hazard Communication Standard is, in turn, incorporated by reference into Labor Code Section 6382(d). In March 2012, OSHA extensively amended the regulations contained in the Hazard Communication Standard. Specifically, Title 29, C.F.R. §1910.1200(d)(3)(ii), which referred to the ACGIH TLV list, was deleted in the 2012 version of the regulation. The Office of Environmental Health Hazard Assessment (OEHHA), within the California Environmental Protection Agency, is the lead agency for the implementation of Proposition 65. OEHHA has determined that these changes have eliminated the ACGIH TLVs as a definitive source for identifying chemicals that are known to cause reproductive toxicity.

Proposition 65 provides mechanisms for administratively listing chemicals that are known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8(b)). The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 27, California Code of Regulations, section 25306, and those for listing a chemical through the formally required to be labeled or identified mechanism are set forth in Title 27, California Code of Regulations, section 25902.

OEHHA has reviewed potential alternative administrative bases for identifying toluene as causing female reproductive toxicity and has found no such basis. Consequently, effective March 7, 2014, OEHHA will remove female reproductive toxicity as a basis for the listing of toluene. Toluene will remain on the Proposition 65 list of chemicals known to cause reproductive toxicity based on the state's qualified experts' findings of reproductive toxicity (developmental endpoint).

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

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

**NOTICE OF CHANGE TO BASIS FOR
IDENTIFICATION OF MALE
REPRODUCTIVE TOXICITY AS AN
ENDPOINT OF REPRODUCTIVE TOXICITY
FOR
METHYL CHLORIDE**

March 7, 2014

Effective March 7, 2014, the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) has changed the basis for identifying male reproductive toxicity as an endpoint of reproductive toxicity for methyl chloride under the Safe Drinking Water and Toxic Enforcement Act of 1986¹.

Background: Methyl chloride was originally added to the Proposition 65 list as causing reproductive toxicity (developmental endpoint) on March 10, 2000, pursuant to the "authoritative bodies" listing mechanism². This action was based on a formal identification of the chemical's reproductive toxicity by the National Institute for Occupational Safety and Health (NIOSH)³.

On August 7, 2009, the endpoint of male reproductive toxicity was also identified for methyl chloride pursuant to the "Labor Code" mechanism based on Labor Code Section 6382(d), which is incorporated by reference in Health and Safety Code Section 25249.8(a). Methyl chloride was identified as causing male reproductive toxicity in the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs). The TLVs were previously incorporated by reference into the federal Occupational Health and Safety Administration (OSHA) Hazard Communication Standard (Title 29, Code of Federal

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

² See Health and Safety Code section 25249.8(b) and Title 27, California Code of Regulations, section 25306. All further references are to sections of Title 27 of the California Code of Regulations, unless indicated otherwise.

³ National Institute for Occupational Safety and Health (NIOSH, 1984). *Current Intelligence Bulletin 43: Monohalomethanes (Methyl Chloride CH₃Cl, Methyl Bromide CH₃Br, Methyl Iodide CH₃I)*. U.S. Department of Health and Human Services, Public Health Services, NIOSH. Available at <http://www.cdc.gov/niosh/docs/84-117/>.

Regulations [C.F.R.] section 1900.1200). The Hazard Communication Standard is, in turn incorporated by reference into Labor Code Section 6382(d). In March 2012, OSHA extensively amended the regulations contained in the Hazard Communication Standard. Specifically, Title 29, C.F.R. 1910.1200(d)(3)(ii), which referred to the ACGIH TLV list, was deleted from the 2012 version of the regulation. OEHHA has determined that these changes have eliminated the ACGIH TLVs as a definitive source for identifying chemicals that are known to cause reproductive toxicity.

However, the U.S. Environmental Protection Agency (U.S. EPA) has concluded that methyl chloride causes male reproductive toxicity⁴. U.S. EPA is an authoritative body for the purpose of identifying chemicals as causing reproductive toxicity under Proposition 65⁵.

OEHHA's determination regarding identification of male reproductive toxicity as an endpoint of reproductive toxicity for methyl chloride: Methyl chloride meets the criteria for identification as causing reproductive toxicity (male reproductive endpoint) under Proposition 65, based on findings of U.S. EPA (U.S. EPA, 2001), as outlined below.

Formal identification and sufficiency of evidence: OEHHA is relying on U.S. EPA's conclusion that methyl chloride causes male reproductive effects. This conclusion meets the formal identification requirement of Section 26306(d)(1)⁶ and is made in the following document:

Toxicological Review of Methyl Chloride (CASRN 74-87-3); In Support of Summary Information on the Integrated Risk Information System (IRIS) (U.S. EPA, 2001)

The U.S. EPA (2001) document states on page 33 that:

“Conclusions: The testicular results in rats are consistent with a LOAEL of 1,000 ppm, based on early signs of seminiferous tubule degeneration and atrophy in the absence of age-related degeneration.”

⁴ U.S. Environmental Protection Agency (U.S. EPA, 2001). *Toxicological Review of Methyl Chloride (CASRN 74-87-3); In Support of Summary Information on the Integrated Risk Information System (IRIS)*. EPA1635/R01/003. U.S. EPA, Washington DC, September. Available online at: <http://www.epa.gov/iris/toxreviews/1003tr.pdf>.

⁵ Section 25306(l).

⁶ “the chemical . . . is the subject of a report which is published by the authoritative body and which concludes that the chemical causes . . . reproductive toxicity.”

The U.S. EPA (2001) synthesizes evidence on non-cancer effects and concludes on pages 58–59 that:

“At high exposure concentrations (1,000 to 5,000 ppm), studies in rats have demonstrated that methyl chloride results in reduced fertility, testicular toxicity (seminiferous epithelium degeneration, delayed spermiation, reduced testicular weight and numbers of sperm and spermatids, sperm abnormalities and reduced motility, abnormal histopathology, reduced levels of NPSH [nonprotein sulfhydryls] and circulating testosterone), epididymal toxicity (inflammation, sperm granulomas, reduced NPSH levels) and dominant lethal effects. The collective data, including studies with the anti-inflammatory agent BW755C, which inhibits methyl chloride-induced epididymal inflammation and postimplantation loss, but not testicular toxicity or preimplantation loss, strongly suggest that the preimplantation loss results from methyl chloride's cytotoxic effects on sperm located in the testes, with consequent failure of fertilization due to low sperm number and poor sperm quality.

In male rats exposed to 475 ppm and mated with exposed and unexposed females, there was a small reduction in F₀ male rat fertility that resolved during postexposure. A statistically significant decreased percentage of males and temporary pup weight reductions in F₁ litters were also observed at 475 ppm. At 1,500 ppm, males were infertile. No effects on fertility were seen at the only other concentration tested, 150 ppm.”

Thus, this report meets the formal identification criterion in Section 26306(d)(2)(C)⁷.

OEHHA has reviewed the study descriptions provided by U.S. EPA (2001) as supporting U.S. EPA's conclusions regarding the male reproductive toxicity of methyl chloride, relative to the criteria in Section 25306(g).

Conclusion: OEHHA has determined that identification of the male reproductive endpoint for methyl chloride is consistent with the criteria for formal identification and sufficiency of evidence for the “authoritative bodies” listing mechanism⁸.

OEHHA is providing this notice of change to the basis for identifying male reproductive toxicity as an endpoint of reproductive toxicity for methyl chloride. The 2000 identification of methyl chloride as a chemical

⁷ “[the document is] Published by the authoritative body in a publication such as, but not limited to, the federal register . . .”

⁸ Section 25306.

known to the state to cause reproductive toxicity (developmental endpoint) remains unchanged.

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

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

**NOTICE TO INTERESTED PARTIES
MARCH 7, 2014**

**TENTATIVE AGENDA FOR THE MARCH 19,
2014 MEETING OF THE DEVELOPMENTAL
AND REPRODUCTIVE TOXICANT
IDENTIFICATION COMMITTEE**

The Developmental and Reproductive Toxicant Identification Committee (DART IC) of OEHHA's¹ Science Advisory Board identifies chemicals for addition to the list of chemicals known to the state to cause reproductive toxicity (Health and Safety Code section 25249.8). The Committee serves as the "state's qualified experts" for determining whether a chemical has been clearly shown, through scientifically valid testing according to generally accepted principles, to cause reproductive toxicity.

A public meeting of the DART IC will be held on Wednesday, March 19, 2014. On January 10, 2014, OEHHA released the hazard identification materials for the six chemicals with listings that will be reconsidered at the March 19 meeting. The meeting will be available via webcast. The URL for the webcast (not active until the day and time of the meeting) is <http://calepa.ca.gov/Broadcast/>. On the day of the meeting, the link to the webcast will also be posted on the OEHHA website at http://www.oehha.ca.gov/prop65/whats_new/index.html. If you have special accommodation or language needs, please contact Cynthia Oshita at (916) 445-6900 or cynthia.oshita@oehha.ca.gov by March 12, 2014. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

¹ The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code, section 25249.5 *et seq.* (commonly known as Proposition 65).

TENTATIVE AGENDA

- I. WELCOME AND OPENING REMARKS**
- II. RECONSIDERATION OF LISTING OF CHEMICALS LISTED VIA THE LABOR CODE AS KNOWN TO THE STATE TO CAUSE REPRODUCTIVE TOXICITY**
 - A. n-Butyl glycidyl ether**
 - Staff presentation
 - Public comments*
 - Committee discussion and decision
 - B. Diglycidyl ether**
 - Staff presentation
 - Public comments*
 - Committee discussion and decision
 - C. Phenyl glycidyl ether**
 - Staff presentation
 - Public comments*
 - Committee discussion and decision
 - D. Methyl n-butyl ketone**
 - Staff presentation
 - Public comments*
 - Committee discussion and decision
 - E. Methylisopropyl ketone**
 - Staff presentation
 - Public comments*
 - Committee discussion and decision
 - F. α-Methyl styrene**
 - Staff presentation
 - Public comments*
 - Committee discussion and decision
- III. Committee Discussion on How to Tabulate Data from Epidemiological and Animal Studies in Hazard Identification Documents**
 - Introduction
 - Public comments*
 - Committee discussion
- IV. Update of the Section 27000 List of Chemicals Which Have Not Been Adequately Tested as Required**
- V. STAFF UPDATES**
- VI. SUMMARY OF COMMITTEE ACTIONS**

* Public comments should be limited to 5 minutes, which may be changed if time allows and at the discretion of the chair. Commenters may ask the chair for additional time in advance by sending a request to Cynthia Oshita at Cynthia.Oshita@oehha.ca.gov at least three business days in advance of the meeting. The request should specify the name(s) of the commenter(s), the amount of time requested, and (briefly) the reasons for additional time.

**RULEMAKING PETITION
DECISION**

**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

**NOTICE OF DECISION ON PETITION TO
AMEND REGULATIONS**

PETITIONER

Don Watson D-90229

AUTHORITY

The authority granted by Government Code (GC) § 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) § 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC § 5054 vests with the Secretary of the CDCR the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC § 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the CDC shall be exercised by the Secretary of the CDCR. PC § 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

CONTACT PERSON

Please direct any inquiries regarding this action to Chandra White, Correctional Case Records Administrator, Case Records Unit, Division of Adult Institutions or to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

The petition to amend regulations is available upon request directed to the Department's contact person.

SUMMARY OF PETITION

Petitioner contends that CDCR exceeds its jurisdiction as its regulations contain language that conflicts with PC 190. Petitioner, an inmate at Duel Vocational Institute, challenges the language of subsection (a)(1) of Title 15 Section 3043 and proposes it be modified to reflect offenders sentenced for offenses under PC 190 be credited with a one-fourth reduction on their "minimum term" pursuant to the credit provisions under PC 2931.

DEPARTMENT DECISION

The Secretary of the CDCR declines the petition in its entirety.

The CDCR has been granted the authority by the enactment of Penal Code § 5058, in which the legislature has granted the Secretary of the CDCR the authority to prescribe or amend rules and regulations for the administration of the prisons. All regulations that the Secretary of the CDCR proposes must be vetted through the rulemaking process and comply with the Administrative Procedure Act (APA) of California, which the regulation in question has completed.

Petitioner challenges subsection (a)(1) of Title 15, Section 3043, part of the regulation on credit earning for incarcerated offenders serving life terms. Petitioner argues that the CDCR surpasses its authority by modifying the language of PC 190. He further proposes that credit provisions under PC 2931 be added to the subsection; however, this statute is inappropriate as it applies to determinate sentences for offenses committed prior to January 1, 1983, not indeterminate life terms.

The CDCR applies conduct credit for behavior and participation according to the offense type and date of occurrence, as well as the governing sentencing and credit laws in effect at the time of the offense. Except where otherwise prohibited by law, Title 15 Sections 3043(a)(1) and 3043(b) set the CDCR standards pertaining to the methodology by which conduct credit is applied to the calculation of the minimum eligible parole date (MEPD), for an offender sentenced pursuant to PC 190 to serve a specified minimum term of 15 or 25 years to life and received by the CDCR on or after May 27, 1987. These inmates are credited with one-fourth reduction for good behavior and one-twelfth reduction for participation. The credit is subject to denial or forfeiture due to disciplinary action for behavior or failure/refusal to participate and perform work and/or program

assignments as ordered. Misconduct, as listed in Title 15 Section 3315 Serious Rule Violations is subject to a forfeiture of credit in the amounts found in Title 15 Section 3323 Disciplinary Credit Forfeiture Schedule.

The MEPD calculation is determined by the minimum sentence prescribed by law and the associated credit earning for the offense, when applicable. When the law provides for application of conduct credit on a life term, the minimum term is first reduced by any pre-prison credit awarded by the court, followed by adjustment for dead time (time out of custody), reduction of CDCR conduct credit (behavior/participation), and lastly, adjusted by credit forfeited via the disciplinary process and/or restored by classification action.

The CDCR appropriately applies credit earning to life terms, as the calculated MEPD includes the reduction of conduct credit dictated by statute.

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# 2014-0115-01
BOARD OF EQUALIZATION
Rules for Tax Appeals

This regulatory action establishes new publication requirements pursuant to section 40 of the Revenue and Taxation Code and incorporates them into the Rule for Tax Appeals (RTA); it also updates several others parts of the RTA regulations to reflect the section 40 changes and it makes a large number of clean-up revisions to these regulations.

Title 18
California Code of Regulations
ADOPT: 5255, 5256, 5453, 5552 AMEND: 5200, 5212, 5215, 5215.4, 5215.6, 5216, 5217, 5218, 5219, 5220, 5222, 5224, 5225, 5230, 5233, 5235, 5237, 5240, 5241, 5242, 5247, 5250, 5262, 5264, 5266, 5267, 5270, 5311, 5322, 5323.6, 5323.8, 5324, 5325.6, 5332, 5332.6, 5333, 5333.4, 5333.6,

5334, 5334.4, 5334.6, 5335, 5336.5, 5345, 5421, 5435, 5444, 5450, 5451, 5452, 5460, 5463, 5510, 5511, 5512, 5522.8, 5523.6, 5551, 5561, 5562, 5563, 5570, 5573, 5574
REPEAL: 5450, 5512, 5563
Filed 02/25/2014
Effective 04/01/2014
Agency Contact:
Richard E. Bennion (916) 445-2130

File# 2014-0110-06
BOARD OF PHARMACY
Partial Fill of Schedule II Prescriptions; Criteria for Rehabilitation; Unprofessional Conduct

This rulemaking by the Board of Pharmacy amends Title 16 of the California Code of Regulations by amending sections 1745 and 1769 and adopting section 1762. These changes assist the Board with investigating and prosecuting complaints of misconduct in a timely manner, and provide the Board with tools to improve the enforcement process and ensure patient safety.

Title 16
California Code of Regulations
ADOPT: 1762 AMEND: 1745, 1769
Filed 02/24/2014
Effective 04/01/2014
Agency Contact: Carolyn Klein (916) 574-7913

File# 2014-0110-03
DENTAL BOARD OF CALIFORNIA
Dentistry Fee Increase

In this regulatory action, the Board is amending section 1021(g) of title 16 of the California Code of Regulations to increase the fees associated with the initial licensure as well as the biennial renewal licensure for dentists. These fees are increased from \$365 to \$450, which is the statutory cap for these categories of fees.

Title 16
California Code of Regulations
AMEND: 1021
Filed 02/19/2014
Effective 07/01/2014
Agency Contact: Sarah Wallace (916) 263-2187

File# 2014-0204-03
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Interior Quarantine

This regulatory action establishes the process for adding and removing interior quarantine areas for the Oriental fruit fly.

Title 3
 California Code of Regulations
 AMEND: 3423(b)
 Filed 02/20/2014
 Effective 04/01/2014
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2014-0107-03
 DEPARTMENT OF FOOD AND AGRICULTURE
 Citrus Nursery Stock Pest Cleanliness Program

This rulemaking action by the Department of Food and Agriculture updates sections 3701-3701.8 of title 3 of the California Code of Regulations to include additional statutory references for the purpose of emphasizing various existing mandates regarding the health of California's citrus industry.

Title 3
 California Code of Regulations
 AMEND: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8
 Filed 02/20/2014
 Effective 04/01/2014
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2014-0211-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Mexican Fruit Fly Interior Quarantine

This regulatory action establishes the process for adding and removing interior quarantine areas for the Mexican fruit fly.

Title 3
 California Code of Regulations
 AMEND: 3417(b)
 Filed 02/25/2014
 Effective 04/01/2014
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2014-0219-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Oak Mortality Disease Control

This emergency regulatory action adds Trinity County to the regulated area for Oak Mortality Disease.

Title 3
 California Code of Regulations
 AMEND: 3700(b)
 Filed 02/25/2014
 Effective 02/25/2014
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2014-0213-04
 DEPARTMENT OF FOOD AND AGRICULTURE
 Light Brown Apple Moth Interior Quarantine

This regulatory action clarifies that the requirements for a regulated area are the same as those for a quarantine area.

Title 3
 California Code of Regulations
 AMEND: 3434(b)(c)(d)
 Filed 02/26/2014
 Effective 04/01/2014
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2014-0113-01
 DEPARTMENT OF HEALTH CARE SERVICES
 Two-Plan Model Modification

This rulemaking action by the Department of Health Care Services (DHCS) modifies regulations concerning the "Two-Plan Model" of managed health care. This amendment provides DHCS with the ability to contract with an Alternate Health Care Service Plan (AHCSPP) to provide medical services to beneficiaries who demonstrate a specific linkage to the AHCSPP.

Title 22
 California Code of Regulations
 AMEND: 53800, 53810 REPEAL: 53830
 Filed 02/26/2014
 Effective 04/01/2014
 Agency Contact: Ben Carranco (916) 440-7766

File# 2014-0110-05
 DEPARTMENT OF INSURANCE
 Prescription Drug Prior Authorization Requests

Insurance Code section 10123.191 mandates the adoption of a standardized form that health insurers and prescribing providers must use for prior authorization requests for prescription drugs. The Department of Insurance adopted section 2218.30 of title 10 of the California Code of Regulations to establish this form.

Title 10
 California Code of Regulations
 ADOPT: 2218.30
 Filed 02/25/2014
 Effective 04/01/2014
 Agency Contact:
 Julia Yee (916) 492-3592

File# 2014-0115-02
 DEPARTMENT OF INSURANCE
 Essential Health Benefits

This rulemaking action makes permanent the Department of Insurance's emergency regulations specifying requirements for coverage of essential health benefits under the Patient Protection and Affordable Care Act (PPACA) and implementing the PPACA's annual limitations on cost sharing and small group deductibles and levels-of-coverage requirements, and establishing

the process through which insurers will submit health insurance policies containing verification of actuarial value to the Department for review for compliance with essential health benefits. The action also amends the emergency regulations to conform them to Senate Bill 639, Chapter 316, Statutes of 2013.

Title 10
California Code of Regulations
ADOPT: 2594, 2594.1, 2594.2, 2594.3, 2594.4, 2594.5, 2594.6, 2594.7
Filed 02/24/2014
Effective 02/24/2014
Agency Contact: Jessica Ryan (415) 538-4110

File# 2014-0124-03
DEPARTMENT OF JUSTICE
Scope and Purpose, Definitions, and Written Confirmation of Compliance

This change without regulatory effect amends the regulatory definition of the term “units sold” in section 999.10 of Title 11 of the California Code of Regulations so as to conform it to its governing definition in Health and Safety Code section 104456(j), as amended by Senate Bill 680, Chapter 168, Statutes of 2013.

Title 11
California Code of Regulations
AMEND: 999.10
Filed 02/19/2014
Agency Contact: Melan Noble (916) 322-0908

File# 2014-0203-02
DEPARTMENT OF MOTOR VEHICLES
Conflict-of-Interest Code

This is a Conflict-of-Interest Code filing that has been approved by FPPC on January 10, 2014 and is being submitted for filing with the Secretary of State and printing only.

Title 13
California Code of Regulations
AMEND: 1
Filed 02/24/2014
Effective 03/26/2014
Agency Contact:
Debbie Swank Cockrill (916) 657-6469

File# 2014-0213-02
FISH AND GAME COMMISSION
Low-Flow Closure to Fishing Due to Drought Conditions

This emergency regulatory action temporarily closes specified streams to fishing to protect vulnerable migrating anadromous fish, primarily wild steelhead trout.

Title 14
California Code of Regulations
AMEND: 7.00, 7.50, 8.00
Filed 02/19/2014
Effective 02/19/2014
Agency Contact: Jon Snellstrom (916) 653-4899

File# 2014-0109-01
FRANCHISE TAX BOARD
Financial Institution Record Match (FIRM)

The Franchise Tax Board (Board) adopted title 18, section 19266 to the California Code of Regulations to implement the requirements of the Financial Institution Record Match (FIRM) program, as established by Revenue and Taxation Code section 19266 in SB 86 (Stats.2011, c. 14). Revenue and Taxation Code section 19266 authorizes FTB to match income and franchise tax and non-tax debtor files referred to the Board for collection against accounts held at financial institutions doing business in California. These financial institutions include banks, credit unions, insurance and brokerage companies. The regulation will make specific the Board’s procedures for exchanging data with financial institutions for its tax and non-tax collection and enforcement function under Revenue and Taxation Code section 19266.

Title 18
California Code of Regulations
ADOPT: 19266
Filed 02/20/2014
Effective 04/01/2014
Agency Contact: Colleen Berwick (916) 845-3306

File# 2014-0210-01
GOVERNOR’S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT
California Competes Tax Credit

The Governor’s Office of Business and Economic Development (GO-Biz) submitted this emergency action to adopt eight sections under a new article and chapter in title 10 of the California Code of Regulations to implement Revenue and Taxation Code sections 17059.2, 18410.2, and 23689, which establishes the California Competes Tax Credit program. Pursuant to those sections, GO-Biz is authorized to administer, on or after January 1, 2014, a tax credit against the “net tax” or the “tax,” as defined in Revenue and Taxation Code section 17039 and section 23036, respectively, owed by a taxpayer. The purpose of this legislation and the implementing regulations is to provide incentives for businesses to stay in California and to attract out-of-state businesses to move to California, for existing California businesses to expand, and to stimulate job growth.

Title 10
 California Code of Regulations
 ADOPT: 8000, 8010, 8020, 8030, 8040, 8050, 8060,
 8070
 Filed 02/20/2014
 Effective 02/20/2014
 Agency Contact:
 Grace Arupo Rodriguez (916) 322-0673

File# 2014-0110-04
NEW MOTOR VEHICLE BOARD
 Arbitration Certification Program — Fee Collection

Under Business and Professions Code section 472.5, the New Motor Vehicle Board (Board) has been given the authority to administer the collection of a fee from new motor vehicle manufacturers and distributors to fund the Department of Consumer Affairs dispute resolution program. In 1988, the Board adopted a regulation in a regular rulemaking (13 CCR section 553.70) setting forth the formula for establishing the amount of the fee and the then-applicable fee amount. This submission reflects the fee to be charged for vehicles sold, leased or otherwise distributed in 2012.

Title 13
 California Code of Regulations
 AMEND: 553.70
 Filed 02/24/2014
 Agency Contact: Dawn K. Kindel (916) 323-7201

File# 2014-0110-01
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
 Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

Title 27
 California Code of Regulations
 AMEND: 27001
 Filed 02/20/2014
 Effective 02/20/2014
 Agency Contact: Cynthia Oshita (916) 322-2068

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN September 25, 2013 TO
 February 26, 2014**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person

listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1
 11/21/13 ADOPT: 2002(c)(4), 2002(c)(5), 2002(c)(8)
 10/29/13 ADOPT: 2000, 2001, 2002, 2003, 2004

Title 2
 02/10/14 AMEND: 58000
 01/27/14 AMEND: 56800
 01/21/14 AMEND: 1194
 01/13/14 AMEND: 55300
 12/23/13 ADOPT: 18950.2 AMEND: 18942, 18944, 18950, 18950.1, 18950.4 REPEAL: 18727.5, 18950.3
 12/23/13 AMEND: 18351
 12/02/13 ADOPT: 18417
 11/19/13 ADOPT: 21001.1, 21001.2, 21001.3 AMEND: 21000, 21001, 21002, 21003, 21004, 21005, 21006, 21007 (re-numbered to 21004.5), 21008, 21009 (re-numbered to 21005.5)
 11/04/13 AMEND: 1859.2, 1859.71, 1859.71.6, 1859.74.5, 1859.77.4, 1859.82, 1859.83
 10/30/13 AMEND: 1859.76
 10/25/13 ADOPT: 579.3, 579.21, 579.22, 579.25 AMEND: 579.2
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 (11055), 7292.4 (11056), 7292.6 02/20/14 AMEND: 3423(b)
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 (11065), 7293.7 (11066), 7293.8 02/10/14 AMEND: 3435(b)
 (11067), 7293.9 (11068), 7294.0 02/05/14 AMEND: 3435(b)
 (11069), 7294.1 (11070), 7294.2 01/27/14 AMEND: 3406(b)
 (11071), 7295.0 (11074), 7295.1 01/23/14 AMEND: 3591.11
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 (11077), 7295.4 (11078), 7295.5 01/09/14 AMEND: 1300, 1300.1, 1300.3,
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 (11121), 8203 (11122), 8205 (11124), 09/30/13 AMEND: 3435(b)
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<p>2014 RULEMAKING CALENDAR</p>
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ing Calendar is being incorporated by reference into this edition of the California Regulatory Notice Register (CRNR).

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