



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. COMMISSION ON STATE MANDATES

The Commission on State Mandates (Commission) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Commission has not scheduled a public hearing for this proposed action. However, 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, the Commission will conduct a public hearing on this proposed action on June 24, 2016, and will notify all persons of the date, time, and location of the hearing pursuant to Government Code section 11346.8(a).

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at **5:00 p.m. on May 23, 2016**. The Commission will consider only comments received at the Commission offices by that time. Submit comments to:

Jill Magee, Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Written comments may be submitted electronically via the Commission website “Drop Box” at http://www.csm.ca.gov/dropbox_procedures.php.

AUTHORITY AND REFERENCE

Government Code section 17527(g), authorizes the Commission to adopt the proposed regulations. The purpose of this rulemaking is to: (1) clarify and streamline Commission regulations; (2) update language for consistency; (3) clarify the period of limitation for filing an incorrect reduction claim consistent with the statutory scheme; (4) clarify the review of consolidated incorrect reduction claims; (5) clarify the procedure when a claimant changes authorized representatives for a matter; (6) update authority and reference citations; and (7) update punctuation for consistency throughout the regulations. Reference citations: Government Code sections 11123, 11346.4, 11347, 11347.1, and 17500 et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commission is a seven-member quasi-judicial body authorized to resolve disputes regarding the existence of state-mandated local programs (Gov. Code, § 17500 et seq.) and to hear matters involving applications for a finding of significant financial distress (Welf. & Inst. Code, § 17000.6). The purpose of this rulemaking is to: (1) clarify and streamline Commission regulations; (2) update language for consistency; (3) clarify the period of limitation for filing an incorrect reduction claim consistent with the statutory scheme; (4) clarify the review of consolidated incorrect reduction claims; (5) clarify the procedure when a claimant changes authorized representatives for a matter; (6) update authority and reference citations; and (7) update punctuation for consistency throughout the regulations.

Therefore, the Commission proposes revised language and citations in Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10 of the California Code of Regulations, Division 2, Title 2, Chapter 2.5 with a proposed effective date of October 1, 2016.

Anticipated Benefits of the Proposed Regulation

The specific benefits anticipated from the regulation are increased clarity for local governments, school districts, state agencies and other interested parties/persons participating in the Commission’s processes and to increase the speed of completing specific processes required by statute.

Consistency and Compatibility with Existing State Regulations

The Commission has conducted an evaluation for any other regulations on this area and has concluded that these are the only regulations concerning the Commission’s process.

Therefore, the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

DESCRIPTION OF PROPOSED REGULATIONS

I. Service of Claimant’s Rebuttal to Comments on a Test Claim

Section 1183.3. Claimant’s Rebuttal to Comments on a Test Claim

The proposed amendment adds the words “shall be” before the words “served in accordance with section 1181.3 of these regulations within 30 days of service of the written comments,” to clarify that rebuttal comments, if filed, are required to be served in accordance with section 1181.3 of the regulations.

II. Comment Period on Draft Expedited Parameters and Guidelines

Section 1183.9. Expedited Process for Proposed Parameters and Guidelines

The proposed amendment increases the comment period in which parties, interested parties, and interested persons may file comments on draft expedited parameters and guidelines from 20 days to 21 days after the service of the Commission draft proposed decision.

III. Comment Period on Proposed Amendment to Parameters and Guidelines

Section 1183.17. Amendment to Parameters and Guidelines

The proposed amendment decreases the comment and rebuttal periods for proposed amendments to parameters and guidelines from 30 days to 21 days after the service of the Commission’s proposed amendment of the parameters and guidelines.

IV. Timeline for Test Claim Filings

Section 1183.18. Timelines

The proposed amendment incorporates the proposed changes to the comment periods for expedited parameters and guidelines and requests to amend parameters and guidelines as described above. In addition, the days on the timeline are corrected to incorporate the 30-day deadline for the Commission to provide notification to the Legislature of its decisions on test claims pursuant to Government Code section 17555 [i.e., decision adopted on day 190, with notification to the Legislature on day 210, instead of on day 220]. The days on the timeline are also corrected to incorporate the 30-day deadline after the adoption of a decision approving a test claim for the claimant and the Department of Finance to notify the Commission in writing of their intent to develop a joint reasonable reimbursement methodology (RRM) pursuant to Government Code section

17557.1 [i.e. test claim decision adopted on day 190, with notification of a joint RRM on day 210, rather than day 220]. Other non-substantive, clarifying changes are also made to the language.

V. Incorrect Reduction Claim Filings

Section 1185.1. Period of Limitation for Filing an Incorrect Reduction Claim

The proposed amendment clarifies that the three-year limitation period begins to accrue when the claimant first receives written notice from the State Controller, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. In addition, the proposed amendment removes “remittance advice” from the list of written notices of adjustment in accordance with Government Code section 17558.5(c), which states that “[r]emittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.” The proposed amendment also clarifies that filings made beyond the statute of limitation, will be returned to the claimant for lack of jurisdiction.

Section 1185.2. Review of Incorrect Reduction Claims

The proposed amendment clarifies that an incorrect reduction claim filing is considered incomplete if any of the elements are illegible, not included or if the requirements of the subdivisions this section are not met. In addition, the proposed amendment specifies that any incorrect reduction claim or portion of an incorrect reduction claim, that the Commission lacks jurisdiction to hear for any reason, including that the incorrect reduction claim was not filed within the period of limitation required by section 1185.1(c) of these regulations, may be dismissed by the executive director with a written notice stating the reason for dismissal.

Section 1185.3. Consolidation of Claims Initiated by an Individual Claimant

The proposed amendment clarifies that a consolidated incorrect reduction claim shall comply with the filing requirements outlined in section 1185.1 for any incorrect reduction claim, including the three-year period of limitation for filing such claims. In addition, the proposed language clarifies that a consolidated incorrect reduction claim shall be deemed complete if it contains a narrative that describes all the elements required for a consolidation and satisfies the requirements in section 1185.1. The proposed language further clarifies that Commission staff shall review a consolidated incorrect reduction claim for completeness and jurisdiction consistent with the other regulations in this article, that incomplete consolidated incorrect reduction claims shall be returned to the claimant and if a complete con-

solidated incorrect reduction claim is not received by the Commission within 30 days from the date the incomplete claim was returned to the claimant, the executive director shall deem the filing to be withdrawn, and that any consolidated incorrect reduction claim or portion of a consolidated incorrect reduction claim that the Commission lacks jurisdiction to hear for any reason may be dismissed by the executive director with a written notice stating the reason for dismissal.

Section 1185.4. Joining Consolidated Incorrect Reduction Claim

The proposed amendments clarify that the notice of intent to join a consolidated incorrect reduction claim is required to include the Controller’s notice of adjustment provided in accordance with Government Code section 17558.5(c), and that the notice of intent to join will be reviewed by Commission staff for completeness and jurisdiction, consistent with the other regulations addressing incorrect reduction claims. In addition, the proposed amendment specifies that any notice of intent to join the consolidated incorrect reduction claim, or portion thereof, that the Commission lacks jurisdiction to hear for any reason, including that the notice was not filed within the period of limitation required by section 1185.1(c) of these regulations, may be dismissed by the executive director with a written notice stating the reason for dismissal.

Section 1185.5. Opting Out of a Consolidated Incorrect Reduction Claim.

The proposed language clarifies that a claimant that opts out of a consolidated claim shall file an individual incorrect reduction claim in accordance with section 1185.1 of these regulations.

VI. Designation in Writing of Authorized Representative at Hearing

Section 1187.8. Representation at Hearing

The proposed amendment requires the party to designate in writing the authorized representative to act as its sole representative and to file and serve written notice of representation in accordance with section 1181.3 of these regulations. The proposed changes also specify that all correspondence and communications shall be forwarded to this representative. In addition, any change in representation must be authorized by the party in writing, and notice of the change shall be filed and served in accordance with section 1181.3 of the regulations.

VII. Technical and Non-Substantive Proposed Changes

In an effort to “clean-up” the Commission’s regulations, the proposed rulemaking makes terminology consistent, corrects punctuation and spacing, updates

authority and reference citations, and fixes clerical or internal reference errors from prior rulemakings.

A. Eliminate Duplicative Language and Increase Clarity

Language in the section listed below is proposed for elimination because it is duplicative of language elsewhere in the governing regulations.

Section 1183.1. Test Claim Filing

The proposed amendment deletes subsection (i), which states that any party may appeal to the Commission regarding the actions and decisions of the executive director pursuant to this section, because it is duplicative. Section 1181.1 already provides that any action and decision of the executive director may be appealed to the Commission for review.

B. Use Consistent Terminology

Language has been changed for consistent use of terminology throughout the regulations. For example, replacing instances of “statement of decision” and “adopted decision” with “decision” to eliminate any ambiguity in the Commission’s terminology and processes.

C. Make Clerical Changes of Internal References, Punctuation and Style

Minor and non-substantive changes in internal references, punctuation and style are proposed to improve the readability and clarity of the regulations.

D. Update Authority and Reference Citations

Citations have been updated to maintain consistency in punctuation throughout the regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies and school district:	None.
Cost or savings to any state agency:	None.
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:	None.
Other non-discretionary 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.
Significant effect on housing costs:	None.
Cost impacts on a representative private person or business: The Commission is not aware of any cost im-	

pacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the Economic Impact Analysis/Assessment

The Commission concludes that the proposal will: (1) not create or eliminate jobs within California; (2) not create new businesses or eliminate existing businesses within California; and (3) not affect the expansion of businesses currently doing business within California. The proposed regulations may indirectly benefit the health and welfare of California residents by clarifying participation in the Commission’s processes and by preventing the inclusion of personal identifying information in written material filed with the Commission.

Small Business Determination

Because the Commission has no jurisdiction over small businesses and small businesses are not parties before the Commission, the proposed regulatory action will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jill Magee, Program Analyst
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562
(jill.magee@csm.ca.gov)

The backup contact person for these inquiries is:

Heidi Palchik, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Telephone: (916) 323-3562
(heidi.palchik@csm.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Jill Magee at the above address or download it from the Commission’s website at <http://www.csm.ca.gov/rulemaking.php>.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Commission order to initiate rulemaking proceedings.

Copies may be obtained on the Commission’s website (see below) or by contacting Ms. Jill Magee at the address or phone number listed above. All persons on the Commission’s interested persons mailing list will be provided a copy of the rulemaking file by making it available on the Commission’s website and providing notice of how to locate it.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, and holding a public hearing, if necessary, the Commission may adopt the proposed regulations substantially as described in this notice. If the Commission makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Jill Magee at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Jill Magee at the above address.

AVAILABILITY OF DOCUMENTS ON
THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through the Commission's website at <http://www.csm.ca.gov/rulemaking.php>.

**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Western Riverside County
Regional Wastewater Authority

A written comment period has been established commencing on April 8, 2016, and closing on May 23, 2016. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

The Executive Director of the Commission, upon her or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than May 23, 2016. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS
AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the re-

spective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture proposes to repeal section 3963 of the regulations in Title 3 of the California Code of Regulations pertaining to South American Spongeplant Eradication Area.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to Sara.Khalid@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on May 23, 2016. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Sara Khalid
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
Sara.Khalid@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

AB 1540 designated Department of Boating and Waterways as the lead agency in cooperating with other agencies in controlling South American spongeplant (*Limnobium laevigatum*) in the delta, its tributaries, and the marsh.

Section 64 of the Harbors and Navigation Code was amended to read: The Department of Boating and Waterways is designated as the lead agency of the state for the purpose of cooperating with agencies of the United States and other public agencies in controlling water hyacinth (*Eichhornia crassipes*), Brazilian elodea (*Egeria densa*), and South American spongeplant (*Limnobium laevigatum*) in the delta, its tributaries, and the marsh. The department, other state agencies, cities, counties, and districts are hereby authorized to cooperate with one another and with agencies of the United States in controlling water hyacinth (*Eichhornia crassipes*), Brazilian elodea (*Egeria densa*), and South American spongeplant (*Limnobium laevigatum*) in the delta, its tributaries, and the marsh and may furnish money, services, equipment, and other property to that end.

The Department of Food and Agriculture is no longer the lead agency for the management and eradication of invasive aquatic plants in the watershed of the Delta, including South American Spongeplant, due to the implementation of AB 1540 and AB 763 of the Harbors and Navigation Code.

The proposed repeal of this regulation ensures the orderly management of invasive aquatic plants, including South American Spongeplant in the Sacramento and San Joaquin Delta, its tributaries, and marshes to the designated lead agency, and improves management of waterways for the general public.

There is no existing, comparable federal regulation or statute regulating the interstate movement.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement plant quaran-

tines. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

REPEALED TEXT

This proposed repeal of the regulation would remove authority for the State to enforce the eradication area currently in place.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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

Cost Impacts on Representative Private Person or Business: The Department is not aware of any costs impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Small Business Determination

The Department has determined that the proposed regulations should not affect small businesses because the repeal of this regulation removes all regulatory requirements and there are no costs associated with compliance.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

The Department is not aware of any specific benefits the amendment of this regulation will have on worker safety or the health of California residents. As described above, the proposed regulations ensures the orderly

management of these invasive aquatic plants and improves management of waterways for the general public.

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to repeal Section 3963 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the FAC.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the FAC.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Sara Khalid, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: Sara.Khalid@cdfa.ca.gov. In her absence, you may contact Laura Petro at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Sara Khalid.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/plant/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed

actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 8. AGRICULTURAL LABOR RELATIONS BOARD

NOTICE OF PROPOSED REGULATORY ACTION TO AMEND TITLE 8, SECTIONS 20335(c)

March 2016

Notice is hereby given that the Agricultural Labor Relations Board (ALRB or Board), pursuant to the authority vested in it by section 1144 of the Labor Code to make, amend, or rescind rules and regulations as may be necessary to implement, interpret, and make specific the provisions of the Agricultural Labor Relations Act (ALRA) (Labor Code sec. 1140, et seq.), proposes to amend section 20335(c) of its regulations in order to implement section 1156.3 as amended by Senate Bill No. 126 (SB 126; Chapt. 697, Stats. of 2011).

The Board's regulations are codified in Title 8, California Code of Regulations, section 20100, et seq. The proposed amendments are described below in the Informative Digest. An initial statement of reasons for the amendment of these regulations, along with the text of proposed amendments, has been prepared by the ALRB and is available upon request by contacting J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 1325 J Street, Suite 1900 B, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: J.Antonio.Barbosa@alrb.ca.gov or Eduardo R. Blanco, Special Legal Advisor (back-up contact), same address and fax number as above, (916) 651-7633, e-mail: eblanco@alrb.ca.gov. This notice, as well as the initial statement of reasons and text of the proposed regulation, also may be found on the Board's

website at www.alrb.ca.gov. The final statement of reasons, once it has been prepared and submitted to the Office of Administrative Law, shall be available in the same manner as the initial statement of reasons.

The ALRB invites all interested persons to submit written comments on the proposed amendments. Comments must be received at ALRB headquarters at the address listed above by May 23, 2016. **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.**

ADOPTION OF PROPOSED REGULATION

After the comment period closes, and a hearing, if requested, is held, the Board will consider all public comment, written and oral, and decide whether to make any changes to the proposed amendments. The Board may adopt the proposed amendments if no substantial changes are made. If the Board decides to make substantial changes that are "sufficiently related" to the initial proposals, the public will be given notice of those changes and will be given at least 15 days to provide comment. If the Board decides to make "major" changes to the proposals that are "not sufficiently related to" the initial proposals, a new notice of proposed action will issue allowing for a new 45-day comment period.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Amend Section 20335(c), Transfer, Consolidation, and Severance

SB 126 includes new subdivision (i) of Labor Code section 1156.3, the existing provision governing elections generally. Subdivision (i) sets forth various time limits for the resolution of challenged ballots and election objections. The time limit for the initial evaluation of whether challenged ballots or election objections warrant an evidentiary hearing is 21 days from the filing of election objections or the submittal of evidence in support of challenged ballots. Within the 21 day period the Board must issue a decision determining which, if any, of the objections and challenges to set for hearing.

Although in SB 126 the legislature did not address whether the application of the 21 day period applied to the consolidation of unfair labor practice charges (hereinafter ulp or ulps) with the challenges and objections to be set for hearing, the need for this type of consolidation has historically caused or prevented an elections objections or challenge hearing from moving forward. In

those instances, the Board has historically preferred to place the objections or challenge hearing into abeyance rather than proceed with it if that were to mean that mirror ulps are not litigated with them. Before the implementation of the new SB 126 timeframes for processing objections and challenges, the Board had determined that the avoidance of duplicative hearings which could result from a failure to consolidate was preferable as it avoided unnecessary additional costs for holding two hearings on the same or similar issues with the same evidence and witnesses which also, and more importantly, created the possibility of conflicting results which would spawn further litigation and uncertainty as to what was the correct result. Such an eventuality would create even more delay rather than reduce it thus frustrating the purposes of SB 126.

In order to ensure that the elimination of delay for which the legislature specifically created the (SB 126) amendments to section 1156.3 actually occur with respect to the consolidation of mirror ulp charges with objections and challenges being set for hearing, it is proposed that section 20335(c) be amended to create a process by which the ALRB's Executive Secretary will provide to the General Counsel with all of the objections and challenges filed so that the General Counsel will be able to determine whether any of the ulps filed in connection to the election appear to mirror those filed objections or challenges. Additionally, the Executive Secretary will advise the General Counsel of the date on which the 21st day of the 21 day timeframe will be reached. With this information, the General Counsel may determine what, if any, of the ulp charges mirror the filed objections and challenges and can then accordingly determine whether to notify the Executive Secretary that there, in fact, are certain ulp charges that do mirror certain of the objections and challenges. In the event the General Counsel desires to consolidate charges with the objections and challenges, those charges must mirror the objections and challenges filed. Charges that were filed during the election and do not mirror an objection or a challenge will not be allowed to be consolidated. The motion must be filed within the 21 day time frame.

Where there is a need on the part of the General Counsel for an extension of the 21 day time frame because the investigation and or issuance of the complaint on the mirror charges remains incomplete and the 21 day limit will expire before a consolidation motion can occur, the General Counsel may seek from the Board an extension for 30 days of the timeframe for the setting of the objections and challenges for hearing. Good cause for the granting of the motion will be established by the General Counsel asserting that more time is needed for the

purposes of consolidation. However, the Board will only grant a one-time 30 day continuance for the purposes of consolidation. No other continuances will be granted for the purposes of consolidation.

Separate and apart from the ability of the General Counsel to obtain an extension of the timeframe is the ability of the parties to the election to obtain, through a stipulation, an extension of the time frames. This ability was created by section 1156.3(i)(3). The Board clarified that the General Counsel is not an affected party and is not necessary for the parties to achieve the stipulation. Additionally, the Board clarified that the role of the General Counsel in an objections hearing did not give it party status and was limited by other regulation and also limited to the objections and challenges mirrored by the ulps.

The amendments eliminated requests from the Board to the General Counsel for expedited ulp investigations; narrowed the types of ulps to be consolidated from "concurrent" ulps to "mirror" ulps; and eliminated the ability of the Board to order consolidation.

It is anticipated that these changes will benefit the protection of public health and safety, worker safety, the environment and promote fairness and social equity. The purpose of Board elections is to give voice and effect to the desires of farmworkers to determine whether they want to be represented by a union for collective bargaining. Ensuring that prompt resolution of mirror ulp charges and their counterpart election objections and challenges occur is pivotal to the process of collective bargaining. The issues of health and safety of our food supply, the public and farmworkers; the protection of the environment and promotion of fairness and social equity can be and are greatly impacted by the collective bargaining between growers and unions.

INCONSISTENCY/INCOMPATIBILITY WITH EXISTING REGULATIONS

The Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the consolidation of mirror ulps and election objections and/or challenges.

FISCAL IMPACT STATEMENTS

- A. Estimated fiscal impact on local government or school districts: None.

- B. The proposed changes would result in no cost or savings in federal funding to the state or to any state agency, or cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code, nor impose other nondiscretionary cost or savings on local agencies or affect cost or savings in federal funding.
- C. Fiscal effect on private persons or businesses directly affected: No increase in costs. The ALRB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- D. The proposed changes would have no effect on small business because the changes impose no new burdens upon parties appearing before the Board.
- E. The proposed changes would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- F. The proposed changes would have no effect on the creation or elimination of jobs within the State of California, no effect on the creation of new businesses or the elimination of existing businesses within the State of California, and no effect on the expansion of businesses currently doing business within the State of California.
- G. The proposed changes would have no effect on housing costs.

RULEMAKING FILE

Pursuant to Government Code sections 11346.5 and 11347.3, the Board shall maintain a rulemaking file containing all materials considered in the rulemaking process.

The file currently contains:

1. A copy of this notice
2. A copy of the Initial Statement of Reasons
3. Text of the Proposed Amendments to Sections 20335(c)

As other materials are received, such as written comments, studies, reports, etc., they will be added to the rulemaking file. The file is available for inspection at the headquarters office of the ALRB, 1325 J Street, Suite 1900B, Sacramento, CA, during normal business hours.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Board concludes that it is (1) unlikely that the proposal will eliminate any job, (2) unlikely that the proposal will create an unknown number of jobs, (3) unlikely that the proposal will create an unknown number of new businesses or will eliminate any existing businesses and (4) unlikely that the proposal will expand existing businesses.

BENEFITS OF THE PROPOSED ACTION

The Board believes that, without the proposed changes to the procedures providing for consolidation, additional costs to the state (Board) and to the litigants appearing in these matters before the Board would double as separate hearings would have to be held. Avoidance of those additional costs will benefit California's public.

In addition, separate hearings might result in conflicting resolutions which would create further unnecessary litigation to determine which resolution was correct and proper and would therefore add even more costs to the state (Board) and to the litigants while negating the statutory requirements for prompt resolution. Ensuring that costs are not increased will benefit California's public.

Prompt resolution through consolidation allows the growers and unions to move more swiftly to adjust their disputes. Prompt resolutions that lead to collective bargaining will positively impact the welfare of the California farmworkers where incomes increase which then impacts our state economy when those monies are spent. The collective bargaining that may result from prompt resolution can also impact our environment, public health and safety as issues such as pesticides and their use can be the subject of collective bargaining.

Further benefit is derived by clarifying to the General Counsel, his or her role in the election objection and challenge hearings which would make for a more efficient and streamlined process therefore reducing the General Counsel's expenditure of human and fiscal resources.

ALTERNATIVES TO PROPOSED ACTION

The Administrative Procedure Act requires that the Board, in taking any regulatory action, determine that no alternative considered 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.

LOCAL MANDATE STATEMENT

The proposed regulatory changes would not impose any mandate on local agencies or school districts.

INQUIRIES

Any inquiries concerning any aspect of the proposed regulatory action noticed herein should be directed to J. Antonio Barbosa, Executive Secretary, Agricultural Labor Relations Board, 1325 J Street, Suite 1900 B, Sacramento, CA 95814, (916) 653-3741, Fax: (916) 653-8750, e-mail: J.Antonio.Barbosa@alrb.ca.gov or Eduardo R. Blanco, Special Legal Advisor (back-up contact), same address and fax number as above, (916) 651-7633, e-mail: eblanco@alrb.ca.gov. Questions concerning the substance of the proposed amendments may be directed to Mr. Blanco.

TITLE 10. CALIFORNIA HEALTH BENEFIT EXCHANGE

**CALIFORNIA CODE OF REGULATIONS,
TITLE 10, CHAPTER 12,
ARTICLES 2, 4, 5, and 7
ADOPT SECTIONS 6408 and 6410 (Art. 2); 6450,
6452, and 6454 (Art. 4); 6470, 6472, 6474, 6476,
6478, 6480, 6482, 6484, 6486, 6490, 6492, 6494,
6496, 6498, 6500, 6502, 6504, 6506, 6508, and 6510
(Art. 5); 6600, 6602, 6604, 6606, 6608, 6610, 6612,
6614, 6616, 6618, 6620, and 6622 (Art. 7)**

The California Health Benefit Exchange/Covered California (the Exchange) Board proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Exchange has not scheduled a public hearing on this proposed action. However, the Exchange will hold a hearing if it receives a written request for a public hearing for 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 person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Exchange. The written comment period closes at **5:00 p.m. on May 23,**

2016. The Exchange will consider only comments received at the Exchange's office by that time. Submit written comments to:

Mandy Garcia, Regulations Analyst
California Health Benefit Exchange
(Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815

Comments may also be submitted by facsimile (FAX) at 916-779-1425 or by e-mail to regulations@covered.ca.gov.

AUTHORITY AND REFERENCE

Government Code Section 100504(a)(6) authorizes the Exchange Board to adopt rules and regulations, as necessary. The proposed regulations implement, interpret, and make specific sections 15438; and 100500 and following of the Government Code; sections 1346.2 and 1366.6 of the Health and Safety Code; and sections 10112.3 and 10112.4 of the Insurance Code. They also implement, interpret, and make specific the policies and requirements of the federal Patient Protection and Affordable Care Act of 2010 (Pub. Law 111-148), as amended by the federal Health Care and Education Reconciliation Act (Pub. L. 111-152) and Title 45, Code of Federal Regulations (CFR) section 155.10 and following.

SUMMARY OF EXISTING LAWS

Under the federal Patient and Protection and Affordable Care Act (ACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. State law, the California Patient Protection and Affordable Care Act (Gov. Code, § 100500 et seq.), established the California Health Benefit Exchange within state government, and it specifies the powers and duties of the executive board of the Exchange.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW AND EFFECT OF
THE REGULATIONS

In the spring of 2010, President Obama signed federal healthcare reform legislation, the Affordable Care Act (ACA) (ACA refers to the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111 - 48), as amended by the Health Care and Education Reconciliation Act of 2010 (Publ. 111- 152).

The ACA provides the authority and establishes requirements for states to create health insurance ex-

changes. These Exchanges make Qualified Health Plans (QHPs) available to individuals and/or qualified employers (small businesses; also known as the Small Business Health Options Program or SHOP). Under the ACA states may choose to operate their own exchanges, participate in a regional (multi-state) or subsidiary exchange or defer to a federally-facilitated exchange (an Exchange established and operated by the federal Secretary of Health and Human Services (HHS)). States that choose to operate an exchange may choose to operate an exchange that provides for the purchase of coverage in the individual market and the establishment of a SHOP, or for the establishment of a SHOP only.

That same year, 2010, California chose to operate its own exchange as the California Legislature enacted and the governor signed, legislation establishing the California Health Exchange (now also known as “Covered California,”) and its governing Board. (Stats. 2010, ch. 659, section 2, (SB 900, [Alquist, Steinberg]); Stats 2010, ch. 655 (AB 1602, [Perez].)

Section 2 of AB 1602 expressed the Legislature’s intent in creating the Exchange and its governing Board as follows: It is the intent of the Legislature to enact the necessary statutory changes to California law in order to establish an American Health Benefit Exchange in California and its administrative authority in a manner that is consistent with the federal Patient Protection and Affordable Care Act (Public Law 111–148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111–152), hereafter the federal act. In doing so, it is the intent of the Legislature to do all of the following: Reduce the number of uninsured Californians by creating an organized, transparent marketplace for Californians to purchase affordable, quality health care coverage, to claim available federal tax credits and cost-sharing subsidies, and to meet the personal responsibility requirements imposed under the federal act. (b) Strengthen the health care delivery system. (c) Guarantee the availability and renewability of health care coverage through the private health insurance market to qualified individuals and qualified small employers. (d) Require that health care service plans and health insurers issuing coverage in the individual and small employer markets compete on the basis of price, quality, and service, and not on risk selection. (e) Meet the requirements of the federal act and all applicable federal guidance and regulations.”

Pursuant to the requirements and guidance of state and federal law, these regulations provide definitions, abbreviations and standards for notice (Articles 2, 4); standards for eligibility, eligibility determination and redetermination for Qualified Health Plans (QHP), Advance Payment of Premium Tax Credit (APTC); Cost

Sharing Reduction (CSR); and termination of coverage (Article 5); and an appeals process, including notice, eligibility pending appeal, informal resolution, hearing requirements, and an expedited appeal procedure (Article 7).

OBJECTIVES

The broad objectives of this proposed regulatory action are to:

- Provide structure for the Exchange and give predictability and clear standards to the public and qualified health plan issuers.
- Specifically provide the public with clear standards and eligibility requirements to qualify for federal tax subsidies through the Exchange.
- Establish the criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in the Exchange.
- Establish a fair and efficient appeals process for prospective and current enrollees of the Exchange. More specifically, this action creates clear guidelines for the public to request and receive a fair hearing.
- Put California in compliance with the federal act.
- Allow the Exchange to administer the ACA systematically and predictably for the public on an ongoing basis through eligibility determination, enrollment, and disenrollment procedures.
- Reduce health care costs and provide increased and quality health care to the public in California.

BENEFITS

Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- Making quality health care available to all Californians;
- Providing structure for the Exchange to give predictability and clear standards to the public and qualified health plan issuers now and into the future;
- Providing the public with clear standards and eligibility requirements to qualify for federal tax subsidies through the Exchange;
- Establishing the criteria and process for eligibility determination, enrollment, and disenrollment of enrollees and potential enrollees in the Exchange;

- Establishing an appeals process for prospective and current enrollees of the Exchange and thereby providing due process to applicants denied insurance or with other appealable rights. More specifically, this action includes clear guidelines for the public to request and receive a fair hearing;
- Aligning California’s regulations with the federal act and complying with state law;
- Reducing health care costs for Californians;
- Providing increased health care access to the public in California; and
- Ultimately, helping to save lives and increase the health of the public in California.

EVALUATION OF CONSISTENCY AND COMPATIBILITY

The Exchange has evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the laws that regulate the Exchange and specifically those statutes and regulations related to health insurance. Exchange staff also conducted an internet search of other state agency regulations.

Several California statutes and regulations govern health insurance. The Exchange has made its best effort to conform its regulations to State law, and does not know of any State statutes or regulations conflicting with these proposed regulations. Some compatible statutes, such as the Health and Safety Code Section 1399.849 and the Insurance Code Section 10965.3, provide additional requirements that affect the Exchange’s proposal as noted throughout this document and the proposed regulatory text. Each is compatible with this proposal.

As for consistency with federal law and regulations, the provisions in subsections 6502(d) and (f) regarding the annual open enrollment period and coverage effective dates for plan years on or after January 1, 2015, are substantially different from subdivisions (e) and (f) of Section 155.410 of Title 45 of the Code of Federal Regulations as amended on March 11, 2014. The 2014 annual open enrollment period has been changed in the amended federal regulations from October 15 through December 7 of 2014 to November 15, 2014 through February 15, 2015. The coverage effective dates for the 2015 benefit year have been consequently changed as well. However, the annual open enrollment period for plan years on or after January 1, 2015, still is October 15 through December 7 in the State laws. (Cal. Health & Saf. Code, § 1399.849(c)(1); Cal. Ins. Code, § 10965.3(c)(1).) As such, these proposed regulations will follow the State law, and therefore, will be substan-

tially different from the existing, comparable federal regulation in 45 C.F.R. Section 155.410.

DOCUMENTS TO BE INCORPORATED BY REFERENCE

None.

JUSTIFICATION FOR DUPLICATION

These proposed regulations were developed with significant stakeholder engagement to implement and clarify the mandates of the ACA and the requirements of the federal regulations. These regulations duplicate texts from the U.S. Department of Health and Human Services’ (HHS) regulations in 45 C.F.R. Part 155 related to the Exchange establishment standards and other related standards under the ACA and 45 C.F.R. Part 156 related to the health insurance issuer standards under the ACA, including standards related to the Exchanges.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

None.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

None. The Executive Director of the California Health Benefit Exchange has determined that this proposed regulatory action does not impose a mandate on local agencies or school districts.

**FISCAL IMPACTS
COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.**

None. This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

COSTS OR SAVINGS TO STATE AGENCIES

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by federal grant money and will become financially self-sustaining in 2015. The proposal does not result in any costs or savings to any other state agency.

OTHER NONDISCRETIONARY OR SAVINGS
IMPOSED ON LOCAL AGENCIES

None. This proposal does not impose other non-discretionary cost or savings on local agencies.

COSTS OR SAVINGS IN FEDERAL FUNDING
TO THE STATE

The proposal results in additional costs to the California Health Benefit Exchange, which is currently funded by federal grant money and will become financially self-sustaining in 2015. There is no other impact on federal funding to the state as a result of these regulations.

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

EFFECT ON SMALL BUSINESS

This proposal may impact small business with whom the Exchange contract to accomplish the goals and objectives of the regulations herein proposed.

SIGNIFICANT, STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY AFFECTING
BUSINESS, INCLUDING THE ABILITY OF
CALIFORNIA BUSINESSES TO COMPETE WITH
BUSINESSES IN OTHER STATES

Covered California makes an initial determination that this proposal 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.

COST IMPACTS ON A REPRESENTATIVE
PRIVATE PERSON OR BUSINESS

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

RESULTS OF THE STANDARDIZED
REGULATORY IMPACT
ASSESSMENT/ANALYSIS

1. The Creation or Elimination of Jobs Within the State of California

The implementation of these regulations will yield both positive and negative impacts on the employment in California, but will generate an overall net positive employment impact.

2. The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

Since the proposed regulations only pertain to enrollment in individual health insurance policies, they will not directly result in the creation or elimination of businesses. The establishment and growth of a health insurance exchange in the nation's most populous state will likely attract insurance carriers who did not previously sell policies in California.

3. Competitive advantages or disadvantages for businesses currently doing business within the state

When comparing the competitive advantage of businesses outside of California to those in California, no direct impact is projected.

4. Increase or decrease of investment in the state

These regulations do not require or mandate any additional investment from individuals or businesses. Any additional investment in the state would be an indirect effect of induced changes in medical care and consumer spending.

5. Incentives for innovation in products, materials, or processes

Improved access to affordable individual health insurance coverage will create a unique opportunity for individuals and businesses. Since healthcare will now be more readily available, the reluctance to leave a job due to uncertainties related to healthcare coverage will diminish. As individuals enjoy more employment mobility, opportunities for innovation, self-employment, independent contracting, and consulting will increase.

Businesses will also be able to dedicate more dollars to research and development, innovation, and expansion. The reduction of healthcare costs and "job lock" will free up capital for individuals and businesses, allowing for more opportunities of expansion and innovation.¹

6. Benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency

The proposed regulations will benefit California residents who apply for health benefits through the Exchange. It will make quality health care available to all

¹ The Economic Impact of the Affordable Care Act of California, May 2012, Bay Area Council, Micah Weinberg and Jon Haverman.

Californians and provide the public with clear standards and eligibility requirements to qualify for federal tax subsidies. It will benefit the public by clarifying the criteria and process for eligibility determination, enrollment and disenrollment, and an appeals process.

SUMMARY OF DOF COMMENTS ON THE SRIA AND AGENCY RESPONSE

Covered California summarized the comments received on February 16, 2016 from DOF.

1. *DOF Comment:* The discussion of incentives for innovation could include an estimate of increased employment mobility as a result of ease of getting health care coverage through the Exchange.

Covered California Response:

The Affordable Care Act will create an increase in personal income due to increased job mobility and labor force expansion. Reductions in “job lock” or the reluctance of employees to seek or consider better employment due to uncertainties about health insurance coverage will allow employees to move between occupations more freely. This should increase overall employee mobility and allow for an increase in personal income as individuals consider a larger spectrum of employment opportunities.

According to an analysis of 2010 American Community Survey data by the Bay Area Economic Institute, voluntary job switches increase income by an average of \$1,500 per year per job switcher, which reflects productivity improvements for the economy and additional income to support additional consumer spending. This analysis concluded that if the provisions of the Affordable Care Act had been in effect in 2010, the California economy would have been about \$562.7 million larger.

2. *DOF Comment:* The discussion of the impacts of the two alternatives could be expanded with more narrative about how the alternatives would work.

Covered California Response:

Alternative 1: Do not expand definition of Other Qualifying Life Event to include “Victims of domestic abuse and spousal abandonment”

Enrollment in individual health plans is limited outside of open enrollment periods to enable health plan carriers to predict treatment costs that can be matched with premium revenue over the course of a benefit year. Without restrictions on enrollment outside of open enrollment, many individuals would have an incentive to seek and pay for coverage only when treatment was needed. Absent the ability to deny coverage based on preexisting conditions, which was ended with the Affordable Care Act, insurance carriers would be faced

with claims for treatment costs that premium revenues could not cover.

Thus enrollment for coverage outside of open enrollment periods is limited to individuals encountering Qualified Life Events such as a change in family status (marriage or birth of a child for example), involuntarily losing health coverage (from a change in employment, for instance), or having one of many hardships.

By limiting the definition of Qualified Life Events, Alternative 1 would not allow victims of domestic abuse and spousal abandonment who otherwise lack health coverage to enroll outside of open enrollment. These individuals and their dependents then would need to wait until the following open enrollment period, which could mean waiting up to 12 months to obtain coverage. In 2015, this could have meant delayed coverage, and possibly delayed treatment, for 600 to 1,200 individuals.

Alternative 2: Adopt Minimum Grace Period for Incomplete Applications

Individuals applying for insurance coverage through the Exchange can submit paper applications in addition to other means such as www.coveredca.com or calling its service center. When a paper application is received that does not include all of the information needed to determine the applicant’s eligibility for Advanced Premium Tax Credit or Medi-Cal coverage, the enrollment process is halted until the applicant provides the missing information. Until that information is provided, the Exchange must maintain the application. If the grace period expires before the missing information is provided, the application is no longer valid and the applicant would need to resubmit a new application. The more time that is allowed to provide this information, the greater the chance that the applicant will ultimately enroll for coverage, but at the expense of maintaining a greater number of incomplete applications. Based on experiences in 2014, it is estimated that limiting the grace period to 10 days would have reduced enrollment by 24,600.

3. *DOF Comment:* The discussion of the fiscal impact of other state agencies could be expanded to include the impact on the California Department of Social Services, the Department of Health Care Services (DHCS), and the Office of Systems Integration. The impact to DHCS and the counties resulting from mixed Advanced Premium Tax Credit and Medi-Cal cases should also be discussed.

Covered California Response:

These regulations are a component of the eligibility rules of the California Healthcare Enrollment, Eligibility and Retention System (CalHEERS) which also determines eligibility for Medi-Cal enrollment in which

expanded by approximately 2 million Californians in 2015. This significantly increased the operational costs and workload of the Department of Health Care Services (DHCS) as well as county level agencies involved in eligibility and benefit determination, enrollment, and case maintenance. In some cases, the anticipation of increased call volumes lead to expanded call center operations. New processes, procedures, additional staffing, and training were required to ensure smooth interaction between the Exchange's customer service representatives, Medi-Cal, and county agencies. The cost of this additional Medi-Cal enrollment totaled approximately \$14 billion in fiscal year 2015-16. All of these costs will be paid for by the federal government through 2016 after which California will pay up to 10 percent.

In addition to the fiscal impact of additional Medi-Cal enrollment on DHCS, the California Department of Social Services (DSS) and the Office of Systems Integration (OSI) were contracted by the Exchange to carry out key functions required for the establishment of a state-based marketplace. DSS was contracted to be the Exchange's designated appeals agency to adjudicate appeals for all eligibility determinations for enrollment, Advance Premium Tax Credits, and cost sharing reductions. To carry out these services, the Exchange paid DSS \$4.8 million in fiscal year 2013-14, \$4.3 million in 2014-15, and budgeted \$6.6 million in 2015-16. OSI was contracted for project management services associated with the implementation of CalHEERS. Agreements with OSI were executed for \$116.4 million in fiscal year 2013-14, \$80.2 million in 2014-15, and \$24.9 million in 2015-16. The costs to develop and maintain CalHEERS are shared by the Exchange and DHCS proportionate to the spread of enrollment between the Exchange and Medi-Cal.

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Mandy Garcia
California Health Benefit Exchange
(Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8432

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

Bahara Hosseini
California Health Benefit Exchange
(Covered California)
1601 Exposition Blvd.
Sacramento, CA 95815
Telephone: (916) 228-8486

Please direct 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 Mandy Garcia at the above contact information.

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

The Exchange 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 of this notice is published in the Notice Register, the rulemaking file will consist of this notice, the proposed text of the regulation and the Initial Statement of Reasons. There is currently no other information upon which the proposed rulemaking is based. Copies may be obtained by contacting Mandy Garcia at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if requested, and considering all timely and relevant comments received, the Exchange may adopt the proposed regulations substantially as described in this notice. If the Exchange makes modifications which are sufficiently related to the originally proposed text, it will make the modified text to the public at least 15 days before the Exchange adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mandy Garcia at the address indicated above. The Exchange will accept written comments on the modified regula-

tions 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 Mandy Garcia 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.healthexchange.ca.gov/regulations.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 215, 219, 220, 713, 1050, 2365, 7071, 7072, 7075, 7078, 7082, 8254, and 8259, of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 207, 215, 220, 1050, 2365, 7050, 7055, 7056, 7071, 7075, 7078, 7852.2, 8043, 8046, 8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006, and 9010 of said Code, proposes to amend Subsections (b) and (g) of Section 29.80, Amend Subsections (a) and (c) and Add Subsection (f) of Section 29.90, Amend Sections 121, 121.5, 122, and 705, Add Article 5, Sections 54.00, 54.01, 54.02, and 54.03, And Add Sections 122.1, and 122.2, Title 14, California Code of Regulations, Title 14, California Code of Regulations, relating to California Spiny Lobster Fishery Management Plan Implementing Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under current regulations, the management of the California spiny lobster fishery is contained under multiple sections (sections 29.80, 29.90, 29.91, 121, 121.5 and 122) of Title 14 of the California Code of Regulations (CCR). Section 29.80 provides general gear restrictions for the recreational take of crustaceans. Section 29.90 provides recreational fishery regulations specific to spiny lobster with report card requirements for the recreational fishery found in Section 29.91. Sec-

tion 121 regulates the possession of spiny lobster during the closed season. Section 121.5 regulates the processing of spiny lobster. Section 122 provides regulations for the commercial fishery, including permit requirements, gear provisions, trap servicing requirements, restricted fishing areas, permit transfers, and logbook requirements.

In accordance with the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code (FGC) Sections 7050–7090), regulations are proposed to implement a California Spiny Lobster Fishery Management Plan (FMP) and to amend existing recreational and commercial spiny lobster fishing regulations to manage the spiny lobster resource at a sustainable level and support orderly fisheries. It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California’s marine living resources for the benefit of all the citizens of the State (FGC Section 7050(b)). The MLMA contemplates the management of state fishery resources through FMPs developed by the Department of Fish and Wildlife (Department) and adopted by the Fish and Game Commission (Commission) (FGC sections 7072, 7075 and 7078).

FGC subsection 7071(b) provides authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery. To implement the conservation and management measurements identified in the California Spiny Lobster FMP, including a proposed trap limit program, the implementing regulations of this FMP will render the following sections of the FGC inoperative once they are adopted:

- 1) FGC sections 8251, 8252, and 8258. These sections prescribe the commercial season length, size limit, and list the Districts where commercial lobster traps may be used. The FMP contemplates changes to season length, minimum size and district closures as possible future conservation and management measures. The commercial season length and size limit will be moved into Title 14, CCR, reflecting the Commission’s authority to make future adjustments.
- 2) FGC sections 7857(e), 7857(j), 8102, 8103, and 8254(c). These sections state the conditions for issuing and transferring commercial fishing permits and lobster operator permit fees. Each will be made inoperative as they apply to the spiny lobster fishery to be consistent with the commercial spiny lobster limited entry fishery permit program described in the FMP and proposed trap limit program.

3) FGC Section 9004: This section requires commercial fishermen to service any deployed trap every 96 hours. The proposed trap servicing regulation in new Section 122.2 will extend the servicing requirement to every 168 hours. As such, this section will be rendered inoperative as applied to the spiny lobster fishery.

Upon adoption by the Commission, the California Spiny Lobster FMP will establish a management program for the spiny lobster recreational and commercial fisheries and detail the procedures by which the spiny lobster resource will be managed by the Department. The proposed regulations would implement the FMP in accordance with the policy goals enumerated in the MLMA. The proposed implementing regulations are divided into three parts: 1) new regulations to implement the FMP, 2) amendments and additions to the recreational fishing regulations, and 3) amendments and additions to the commercial fishing regulations. The following is a summary of the proposed changes to Title 14, CCR:

- 1) Establish a new Article in Chapter 5.5, Subdivision 1, Division 1, Title 14, CCR, and add new sections 54.00, 54.01, 54.02, and 54.03. The proposed new sections will:
 - a. describe the purpose and scope of the California Spiny Lobster FMP;
 - b. provide relevant definitions used in the California Spiny Lobster FMP;
 - c. describe management processes and timing; and
 - d. describe the harvest control rule (HCR) as the management basis for the California Spiny Lobster FMP.
- 2) Amendments are proposed to existing recreational lobster fishery regulations in subsections (b) and (g) of Section 29.80 and subsections (a), (c), and (f) of Section 29.90. If adopted, the proposed amendments will:
 - a. Provide an option to require hole-punching or fin-clipping of recreationally caught lobsters, with commercial market restrictions, to distinguish recreational catch from commercial catch for enforcement purposes.
 - b. Delay the start of the recreational season six hours from the current start time of 12:01 a.m. to 6:00 a.m. for safety purposes.
 - c. Require buoy marking of hoop nets used south of Point Arguello for identification and enforcement purposes.

- d. Clarify existing language on the possession of a hooked device while taking lobster. This regulatory change will provide clarification for both recreational divers and enforcement.
- e. Clarify measuring requirements in order to allow for measuring lobster aboard a boat. The proposed change will allow hoop netters to bring spiny lobster aboard a vessel where they can be measured safely.
- f. Make editorial changes to improve clarity of existing regulations.

3) Amendments to the commercial fishing are proposed to sections 121, 121.5, 122, and 705 as well as the addition of new sections 122.1 and 122.2. If adopted, the proposed amendments will:

- a. Implement a new trap limit program, effective October 2017, to specify 300 traps per lobster operator permit, establish lobster trap tags, new buoy marking requirements, and lost trap replacement (i.e., “catastrophic trap tag loss”) measures. The establishment of a trap limit program will optimize and create a more orderly commercial fishery as well as provide improved understanding of the amount of gear used in the fishery.
- b. Allow permittees to possess up to two lobster operator permits. The possession of two lobster operator permits will allow a commercial fisherman to deploy a maximum of 600 traps in accordance with the proposed trap limit program.
- c. Allow permittees to retrieve up to six (6) traps of another lobster operator permit holder that were lost, or damaged lobster traps per fishing trip to help reduce potential impact of fishing gear on living marine resources and underwater habitat.
- d. Require Department approval of a waiver request for one lobster operator permit holder to service the trap of another. The proposed regulation will provide clear rules for requesting a waiver and improve regulatory enforcement.
- e. Require each fisherman who holds a lobster operator permit to submit an end of the season trap loss affidavit for each permit they hold at the end of each season to estimate gear loss in the fishery.
- f. Extend the maximum trap service requirement from four (4) to seven (7) days to provide fishermen more flexibility to service their gear and for safety purposes.

- g. Extend the pre- and post-season gear deployment periods from six (6) to nine (9) days for safety purposes.
- h. Extend the lobster operator permit holder death provision from one (1) to two (2) years to provide more time to transfer the lobster operator permit.
- i. Update permit renewal and transfer regulations for clarity and consistency with the proposed trap limit program.
- j. Update description of restricted fishing areas with latitude and longitude coordinates for clarification purpose.
- k. Provide clarification for identifying abandoned traps in state waters.
- l. Provide modifications to the existing fishing logbook format to improve data collection.
- m. Provide an option that would prohibit the sale of hole-punched or tail-clipped lobster in the markets for enforcement purposes.
- n. Establish fees for lobster operator permit and trap tags. Currently, lobster operator permit fees are located in FGC Section 8254(c), however, this code section will be rendered inoperative as part of the CA Lobster FMP implementing regulations as needed to implement the trap limit and trap tag program for the 2017–2018 lobster season.
- o. Clarify that all lobster operator permit holder fishing jointly on one vessel will be liable for any violation from that vessel.
- p. Clarify existing language on the use and possession of SCUBA gear in the commercial fishery.
- q. Make editorial changes to improve clarity of existing regulations.

The proposed regulations were drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056. The Commission evaluated whether there were any other regulations on this area and has found that these are the only regulations concerning the California Spiny Lobster Fishery Management Plan. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Flamingo Conference Resort and Spa, 2777 Fourth Street, Santa Rosa, California, on Wednesday, April 13, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, rele-

vant to this action at a hearing to be held in Bakersfield, California, on Wednesday, June 22, 2016, at 8:00 a.m., or as soon thereafter as the matter may be heard. The exact location of this meeting has not yet been determined. As soon as this information is available but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and published on the Commission’s website. It is requested, but not required, that written comments be submitted on or before June 9, 2016, at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed or emailed to the Commission office must be received before 12:00 noon on June 17, 2016.** Written and oral comments may be received at the **June 22, 2016** hearing. No comments will be received after the hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Michael Yaun, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Michael Yaun or Sheri Tiemann at the preceding address or phone number. **Tom Mason, Senior Environmental Scientist, Department of Fish and Wildlife, [(562) 342–7107 or Tom.Mason@wildlife.ca.gov], has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, the proposed regulatory language, the notice, and other information concerning the proposed regulation, may be obtained from the address above and will also be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15–day comment period, and the Commission will exercise its powers under Section 202 of

the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

Impact of Regulatory Action/Results of the Economic Impact Analysis

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action will not substantially increase compliance costs, is not anticipated to impact harvest quantities, and only applies to a fishery that is unique to the state of California. The commercial spiny lobster fishery extends from Point Conception in Santa Barbara County to the U.S./Mexico border. The recreational spiny lobster fishery covers the same range but also extends further north into San Luis Obispo County.

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

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses because the proposed action will not significantly increase costs or reduce harvest quotas. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and spiny lobster resource.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission anticipates an increase in the commercial lobster operator permit fee due to the proposed trap tag program to be approximately \$395 per permit. Permit holders may have the potential for a substantial gain from expanded permit transfer options and potential fuel savings with the increase in time for the maximum trap servicing requirement. The Commission is not aware of any cost impacts in the recreational lobster fishery, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

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

Consideration of Alternatives

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

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Wildlife, proposes to amend Section 790 in Subdivision 4, Chapter 1, of Title 14 of the California Code of Regulations. This section pertains to General Definition and Abbreviations. This proposal updates the version of the Shoreline Protection Table listed in the definition.

PUBLIC HEARING

Pursuant to Gov. Code S. 11346.8(a), **no public hearing has been scheduled** on the proposed action. However, a hearing will be held if OSPR receives a written request for a public hearing from any interested person, no later than 15 days prior to the close of the written comment period. If a hearing is requested, it will be held in Sacramento. **Copies of the written comments submitted will be made available upon request.**

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than **May 24, 2016, by 5:00 p.m.** in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department Of Fish And Wildlife
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Shaun S. Pritchard
Fax: (916) 324-5662
E-mail: Shaun.Pritchard@Wildlife.ca.gov

PERMANENT ADOPTION OF REGULATIONS

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals — with changes clearly indicated — will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code Section 8670.10 grants the Administrator of OSPR the authority to adopt regulations and guidelines for oil spill contingency plans. The proposed regulations implement, interpret and make specific Government Code Sections 8670.28 through 8670.31.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert–Keene–Seastrand Oil Spill Prevention and Response Act (Act), enacted in 1990 by Senate Bill 2040, created a comprehensive state oil spill program for marine waters. Among its many provisions, it required the adoption of regulations requiring oil spill contingency plans for tank vessels, nontank vessels, and marine facilities.

Following the enactment of the Act, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing oil spill contingency plans were adopted. These regulations established clear and consistent guidelines to those parties either affected by their adoption or charged with their enforcement. These regulations were necessary to implement, interpret and make specific Government Code Sections 8670.28 through 8670.31.

These proposed amendments to the regulations are needed to update the required Shoreline Protection Tables (SP Tables), which were adopted in 2006 as a new approach to determine required shoreline protection response resources and to level the playing field for the plan holders and the Oil Spill Response Organizations (OSROs) they contract with. These SP Tables show the sites to be protected, the hour by which they should be protected, and the response resources required to provide this protection. These tables provide a standard for the statutorily mandated Best Achievable Protection of coastal resources.

An update to the definition of “Shoreline Protection Tables” has also been included, to update the date of the most current tables.

POLICY STATEMENT OVERVIEW

The updates align the SP Tables with the 2013 versions of the Area Contingency Plans (ACP), which are developed by the U.S. Coast Guard with input from affected stakeholders, mandated by the Oil Pollution Act of 1990 [OPA-90, at 33 USC 1321(j)]. Section 790(s) (6) has been updated by necessity with a new date, May 2016, for the new version of the SP Tables, which are incorporated by reference.

It is not anticipated that the updates to the SP Tables will require any additional resources or costs to the regulated community. In addition to the consolidations and corrections, the substantive changes are refinements to strategies that should result in no extra costs to implement.

The proposed regulations will provide benefits to the health and welfare of California residents, worker safety, and the state’s environment, by ensuring that adequate shoreline protection response resources are avail-

able in the timeframes outlined in the SP Tables, which could potentially eliminate or mitigate the impacts of the spill on the shoreline environment.

After conducting a search of any other regulations in this area, we find that these are the only regulations dealing with requirements for shoreline protection, as outlined in the Shoreline Protection Tables. Therefore, the Department finds that these proposed regulations are not inconsistent or incompatible with existing state regulations.

Document Incorporated by Reference:

Shoreline Tables, May 2016 (new revised date)

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10, 8670.28, 8670.29 AND 8670.55

In accordance with Government Code Section 8670.55(a), these regulations have been developed in consultation with the Oil Spill Technical Advisory Committee.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses: It is not anticipated that the updates to the SP Tables will require any additional resources or costs to the regulated community. In addition to the consolidations and corrections, the substantive changes are refinements to strategies that should result in no extra costs to implement. OSPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulations:

— Will not result in the creation or elimination of jobs within the State of California;

— Will not result in the creation of new businesses or the elimination of existing businesses within the State of California;

— Will not result in the expansion of businesses currently doing business within the State of California.

— Will provide benefits to the health and welfare of California residents, worker safety, and the state's environment, by ensuring that adequate shoreline protection response resources are available in the timeframes outlined in the SP Tables, which could potentially eliminate or mitigate the impacts of the spill on the shoreline environment.

CONSIDERATION OF ALTERNATIVES

OSPR must determine that no reasonable alternative considered by OSPR or that has otherwise been identified and brought to the attention of OSPR 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.

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish And Wildlife
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

<https://www.wildlife.ca.gov/OSPR/Legal/Proposed-Regulations>

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance of this regulatory action may be directed to Shaun Pritchard (916-324-6259), or Joy Lavin-Jones (916-327-0910).

TITLE 16. BUREAU OF SECURITY AND INVESTIGATIVE SERVICES

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Bureau of Security and Investigative Services (Bureau or BSIS) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the:

**Department of Consumer Affairs
Hearing Room 102
1625 N Market Blvd
Sacramento, CA 95834
May 27, 2016
9:00 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on May 27, 2016, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 7515, 7581, 7588 and 7591.6 of the Business and Professions Code, and to implement, interpret or make specific Sections 7542, 7570, 7583.2, 7583.5, 7583.9, 7583.12, 7583.22, 7583.23, 7583.24, 7583.25, 7583.32, 7585.8, 7596, 7596.3, 7596.7, 7588, 7599.40 and 7599.41 of the Business and Professions

Code, the Bureau is considering changes to Division 7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

The Bureau of Security and Investigative Services (BSIS or Bureau) is responsible for issuing BSIS Firearms Permits (also referred to as Firearm Qualification Cards) to individuals statutorily authorized and eligible to receive them. These individuals include private patrol operator (PPO) licensees, qualified managers currently employed by a PPO licensee, security guards, private investigator (PI) licensees, qualified managers currently employed by a PI licensee, alarm company operator (ACO) licensees, qualified managers currently employed by an ACO, and alarm company employee registrants. BSIS also certifies firearms training facilities and instructors who provide the firearms training required for a BSIS Firearms Permit. The Private Security Services Act, Private Investigator Act, and Alarm Company Act mandate the Bureau to prescribe a course of training and to require that training as a condition for the issuance of a BSIS Firearms Permits. Article 7 of Division 7 of Title 16 of the California Code of Regulations (CCR) specifies the requirements for the issuance of a BSIS Firearms Permits. There are over 45,000 Bureau licensees and registrants who possess firearms permits and carry a firearm while in close contact with the public in numerous settings throughout the state.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The Bureau is concerned about applicants seeking a BSIS Firearms Permit using firearm simulators to complete their range qualifications in order to qualify for a BSIS Firearms Permit. Firearm simulators have become a widely used training tool for citizens and law enforcement agencies across the country. These simulators vary in design and functionality and there are currently no specific standards governing the use of firearm simulators for BSIS Firearms Permit applicants. The Bureau recognizes that firearm simulators can be a valuable tool for training; however, simulators cannot replace the experience and skills acquired by firing live ammunition with an actual firearm.

Additionally, there has been a rise in the demand for online education. The Bureau needs to ensure that BSIS-approved Firearm Training Facilities are only offering the initial BSIS Firearms Training Course and the review training in a traditional classroom setting. The Bureau recognizes that online training can be both beneficial and convenient for both students and training facilities; however, online training is not appropriate for the initial firearms training as the content of the fire-

arms training needs to be taught using hands-on instruction techniques in order to maximize student safety and proficiency. Additionally, the review training in deadly force, the avoidance of deadly force and de-escalation of force needs to be taught using practical classroom instruction that includes class discussion.

This regulatory proposal seeks to ensure that the initial firearms training provided to individuals seeking a BSIS Firearms Permit and the review training required for each range qualification includes hands-on instruction, class discussion and live ammunition range qualifications. The adoption of regulatory language will provide definitions for various firearm training terms as well as specify the proper method of training required in order to satisfactorily meet the requirements outlined in the BSIS firearms training course. The Bureau's highest priority is the protection of the public, and these proposed amendments will strengthen the Bureau's firearms training requirements in a manner that will provide the greatest protection for the people of California.

C. Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: No costs or saving related to Federal funding to the State. No anticipated direct costs or savings to State agencies.

Nondiscretionary Costs/Savings to Local Agencies: No direct nondiscretionary costs or savings to local agencies anticipated.

Local Mandate: NONE.

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

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The Bureau has made this initial determination based on the fact that a recent sampling of 150 Bureau-ap-

proved Firearm Training Facilities showed that only 13 out of the 150 facilities sampled (approximately 9% of facilities) are qualifying applicants and permit holders exclusively through the use of firearm simulators. The remaining 137 facilities (approximately 91%) are already completing qualifications with live ammunition. For the 9% of firearm training facilities that are exclusively using firearm simulators to qualify students, these regulations will reduce the facilities BSIS firearm permit qualification business by 50% due to the required use of live ammunition for the initial range qualification and 2 of the 4 required renewal range qualifications.

Additionally, the Bureau currently has 9,795 Private Investigator Licensees, 2,065 Private Patrol Operator Licensees and 2,052 Alarm Company Operator Licensees. Some of these companies cover the cost of their employee's firearms training and qualifications. Additionally, some of these company licenses are held by individuals who absorb their own cost for the firearms training and qualifications. The Bureau has no way of knowing what percentages of companies cover the costs for employees. The Bureau can only calculate the costs based on the individual permit holder.

Cost Impact on Representative Private Person or Business:

This regulatory proposal will specify that the BSIS Firearms Training Course be taught through traditional classroom instruction and that the initial range qualification and two of the four required renewal range qualifications be completed with live ammunition.

The Bureau has not authorized any Firearms Training Facilities to administer or teach the Firearms Training Course online. Facilities that may be teaching the course online are doing so out of compliance with the Bureau's mandate, therefore these regulations should not create an increase in the cost of the firearms training course for individuals.

Each individual seeking a BSIS Firearms Permit must complete the BSIS firearms training provided by a Bureau-approved Firearms Training Facility. The cost of this training varies from facility to facility and can either include the cost of ammunition or require the student to provide their own ammunition. When completing the initial range qualification on the firearm range, applicants must fire 50 rounds for practice and then qualify by firing 50 rounds for score. The initial range qualification required for a BSIS Firearms Permit requires 100 rounds of ammunition. These regulations will require the use of live ammunition for the initial range qualification. The Bureau estimates the following increase in the initial cost for individuals completing their initial range qualification:

While the cost of ammunition varies by caliber and is susceptible to market price fluctuations, ammunition prices vary between \$13.99 per box of 50 to \$23.99 per box of 50, depending on the caliber of the ammunition. The Bureau estimates that the initial range qualification will require 2 boxes of ammunition and cost an individual \$27.98–\$47.98 (\$13.99 x 2 boxes of 50 rounds)–(\$23.99 x 2 boxes of 50 rounds).

The cost of ammunition needed to complete the initial range qualification increases if the applicant is qualifying for more than one caliber. In order to have more than one caliber listed on a firearms permit, the applicant/permit holder must complete a range qualification for each caliber to be listed on the permit.

In addition to ammunition, most training facilities and instructors charge a \$15.00–\$20.00 range fee and an average of \$10.00 for an instructor fee.

The Bureau estimates that this regulatory proposal will create an additional cost of \$52.98 (ammunition)+(range fees)+(instructor fees)–\$77.98 (ammunition)+(range fees)+(instructor fees) for applicants to complete the initial range qualification with one caliber.

BSIS Firearm Permits are valid for 2 years. Permit holders must complete 4 range qualifications during the two year cycle before renewing the firearm permit. When completing a range qualification for the purposes of renewal, the permit holder must fire 50 rounds for score. While the cost of ammunition varies by caliber and is susceptible to market price fluctuations, ammunition prices vary between \$13.99 per box of 50 to \$23.99 per box of 50, depending on the caliber of the ammunition. The Bureau estimates that a range qualification for the purposes of renewal will require 1 box of ammunition and cost an individual \$13.99–23.99 per caliber.

In addition to ammunition, most training facilities and instructors charge a \$15.00–\$20.00 range fee and an average of \$10.00 for an instructor fee and \$5.00–\$10.00 fee per caliber.

The Bureau estimates that this regulatory proposal will create an additional cost of \$38.99 (ammunition)+(range fees)+(instructor fees)–\$53.99 (ammunition)+(range fees)+(instructor fees) for each permit holder to complete one range qualification for each caliber.

If the permit holder is completing a range qualification for more than one caliber, then the permit holder will have to pay for the cost of ammunition (\$13.99–\$23.99) plus the instructor may charge an additional \$5.00–\$10.00 for each caliber. This cost would be in addition to the aforementioned cost of completing one range qualification.

Example:

Range qualification with 2 calibers:
 \$13.99 (ammunition) + \$15.00 (range fee) + \$10.00 (instructor fee)= \$38.99
 2nd caliber: \$23.99 (ammunition) + (\$5.00 caliber fee)= \$28.99
 Total=\$67.98

This regulatory proposal will require 2 of the 4 range qualifications be completed with live ammunition which would require the permit holder to complete a range qualification with live ammunition once per year. This would create an additional annual cost to permit holders of \$38.99 (lowest estimate from above)–\$67.98 (estimate with 2nd caliber).

In addition to mandating the use of live ammunition for the completion of the initial range qualification and 2 of the 4 renewal range qualifications, this regulatory proposal also removes the mandate of a specified target and adopts a new section that outlines the minimum standards that are required of a target in order to be used for the completion of a range qualification. When the BSIS firearms training regulations were first promulgated, two specific targets were prescribed. These targets have become antiquated and are now harder for permit holders and training facilities to acquire which has driven up the cost of these targets. By removing the mandate for these targets and instead specifying minimum standards, permit holders will have a wider variety of targets available to them, thus bringing down the cost of the targets.

Effect on Housing Costs: NONE.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations impact small businesses as previously stated because the Bureau estimates that the majority of Firearm Training Facilities are small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

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

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will have the following benefits to health and wel-

fare of California residents, worker safety, and state's environment:

The clarification of BSIS firearms training terminology and methods will increase training standards for BSIS Firearm Permit holders thus resulting in increased personal and public safety.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Security and Investigative Services at 2420 Del Paso Road, Suite 270, Sacramento, CA 95834.

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

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

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

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Sam Stodolski
Address: 2420 Del Paso Road, Suite 270
Sacramento, CA 95834

Telephone No.: (916) 575-7024
Fax No.: (916) 575-7287

E-Mail Address: Samuel.Stodolski@DCA.ca.gov

The backup contact person is:

Name: Jennifer Munoz
Address: 2420 Del Paso Road, Suite 270
Sacramento, CA 95834

Telephone No.: (916) 575-7005
Fax No.: (916) 575-7287

E-Mail Address: Jennifer.Munoz@DCA.ca.gov

Website Access: Materials regarding this proposal can be found at www.bsis.ca.gov.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt California Code of Regulations, Title 18, Section 4076, Wholesale Cost of Tobacco Products

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 30451, proposes to adopt California Code of Regulations, title 18, section (Regulation or Reg.) 4076, *Wholesale Cost of Tobacco Products*. Proposed Regulation 4076 further clarifies the meaning of the "wholesale cost" of tobacco products other than cigarettes (collectively referred to as "other tobacco products" or "OTP") as defined in RTC section 30017, provides alternative methods for estimating or calculating the wholesale cost of OTP, provides examples to show how the wholesale cost of OTP is determined in common situations, and clarifies that only current-year tobacco product prices may be used to determine the OTP tax rate for the next fiscal year.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on May 24-26,

2016. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:00 a.m. or as soon thereafter as the matter may be heard on May 24, 25, or 26, 2016. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of proposed Regulation 4076.

AUTHORITY

RTC section 30451

REFERENCE

RTC sections 30008, 30010, 30011, 30017, 30105, 30121, 30123, 30126, 30131.1, 30131.2, 30131.5, 30201, and 30221

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Current Law

In November 1988, California voters passed Proposition 99, known as the "Tobacco and Health Protection Act of 1988" (Prop. 99). Among other things, Prop. 99 imposed a surtax on every distributor (as defined in RTC, § 30011) of cigarettes at the rate of 12.5 mills (\$0.0125) per cigarette or \$0.25 per pack (\$0.0125 x 20 cigarettes) distributed. Prop. 99 also imposed a tax on every distributor of other tobacco products or OTP (as defined in RTC, § 30121, subd. (b)), including, for example, cigars, smoking and chewing tobacco, and snuff, at a rate equivalent to the combined rate of the tax imposed on cigarettes, under various provisions of the Cigarette and Tobacco Products Tax Law (RTC, § 30001 et seq.). Prop. 99's surtax on the distribution of cigarettes and equivalent tax on the distribution of OTP are both codified in RTC section 30123 and they apply to the "distribution" (as defined in RTC, § 30008) of cigarettes or OTP.

In 1998, California voters passed Proposition 10, known as "The Children and Families First Act" (Prop. 10). The purpose of Prop. 10 was to create county commissions to provide early childhood medical care and

education. Prop. 10 imposed an additional tax on every distributor of cigarettes at the rate of 25 mills (\$0.025) per cigarette or \$0.50 per pack, as well as an equivalent tax on every distributor of OTP (as defined in RTC, § 30131.1, subd. (b), which is identical to RTC, § 30121, subd. (b)). Prop. 10's tax on the distribution of cigarettes and equivalent tax on the distribution of OTP are both codified in RTC section 30131.2. The taxes codified in and imposed by RTC sections 30123 and 30131.2 do not apply to "the sale of cigarettes or tobacco products by the original importer to a licensed distributor if the cigarettes or tobacco products are manufactured outside the United States" (as provided by RTC, § 30105).

The Board is responsible for enforcing the Cigarette and Tobacco Products Tax Law, including the taxes imposed on distributors of OTP under RTC sections 30123 and 30131.2. (RTC, § 30451.) Pursuant to RTC sections 30123, 30126, 30131.2, and 30131.5, the Board is required to calculate the combined tax rate on OTP on an annual basis based on the wholesale cost of tobacco products as of March 1 and the rate determined by the Board is effective during the state's next fiscal year, which begins on July 1. This combined rate is applied by distributors to the "wholesale cost" of distributed OTP to calculate the amount of excise tax due (RTC, §§ 30123, 30131.2) and the resulting tax is then required to be reported and paid to the Board under chapter 4 of the Cigarette and Tobacco Products Tax Law. RTC section 30017 defines "wholesale cost" as "the cost of tobacco products to the distributor prior to any discounts or trade allowances."

Currently, there are no other statutes or regulations that further define the term "wholesale cost" of OTP or clarify how the wholesale cost of OTP should be calculated. However, the Board is still required to audit distributors, determine if they have correctly reported the taxes due on the wholesale cost of OTP they have distributed, and the Board may determine the wholesale cost of such OTP (as defined in RTC, § 30017) based upon any information available to the Board for such purposes. (RTC, §§ 30201, 30221.) Therefore, the Board's Legal Department has previously concluded that:

- When a retailer purchases raw goods at wholesale and manufactures its own tobacco products, the wholesale cost of the finished products must include the cost of the raw goods, plus amounts for labor, overhead, and a markup, and may be determined by reference to the wholesale cost of similar size and quality products that are available

for purchase at the wholesale level, in an annotation dated February 9, 1996; and

- The wholesale cost of OTP does not include charges for the domestic shipping of finished products from a supplier to a distributor, in an annotation dated April 20, 1989. (Annotations are published in the Board’s Business Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of the Board’s Legal Department. (Reg. 5700.))

Also, the Board has historically concluded that, under RTC section 30017, the wholesale cost of OTP includes any amounts a distributor pays to a supplier for OTP, including any federal excise tax and any United States Customs taxes paid, other than charges for domestic shipping (discussed above).

In addition, the Board’s Legal Department has previously opined that, based upon the express provisions of RTC section 30017, the wholesale cost of OTP sold in so-called “buy one, get one free” promotions is the cost of each retail unit of OTP to the distributor prior to any discounts or allowances. This means that when a supplier’s price list shows that the supplier sells cigars that are individually packaged for retail sale for \$10 each and the supplier agrees to give a distributor one of the cigars for free if the distributor buys one cigar at full price, then the wholesale cost of each cigar to the distributor is \$10 because each cigar is a separate unit of OTP for retail purposes, the distributor actually paid \$10 for one of the cigars, and the distributor would have paid \$10 for the other cigar prior to receiving a 100 percent discount on the price of that retail unit from the supplier. However, when the supplier actually combines two of the same cigars in one package labelled with a single UPC barcode for purposes of retail sale, and offers to sell the retail unit to distributors for \$10 before any discounts or allowances, then the wholesale cost of the two-cigar retail unit to the distributor is \$10.

Proposed Regulation

Need for Clarification

The wholesale cost of OTP depends on a variety of factors. The statutory definition of “wholesale cost” is very general and provides little guidance to distributors as to how the wholesale cost of OTP should be determined in specific circumstances. The lack of statutory guidance regarding whether certain manufacturing costs, shipping charges, and federal excise taxes should be included in the calculation of wholesale cost has caused misinterpretation and confusion among taxpayers, and it has made it difficult for taxpayers to accurately report amounts subject to the excise tax. This is especially true when a distributor is also the manufacturer of the product. Therefore, the Board’s Business Taxes Committee (BTC) staff determined that there is an issue

(or problem within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) as there currently is not a regulation that further defines “wholesale cost” of OTP and provides sufficient examples to illustrate how wholesale cost should be computed in various situations in which OTP is distributed.

Interested Parties Process

As a result, the Board’s BTC staff drafted Regulation 4076, *Wholesale Cost of Tobacco Products*, to address the issue described above, and staff prepared a discussion paper explaining the new proposed regulation. Both were provided to interested parties. (BTC staff proposed Regulation 4076 and new Regulation 4001, *Retail Stock*, at the same time, and both regulations were discussed during the interested parties process (described below). At the January 26, 2016, BTC meeting, however, the rulemaking process for the proposed regulations was bifurcated. Therefore, this notice only discusses proposed Regulation 4076.)

Subdivision (a) of staff’s proposed Regulation 4076 defined the terms “arm’s-length transaction,” “discounts or trade allowances,” “finished tobacco products,” and “finished condition.” Subdivision (b) of staff’s proposed Regulation 4076 explained how to determine the wholesale cost of OTP a distributor purchased from a supplier in an arms-length transaction and how to determine the wholesale cost of OTP when a manufacturer is also the distributor. Subdivisions (b) and (c) of staff’s proposed Regulation 4076 provided that when a distributor receives discounts or trade allowances or does not purchase OTP in an arms-length transaction, then the wholesale cost of the OTP may be determined by: (1) looking to a publicly or commercially available price list that the distributor used to determine the prices of tobacco products sold to customers in arm’s-length transactions during the time period at issue, “less a reasonable estimate of the distributor’s or a similarly situated distributor’s profit”; or (2) if a publicly or commercially available price list is not available, using industry data from the time period to be estimated or calculated that provides reasonable evidence of typical tobacco product costs during such time period. Subdivision (c) also provided a non-exhaustive list of industry data that can provide such evidence and how that data may be used to determine the wholesale cost of OTP with appropriate adjustments. Subdivision (d) of staff’s proposed Regulation 4076 established a presumption that sales, purchases, and transfers between related parties, including between spouses and between persons (as defined in RTC section 30010) and entities under their control, are not at arm’s-length and provided that a distributor may rebut the presumption by showing that the price, terms and conditions of a transaction were substantially equivalent to a transaction ne-

gotiated between unrelated parties. Subdivision (e) of staff's proposed Regulation 4076 also provided examples of how to estimate or calculate the wholesale cost of OTP when the distributor is also the manufacturer or importer, when OTP is not purchased in an arm's-length transaction, and when OTP is acquired free of charge (or at a 100% discount or trade allowance).

On August 4, 2015, BTC staff conducted an interested parties meeting to discuss proposed Regulation 4076. At the meeting, questions were raised about the proper way to estimate or calculate the wholesale cost of OTP when multiple items of OTP are packaged as a unit, two items of OTP are sold in a "buy one, get one free" promotion, and OTP is sold at a discount, and it was suggested that the Board allow trade discounts to be exempted from the "wholesale cost." Also, at the meeting, Mr. Dennis Loper from the California Distributors Association provided staff with a submission of proposed regulatory language for Regulation 4076. Mr. Loper's submission agreed that the alternative methods for determining wholesale cost provided in subdivision (c) "should not be exclusive." Therefore, his submission alternatively suggested that the word "non-exclusive" be added to subdivision (c) or that a new subdivision (c)(2)(E) be added to the proposed regulation to allow "any other reasonable method" to be used when calculating the wholesale cost of OTP. Mr. Loper's submission also suggested adding a subdivision (f) to the proposed regulation to clarify that the Board uses the wholesale cost of OTP on March 1 of the "current calendar year" to determine the OTP tax rate for the next fiscal year, under RTC sections 30123, 30126, 30131.2, and 30131.5.

On August 19, 2015, Mr. Ron Michelson, representing Briar Patch, provided a submission to BTC staff. Mr. Michelson's submission indicated that he had an issue with the definition of "wholesale cost" because, in his opinion, the "net price paid for tobacco products by licensed California Distributors should be the basis for computing" wholesale cost and therefore some discounts should not be included in wholesale cost. Mr. Michelson's submission also included "a somewhat more detailed definition of fair market value . . . from businessdictionary.com."

BTC staff considered the interested parties' comments and submissions and revised proposed Regulation 4076. Staff clarified, in subdivision (b)(1), that the wholesale cost of OTP does not include transportation charges for shipments "originating" in the United States. Staff clarified that the provisions of subdivision (b)(2) apply to "importers" that are distributors, not just manufacturers that are distributors. Staff clarified how to determine wholesale cost using publicly or commercially available price lists by replacing "less a reasonable estimate" of the distributor's profit with "less an

estimate based upon best available information" of the distributor's profit, in subdivision (c)(1). In response to Mr. Loper's submission, new subdivision (c)(2)(E) was added to allow additional methods of estimating or calculating wholesale cost to be used, provided that the methods are approved by the Board. In response to the questions raised at the interested parties meeting, staff added subdivision (e)(5), (6), and (7) to provide additional examples of how to estimate or calculate the wholesale cost of OTP when multiple items of OTP are packaged as a unit for retail sale, two items of OTP are separately packaged and sold in a "buy one, get one free" promotion, and OTP is sold at a discount. All three examples were based on current opinions from the Board's Legal Department. Also, subdivision (f) was added, in response to Mr. Loper's submission, to clarify that the Board will use the price of tobacco products as of March 1st of the current year to determine the OTP tax rate for the next fiscal year.

Staff did not agree to revise proposed Regulation 4076 to allow trade discounts to be deducted from wholesale cost because RTC section 30017 expressly defines wholesale cost as the cost to the distributor "prior to any discounts or trade allowances." Also, staff was concerned that OTP could be sold at retail without tax having been properly paid on its "wholesale cost" to the distributor if discounts were subtracted from the wholesale cost of OTP to the distributor. For example, if a supplier's price list showed that the supplier sells cigars that are individually packaged for retail sale for \$10 each, the supplier agreed to give a distributor one cigar for free (or at a 100% discount) if the distributor buys one cigar at full price, and the Board agreed that the 100 percent discount could be deducted from the regular price charged for the first cigar, then the wholesale cost of the first cigar would be zero and no tax would be paid on the distribution of the first cigar. Staff determined that allowing a situation where no tax is paid on some units of distributed OTP would potentially create a loophole and invite fraud. Further, allowing discounts and trade allowances to be deducted from the price indicated on a supplier's price list would make it difficult to use the price list to determine the wholesale cost of the supplier's products. Furthermore, by allowing trade discounts, which may be as high as 100 percent, the special funds that benefit from the taxes collected could potentially receive substantially fewer tax dollars. Finally, small distributors that may not qualify for suppliers' discounts could potentially be at a further competitive disadvantage.

On October 20, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft of the proposed regulation. There were no additional comments at the meeting, and no other submissions were received that related to proposed Regulation 4076.

January 26, 2016, BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15–013 and distributed it to the Board Members for consideration at the Board’s January 26, 2016, BTC meeting. Formal Issue Paper 15–013 recommended that the Board propose to adopt revised Regulation 4076 (discussed above) in order to address the issue (or problem) referred to above and clarify how tobacco product distributors can determine the wholesale cost of OTP by:

- Defining the terms “arm’s-length transaction,” “discounts or trade allowances,” “finished tobacco products” and “finished condition.”
- Explaining how to determine the wholesale cost of OTP a distributor purchased from a supplier in an arm’s-length transaction.
- Explaining how to determine the wholesale cost of OTP when a manufacturer or importer is also a distributor.
- Providing alternative methods for estimating or calculating the wholesale cost of OTP when a distributor receives discounts or trade allowances or does not purchase OTP in an arm’s-length transaction, and permitting other methods to be used with Board approval.
- Establishing a rebuttable presumption that sales, purchases, and transfers of OTP between related parties are not made at arm’s-length and providing that the presumption may be rebutted by evidence showing that the price, terms and conditions of a transaction were substantially equivalent to a transaction negotiated between unrelated parties.
- Providing seven examples illustrating how to estimate or calculate the wholesale cost of OTP when the distributor is a manufacturer or importer, when OTP is not purchased in an arm’s-length transaction, when OTP is acquired free of charge, when multiple items of OTP are packaged as a unit, when two items of OTP are sold in a “buy one, get one free” promotion, and when OTP is sold at a discount.
- Clarifying that only current-year tobacco product prices may be used to determine the OTP tax rate for the next fiscal year.

During the January 26, 2016, BTC meeting, the Board Members unanimously voted to propose Regulation 4076 as recommended in the formal issue paper. The Board determined that proposed Regulation 4076 is reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) created because there is no statute or regulation that further defines RTC section 30017’s general definition of “wholesale cost” by clarifying the meaning of the

wholesale cost of OTP and providing methods for estimating and calculating wholesale cost.

The Board anticipates that proposed Regulation 4076 will promote fairness and benefit taxpayers, Board staff, and the Board by providing additional clarification regarding and implementing, interpreting, and making specific the meaning of wholesale cost.

The Board has performed an evaluation of whether proposed Regulation 4076 is inconsistent or incompatible with existing state regulations and determined that proposed Regulation 4076 is not inconsistent or incompatible with existing state regulations. This is because proposed Regulation 4076 is the only state regulation that provides additional clarification regarding wholesale cost of tobacco products and implements, interprets, and makes specific the meaning of “wholesale cost” as defined by RTC section 30017. In addition, the Board has determined that there are no comparable federal regulations or statutes to proposed Regulation 4076.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of proposed Regulation 4076 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement 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 proposed Regulation 4076 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no 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 proposed Regulation 4076 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 proposed Regulation 4076 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 determined that proposed Regulation 4076 is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, 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 proposed Regulation 4076 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 proposed Regulation 4076 will not affect the benefits of Regulation 4076 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

The adoption of proposed Regulation 4076 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 regulation 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. Mr. Bennion is the designated backup contact person to Ms. Mash.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:00 a.m. on May 24, 2016, or as soon thereafter as the Board begins the public hearing regarding the adoption of proposed Regulation 4076 during the May 24-26, 2016, 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 proposed Regulation 4076. 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 a copy of the text of proposed Regulation 4076 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations." The Board has also prepared an initial statement of reasons for the adoption of proposed Regulation 4076, 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 regulation is 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 regulation 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 proposed Regulation 4076 with changes that are non-substantial 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 regulation 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 proposed Regulation 4076, 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.

**TITLE 22. DEPARTMENT OF PUBLIC
HEALTH**

**Title 17, California Code of Regulations
DPH-07-005, WIC Participant Sanctions**

PUBLIC PROCEEDINGS

The California Department of Public Health (Department) is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement overview section of this notice.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her duly

authorized representative, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5:00 p.m. on May 23, 2016 which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-07-005" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission: (916) 440-5747;
3. By Postal Service to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814;
4. Hand-delivered to Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier, DPH-07-005, author's name and mailing address.

Authority and Reference

The Department is proposing to repeal the regulation section identified under the authority provided in sections 131000, 131050, 131051, 131052, and 131200 of the Health and Safety Code. The aforementioned sections provide the Department with the authority to repeal 22 CCR section 40679(a)(2)(G).

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Summary of Proposal

The California Department of Public Health (Department) proposes to repeal Title 22 California Code of Regulations (22 CCR) section 40679(a)(2)(G) pursuant to a settlement agreement so ordered by the court entered in 2002 that limits the grounds on which participants in the Women, Infants and Children (WIC) program can be sanctioned.

Pursuant to a settlement agreement entered on July 29, 2002, in *Nicholas v. Bonta et al.*, Superior Court of California, County of Sacramento, case number 01CS00678, the WIC program is no longer allowed to use a participant's "rude or abusive behavior" that does

not amount to physical abuse or threat of physical abuse at a WIC clinic or food vendor as grounds to disqualify the individual from the program mid–certification.

Repealing 22 CCR section 40679(a)(2)(G) would improve the Department’s alignment to federal law and regulations governing the federal WIC program. As such, the Department has determined that this proposal would create no financial impact, and would help further the goals and efficiency of the WIC program.

Background

The Department is tasked with administering the WIC Program, a federally–funded program for eligible Californians, under the Child Nutrition Act of 1966, in accordance with Title 7 Code of Federal Regulations (7 CFR) part 246 promulgated by the Food and Nutrition Service of the U.S. Department of Agriculture.

The WIC program provides nutritious supplemental foods, nutrition education, breastfeeding support, and referrals to other health services to low–income pregnant, postpartum women, infants, and children up to the age of five who are at nutritional risk.

The WIC program operates through 84 WIC local agencies that provide services throughout California to WIC participants. Participants receive food vouchers every month, which they redeem for WIC–specific supplemental foods in the form of healthy food items at food vendors (WIC vendors). The cost of providing WIC benefits varies widely depending on the recipient category (i.e., pregnant, breastfeeding, non–breastfeeding, infant, and child) and the food available to participants in that recipient category.

Participant violations of the WIC program can be an act of a participant; the parent, guardian or caregiver of an infant or child participant; or proxy that violates federal or state statutes, regulations, and policies governing the WIC program. Sanctions are imposed when a violation is committed. If it is the participant’s first violation, they are commonly presented with a written warning. Depending on the severity of the violation and the number of participant violations, the participant may be disqualified for up to a year.

Federal regulations require the WIC program to disqualify a participant for a period of up to one year for any violation of physically harming or threatening to harm WIC clinic, farmer or vendor staff (22 CCR section 40679(a)(2)(F); 7 CFR part 246.7(h)(2)). Federal regulations give the state WIC program discretion in determining the appropriate time period of discipline for certain violations. When adopting the regulation concerning sanctions for rude or abusive behavior that does not amount to physical abuse or threat of physical abuse, California elected to sanction participants for a period of three months.

WIC local agencies report cases of actual physical abuse and threats of harm or physical abuse to the Department’s WIC Division. WIC Division staff then work with the local agency’s director and the participant to determine an appropriate response based on the type of violation.

Sanctions are applied to the participant based on the type of violation. In contrast to the regulation to be repealed, if a participant is disqualified due to physical harm or threats of harm toward a WIC employee or vendor, they will be disqualified from the program for a period of up to one year, in accordance with federal regulations, and will not be issued food instruments. The Department sends a Notice of Disqualification to the participant which lists the reason for disqualification as well as the participant’s right to a fair hearing, including the method by which a fair hearing may be requested. Notifications of disqualification are also documented in the WIC program’s management information system and in the participant’s file.

The participant has the right to appeal the decision, pursuant to 7 CFR part 246.9(d) and has 60 calendar days from the notice of disqualification to request a fair hearing. The disqualified participant(s) must reapply for WIC benefits after the disqualifying period has expired.

In 2002, the Department agreed to repeal 22 CCR section 40679(a)(2)(G), pursuant to the settlement agreement in *Nicholas v. Bonta*, because at the time, state regulations were inconsistent with federal regulations. State regulations listed “rude or abusive behavior” that does not amount to physical abuse or threat of physical abuse as grounds for disqualification from the WIC program, while federal regulations did not. In addition to this inconsistency, the state regulation also raised concerns regarding First Amendment protections of free speech in its vague and overbroad language. As such, the Department agreed to repeal the regulation.

Policy Statement Overview

Problem Statement: The Department must update its regulations to comply with a settlement agreement and the accompanying court order entered on July 29, 2002, and with federal law.

Currently, the Department’s policies list a variety of reasons for which a WIC participant can be disqualified from the WIC program. These reasons include a basis for disqualification that is not listed in federal regulations and which the Department agreed to no longer use as a basis for disqualification when settling *Nicholas v. Bonta*.

Repealing this subdivision does not leave WIC clinic or vendor staff without protection from violence or the

threat of violence from participants. In concurrence with federal laws and regulations, physical abuse or violence toward WIC clinic or vendor staff remains a basis for disqualification (22 CCR section 40679(a)(2)(F)).

Objectives (Goals): Broad objectives of this proposed regulatory action are:

- The Department's establishment of policies which are consistent with federal and state law.
- To provide clarity regarding grounds for disqualification from the WIC program.
- Compliance with the settlement agreement entered on July 29, 2002, in *Nicholas v. Bonta et al.*, Superior Court of California, County of Sacramento, case number 01CS00678.

Benefits: Anticipated benefits, including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- The prevention of unfair disqualification procedures.
- Improved consistency in participant disqualification.
- Local agencies and the Department will experience greater efficiencies in their internal processes due to federal and state regulatory alignment.
- Participants will feel more secure about their participation in the WIC program.
- Continues Department practice of not disqualifying participants for rude or abusive behavior, but maintains the ability to disqualify participants due to physical abuse or threats of physical abuse.

Determination of Inconsistency and Incompatibility with Existing State and Federal Regulations

The Department has determined that the proposed regulations are not incompatible or inconsistent with existing state or federal regulations. This evaluation included a review of the Department's existing general regulations and federal regulations specific to WIC participant violations and sanctions.

Cost Impacts on Representative Private Persons or Business

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Providers licensed by the Department and governed by these regulations would not incur additional costs to comply with the regulation.

Statement of Determinations

(A) Alternatives Statement

The Department has made the determination that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department 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. In addition, no other alternative would comply with the settlement agreement entered on July 29, 2002, in *Nicholas v. Bonta et al.*, Superior Court of California, County of Sacramento, case number 01CS00678, which requires the WIC program to repeal 22 CCR section 40679(a)(2)(G).

(B) Results of the Economic Impact Assessment

The Department has made the determination that the proposed regulations 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. The proposed regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations are reasonably necessary to protect the health and welfare of California WIC participants, employees, and vendors by maintaining the ability to disqualify participants due to physical abuse or threats of physical abuse.

(C) Effect on Housing Costs

The Department has determined that the regulations will have no impact on housing costs.

Local Mandate

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with section

17500) of division 4 of the California Government Code.

Effect on Small Business

The Department has determined that the proposed regulatory action would not impact small businesses in California as defined by Government Code section 11342.610 because it removes only “rude or abusive behavior” as grounds for participant disqualification from the WIC program. The Department will continue to have the ability to disqualify participants from the program for “physical abuse, or threat of physical abuse” to the staff of a vendor store or local agency.

Fiscal Impact Analysis

- (A) Other nondiscretionary cost or savings imposed on local agencies: None.
- (B) Cost or savings to any state agency: None.
- (C) Cost or savings in federal funding to the state: None.
- (D) Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4: None.

Reporting Requirements

The Department has determined that these proposed regulations do not require a report.

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

The Department has made an initial determination that the proposed regulations would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Thus, there will be no significant adverse economic impact on California businesses.

Documents Relied Upon

- *Nicholas v. Bonta et al.*, Superior Court of California, County of Sacramento, case number 01CS00678.

CONTACT PERSON

Maggie Young, WIC, Center for Family Health, CDPH (916) 928-8609. All other inquiries concerning the action described in this notice may be directed to Dawn Basciano, Office of Regulations, at (916) 440-7367, or to the designated backup contact person, Linda Cortez (916) 440-7683.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7367 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department’s Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

**Hazardous Materials: Motor Vehicle Brake Friction Materials
Department Reference Number: R-2014-01**

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt

California Code of Regulations, Title 22, Division 4.5, Chapter 35, Article 1, sections 66387.1 to 66387.9.

PUBLIC HEARING

DTSC will hold one public hearing on the proposed regulation at the following time and location:

DATE: May 27, 2016
TIME: 8:00 a.m. (PDT)
LOCATION: Sierra Hearing Room
1001 "I" Street
Sacramento, California 95814

At the time and location listed above, any person(s) may present statements or arguments, orally or in writing, relevant to this proposal described in the Informative Digest. The public hearing will convene at 8:00 a.m. PDT and will remain open until 12:00 p.m. PDT, or until no attendees present testimony, whichever occurs first.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to please register before the hearing. Pre-hearing registration is conducted at the location of the hearing from 7:30 a.m. PDT until the hearing commences. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center located just inside and to the left of the building's public entrance. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

NOTICE PERTAINING TO ACCESSIBILITY AND REASONABLE ACCOMMODATION

All documents related to this regulation can be made available in alternate format (*i.e.* Braille, large print, etc.) or in another language, as requested, in accordance with State and Federal law. Further, to ensure the public has equal access to all available services and information, DTSC will provide disability related reasonable accommodations and/or translator/interpreter needs, upon request. For assistance, please contact **Litiana Patino at (916) 324-3095** or **Litiana.Patino@dtsc.ca.gov** as soon as possible, but no later than 10 business days prior to the scheduled hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

WRITTEN COMMENT PERIOD

Any interested person(s) or their authorized representative(s) may submit written comments relevant to the proposed regulatory action to DTSC in either electronic or hard-copy formats.

Written comments may be submitted electronically through the DTSC regulations email address at regs@dtsc.ca.gov or please direct hard-copy written comments to:

Ms. Jackie Buttle, Regulations Coordinator
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806
Fax Number: (916) 255-3757

The written comment period will close at 11:59 p.m. PDT on May 23. Only comments received at the DTSC office by that date and time will be considered.

AUTHORITY & REFERENCE

Authority

These regulations are being adopted under the following authorities:

- Health and Safety Code section 58012. This section grants DTSC authority to adopt and enforce rules and regulations to execute its duties. (Added by Governor's Reorganization Plan No. 1, §146, eff. July 17, 1991. See http://www.dtsc.ca.gov/LawsRegsPolicies/upload/OEARA_REG_GRP1.pdf)
- Health and Safety Code section 25250.50(g). This section requires DTSC to develop and approve certification agency requirements.
- Health and Safety Code section 25250.60(a). This section requires DTSC to adopt certification procedures for brake friction materials.
- Health and Safety Code section 25250.60(j). This section requires a certification and mark of proof that is accepted in all 50 states and United States territories be used to demonstrate compliance with all applicable requirements.

Reference

These regulations implement, interpret, or make specific the following statutes:

- Health and Safety Code section 25250.50(g). This section requires DTSC to develop and approve certification agency requirements.
- Health and Safety Code section 25250.54. This section requires a procedure for the extension process which shall be facilitated by DTSC.

- Health and Safety Code section 25250.60(a). This section requires the certification procedures for brake friction materials to be adopted by the DTSC.
- Health and Safety Code section 25250.60(j). This section requires a certification and mark of proof that is accepted in all 50 states and United States territories be used to demonstrate compliance with all applicable requirements.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Policy Statement Overview

The governor of California approved Senate Bill 346 on September 10, 2010 and enacted Health and Safety Code (HSC) sections 25250 et seq. The statute, commencing on January 1, 2014, prohibits the sale of any motor vehicle brake friction materials containing specified constituents in amounts that exceed certain concentrations. The statute allows, until December 31, 2023, motor vehicle manufacturers and distributors, wholesalers, or retailers of replacement brake friction materials to deplete their inventory of noncompliant materials. Commencing on January 1, 2021, the statute prohibits motor vehicle brake friction materials containing more than 5.0 % copper by weight from being sold in the state, and, commencing on January 1, 2025, prohibits motor vehicle brake friction materials exceeding 0.5% copper by weight from being sold in the state. DTSC is responsible for implementing this statute.

The statute exempts brake friction materials used for certain motor vehicle classes, such as motorcycles, from its requirements and would exempt from certain prohibitions the sale of vehicles or brake friction materials manufactured prior to certain dates. Manufacturers of vehicle brake friction material are required to screen potential alternatives for copper using the existing Toxics Information Clearinghouse and to use an open source alternatives assessment or a screening analysis to select alternatives to copper that pose less potential hazard to public health and the environment. The vehicle brake friction material manufacturer or importer of record is required to provide DTSC with a summary of the alternatives screening, upon request, and the manner in which the selection of alternatives is informed.

The statute requires all new motor vehicles offered for sale, on and after the specified compliance dates described above, to be equipped with brake friction materials meeting the requirements of the HSC sections 25250.51, 25250.52, and 25250.53. The statute also requires all vehicle brake friction material manufacturers,

on or after those compliance dates, to certify compliance with those requirements and mark proof of certification on all brake friction materials. Manufacturers of vehicle brake friction materials are required to file a copy of the certification with a testing certification agency.

Proposed regulation

The proposed regulation would:

Adopt a new Chapter 35, Hazardous materials: motor vehicle brake friction materials, to division 4.5 of Title 22, California Code of Regulations to satisfy the mandates of HSC sections 25250.50(g), 25250.54, 25250.60(a), and 25250.60(j). These sections direct DTSC to develop performance requirements for (1) testing the chemical content of brake friction materials for compliance to HSC sections 25250.51, 25250.52 and 25250.53, (2) marking compliant brake friction materials, (3) reviewing certification procedures used by the testing certification agency, and (4) approving alternative chemical analytical testing methods for brake friction materials for compliance to HSC sections 25250.51, 25250.52 and 25250.53, and (5) approving alternative laboratory accreditation standards for analytical laboratories. The proposed regulation would clarify the process to approve extension requests for the 2025 statutory requirements.

Anticipated Benefits

DTSC estimates the benefits from the proposed regulations are from incorporating key aspects of the current certification and marking system used by the brake friction materials industry. By incorporating these key aspects into the proposed regulations, compliance costs will be low for the regulated industry; California consumers and retailers will more easily identify compliant brake friction materials; and the time to achieve compliance with the statute and the proposed regulations will be reduced. Compliance with the statute and proposed regulations will promote the goal to reduce the amount of copper and other toxic substances released from brakes from entering California's streams, rivers, and marine environment.

Summary of Existing Statutes and Regulations

HSC section 25250.60(a) requires the DTSC to approve certification procedures for brake friction materials. HSC section 25250.50(g) requires the DTSC to develop and approve certification agency requirements. HSC section 25250.54 requires the DTSC to develop steps to clarify the extension process which shall be facilitated by the DTSC.

The statute provides a framework for reducing specific heavy metals and asbestos in brakes, and calls upon the department to work with interested parties to develop compliance criteria including:

- Criteria for self–certification of compliance using a testing certification agency that uses third–party accredited laboratories.
- Requirements relating to a “proof of certification” mark to appear on brake pads.
- Process for approving certification requirements used by the testing certification agency.
- Requirements for the third–party accredited laboratories.
- Process for approving an equivalent laboratory accreditation program or standard.
- Adoption of criteria and procedures to test brake friction materials.
- Process for approving equivalent analytical methods for testing brake friction materials.
- A process for companies to apply for an extension to the January 1, 2025 restriction for copper and its compounds under HSC section 25250.54. The law includes a fee assessed to process the extension application.

Relation to Existing Federal Regulations

DTSC performed an automated search of electronic Code of Federal Regulations that yielded no conflicting federal regulations using the following keywords: “copper and brake and pads”, “lead and brake and pads”, “mercury and brake and pads”, “hexavalent chromium and brake and pads”, “asbestiform fibers and brake and pads”, “asbestos and brake and pads”, “brake and pads”, “braking systems”, “vehicle and brakes and chemical content”.

Several federal regulations were found that specified the safety and performance standards for brakes and braking systems used in various types of transportation systems and industrial systems. Existing federal motor vehicle safety standard regulations (FMVSSR) provide performance–based requirements for braking systems under FMVSSR sections 571.105, 571.121, 571.122, and 571.135.

The Occupational Safety and Health Administration (OSHA) established several regulations that oversee the occupational exposures to asbestos (29 CFR §1910.1001), specific compliance methods for brake and clutch repair (29 CFR § 1910.1001(F)(3)), and sampling and testing methods for asbestos occupational exposure (29 CFR § 1915.1001, Appendix B). The U.S. Environmental Protection Agency promulgated regulations under the National Emission Standards for Hazardous Air Pollutants for new and existing friction materials manufacturing facilities under 40 CFR Part 63, Subpart QQQQQ. These federal rules do not address the chemical composition of the brake friction material and focus either on a safety–based performance stan-

dard or on the air–based emissions. Therefore, the proposed regulations will neither duplicate nor conflict with the federal regulations.

Relation to Existing State Regulations

An automated search was conducted via Westlaw that yielded no conflicting state regulations using the following keywords: “brakes”, “brake pads”, “braking systems”, “copper”, “cadmium and brakes”, “lead and brakes”, “mercury and brakes”, hexavalent chromium and brakes”, “asbestiform fibers and brakes”, and “asbestos and brakes”.

Several state regulations were found that specified safety and performance standards for brakes and braking systems used in various types of transportation systems and industrial systems. The regulations concerning braking systems and brakes used on motor vehicles are overseen by the California Highway Patrol, Department of Industrial Relations, and Department of Transportation. DTSC also reviewed regulations regarding the requirements for brake adjusters and brake stations overseen by the Bureau of Automotive Repair.

The proposed regulation is not inconsistent or incompatible with any existing state regulations. The existing regulations focused on safety–based performance standards and best management practices, and not the chemical composition of the brake friction materials.

DISCLOSURE REGARDING THE PROPOSED ACTION

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC determined that the proposed changes to these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to Part 7 of Division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS SUBJECT TO REIMBURSEMENT

DTSC determined that the proposed changes to these regulations will not result in costs or savings for any state or local agency, or school district that is required to be reimbursed pursuant to part 7 of division 4, commencing with section 17500 of the Government Code. The proposed regulation is not anticipated to result in any other nondiscretionary cost or savings imposed on local agencies or any change in federal funding to the state.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

DTSC does not anticipate any changes to federal funds which the State of California receives. DTSC does not receive any federal funds for water pollution control.

DETERMINATION OF NO SIGNIFICANT STATEWIDE ECONOMIC IMPACT

DTSC has made an initial determination found through the economic impact assessment that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The statute requires the brake friction material manufacturer to test, mark and certify their brake friction materials comply with the provisions of HSC sections 25250.51, 25250.52 or 25250.53.

DTSC estimates that the economic impact on California businesses, employment, and consumers will be negligible because brake pad manufacturers and new motor vehicle manufacturers have already invested in the third-party testing and third-party testing certification agency in order to comply with the State of Washington's Better Brake Rule and statute. From experience gained through implementation of the State of Washington Better Brake Rule, the consumer's costs for brake pads that are compliant with the chemical restrictions are unchanged.

EFFECT ON SMALL BUSINESSES

The Department of Consumer Affairs, Bureau of Automotive Repair reports 1,448 service and repair stations (providers) are licensed for brake repair work in California as of 2014. These businesses provide "Do It For Me" or "DIFM" aftermarket repair and replacement for worn or damaged brake pads. DTSC anticipates minor additional time — to view the package labeling — but no additional cost to the consumer because "brake jobs" are customarily a flat fee which includes labor and brake pad materials. New original equipment (OE) vehicle sellers typically now include brake pad replacement in on-going service contracts sold along with the new vehicle. These also are a pre-set cost, and paid under the service contract.

The Board of Equalization reports 20,916 permits have been issued to entities selling auto parts, accessories, and tires. This universe includes the subset of retailers selling aftermarket brake pads to the "Do It Yourself" or "DIY" customer. As above, DTSC does not anticipate any price changes (increase or decrease) for the aftermarket brake pads sold at retail.

The proposed regulations will not affect small business because DTSC does not anticipate any price changes (increase or decrease) for the aftermarket brake pads sold at retail or purchased by small businesses in California.

EFFECT ON HOUSING COSTS

DTSC determined that the proposed changes to the regulations will not impact housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

DTSC has conducted an economic impact assessment, as required by Government Code section 11346.3, and found that no businesses or jobs will be created, expanded, or eliminated in California as a result of the proposed regulation. The rulemaking does, however, aim to reduce the amount of copper pollution, which helps to protect public health and the environment.

DTSC estimates that the economic impact on California businesses, employment, and consumers will be negligible because brake pad manufacturers and new motor vehicle manufacturers have already invested in the third-party testing and third-party testing certification agency in order to comply with the State of Washington's Better Brake Rule and statute. While brake pad manufacturers have complied with the statutory and administrative requirements under the State of Washington's Better Brake Rule, no cost increases appear to have been passed along to consumers — in the original equipment or aftermarket sectors.

CONSIDERATION OF ALTERNATIVES

Prior to rulemaking, DTSC vetted the proposed regulation language in June 2014 and October 2014 to solicit comments from the public. As part of the June 2014 comment period, DTSC held five (5) workshops to solicit comments on the proposed regulation language. The comments received focused on differences in the exemptions listed in the California and the State of Washington laws; sell-through timelines; reciprocity agreement between California and the State of Washington; retroactive application of the regulations; exclusion of the date of publication on standards cited in

the reference section; and harmonization of the product marking and package labeling.

DTSC issued revised proposed language for public comment in October 2014. The second round of comments focused on mainly editorial issues but also included comments on accreditation of the testing certification agency; availability of information on the testing certification agency; certified analytical laboratories; and alternative test method requests. For both sets of comments, DTSC addressed comments in a document that was posted on the DTSC website. DTSC also notified subscribers on the DTSC Brake Pad eList, workshop participants, and members of the Society of Automotive Engineers (SAE) Brake Materials Environmental Task Force via electronic mail about the documents and where they could be obtained.

A detailed discussion of the proposed regulations is presented in the Initial Statement of Reasons for statute entitled Hazardous Materials: Motor Vehicle Brake Friction Materials.

Per Government Code section 11346.5(a)(13), DTSC must determine that no reasonable alternatives considered or that have otherwise been identified and brought to our 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. In making this determination, DTSC has considered the following alternatives:

Chosen Alternative

The proposed regulation was found to be the least burdensome alternative for regulated businesses because it relies on a certification process, testing, and marking procedure currently in use to meet the State of Washington Better Brakes Rule. The proposed regulations also reflect the other conditions in the Memorandum of Understanding (MOU) between U.S. EPA, industry stakeholders, and the Environmental Council of the States (ECOS). The MOU is a template for the other 48 states to reduce copper concentrations in brake friction material and identify brakes that comply with copper restrictions listed in the California and the State of Washington statutes. This proposal clarifies how private market-based mechanisms will be utilized to conduct the chemical analysis of brake friction material and certify compliance, and thus reduce the cost to state agencies.

These regulations are set up as outlined below:

- Definitions & References
- Self-Certification of Compliance
- Testing Certification Agency for Brake Friction Materials

- Certified Laboratories for Brake Friction Materials
- Testing Methodology for Brake Friction Materials (SAE J2975)
- Marked Proof of Certification (SAE J866)
- Extension Process

Rejected Alternatives

1. Do Nothing (No Action)

DTSC rejected this option because HSC section 25250.50 et seq. as currently written lacks details on how a regulated entity is to determine the process and criteria to be used for (1) testing, marking and certifying brake friction materials, (2) verifying certified laboratories, and (3) approving the certification requirements used by the testing certification agencies. Further, HSC section 25250.60 requires that DTSC consult with the manufacturing industry in the development of testing and marking criteria and adopt certification procedures.

To do nothing would reject California Legislature’s intent and direction to develop an implementation program to reduce the amount of copper released into the State’s waters. Copper is toxic to aquatic life and organisms. In recent years, California has experienced a moderate to severe drought potentially exacerbating the impacts of copper in California’s waterways. Limits on the copper content of brake materials are one tool that can be used to comply with the federal Clean Water Act (33 U.S.C. Section 1251 et seq.) mandates. Standards are necessary to help local water control agencies’ efforts in implementing copper reduction programs.

For the reasons cited above, DTSC rejected this option.

2. Performance Standards

DTSC considered whether performance standards would be a viable alternative in place of the proposed regulations as part of its rulemaking process. Performance standards established through best management practices would not be enforceable thus creating an un-level playing field. DTSC concluded that performance standards would not fulfill the mandates of HSC section 25250.60 which call on DTSC to develop criteria for testing and marking brake friction materials and certification procedures. To establish an effective program, the criteria for testing, marking, and certifying brake friction materials must be adopted in regulations since they will be universally applied to any brake friction material sold in the State of California.

3. Regulation with a unique certification process and California-specific packaging logo

This alternative assumed DTSC adopted regulations that developed a unique certification process that used a California-specific packaging logo. This process would require:

- The brake friction material manufacturers to submit testing results to a testing certification agency for certification;
- The use of accredited laboratories to test brake friction materials;
- Submittal of testing results and data to DTSC on a quarterly basis;
- Use of a packaging logo owned by DTSC;
- Development of a certification scheme for brake friction materials in accordance with ISO/IEC 17067;
- Direct oversight by DTSC to ensure the accreditation of the testing certification agency and accredited laboratories met the ISO/IEC 17065 standards; and
- Direct oversight of the data sent to the testing certification agency for quality control purposes.

The regulations would also include a section to clarify the extension process that would be similar to the proposed regulations.

DTSC rejected this alternative due to additional cost to DTSC associated with directly overseeing the testing certification agency and accredited laboratories; managing access and use of the packaging logo; imposing additional cost to industry to redesign their packaging to incorporate the DTSC logo, in addition to the existing logo; and the duplicative reporting of test results to DTSC and the testing certification agency.

OTHER APPLICABLE REQUIREMENTS PRESCRIBED BY STATUTE

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be an exempt General Rule (CEQA Guidelines, § 15061(b)(3)) under the California Environmental Quality Act (Public Resources Code section 21000, et seq.). This rulemaking meets the statutory exemption available under subdivision (b)(8) of Public Resources Code section 21080. A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

INCORPORATED BY REFERENCE

- The regulation incorporates the following references:
- (1) ILAC-P5:10:2013, “International Laboratory Accreditation Cooperation (ILAC) Multilateral Recognition Arrangement”, dated 2013, available from the ILAC Secretariat, PO Box 7507, Silverwater, NSW 2128, Australia.

- (2) ISO/IEC Guide 65:1996, “General requirement for bodies operating product certification systems,” dated 1996, available from the International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (3) ISO/IEC 17011:2005, “General requirements for accreditation bodies accrediting conformity assessment bodies”, dated 2005, available from International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (4) ISO/IEC 17025:2005, “General requirements for the competence of testing and calibration laboratories,” dated 2005, available from International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (5) ISO/IEC 17065:2012, “Conformity assessment — Requirements for bodies certifying products, processes and services”, dated 2012, available from International Organization for Standardization (ISO), ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH-1211 Geneva 20, Switzerland
- (6) NELAC Institute Standard, Environmental Laboratory Sector, Volume 1, “Management and Technical Requirements for Laboratories Performing Environmental Analysis,” dated 2009, available from The NELAC Institute, P. O. Box 2439, Weatherford, TX 76086;
- (7) SAE J 866:2012, “Friction Coefficient Identification and Environmental Marking System for Brake Linings,” dated July 2012, available from the Society of Automotive Engineers (SAE) Customer Service, 400 Commonwealth Drive, Warrendale, PA 15096-0001;
- (8) SAE J 2975:2013, “Measurement of Copper and Other Elements in Brake Friction Materials,” dated December 2013, available from the Society of Automotive Engineers (SAE) Customer Service, 400 Commonwealth Drive, Warrendale, PA 15096-0001.

CONTACTS

Inquiries regarding technical aspects of the proposed regulation or CEQA documents may be directed to Suzanne Davis of DTSC at (916) 327-4206; or Evelia Rodriguez at (916) 327-6104. If unavailable, contact

Tony Luan of DTSC at (916) 322-5244. However, such oral inquiries are not part of the rulemaking record.

A 45-day public comment period for this rulemaking file, as described above, will commence on April 8, 2016 and close on May 23 at 11:59 p.m. PDT. During this time, DTSC will accept statements, arguments, or contentions and/or supporting documents regarding this rulemaking that must be submitted in writing, or may be presented orally or in writing at the public hearing. Comments must be received by the deadline in order for them to be considered before DTSC adopts, amends, or repeals these regulations.

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

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulations, all the information upon which its proposal is based, and the express terms of the proposed regulation are posted to DTSC's Internet site at: <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm> or may be obtained from Jackie Buttle of DTSC's Office of Planning and Environmental Analysis, as specified below.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial changes are made, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend the hearing, or provide written comments on this specific regulation will be sent a copy of the modified text if substantive changes are made.

Once the regulation has been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments, and includes other materials required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Jackie Buttle at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at: <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable eList, or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Ms. Jackie Buttle
Regulations Coordinator
Office of Planning and Environmental Analysis
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

E-mail address: regs@dtsc.ca.gov
Fax number: (916) 255-3757
Phone number: (916) 255-3730
If Ms. Buttle is unavailable, please call Ms. Evelia Rodriguez at (916) 327-6104.

**TITLE 27. OFFICE OF
ENVIRONMENTAL HEALTH HAZARD
ASSESSMENT**

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

**NOTICE OF PROPOSED RULEMAKING
TITLE 27, CALIFORNIA CODE OF
REGULATIONS**

**AMENDMENT TO SECTION 25805
SPECIFIC REGULATORY LEVELS:
CHEMICALS CAUSING REPRODUCTIVE
TOXICITY**

ETHYLENE GLYCOL (INGESTED)

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a Proposition 65¹ Maximum Allowable Dose Level (MADL) for oral exposure to ethylene glycol of 8,700 micrograms per day by amending Section 25805(b) of Title 27 of the California Code of Regulations².

PUBLIC PROCEEDINGS

Any 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 23, 2016**, the designated close of the written comment period. All comments received will be posted on the OEHHA website at the close of the public comment period.

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq., referred to herein as "Proposition 65" or "The Act."

² All further references are to sections of Title 27, Cal. Code of Regs., unless otherwise indicated.

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

Mailing

Address: Ms. Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS-23B
Sacramento, California 95812-4010
Fax: (916) 323-2517
Street Address: 1001 I Street
Sacramento, California 95814

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. Comments on all regulatory and other actions are routinely posted on our website. By sending us your comments you are waiving any right to privacy you may have in the information you provide. Individual commenters should advise OEHHA when submitting documents to request redaction of home address or personal telephone numbers. Names of commenters will not be redacted.

A public hearing on this proposed regulatory amendment will be scheduled on request. To request a hearing send an e-mail to Monet Vela at monet.vela@oehha.ca.gov or to the address listed above by no later than **May 9, 2016**, which is 15 days before the close of the comment period. OEHHA will mail a notice of the hearing to the requester and interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days before the public hearing date. The notice will provide the date, time, and location of the hearing.

If a hearing is scheduled and you have special accommodation or language needs, please contact Monet Vela at (916) 323-2517 or monet.vela@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the proposed regulatory action described in this notice to Monet Vela, in writing at the address given above, via e-mail to monet.vela@oehha.ca.gov or (916) 323-2517. Fran Kammerer will be a back-up contact. She can be contacted at (916) 445-4693 or fran.kammerer@oehha.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 65 prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the State to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual³. The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water⁴. Warnings are not required and the discharge prohibition does not apply when exposures are insignificant.⁵ The MADL safe harbors provide guidance for determining when this is the cases.⁶

Details on the basis for the proposed MADL for oral exposure to ethylene glycol are provided in the Initial Statement of Reasons for this regulatory amendment, which is available on request from Monet Vela and is posted on the OEHHA website at www.oehha.ca.gov.

This proposed regulation sets forth a MADL for adoption into Section 25805 that was derived using scientific methods outlined in Section 25803.

The proposed regulation would adopt the following MADL for oral exposure to ethylene glycol, by amending Section 25805 as follows (addition in underline):

(b) Chemical	Level
Name	(Micrograms/day)
<u>Ethylene Glycol</u>	<u>8,700 (oral)</u>
<u>(ingested)</u>	

OEHHA reviewed the studies identified in the NTP-CERHR Monograph⁷ that provide the basis for the listing, and conducted a literature search for any other relevant studies or reports published after the NTP-CERHR review was completed. Additional relevant studies were identified and reviewed by OEHHA. This is discussed in more detail in the initial statement of reasons for this proposed regulatory amendment.

Anticipated Benefits of the Proposed Regulation: Some businesses may not be able to afford the expenses of establishing a MADL and therefore may face litigation for a failure to warn or for a prohibited discharge of the listed chemical. Adopting this regulation will save these businesses those expenses and may reduce litigation.

³ Health and Safety Code section 25249.6.

⁴ Health and Safety Code section 25249.5.

⁵ Health and Safety Code sections 25249.9 and 25249.10.

⁶ See Sections 25801 to 25805.

⁷ NTP-CERHR (2004). NTP-CERHR Monograph on the Potential Human Reproductive and Development Effects of Ethylene Glycol. Research Triangle Park, NC, National Toxicology Program, Center for the Evaluation of Risks to Human Reproduction: NIH Publication No. 04-4481. Available online at <http://ntp.niehs.nih.gov/?objectid=4980AA81-E919-4E85-60B789CA36E559FA5>.

tion costs. In addition, by providing a MADL, this regulatory proposal may encourage businesses to lower the amount of the listed chemical in their products to a level that does not require a warning. This in turn may reduce exposures to ethylene glycol and reduce resident, worker and environmental exposures to chemicals that cause reproductive toxicity.

No Inconsistency or Incompatibility with Existing Regulations

OEHHA has conducted an evaluation for whether there are any other regulations on this matter and has found that these are the only regulations dealing with ethylene glycol. Therefore, OEHHA has determined that the proposed regulation is neither inconsistent nor incompatible with existing state regulations because it provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses, state or local agencies and does not address compliance with any other law or regulation.

RESULTS OF ECONOMIC IMPACT ANALYSIS
(Gov. Code section 11346.3(b))

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses in California

This regulatory proposal will not affect the creation or elimination of jobs within the State of California. Proposition 65 requires businesses with ten or more employees to provide warnings when they expose people to chemicals that are known to cause cancer or reproductive harm. The law also prohibits the discharge of listed chemicals into sources of drinking water.

Because the proposed MADL provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses, OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Benefits of this regulation include, sparing businesses the expense of calculating their own MADL and possibly enabling them to reduce or avoid litigation costs. By providing a MADL, it may encourage businesses to lower the amount of the listed chemical in their product to a level that does not cause a significant exposure, thereby providing a public health benefit to Californians. This in turn may reduce exposure to ethylene glycol and reduce resident, worker and environmental exposures to chemicals that cause reproductive harm.

PEER REVIEW

This notice and the Initial Statement of Reasons will be provided to the Developmental and Reproductive Toxicant Identification Committee for scientific peer review and comment.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Because Proposition 65 expressly⁸ does not apply to local agencies or school districts, OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

Because Proposition 65 expressly⁹ does not apply to any State agency, OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

Because Proposition 65 expressly¹⁰ does not apply to any federal agency, OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs because it provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses.

⁸ See Health and Safety Code section 25249.11(b).

⁹ See Health and Safety Code section 25249.11(b).

¹⁰ See Health and Safety Code section 25249.11(b).

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

Because the proposed regulatory level provides compliance assistance to businesses subject to the Act, but does not impose any mandatory requirements on those businesses, OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed MADL was developed to provide compliance assistance for these businesses in determining whether a warning is required or a discharge is prohibited. The MADL provides a level of exposure at or below which a warning is not required and a discharge is not prohibited. Use of the MADL is not mandatory. The implementing regulations allow a business to calculate its own level and provide guidance in order to assist businesses in doing so.¹¹ However, conducting such a process can be expensive and time consuming, and the resulting levels may not be defensible in an enforcement action. OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed MADL will not impose any mandatory requirements on small business. Rather, the proposed MADL will provide compliance assistance for small businesses subject to the Act because it will help them determine whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition of the Act.

¹¹Title 27, Cal. Code of Regs, Section 25801 et seq.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346.5(a)(13) requires that OEHHA must determine that no reasonable alternative considered by the OEHHA or that has otherwise been identified and brought to the attention of the OEHHA 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 proposal described in this Notice.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, which contains the text of the regulation and the information upon which the regulation is based. A copy of the Initial Statement of Reasons, the text of the regulation and documents used by OEHHA to develop the proposed regulation are available upon request from OEHHA at the address, e-mail address and telephone number indicated above. These documents are also posted on OEHHA's website at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, if held, or whose comments were received by OEHHA during the public comment period, and anyone who requests notification from OEHHA of the availability of such changes. Copies of the notice and the changed regulation will also be available on the OEHHA website at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons for this regulatory action may be obtained, when it becomes avail-

able, from OEHHA at the address, e-mail address and telephone number indicated above, and on the OEHHA website at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH CARE SERVICES

THE DEPARTMENT OF HEALTH CARE SERVICES PROPOSES TO SUBMIT A STATE PLAN AMENDMENT FOR UPDATING THE MEDI-CAL REIMBURSEMENT METHODOLOGY FOR YEAR 4 OF DIAGNOSIS RELATED GROUP

This notice is to provide information of public interest about the proposed changes in the Year 4 Diagnosis Related Group (DRG) payment parameters for general acute inpatient services provided by private hospitals and nondesignated public hospitals in California, out-of-state hospitals, and hospitals designated by Medicare as critical access hospitals.

The Year 4 DRG payment parameters will take effect for hospital admissions on or after July 1, 2016, which are reimbursed using the APR-DRG methodology. Updates to the payment parameters include the following:

- Changes in the APR-DRG grouping algorithm from Version 32 to Version 33.
- V.33 relative weights under the hospital-specific relative value (HSRV) methodology.
- Transition rates for CA hospitals will cease. DRG payment rates will no longer receive transition-based adjustments to the DRG payment rate.
- Both Tier 1 and Tier 2 cost outlier threshold increased to 4% for DRG hospitals.
- Changes in the most recent hospital-specific CA hospital and border hospital wage area index values from the Centers for Medicare and Medicaid Services, adjusted by a neutrality factor of 0.9690.
- The labor portion of the base price that will be adjusted by the hospital specific wage index of a California hospital or border hospital will be 62%.

PUBLIC REVIEW AND COMMENTS

Copies of this public notice will be available at welfare offices in every county of the State.

Copies of the State Plan Amendment that amends California's Medicaid State Plan may be requested, in writing, from Mr. John Mendoza, Department of Health Care Services, Safety Net Financing Division, MS 4518, P.O. Box 997436, Sacramento, CA 95899-7436.

Written comments concerning the proposal may be mailed to Mr. Mendoza at the above address and must be received on or before May 23, 2016.

DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PUBLIC HEARING ON PETITION TO AMEND REGULATIONS

(Government Code section 11340.7)

TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTION 17304, ARTICLE 1 OF CHAPTER 8, SUBCHAPTER 7

PETITIONER

California Applicants' Attorneys Association

By letter dated February 12, 2016, the California Applicants' Attorneys Association (Petitioner) petitioned the Director of Industrial Relations (Director) in accordance with Government Code section 11340.6. The Petitioner requests that the Director amend California Code of Regulations, title 8 (8 CCR), section 17304 to extend the Return-to-Work Supplement (RTWS) application deadline for individuals who became eligible for the benefit before December 1, 2015.

AUTHORITY

Labor Code section 55 authorizes the Director to make rules and regulations that are reasonably necessary to effectuate the purposes of the Department of Industrial Relations (Department). Labor Code section 139.48, subdivision (b) specifically authorizes the Director to adopt regulations determining eligibility for, and the amount of, benefit payments under the RTWS Program.

PUBLIC HEARING

The Director will hold a public hearing at 10:00 a.m. on April 15, 2016, at 1515 Clay Street, Oakland, California. The hearing room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed

action described in the Petition and any reasonable alternatives thereto. The Director requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

CONTACT PERSON

Please direct any inquiries regarding this action to Nathan Schmidt, Counsel, Office of the Director — Legal Unit, P.O. Box 420603, San Francisco, CA 94142-0603.

AVAILABILITY OF PETITION

The Petition to amend regulations is available upon request directed to the Department’s contact person.

SUMMARY OF THE PETITION

Petitioner requests that 8 CCR section 17304 be amended as follows:

An application for the Return-to-Work Supplement must be received by the Return-to-Work Supplement Program within one year from the date the updated Voucher form containing notice was served on the individual ~~or within one year from the effective date of these regulations, or one year from the effective date of this amendment to the regulations for those individuals who received vouchers before December 1, 2015, whichever is later.~~

Petitioner states that the requested extension to the application deadline is necessary, because injured workers who received a voucher on or before the April 13, 2015 effective date of the regulations implementing the RTWS Program will no longer be able to apply for an RTWS benefit after April 13, 2016. This is despite the fact that those individuals did not receive notice of their eligibility to apply for an RTWS benefit when they received their Vouchers. Petitioner also notes that the Supplemental Job Displacement Voucher form, which is supposed to provide notice of eligibility to apply an RTWS benefit, was not updated to include that notice until December 1, 2015.

Petitioner believes that the low number of applicants to the RTWS Program in 2015 (less than 12,000 when at least 24,000 were projected by the Rand study which the Department relied on when developing the Program) is most likely due to this lack of notice of eligibility, as well as some difficulties in using the online application process.

DEPARTMENT DECISION

The Director has determined to hold a hearing on the Petition.

The RTWS Program was established by the Legislature in Labor Code section 139.48, part of Senate Bill 863, the landmark workers’ compensation reform measure of 2012, to provide “supplemental payments to workers whose [Workers’ Compensation] permanent disability benefits are disproportionately low in comparison to their earnings loss.” After Labor Code section 139.48 took effect on January 1, 2013, the Department, in coordination with the Commission on Health and Safety and Workers’ Compensation, commissioned a study from the Rand Corporation of injured workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Guided by the Rand study, which was completed in February 2014, the Department developed and adopted 8 CCR sections 17300 through 17310 to implement the RTWS Program. These regulations went into effect on April 6, 2015, and the Department began accepting applications for RTWS benefits on April 13, 2015.

8 CCR section 17302 establishes receipt of a Supplemental Job Displacement Benefit Voucher (Voucher) for an injury occurring on or after January 1, 2013, as the sole basis of eligibility for the RTWS benefit. Existing section 17304 requires an application for the RTWS benefit to be submitted “within one year from the date the Voucher was served on the individual or within one year from the effective date of these regulations, whichever is later.” To protect the ability of individuals whose entitlement to receive an RTWS benefit is based on receipt of a voucher after January 1, 2013, the effective date of Labor Code section 139.48, but before the April 2013 effective date of the regulations implementing the RTWS Program, 8 CCR section 17304 gave individuals who received vouchers in that time period one year after the effective date of the regulations to apply for the benefit.

Because Vouchers are issued directly to eligible workers by Workers’ Compensation claims administrators on a form adopted by the Division of Workers’ Compensation (DWC), 8 CCR section 17303 established the following interim notice procedure pending amendment of the Voucher form:

Commencing 30 days after the effective date of these regulations, and continuing until the Administrative Director of the Division of Workers’ Compensation amends Form DWC-AD 10133.32 to include notice of the Return-to-Work Supplement application process, all Vouchers issued shall be accompanied by a cover sheet, prepared by the claims administrator, containing the following notice: “Because you have received

this Voucher and are unable to return to your usual employment you may be eligible for a Return-to-Work Supplement. You must apply within one year from the date this Voucher was served on you. You should make a copy of the Voucher which you will need to apply for the Return-to-Work Supplement. Details about the Return-to-Work supplement program are available from the Department of Industrial Relations on its web site, www.dir.ca.gov, or by calling 510-286-0787.” The Director will arrange for publication on the Department web site of a notice targeted at eligible persons who received vouchers before the notice was included with the voucher.

As noted in the Petition, the amended Voucher form including a notice of eligibility for the RTWS benefit (DWC-AD Form 10133.32 (SJDB) Rev: 10/1/15) did not go into general use until approximately December 1, 2015. While 8 CCR 17303 required claims administrators to provide notice of eligibility via a cover sheet accompanying all Vouchers issued until the Voucher form was amended by DWC, the Department has been informed that at least some vouchers issued prior to December 1, 2015 were not accompanied by the required notice. Petitioner suggests that amendment of 8 CCR section 17304 is “a fair remedy to allow all eligible injured workers the opportunity to apply for the Return-to-Work Supplement payment.”

Before making a determination whether to grant or deny the Petition, or to address the identified situation via another means, the Director has determined to hold a public hearing to gather input on the Petitioner’s proposal and reasonable alternatives thereto.

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

**NOTICE TO INTERESTED PARTIES
April 8, 2016**

**CHEMICAL LISTED EFFECTIVE APRIL 8, 2016
AS KNOWN TO THE STATE OF CALIFORNIA
TO CAUSE REPRODUCTIVE TOXICITY:
ABIRATERONE ACETATE**

Effective **April 8, 2016**, the Office of Environmental Health Hazard Assessment (OEHHA) is adding *abiraterone acetate* (CAS No. 154229-18-2) to the list of chemicals known to the state to cause reproductive toxicity (developmental, female, and male endpoints) for purposes of Proposition 65¹.

The listing of abiraterone acetate is based on a formal requirement by a state or federal agency that the chemical be identified or labeled as causing reproductive toxicity² as provided under Proposition 65. Abiraterone acetate has been identified or labeled to communicate a risk of reproductive harm (developmental, female, and male endpoints) in accordance with formal requirements by the US Food and Drug Administration. Regulations governing the listing of chemicals under the “formally required to be labeled or identified” mechanism are published in Title 27, California Code of Regulations, section 25902.

The documentation supporting OEHHA’s determination that abiraterone acetate meets the criteria for administrative listing is included in the Notice of Intent to List Abiraterone Acetate (http://oehha.ca.gov/prop65/cmr_notices), published in the January 29, 2016 issue of the *California Regulatory Notice Register* (Register 2016, No. 5-Z). No public comments were received.

A complete, updated chemical list is published in this issue of the *California Regulatory Notice Register* and is available on the OEHHA website at www.oehha.ca.gov.

In summary, the following chemical is listed under Proposition 65 as known to the state to cause reproductive toxicity:

Chemical	CAS No.	Toxicological Endpoints	Listing Mechanism*
Abiraterone acetate	154229-18-2	Developmental toxicity Female reproductive toxicity Male reproductive toxicity	FR

*Listing mechanism: FR — “formally required to be labeled or identified” mechanism Health and Safety Code section 25249.8(b) and Title 27 Cal. Code of Regs., section 25902.

¹ The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq.

² See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25902.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986**

**CHEMICALS KNOWN TO THE STATE
TO CAUSE CANCER OR
REPRODUCTIVE TOXICITY
April 8, 2016**

The Safe Drinking Water and Toxic Enforcement Act of 1986 requires that the Governor revise and republish at least once per year the list of chemicals known to the State to cause cancer or reproductive toxicity. The identification number indicated in the following list is the Chemical Abstracts Service (CAS) Registry Number. No CAS number is given when several substances are presented as a single listing. The date refers to the initial appearance of the chemical on the list. For easy reference, chemicals which are shown underlined are newly added. Chemicals which are shown with a strikethrough were placed on the list with the date noted, and have subsequently been removed.

CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER

<u>Chemical</u>	<u>CAS Number</u>	<u>Date</u>
A-alpha-C (2-Amino-9H-pyrido[2,3-b]indole)	26148-68-5	January 1, 1990
Acetaldehyde	75-07-0	April 1, 1988
Acetamide	60-35-5	January 1, 1990
Acetochlor	34256-82-1	January 1, 1989
2-Acetylaminofluorene	53-96-3	July 1, 1987
Acifluorfen sodium	62476-59-9	January 1, 1990
Acrylamide	79-06-1	January 1, 1990
Acrylonitrile	107-13-1	July 1, 1987
Actinomycin D	50-76-0	October 1, 1989
AF-2;[2-(2-furyl)-3-(5-nitro-2-furyl)]acrylamide	3688-53-7	July 1, 1987
Aflatoxins	—	January 1, 1988
Alachlor	15972-60-8	January 1, 1989
Alcoholic beverages, when associated with alcohol abuse	—	July 1, 1988
Aldrin	309-00-2	July 1, 1988
<u>Allyl chloride</u> <u>Delisted October 29, 1999</u>	107-05-1	January 1, 1990
Aloe vera, non-decolorized whole leaf extract		December 4, 2015
2-Aminoanthraquinone	117-79-3	October 1, 1989
<i>p</i> -Aminoazobenzene	60-09-3	January 1, 1990
<i>ortho</i> -Aminoazotoluene	97-56-3	July 1, 1987
4-Aminobiphenyl (4-aminodiphenyl)	92-67-1	February 27, 1987
1-Amino-2,4-dibromoanthraquinone	81-49-2	August 26, 1997
3-Amino-9-ethylcarbazole hydrochloride	6109-97-3	July 1, 1989
2-Aminofluorene	153-78-6	January 29, 1999
1-Amino-2-methylanthraquinone	82-28-0	October 1, 1989
2-Amino-5-(5-nitro-2-furyl)-1,3,4-thiadiazole	712-68-5	July 1, 1987

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4-Amino-2-nitrophenol	119-34-6	January 29, 1999
Amitrole	61-82-5	July 1, 1987
Amsacrine	51264-14-3	August 7, 2009
Analgesic mixtures containing phenacetin	—	February 27, 1987
Androstenedione	63-05-8	May 3, 2011
Aniline	62-53-3	January 1, 1990
Aniline hydrochloride	142-04-1	May 15, 1998
<i>ortho</i> -Anisidine	90-04-0	July 1, 1987
<i>ortho</i> -Anisidine hydrochloride	134-29-2	July 1, 1987
Anthraquinone	84-65-1	September 28, 2007
Antimony oxide (Antimony trioxide)	1309-64-4	October 1, 1990
Aramite	140-57-8	July 1, 1987
Areca nut	—	February 3, 2006
Aristolochic acids	—	July 9, 2004
Arsenic (inorganic arsenic compounds)	—	February 27, 1987
Asbestos	1332-21-4	February 27, 1987
Auramine	492-80-8	July 1, 1987
Azacitidine	320-67-2	January 1, 1992
Azaserine	115-02-6	July 1, 1987
Azathioprine	446-86-6	February 27, 1987
Azobenzene	103-33-3	January 1, 1990
Benthiavalicarb-isopropyl	177406-68-7	July 1, 2008
Benz[a]anthracene	56-55-3	July 1, 1987
Benzene	71-43-2	February 27, 1987
Benzidine [and its salts]	92-87-5	February 27, 1987
Benzidine-based dyes	—	October 1, 1992
Benzo[b]fluoranthene	205-99-2	July 1, 1987
Benzo[j]fluoranthene	205-82-3	July 1, 1987
Benzo[k]fluoranthene	207-08-9	July 1, 1987
Benzofuran	271-89-6	October 1, 1990
Benzophenone	119-61-9	June 22, 2012
Benzo[a]pyrene	50-32-8	July 1, 1987
Benzotrichloride	98-07-7	July 1, 1987
Benzyl chloride	100-44-7	January 1, 1990
Benzyl violet 4B	1694-09-3	July 1, 1987
Beryllium and beryllium compounds	—	October 1, 1987
Betel quid with tobacco	—	January 1, 1990
Betel quid without tobacco	—	February 3, 2006
2,2-Bis(bromomethyl)-1,3-propanediol	3296-90-0	May 1, 1996
Bis(2-chloroethyl)ether	111-44-4	April 1, 1988
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornapazine)	494-03-1	February 27, 1987
Bischloroethyl nitrosourea (BCNU) (Carmustine)	154-93-8	July 1, 1987
Bis(chloromethyl)ether	542-88-1	February 27, 1987
Bis(2-chloro-1-methylethyl) ether, technical grade	—	October 29, 1999
Bitumens, extracts of steam-refined and air refined	—	January 1, 1990
Bracken fern	—	January 1, 1990
Bromate	15541-45-4	May 31, 2002
Bromochloroacetic acid	5589-96-8	April 6, 2010
Bromodichloromethane	75-27-4	January 1, 1990
Bromoethane	74-96-4	December 22, 2000
Bromoform	75-25-2	April 1, 1991
1,3-Butadiene	106-99-0	April 1, 1988
1,4-Butanediol dimethanesulfonate (Busulfan)	55-98-1	February 27, 1987

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Butylated hydroxyanisole	25013-16-5	January 1, 1990
beta-Butyrolactone	3068-88-0	July 1, 1987
Cacodylic acid	75-60-5	May 1, 1996
Cadmium and cadmium compounds	—	October 1, 1987
Caffeic acid	331-39-5	October 1, 1994
Captafol	2425-06-1	October 1, 1988
Captan	133-06-2	January 1, 1990
Carbaryl	63-25-2	February 5, 2010
Carbazole	86-74-8	May 1, 1996
Carbon black (airborne, unbound particles of respirable size)	1333-86-4	February 21, 2003
Carbon tetrachloride	56-23-5	October 1, 1987
Carbon-black extracts	—	January 1, 1990
N-Carboxymethyl-N-nitrosourea	60391-92-6	January 25, 2002
Catechol	120-80-9	July 15, 2003
Ceramic fibers (airborne particles of respirable size)	—	July 1, 1990
Certain combined chemotherapy for lymphomas	—	February 27, 1987
Chloral	75-87-6	September 13, 2013
Chloral hydrate	302-17-0	September 13, 2013
Chlorambucil	305-03-3	February 27, 1987
Chloramphenicol <u>Delisted January 4, 2013</u>	56-75-7	October 1, 1989
Chloramphenicol sodium succinate	982-57-0	September 27, 2013
Chlordane	57-74-9	July 1, 1988
Chlordecone (Kepone)	143-50-0	January 1, 1988
Chlordimeform	6164-98-3	January 1, 1989
Chlorendic acid	115-28-6	July 1, 1989
Chlorinated paraffins (Average chain length, C12; approximately 60 percent chlorine by weight)	108171-26-2	July 1, 1989
<i>p</i> -Chloroaniline	106-47-8	October 1, 1994
<i>p</i> -Chloroaniline hydrochloride	20265-96-7	May 15, 1998
Chlorodibromomethane <u>Delisted October 29, 1999</u>	124-48-1	January 1, 1990
Chloroethane (Ethyl chloride)	75-00-3	July 1, 1990
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU)	13010-47-4	January 1, 1988
(Lomustine)		
1-(2-Chloroethyl)-3-(4-methylcyclohexyl)-1-nitrosourea (Methyl-CCNU)	13909-09-6	October 1, 1988
Chloroform	67-66-3	October 1, 1987
Chloromethyl methyl ether (technical grade)	107-30-2	February 27, 1987
3-Chloro-2-methylpropene	563-47-3	July 1, 1989
1-Chloro-4-nitrobenzene	100-00-5	October 29, 1999
4-Chloro-ortho-phenylenediamine	95-83-0	January 1, 1988
<i>p</i> -Chloro- <i>o</i> -toluidine	95-69-2	January 1, 1990
<i>p</i> -Chloro- <i>o</i> -toluidine, strong acid salts of	—	May 15, 1998
5-Chloro- <i>o</i> -toluidine and its strong acid salts	—	October 24, 1997
Chloroprene	126-99-8	June 2, 2000
Chlorothalonil	1897-45-6	January 1, 1989
Chlorotrianisene	569-57-3	September 1, 1996
Chlorozotocin	54749-90-5	January 1, 1992
Chromium (hexavalent compounds)	—	February 27, 1987
Chrysene	218-01-9	January 1, 1990
C.I. Acid Red 114	6459-94-5	July 1, 1992
C.I. Basic Red 9 monohydrochloride	569-61-9	July 1, 1989
C.I. Direct Blue 15	2429-74-5	August 26, 1997
C.I. Direct Blue 218	28407-37-6	August 26, 1997

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C.I. Disperse Yellow 3	2832-40-8	February 8, 2013
C.I. Solvent Yellow 14	842-07-9	May 15, 1998
Ciclosporin (Cyclosporin A; Cyclosporine)	59865-13-3 79217-60-0	January 1, 1992
Cidofovir	113852-37-2	January 29, 1999
Cinnamyl anthranilate	87-29-6	July 1, 1989
Cisplatin	15663-27-1	October 1, 1988
Citrus Red No. 2	6358-53-8	October 1, 1989
Clofibrate	637-07-0	September 1, 1996
Clomiphene citrate	50-41-9	May 24, 2013
CMNP (pyrazachlor)	6814-58-0	August 21, 2015
Cobalt metal powder	7440-48-4	July 1, 1992
Cobalt [II] oxide	1307-96-6	July 1, 1992
Cobalt sulfate	10124-43-3	May 20, 2005
Cobalt sulfate heptahydrate	10026-24-1	June 2, 2000
Coconut oil diethanolamine condensate (cocamide diethanolamine)	—	June 22, 2012
Coke oven emissions	—	February 27, 1987
Conjugated estrogens	—	February 27, 1987
Creosotes	—	October 1, 1988
<i>para</i> -Cresidine	120-71-8	January 1, 1988
Cumene	98-82-8	April 6, 2010
Cupferron	135-20-6	January 1, 1988
Cycasin	14901-08-7	January 1, 1988
Cyclopenta[<i>cd</i>]pyrene	27208-37-3	April 29, 2011
Cyclophosphamide (anhydrous)	50-18-0	February 27, 1987
Cyclophosphamide (hydrated)	6055-19-2	February 27, 1987
Cytembena	21739-91-3	May 15, 1998
D&C Orange No. 17	3468-63-1	July 1, 1990
D&C Red No. 8	2092-56-0	October 1, 1990
D&C Red No. 9	5160-02-1	July 1, 1990
D&C Red No. 19	81-88-9	July 1, 1990
Dacarbazine	4342-03-4	January 1, 1988
Daminozide	1596-84-5	January 1, 1990
Dantron (Chrysazin; 1,8-Dihydroxyanthraquinone)	117-10-2	January 1, 1992
Daunomycin	20830-81-3	January 1, 1988
DDD (Dichlorodiphenyldichloroethane)	72-54-8	January 1, 1989
DDE (Dichlorodiphenyldichloroethylene)	72-55-9	January 1, 1989
DDT (Dichlorodiphenyltrichloroethane)	50-29-3	October 1, 1987
DDVP (Dichlorvos)	62-73-7	January 1, 1989
N,N'-Diacetylbenzidine	613-35-4	October 1, 1989
2,4-Diaminoanisole	615-05-4	October 1, 1990
2,4-Diaminoanisole sulfate	39156-41-7	January 1, 1988
4,4'-Diaminodiphenyl ether (4,4'-Oxydianiline)	101-80-4	January 1, 1988
2,4-Diaminotoluene	95-80-7	January 1, 1988
Diaminotoluene (mixed) <u>Delisted November 20, 2015</u>	—	January 1, 1990
Diazoaminobenzene	136-35-6	May 20, 2005
Dibenz[<i>a,h</i>]acridine	226-36-8	January 1, 1988
Dibenz[<i>a,j</i>]acridine	224-42-0	January 1, 1988
Dibenzanthracenes	—	December 26, 2014
Dibenz[<i>a,c</i>]anthracene	215-58-7	December 26, 2014
Dibenz[<i>a,h</i>]anthracene	53-70-3	January 1, 1988
Dibenz[<i>a,j</i>]anthracene	224-41-9	December 26, 2014
7H-Dibenzo[<i>c,g</i>]carbazole	194-59-2	January 1, 1988

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Dibenzo[a,e]pyrene	192-65-4	January 1, 1988
Dibenzo[a,h]pyrene	189-64-0	January 1, 1988
Dibenzo[a,i]pyrene	189-55-9	January 1, 1988
Dibenzo[a,l]pyrene	191-30-0	January 1, 1988
Dibromoacetic acid	631-64-1	June 17, 2008
Dibromoacetone	3252-43-5	May 3, 2011
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	July 1, 1987
2,3-Dibromo-1-propanol	96-13-9	October 1, 1994
Dichloroacetic acid	79-43-6	May 1, 1996
<i>p</i> -Dichlorobenzene	106-46-7	January 1, 1989
3,3'-Dichlorobenzidine	91-94-1	October 1, 1987
3,3'-Dichlorobenzidine dihydrochloride	612-83-9	May 15, 1998
1,4-Dichloro-2-butene	764-41-0	January 1, 1990
3,3'-Dichloro-4,4'-diaminodiphenyl ether	28434-86-8	January 1, 1988
1,1-Dichloroethane	75-34-3	January 1, 1990
Dichloromethane (Methylene chloride)	75-09-2	April 1, 1988
1,2-Dichloropropane	78-87-5	January 1, 1990
1,3-Dichloro-2-propanol (1,3-DCP)	96-23-1	October 8, 2010
1,3-Dichloropropene	542-75-6	January 1, 1989
Diclofop-methyl	51338-27-3	April 6, 2010
Dieldrin	60-57-1	July 1, 1988
<u>Dienestrol Delisted January 4, 2013</u>	84-17-3	January 1, 1990
Diepoxybutane	1464-53-5	January 1, 1988
Diesel engine exhaust	—	October 1, 1990
Diethanolamine	111-42-2	June 22, 2012
Di(2-ethylhexyl)phthalate	117-81-7	January 1, 1988
1,2-Diethylhydrazine	1615-80-1	January 1, 1988
Diethyl sulfate	64-67-5	January 1, 1988
Diethylstilbestrol (DES)	56-53-1	February 27, 1987
Diglycidyl resorcinol ether (DGRE)	101-90-6	July 1, 1989
Dihydrosafrole	94-58-6	January 1, 1988
Diisononyl phthalate (DINP)	—	December 20, 2013
Diisopropyl sulfate	2973-10-6	April 1, 1993
3,3'-Dimethoxybenzidine (ortho-Dianisidine)	119-90-4	January 1, 1988
3,3'-Dimethoxybenzidine dihydrochloride (ortho-Dianisidine dihydrochloride)	20325-40-0	October 1, 1990
3,3'-Dimethoxybenzidine-based dyes metabolized to 3,3'-dimethoxybenzidine	—	June 11, 2004
3,3'-Dimethylbenzidine-based dyes metabolized to 3,3'-dimethylbenzidine	—	June 11, 2004
Dimethyl sulfate	77-78-1	January 1, 1988
4-Dimethylaminoazobenzene	60-11-7	January 1, 1988
trans-2-[(Dimethylamino)methylimino]-5-[2-(5-nitro-2-furyl)vinyl]-1,3,4-oxadiazole	55738-54-0	January 1, 1988
7,12-Dimethylbenz(a)anthracene	57-97-6	January 1, 1990
3,3'-Dimethylbenzidine (ortho-Tolidine)	119-93-7	January 1, 1988
3,3'-Dimethylbenzidine dihydrochloride	612-82-8	April 1, 1992
Dimethylcarbamoyl chloride	79-44-7	January 1, 1988
1,1-Dimethylhydrazine (UDMH)	57-14-7	October 1, 1989
1,2-Dimethylhydrazine	540-73-8	January 1, 1988
2,6-Dimethyl-N-nitrosomorpholine (DMNM)	1456-28-6	February 8, 2013
<i>N,N</i> -Dimethyl- <i>p</i> -toluidine	99-97-8	May 2, 2014
Dimethylvinylchloride	513-37-1	July 1, 1989
3,7-Dinitrofluoranthene	105735-71-5	August 26, 1997

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3,9-Dinitrofluoranthene	22506-53-2	August 26, 1997
1,3-Dinitropyrene	75321-20-9	November 2, 2012
1,6-Dinitropyrene	42397-64-8	October 1, 1990
1,8-Dinitropyrene	42397-65-9	October 1, 1990
Dinitrotoluene mixture, 2,4-/2,6-	—	May 1, 1996
2,4-Dinitrotoluene	121-14-2	July 1, 1988
2,6-Dinitrotoluene	606-20-2	July 1, 1995
Di-n-propyl isocinchomeronate (MGK Repellent 326)	136-45-8	May 1, 1996
1,4-Dioxane	123-91-1	January 1, 1988
Diphenylhydantoin (Phenytoin)	57-41-0	January 1, 1988
Diphenylhydantoin (Phenytoin), sodium salt	630-93-3	January 1, 1988
Direct Black 38 (technical grade)	1937-37-7	January 1, 1988
Direct Blue 6 (technical grade)	2602-46-2	January 1, 1988
Direct Brown 95 (technical grade)	16071-86-6	October 1, 1988
Disperse Blue 1	2475-45-8	October 1, 1990
Diuron	330-54-1	May 31, 2002
Doxorubicin hydrochloride (Adriamycin)	25316-40-9	July 1, 1987
Emissions from combustion of coal	—	August 7, 2013
Emissions from high-temperature unrefined rapeseed oil	—	January 3, 2014
Epichlorohydrin	106-89-8	October 1, 1987
Epoxiconazole	135319-73-2	April 15, 2011
Erionite	12510-42-8/ 66733-21-9	October 1, 1988
Estradiol 17B	50-28-2	January 1, 1988
Estragole	140-67-0	October 29, 1999
Estrogens, steroidal	—	August 19, 2005
Estrogen-progestogen (combined) used as menopausal therapy	—	November 4, 2011
Estrone	53-16-7	January 1, 1988
Estropipate	7280-37-7	August 26, 1997
Ethanol in alcoholic beverages	—	April 29, 2011
Ethinylestradiol	57-63-6	January 1, 1988
Ethoprop	13194-48-4	February 27, 2001
Ethyl acrylate	140-88-5	July 1, 1989
Ethylbenzene	100-41-4	June 11, 2004
Ethyl methanesulfonate	62-50-0	January 1, 1988
Ethyl-4,4'-dichlorobenzilate	510-15-6	January 1, 1990
Ethylene dibromide	106-93-4	July 1, 1987
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	October 1, 1987
Ethylene oxide	75-21-8	July 1, 1987
Ethylene thiourea	96-45-7	January 1, 1988
Ethyleneimine (Aziridine)	151-56-4	January 1, 1988
Etoposide	33419-42-0	November 4, 2011
Etoposide in combination with cisplatin and bleomycin	—	November 4, 2011
Fenoxycarb	72490-01-8	June 2, 2000
Folpet	133-07-3	January 1, 1989
Formaldehyde (gas)	50-00-0	January 1, 1988
2-(2-Formylhydrazino)-4-(5-nitro-2-furyl)thiazole	3570-75-0	January 1, 1988
FumonisinB ₁	116355-83-0	November 14, 2003
Furan	110-00-9	October 1, 1993
Furazolidone	67-45-8	January 1, 1990
Furmecyclox	60568-05-0	January 1, 1990
Fusarin C	79748-81-5	July 1, 1995

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Gallium arsenide	1303-00-0	August 1, 2008
Ganciclovir	82410-32-0	August 26, 1997
Gasoline engine exhaust (condensates/extracts)	—	October 1, 1990
Gemfibrozil	25812-30-0	December 22, 2000
Glass wool fibers (inhalable and biopersistent)	—	July 1, 1990
Glu-P-1 (2-Amino-6-methyldipyrido[1,2-a:3',2'-d]imidazole)	67730-11-4	January 1, 1990
Glu-P-2 (2-Aminodipyrido[1,2-a:3',2'-d]imidazole)	67730-10-3	January 1, 1990
Glycidaldehyde	765-34-4	January 1, 1988
Glycidol	556-52-5	July 1, 1990
Goldenseal root powder		December 4, 2015
Griseofulvin	126-07-8	January 1, 1990
Gyromitrin (Acetaldehyde methylformylhydrazone)	16568-02-8	January 1, 1988
HC Blue 1	2784-94-3	July 1, 1989
Heptachlor	76-44-8	July 1, 1988
Heptachlor epoxide	1024-57-3	July 1, 1988
Herbal remedies containing plant species of the genus Aristolochia	—	July 9, 2004
Hexachlorobenzene	118-74-1	October 1, 1987
Hexachlorobutadiene	87-68-3	May 3, 2011
Hexachlorocyclohexane (technical grade)	—	October 1, 1987
Hexachlorodibenzodioxin	34465-46-8	April 1, 1988
Hexachloroethane	67-72-1	July 1, 1990
2,4-Hexadienal (89% trans, trans isomer; 11% cis, trans isomer)	—	March 4, 2005
Hexamethylphosphoramide	680-31-9	January 1, 1988
Hydrazine	302-01-2	January 1, 1988
Hydrazine sulfate	10034-93-2	January 1, 1988
Hydrazobenzene (1,2-Diphenylhydrazine)	122-66-7	January 1, 1988
1-Hydroxyanthraquinone	129-43-1	May 27, 2005
Imazalil	35554-44-0	May 20, 2011
Indeno [1,2,3-cd]pyrene	193-39-5	January 1, 1988
Indium phosphide	22398-80-7	February 27, 2001
IQ (2-Amino-3-methylimidazo[4,5-f]quinoline)	76180-96-6	April 1, 1990
Iprodione	36734-19-7	May 1, 1996
Iprovalicarb	140923-17-7	June 1, 2007
	140923-25-7	
Iron dextran complex	9004-66-4	January 1, 1988
Isobutyl nitrite	542-56-3	May 1, 1996
Isoprene	78-79-5	May 1, 1996
Isopyrazam	881686-58-1	July 24, 2012
<u>Isosafrole Delisted December 8, 2006</u>	120-58-1	October 1, 1989
Isoxaflutole	141112-29-0	December 22, 2000
Kresoxim-methyl	143390-89-0	February 3, 2012
Lactofen	77501-63-4	January 1, 1989
Lasiocarpine	303-34-4	April 1, 1988
Lead acetate	301-04-2	January 1, 1988
Lead and lead compounds	—	October 1, 1992
Lead phosphate	7446-27-7	April 1, 1988
Lead subacetate	1335-32-6	October 1, 1989
Leather dust	—	April 29, 2011
Lindane and other hexachlorocyclohexane isomers	—	October 1, 1989
Lynestrenol	52-76-6	February 27, 2001
Malonaldehyde, sodium salt	24382-04-5	May 3, 2011
Mancozeb	8018-01-7	January 1, 1990

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Maneb	12427-38-2	January 1, 1990
Marijuana smoke	—	June 19, 2009
Me-A-alpha-C (2-Amino-3-methyl-9H-pyrido[2,3-b]indole)	68006-83-7	January 1, 1990
Medroxyprogesterone acetate	71-58-9	January 1, 1990
Megestrol acetate	595-33-5	March 28, 2014
MeIQ(2-Amino-3,4-dimethylimidazo[4,5-f]quinoline)	77094-11-2	October 1, 1994
MeIQx(2-Amino-3,8-dimethylimidazo[4,5-f]quinoxaline)	77500-04-0	October 1, 1994
Melphalan	148-82-3	February 27, 1987
Mepanipyridin	110235-47-7	July 1, 2008
Merphalan	531-76-0	April 1, 1988
Mestranol	72-33-3	April 1, 1988
Metam potassium	137-41-7	December 31, 2010
Metham sodium	137-42-8	November 6, 1998
8-Methoxypsoralen with ultraviolet A therapy	298-81-7	February 27, 1987
5-Methoxypsoralen with ultraviolet A therapy	484-20-8	October 1, 1988
2-Methylaziridine (Propyleneimine)	75-55-8	January 1, 1988
Methylazoxymethanol	590-96-5	April 1, 1988
Methylazoxymethanol acetate	592-62-1	April 1, 1988
Methyl carbamate	598-55-0	May 15, 1998
3-Methylcholanthrene	56-49-5	January 1, 1990
5-Methylchrysene	3697-24-3	April 1, 1988
4,4' -Methylene bis(2-chloroaniline)	101-14-4	July 1, 1987
4,4' -Methylene bis(N,N-dimethyl)benzenamine	101-61-1	October 1, 1989
4,4' -Methylene bis(2-methylaniline)	838-88-0	April 1, 1988
4,4' -Methylenedianiline	101-77-9	January 1, 1988
4,4' -Methylenedianiline dihydrochloride	13552-44-8	January 1, 1988
Methyleugenol	93-15-2	November 16, 2001
Methylhydrazine and its salts	—	July 1, 1992
2-Methylimidazole	693-98-1	June 22, 2012
4-Methylimidazole	822-36-6	January 7, 2011
Methyl iodide	74-88-4	April 1, 1988
Methyl isobutyl ketone	108-10-1	November 4, 2011
Methylmercury compounds	—	May 1, 1996
Methyl methanesulfonate	66-27-3	April 1, 1988
2-Methyl-1-nitroanthraquinone (of uncertain purity)	129-15-7	April 1, 1988
N-Methyl-N' -nitro-N-nitrosoguanidine	70-25-7	April 1, 1988
N-Methylolacrylamide	924-42-5	July 1, 1990
alpha-Methyl styrene (alpha-Methylstyrene)	98-83-9	November 2, 2012
Methylthiouracil	56-04-2	October 1, 1989
Metiram	9006-42-2	January 1, 1990
Metronidazole	443-48-1	January 1, 1988
Michler's ketone	90-94-8	January 1, 1988
Mirex	2385-85-5	January 1, 1988
Mitomycin C	50-07-7	April 1, 1988
Mitoxantrone hydrochloride	70476-82-3	January 23, 2015
MON 4660 (dichloroacetyl-1-oxa-4-azaspiro(4,5)-decane)	71526-07-3	March 22, 2011
MON 13900 (furilazole)	121776-33-8	March 22, 2011
3-Monochloropropane-1,2-diol (3-MCPD)	96-24-2	October 8, 2010
Monocrotaline	315-22-0	April 1, 1988
MOPP (vincristine-prednisone-nitrogen mustard-procarbazine mixture)	113803-47-7	November 4, 2011
5-(Morpholinomethyl)-3-[(5-nitro-furfurylidene)-amino]-2-oxazolidinone	139-91-3	April 1, 1988
Mustard Gas	505-60-2	February 27, 1987

<i>Chemical</i>	<i>CASNumber</i>	<i>Date</i>
MX (3-chloro-4-(dichloromethyl)-5-hydroxy-2(5H)-furanone)	77439-76-0	December 22, 2000
beta-Myrcene	123-35-3	March 27, 2015
Nafenopin	3771-19-5	April 1, 1988
Nalidixic acid	389-08-2	May 15, 1998
Naphthalene	91-20-3	April 19, 2002
1-Naphthylamine	134-32-7	October 1, 1989
2-Naphthylamine	91-59-8	February 27, 1987
Nickel (Metallic)	7440-02-0	October 1, 1989
Nickel acetate	373-02-4	October 1, 1989
Nickel carbonate	3333-67-3	October 1, 1989
Nickel carbonyl	13463-39-3	October 1, 1987
Nickel compounds	—	May 7, 2004
Nickel hydroxide	12054-48-7; 12125-56-3	October 1, 1989
Nickelocene	1271-28-9	October 1, 1989
Nickel oxide	1313-99-1	October 1, 1989
Nickel refinery dust from the pyrometallurgical process	—	October 1, 1987
Nickel subsulfide	12035-72-2	October 1, 1987
Niridazole	61-57-4	April 1, 1988
Nitrapyrin	1929-82-4	October 5, 2005
Nitrioltriacetic acid	139-13-9	January 1, 1988
Nitrioltriacetic acid, trisodium salt monohydrate	18662-53-8	April 1, 1989
5-Nitroacenaphthene	602-87-9	April 1, 1988
5-Nitro- <i>o</i> -anisidine <u>Delisted December 8, 2006</u>	99-59-2	October 1, 1989
<i>o</i> -Nitroanisole	91-23-6	October 1, 1992
Nitrobenzene	98-95-3	August 26, 1997
4-Nitrobiphenyl	92-93-3	April 1, 1988
6-Nitrochrysene	7496-02-8	October 1, 1990
Nitrofen (technical grade)	1836-75-5	January 1, 1988
2-Nitrofluorene	607-57-8	October 1, 1990
Nitrofurazone	59-87-0	January 1, 1990
1-[(5-Nitrofurfurylidene)-amino]-2-imidazolidinone	555-84-0	April 1, 1988
N-[4-(5-Nitro-2-furyl)-2-thiazolyl]acetamide	531-82-8	April 1, 1988
Nitrogen mustard (Mechlorethamine)	51-75-2	January 1, 1988
Nitrogen mustard hydrochloride (Mechlorethamine hydrochloride)	55-86-7	April 1, 1988
Nitrogen mustard N-oxide	126-85-2	April 1, 1988
Nitrogen mustard N-oxide hydrochloride	302-70-5	April 1, 1988
Nitromethane	75-52-5	May 1, 1997
2-Nitropropane	79-46-9	January 1, 1988
1-Nitropyrene	5522-43-0	October 1, 1990
4-Nitropyrene	57835-92-4	October 1, 1990
N-Nitrosodi- <i>n</i> -butylamine	924-16-3	October 1, 1987
N-Nitrosodiethanolamine	1116-54-7	January 1, 1988
N-Nitrosodiethylamine	55-18-5	October 1, 1987
N-Nitrosodimethylamine	62-75-9	October 1, 1987
<i>p</i> -Nitrosodiphenylamine	156-10-5	January 1, 1988
N-Nitrosodiphenylamine	86-30-6	April 1, 1988
N-Nitrosodi- <i>n</i> -propylamine	621-64-7	January 1, 1988
N-Nitroso-N-ethylurea	759-73-9	October 1, 1987
3-(N-Nitrosomethylamino)propionitrile	60153-49-3	April 1, 1990
4-(N-Nitrosomethylamino)-1-(3-pyridyl)1-butanone	64091-91-4	April 1, 1990
N-Nitrosomethyl- <i>n</i> -butylamine	7068-83-9	December 26, 2014
N-Nitrosomethyl- <i>n</i> -decylamine	75881-22-0	December 26, 2014

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N-Nitrosomethyl- <i>n</i> -dodecylamine	55090-44-3	December 26, 2014
N-Nitrosomethylethylamine	10595-95-6	October 1, 1989
N-Nitrosomethyl- <i>n</i> -heptylamine	16338-99-1	December 26, 2014
N-Nitrosomethyl- <i>n</i> -hexylamine	28538-70-7	December 26, 2014
N-Nitrosomethyl- <i>n</i> -nonylamine	75881-19-5	December 26, 2014
N-Nitrosomethyl- <i>n</i> -octylamine	34423-54-6	December 26, 2014
N-Nitrosomethyl- <i>n</i> -pentylamine	13256-07-0	December 26, 2014
N-Nitrosomethyl- <i>n</i> -propylamine	924-46-9	December 26, 2014
N-Nitrosomethyl- <i>n</i> -tetradecylamine	75881-20-8	December 26, 2014
N-Nitrosomethyl- <i>n</i> -undecylamine	68107-26-6	December 26, 2014
N-Nitroso-N-methylurea	684-93-5	October 1, 1987
N-Nitroso-N-methylurethane	615-53-2	April 1, 1988
N-Nitrosomethylvinylamine	4549-40-0	January 1, 1988
N-Nitrosomorpholine	59-89-2	January 1, 1988
N-Nitrosornicotine	16543-55-8	January 1, 1988
N-Nitrosopiperidine	100-75-4	January 1, 1988
N-Nitrosopyrrolidine	930-55-2	October 1, 1987
N-Nitrososarcosine	13256-22-9	January 1, 1988
<i>o</i> -Nitrotoluene	88-72-2	May 15, 1998
Norethisterone (Norethindrone)	68-22-4	October 1, 1989
Norethynodrel	68-23-5	February 27, 2001
Ochratoxin A	303-47-9	July 1, 1990
Oil Orange SS	2646-17-5	April 1, 1988
Oral contraceptives, combined	—	October 1, 1989
Oral contraceptives, sequential	—	October 1, 1989
Oryzalin	19044-88-3	September 12, 2008
Oxadiazon	19666-30-9	July 1, 1991
Oxazepam	604-75-1	October 1, 1994
Oxymetholone	434-07-1	January 1, 1988
Oxythioquinox (Chinomethionat)	2439-01-2	August 20, 1999
Palygorskite fibers (> 5µm in length)	12174-11-7	December 28, 1999
Panfuran S	794-93-4	January 1, 1988
Pentachlorophenol	87-86-5	January 1, 1990
Pentosan polysulfate sodium	—	April 18, 2014
Phenacetin	62-44-2	October 1, 1989
Phenazopyridine	94-78-0	January 1, 1988
Phenazopyridine hydrochloride	136-40-3	January 1, 1988
Phenesterin	3546-10-9	July 1, 1989
Phenobarbital	50-06-6	January 1, 1990
Phenolphthalein	77-09-8	May 15, 1998
Phenoxybenzamine	59-96-1	April 1, 1988
Phenoxybenzamine hydrochloride	63-92-3	April 1, 1988
<i>o</i> -Phenylenediamine and its salts	95-54-5	May 15, 1998
Phenyl glycidyl ether	122-60-1	October 1, 1990
Phenylhydrazine and its salts	—	July 1, 1992
<i>o</i> -Phenylphenate, sodium	132-27-4	January 1, 1990
<i>o</i> -Phenylphenol	90-43-7	August 4, 2000
PhiP(2-Amino-1-methyl-6-phenylimidazol[4,5-b]pyridine)	105650-23-5	October 1, 1994
Pioglitazone	111025-46-8	April 18, 2014
Pirimitcarb	23103-98-2	July 2, 2008
Polybrominated biphenyls	—	January 1, 1988
Polychlorinated biphenyls	—	October 1, 1989

<i>Chemical</i>	<i>CASNumber</i>	<i>Date</i>
Polychlorinated biphenyls (containing 60 or more percent chlorine by molecular weight)	—	January 1, 1988
Polychlorinated dibenzo-p-dioxins	—	October 1, 1992
Polychlorinated dibenzofurans	—	October 1, 1992
Polygeenan	53973-98-1	January 1, 1988
Ponceau MX	3761-53-3	April 1, 1988
Ponceau 3R	3564-09-8	April 1, 1988
Potassium bromate	7758-01-2	January 1, 1990
Primidone	125-33-7	August 20, 1999
Procarbazine	671-16-9	January 1, 1988
Procarbazine hydrochloride	366-70-1	January 1, 1988
Procymidone	32809-16-8	October 1, 1994
Progesterone	57-83-0	January 1, 1988
Pronamide	23950-58-5	May 1, 1996
Propachlor	1918-16-7	February 27, 2001
1,3-Propane sultone	1120-71-4	January 1, 1988
Propargite	2312-35-8	October 1, 1994
beta-Propiolactone	57-57-8	January 1, 1988
Propoxur	114-26-1	August 11, 2006
Propylene glycol mono- <i>t</i> -butyl ether	57018-52-7	June 11, 2004
Propylene oxide	75-56-9	October 1, 1988
Propylthiouracil	51-52-5	January 1, 1988
Pulegone	89-82-7	April 18, 2014
Pymetrozine	123312-89-0	March 22, 2011
Pyridine	110-86-1	May 17, 2002
Quinoline and its strong acid salts	—	October 24, 1997
Radionuclides	—	July 1, 1989
Reserpine	50-55-5	October 1, 1989
Residual (heavy) fuel oils	—	October 1, 1990
Resmethrin	10453-86-8	July 1, 2008
Riddelliine	23246-96-0	December 3, 2004
<u>Saccharin Delisted April 6, 2001</u>	81-07-2	October 1, 1989
<u>Saccharin, sodium Delisted January 17, 2003</u>	128-44-9	January 1, 1988
Safrole	94-59-7	January 1, 1988
Salted fish, Chinese-style	—	April 29, 2011
Selenium sulfide	7446-34-6	October 1, 1989
Shale-oils	68308-34-9	April 1, 1990
Silica, crystalline (airborne particles of respirable size)	—	October 1, 1988
Soots, tars, and mineral oils (untreated and mildly treated oils and used engine oils)	—	February 27, 1987
Spirodiclofen	148477-71-8	October 8, 2010
Spironolactone	52-01-7	May 1, 1997
Stanozolol	10418-03-8	May 1, 1997
Sterigmatocystin	10048-13-2	April 1, 1988
Streptozotocin (streptozocin)	18883-66-4	January 1, 1988
Strong inorganic acid mists containing sulfuric acid	—	March 14, 2003
Styrene oxide	96-09-3	October 1, 1988
Sulfallate	95-06-7	January 1, 1988
Sulfasalazine (Salicylazosulfapyridine)	599-79-1	May 15, 1998
Talc containing asbestiform fibers	—	April 1, 1990
Tamoxifen and its salts	10540-29-1	September 1, 1996
Teriparatide	52232-67-4	August 14, 2015
Terrazole	2593-15-9	October 1, 1994

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<u>Chemical</u>	<u>CAS Number</u>	<u>Date</u>
Testosterone and its esters	58-22-0	April 1, 1988
3,3',4,4'-Tetrachloroazobenzene	14047-09-7	July 24, 2012
2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	1746-01-6	January 1, 1988
1,1,1,2-Tetrachloroethane	630-20-6	September 13, 2013
1,1,2,2-Tetrachloroethane	79-34-5	July 1, 1990
Tetrachloroethylene (Perchloroethylene)	127-18-4	April 1, 1988
p-a,a,a-Tetrachlorotoluene	5216-25-1	January 1, 1990
Tetrafluoroethylene	116-14-3	May 1, 1997
Tetranitromethane	509-14-8	July 1, 1990
Thioacetamide	62-55-5	January 1, 1988
4,4' -Thiodianiline	139-65-1	April 1, 1988
Thiodicarb	59669-26-0	August 20, 1999
Thiouracil	141-90-2	June 11, 2004
Thiourea	62-56-6	January 1, 1988
Thorium dioxide	1314-20-1	February 27, 1987
Titanium dioxide (airborne, unbound particles of respirable size)	—	September 2, 2011
Tobacco, oral use of smokeless products	—	April 1, 1988
Tobacco smoke	—	April 1, 1988
Toluene diisocyanate	26471-62-5	October 1, 1989
ortho-Toluidine	95-53-4	January 1, 1988
ortho-Toluidine hydrochloride	636-21-5	January 1, 1988
<u>para-Toluidine Delisted October 29, 1999</u>	106-49-0	January 1, 1990
Toxaphene (Polychlorinated camphenes)	8001-35-2	January 1, 1988
Toxins derived from <i>Fusarium moniliforme</i> (<i>Fusarium verticillioides</i>)	—	August 7, 2009
Treosulfan	299-75-2	February 27, 1987
Triamterene	396-01-0	April 18, 2014
S,S,S-Tributyl phosphorotrithioate (Tribufos, DEF)	78-48-8	February 25, 2011
Trichlormethine (Trimustine hydrochloride)	817-09-4	January 1, 1992
Trichloroacetic acid	76-03-9	September 13, 2013
Trichloroethylene	79-01-6	April 1, 1988
2,4,6-Trichlorophenol	88-06-2	January 1, 1988
1,2,3-Trichloropropane	96-18-4	October 1, 1992
Trimethyl phosphate	512-56-1	May 1, 1996
2,4,5-Trimethylaniline and its strong acid salts	—	October 24, 1997
2,4,6-Trinitrotoluene (TNT)	118-96-7	December 19, 2008
Triphenyltin hydroxide	76-87-9	July 1, 1992
Tris(aziridinyl) para-benzoquinone (Triaziqunone) <u>Delisted December 8, 2006</u>	68-76-8	October 1, 1989
Tris(1-aziridinyl)phosphine sulfide (Thiotepa)	52-24-4	January 1, 1988
Tris(2-chloroethyl) phosphate	115-96-8	April 1, 1992
Tris(2,3-dibromopropyl)phosphate	126-72-7	January 1, 1988
Tris(1,3-dichloro-2-propyl) phosphate (TDCPP)	13674-87-8	October 28, 2011
Trp-P-1 (Tryptophan-P-1)	62450-06-0	April 1, 1988
Trp-P-2 (Tryptophan-P-2)	62450-07-1	April 1, 1988
Trypan blue (commercial grade)	72-57-1	October 1, 1989
Unleaded gasoline (wholly vaporized)	—	April 1, 1988
Uracil mustard	66-75-1	April 1, 1988
Urethane (Ethyl carbamate)	51-79-6	January 1, 1988
Vanadium pentoxide (orthorhombic crystalline form)	1314-62-1	February 11, 2005
Vinclozolin	50471-44-8	August 20, 1999
Vinyl bromide	593-60-2	October 1, 1988

<u>Chemical</u>	<u>CASNumber</u>	<u>Date</u>
Vinyl chloride	75-01-4	February 27, 1987
4-Vinylcyclohexene	100-40-3	May 1, 1996
4-Vinyl-1-cyclohexene diepoxide (Vinyl cyclohexene dioxide)	106-87-6	July 1, 1990
Vinyl fluoride	75-02-5	May 1, 1997
Vinyl trichloride (1,1,2-Trichloroethane)	79-00-5	October 1, 1990
Wood dust	—	December 18, 2009
2,6-Xylidine (2,6-Dimethylaniline)	87-62-7	January 1, 1991
Zalcitabine	7481-89-2	August 7, 2009
Zidovudine (AZT)	30516-87-1	December 18, 2009
Zileuton	111406-87-2	December 22, 2000
Zineb <u>Delisted October 29, 1999</u>	12122-67-7	January 1, 1990

CHEMICALS KNOWN TO THE STATE TO CAUSE REPRODUCTIVE TOXICITY

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
<u>Abiraterone acetate</u>	<u>developmental, female, male</u>	<u>154229-18-2</u>	<u>April 8, 2016</u>
Acetazolamide	developmental	59-66-5	August 20, 1999
Acetohydroxamic acid	developmental	546-88-3	April 1, 1990
Acrylamide	developmental, male	79-06-1	February 25, 2011
Actinomycin D	developmental	50-76-0	October 1, 1992
All-trans retinoic acid	developmental	302-79-4	January 1, 1989
Alprazolam	developmental	28981-97-7	July 1, 1990
Altretamine	developmental, male	645-05-6	August 20, 1999
Amantadine hydrochloride	developmental	665-66-7	February 27, 2001
Amikacin sulfate	developmental	39831-55-5	July 1, 1990
Aminoglutethimide	developmental	125-84-8	July 1, 1990
tert-Amyl methyl ether <u>Delisted December 13, 2013</u>	developmental	994-05-8	December 18, 2009
Aminoglycosides	developmental	—	October 1, 1992
Aminopterin	developmental, female	54-62-6	July 1, 1987
Amiodarone hydrochloride	developmental, female, male	19774-82-4	August 26, 1997
Amitraz	developmental	33089-61-1	March 30, 1999
Amoxapine	developmental	14028-44-5	May 15, 1998
Anabolic steroids	female, male	—	April 1, 1990
Angiotensin converting enzyme (ACE) inhibitors	developmental	—	October 1, 1992
Anisindione	developmental	117-37-3	October 1, 1992
Arsenic (inorganic oxides)	developmental	—	May 1, 1997
Aspirin (NOTE: It is especially important not to use aspirin during the last three months of pregnancy, unless specifically directed to do so by a physician because it may cause problems in the unborn child or complications during delivery.)	developmental, female	50-78-2	July 1, 1990
Atenolol	developmental	29122-68-7	August 26, 1997
Auranofin	developmental	34031-32-8	January 29, 1999
Avermectin B1 (Abamectin)	developmental	71751-41-2	December 3, 2010
Azathioprine	developmental	446-86-6	September 1, 1996
Barbiturates	developmental	—	October 1, 1992
Beclomethasone dipropionate	developmental	5534-09-8	May 15, 1998

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<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Benomyl	developmental, male	17804-35-2	July 1, 1991
Benzene	developmental, male	71-43-2	December 26, 1997
Benzodiazepines	developmental	—	October 1, 1992
Benzphetamine hydrochloride	developmental	5411-22-3	April 1, 1990
Bischloroethyl nitrosourea (BCNU) (Carmustine)	developmental	154-93-8	July 1, 1990
Bisphenol A (BPA)	female	80-05-7	May 11, 2015
Bisphenol A (BPA) <u>Delisted April 19, 2013</u>	developmental	80-05-7	April 11, 2013
Bromacil lithium salt	developmental	53404-19-6	May 18, 1999
1-Bromopropane	male		January 17, 2003
2-Bromopropane	developmental, female, male	106-94-5	December 7, 2004
Bromoxynil	female, male	75-26-3	May 31, 2005
Bromoxynil octanoate	developmental	1689-84-5	October 1, 1990
Butabarbital sodium	developmental	1689-99-2	May 18, 1999
1,3-Butadiene	developmental	143-81-7	October 1, 1992
1,4-Butanediol dimethane-sulfonate (Busulfan)	developmental, female, male	106-99-0	April 16, 2004
Butyl benzyl phthalate (BBP)	developmental	55-98-1	January 1, 1989
n-Butyl glycidyl ether <u>Delisted April 4, 2014</u>	developmental	85-68-7	December 2, 2005
Cadmium	male	2426-08-6	August 7, 2009
Carbamazepine	developmental, male	—	May 1, 1997
Carbaryl	developmental	298-46-4	January 29, 1999
Carbon disulfide	developmental, female, male	63-25-2	August 7, 2009
Carbon monoxide	developmental, female, male	75-15-0	July 1, 1989
Carboplatin	developmental	630-08-0	July 1, 1989
Chenodiol	developmental	41575-94-4	July 1, 1990
Chlorambucil	developmental	474-25-9	April 1, 1990
Chlorcyclizine hydrochloride	developmental	305-03-3	January 1, 1989
Chlordecone (Kepone)	developmental	1620-21-9	July 1, 1987
Chlordiazepoxide	developmental	143-50-0	January 1, 1989
Chlordiazepoxide hydrochloride	developmental	58-25-3	January 1, 1992
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU) (Lomustine)	developmental	438-41-5	January 1, 1992
Chloroform	developmental	13010-47-4	July 1, 1990
2-Chloropropionic acid	developmental	67-66-3	August 7, 2009
Chlorsulfuron <u>Delisted June 6, 2014</u>	male	598-78-7	August 7, 2009
Chromium (hexavalent compounds)	developmental, female, male	64902-72-3	May 14, 1999
Cidofovir	developmental, female, male	—	December 19, 2008
Cladribine	developmental	113852-37-2	January 29, 1999
Clarithromycin	developmental	4291-63-8	September 1, 1996
Clobetasol propionate	developmental	81103-11-9	May 1, 1997
Clomiphene citrate	developmental, female	25122-46-7	May 15, 1998
Clorazepate dipotassium	developmental	50-41-9	April 1, 1990
Cocaine	developmental	57109-90-7	October 1, 1992
Codeine phosphate	developmental, female	50-36-2	July 1, 1989
	developmental	52-28-8	May 15, 1998

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Colchicine	developmental, male	64-86-8	October 1, 1992
Conjugated estrogens	developmental	—	April 1, 1990
Cyanazine	developmental	21725-46-2	April 1, 1990
Cycloate	developmental	1134-23-2	March 19, 1999
Cyclohexanol	male	108-93-0	November 6, 1998
<u>Delisted January 25, 2002</u>			
Cycloheximide	developmental	66-81-9	January 1, 1989
Cyclophosphamide (anhydrous)	developmental, female, male	50-18-0	January 1, 1989
Cyclophosphamide (hydrated)	developmental, female, male	6055-19-2	January 1, 1989
Cyhexatin	developmental	13121-70-5	January 1, 1989
Cytarabine	developmental	147-94-4	January 1, 1989
Dacarbazine	developmental	4342-03-4	January 29, 1999
Danazol	developmental	17230-88-5	April 1, 1990
Daunorubicin hydrochloride	developmental	23541-50-6	July 1, 1990
2,4-D butyric acid	developmental, male	94-82-6	June 18, 1999
o,p' -DDT	developmental, female, male	789-02-6	May 15, 1998
p,p' -DDT	developmental, female, male	50-29-3	May 15, 1998
2,4 DP (dichloroprop)	developmental	120-36-5	April 27, 1999
<u>Delisted January 25, 2002</u>			
Demeclocycline hydrochloride (internal use)	developmental	64-73-3	January 1, 1992
Diazepam	developmental	439-14-5	January 1, 1992
Diazoxide	developmental	364-98-7	February 27, 2001
1,2-Dibromo-3-chloropropane (DBCP)	male	96-12-8	February 27, 1987
Di-n-butyl phthalate (DBP)	developmental, female, male	84-74-2	December 2, 2005
Dichloroacetic acid	developmental, male	79-43-6	August 7, 2009
1,1-Dichloro-2,2-bis(p-chlorophenyl) ethylene (DDE)	developmental, male	72-55-9	March 30, 2010
Dichlorophene	developmental	97-23-4	April 27, 1999
Dichlorophenamide	developmental	120-97-8	February 27, 2001
Diclofop methyl	developmental	51338-27-3	March 5, 1999
Dicumarol	developmental	66-76-2	October 1, 1992
Di(2-ethylhexyl)phthalate (DEHP)	developmental, male	117-81-7	October 24, 2003
Diethylstilbestrol (DES)	developmental	56-53-1	July 1, 1987
Diflunisal	developmental, female	22494-42-4	January 29, 1999
Diglycidyl ether	male	2238-07-5	August 7, 2009
<u>Delisted April 4, 2014</u>			
Di-n-hexyl phthalate (DnHP)	female, male	84-75-3	December 2, 2005
Dihydroergotamine mesylate	developmental	6190-39-2	May 1, 1997
Di-isodecyl phthalate (DIDP)	developmental	68515-49-1/ 26761-40-0	April 20, 2007
Diltiazem hydrochloride	developmental	33286-22-5	February 27, 2001
N,N-Dimethylacetamide	developmental, male	127-19-5	May 21, 2010
m-Dinitrobenzene	male	99-65-0	July 1, 1990
o-Dinitrobenzene	male	528-29-0	July 1, 1990
p-Dinitrobenzene	male	100-25-4	July 1, 1990
2,4-Dinitrotoluene	male	121-14-2	August 20, 1999
2,6-Dinitrotoluene	male	606-20-2	August 20, 1999
Dinitrotoluene (technical grade)	female, male	—	August 20, 1999

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Dinocap	developmental	39300-45-3	April 1, 1990
Dinoseb	developmental, male	88-85-7	January 1, 1989
Diphenylhydantoin (Phenytoin)	developmental	57-41-0	July 1, 1987
Disodium cyanodithioimidocarbonate	developmental	138-93-2	March 30, 1999
Doxorubicin hydrochloride (Adriamycin)	developmental, male	25316-40-9	January 29, 1999
Doxycycline (internal use)	developmental	564-25-0	July 1, 1990
Doxycycline calcium (internal use)	developmental	94088-85-4	January 1, 1992
Doxycycline hyclate (internal use)	developmental	24390-14-5	October 1, 1991
Doxycycline monohydrate (internal use)	developmental	17086-28-1	October 1, 1991
Endrin	developmental	72-20-8	May 15, 1998
Environmental tobacco smoke (ETS)	developmental	—	June 9, 2006
Epichlorohydrin	male	106-89-8	September 1, 1996
Ergotamine tartrate	developmental	379-79-3	April 1, 1990
Estropipate	developmental	7280-37-7	August 26, 1997
Ethionamide	developmental	536-33-4	August 26, 1997
Ethyl alcohol in alcoholic beverages	developmental	—	October 1, 1987
Ethyl tert-butyl ether <u>Delisted December 13, 2013</u>	male	637-92-3	December 18, 2009
Ethyl dipropylthiocarbamate	developmental	759-94-4	April 27, 1999
Ethylene dibromide	developmental, male	106-93-4	May 15, 1998
Ethylene glycol (ingested)	developmental	107-21-1	June 19, 2015
Ethylene glycol monoethyl ether	developmental, male	110-80-5	January 1, 1989
Ethylene glycol monomethyl ether	developmental, male	109-86-4	January 1, 1989
Ethylene glycol monoethyl ether acetate	developmental, male	111-15-9	January 1, 1993
Ethylene glycol monomethyl ether acetate	developmental, male	110-49-6	January 1, 1993
Ethylene oxide	female	75-21-8	February 27, 1987
	developmental, male		August 7, 2009
Ethylene thiourea	developmental	96-45-7	January 1, 1993
2-Ethylhexanoic acid <u>Delisted December 13, 2013</u>	developmental	149-57-5	August 7, 2009
Etodolac	developmental, female	41340-25-4	August 20, 1999
Etoposide	developmental	33419-42-0	July 1, 1990
Etretinate	developmental	54350-48-0	July 1, 1987
Fenoxaprop ethyl	developmental	66441-23-4	March 26, 1999
Filgrastim	developmental	121181-53-1	February 27, 2001
Fluazifop butyl	developmental	69806-50-4	November 6, 1998
Flunisolide	developmental, female	3385-03-3	May 15, 1998
Fluorouracil	developmental	51-21-8	January 1, 1989
Fluoxymesterone	developmental	76-43-7	April 1, 1990
Flurazepam hydrochloride	developmental	1172-18-5	October 1, 1992
Flurbiprofen	developmental, female	5104-49-4	August 20, 1999
Flutamide	developmental	13311-84-7	July 1, 1990
Fluticasone propionate	developmental	80474-14-2	May 15, 1998
Fluvalinate	developmental	69409-94-5	November 6, 1998
Ganciclovir	developmental, male	82410-32-0	August 26, 1997
Ganciclovir sodium	developmental, male	107910-75-8	August 26, 1997

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Gemfibrozil	female, male	25812-30-0	August 20, 1999
Goserelin acetate	developmental, female, male	65807-02-5	August 26, 1997
Halazepam	developmental	23092-17-3	July 1, 1990
Halobetasol propionate	developmental	66852-54-8	August 20, 1999
Haloperidol	developmental, female	52-86-8	January 29, 1999
Halothane	developmental	151-67-7	September 1, 1996
Heptachlor	developmental	76-44-8	August 20, 1999
Hexachlorobenzene	developmental	118-74-1	January 1, 1989
Hexafluoroacetone	developmental, male	684-16-2	August 1, 2008
Hexamethylphosphoramide	male	680-31-9	October 1, 1994
2,5-Hexanedione	male	110-13-4	December 4, 2015
Histrelin acetate	developmental	—	May 15, 1998
Hydramethylnon	developmental, male	67485-29-4	March 5, 1999
Hydrogen cyanide (HCN) and cyanide salts (CN salts)	male	—	July 5, 2013
Hydroxyurea	developmental	127-07-1	May 1, 1997
Idarubicin hydrochloride	developmental, male	57852-57-0	August 20, 1999
Ifosfamide	developmental	3778-73-2	July 1, 1990
Iodine-131	developmental	10043-66-0	January 1, 1989
Isotretinoin	developmental	4759-48-2	July 1, 1987
Lead	developmental, female, male	—	February 27, 1987
Leuprolide acetate	developmental, female, male	74381-53-6	August 26, 1997
Levodopa	developmental	59-92-7	January 29, 1999
Levonorgestrel implants	female	797-63-7	May 15, 1998
Linuron	developmental	330-55-2	March 19, 1999
Lithium carbonate	developmental	554-13-2	January 1, 1991
Lithium citrate	developmental	919-16-4	January 1, 1991
Lorazepam	developmental	846-49-1	July 1, 1990
Lovastatin	developmental	75330-75-5	October 1, 1992
Mebendazole	developmental	31431-39-7	August 20, 1999
Medroxyprogesterone acetate	developmental	71-58-9	April 1, 1990
Megestrol acetate	developmental	595-33-5	January 1, 1991
Melphalan	developmental	148-82-3	July 1, 1990
Menotropins	developmental	9002-68-0	April 1, 1990
Meproamate	developmental	57-53-4	January 1, 1992
Mercaptopurine	developmental	6112-76-1	July 1, 1990
Mercury and mercury compounds	developmental	—	July 1, 1990
Methacycline hydrochloride	developmental	3963-95-9	January 1, 1991
Metham sodium	developmental	137-42-8	May 15, 1998
Methanol	developmental	67-56-1	March 16, 2012
Methazole	developmental	20354-26-1	December 1, 1999
Methimazole	developmental	60-56-0	July 1, 1990
Methotrexate	developmental	59-05-2	January 1, 1989
Methotrexate sodium	developmental	15475-56-6	April 1, 1990
Methyl bromide as a structural fumigant	developmental	74-83-9	January 1, 1993
Methyl n-n-butyl ketone	developmental male	591-78-6	December 4, 2015 August 7, 2009
Methyl chloride	developmental male	74-87-3	March 10, 2000 August 7, 2009

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Methyl isobutyl ketone (MIBK)	developmental	108-10-1	March 28, 2014
Methyl isocyanate (MIC)	developmental, female	624-83-9	November 12, 2010
Methyl isopropyl ketone <u>Delisted April 4, 2014</u>	developmental	563-80-4	February 17, 2012
Methyl mercury	developmental	—	July 1, 1987
N-Methylpyrrolidone	developmental	872-50-4	June 15, 2001
α -Methylstyrene <u>Delisted April 4, 2014</u>	female	98-83-9	July 29, 2011
Methyltestosterone	developmental	58-18-4	April 1, 1990
Metiram	developmental	9006-42-2	March 30, 1999
Midazolam hydrochloride	developmental	59467-96-8	July 1, 1990
Minocycline hydrochloride (internal use)	developmental	13614-98-7	January 1, 1992
Misoprostol	developmental	59122-46-2	April 1, 1990
Mitoxantrone hydrochloride	developmental	70476-82-3	July 1, 1990
Molinate	developmental, female, male	2212-67-1	December 11, 2009
Myclobutanil	developmental, male	88671-89-0	April 16, 1999
Nabam	developmental	142-59-6	March 30, 1999
Nafarelin acetate	developmental	86220-42-0	April 1, 1990
Neomycin sulfate (internal use)	developmental	1405-10-3	October 1, 1992
Netilmicin sulfate	developmental	56391-57-2	July 1, 1990
Nickel carbonyl	developmental	13463-39-3	September 1, 1996
Nicotine	developmental	54-11-5	April 1, 1990
Nifedipine	developmental, female, male	21829-25-4	January 29, 1999
Nimodipine	developmental	66085-59-4	April 24, 2001
Nitrapyrin	developmental	1929-82-4	March 30, 1999
Nitrobenzene	male	98-95-3	March 30, 2010
Nitrofurantoin	male	67-20-9	April 1, 1991
Nitrogen mustard (Mecholethamine)	developmental	51-75-2	January 1, 1989
Nitrogen mustard hydrochloride (Mecholethamine hydrochloride)	developmental	55-86-7	July 1, 1990
Nitrous oxide	developmental, female	10024-97-2	August 1, 2008
Norethisterone (Norethindrone)	developmental	68-22-4	April 1, 1990
Norethisterone acetate (Norethindrone acetate)	developmental	51-98-9	October 1, 1991
Norethisterone (Norethindrone)/ Ethinyl estradiol	developmental	68-22-4/ 57-63-6	April 1, 1990
Norethisterone (Norethindrone)/Mestranol	developmental	68-22-4/ 72-33-3	April 1, 1990
Norgestrel	developmental	6533-00-2	April 1, 1990
Oxadiazon	developmental	19666-30-9	May 15, 1998
Oxazepam	developmental	604-75-1	October 1, 1992
p,p'-Oxybis(benzenesulfonylhydrazide) <u>Delisted December 13, 2013</u>	developmental	80-51-3	August 7, 2009
Oxydemeton methyl	female, male	301-12-2	November 6, 1998
Oxymetholone	developmental	434-07-1	May 1, 1997
Oxytetracycline (internal use)	developmental	79-57-2	January 1, 1991
Oxytetracycline hydrochloride (internal use)	developmental	2058-46-0	October 1, 1991

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Oxythioquinox (Chinomethionat)	developmental	2439-01-2	November 6, 1998
Paclitaxel	developmental, female, male	33069-62-4	August 26, 1997
Paramethadione	developmental	115-67-3	July 1, 1990
Penicillamine	developmental	52-67-5	January 1, 1991
Pentobarbital sodium	developmental	57-33-0	July 1, 1990
Pentostatin	developmental	53910-25-1	September 1, 1996
Phenacemide	developmental	63-98-9	July 1, 1990
Phenprocoumon	developmental	435-97-2	October 1, 1992
Phenyl glycidyl ether	male	122-60-1	August 7, 2009
<u>Delisted April 4, 2014</u>			
Phenylphosphine	developmental male	638-21-1	August 7, 2009
Pimozide	developmental, female	2062-78-4	August 20, 1999
Pipobroman	developmental	54-91-1	July 1, 1990
Plicamycin	developmental	18378-89-7	April 1, 1990
Polybrominated biphenyls	developmental	—	October 1, 1994
Polychlorinated biphenyls	developmental	—	January 1, 1991
Potassium dimethyldithiocarbamate	developmental	128-03-0	March 30, 1999
Pravastatin sodium	developmental	81131-70-6	March 3, 2000
Prednisolone sodium phosphate	developmental	125-02-0	August 20, 1999
Procarbazine hydrochloride	developmental	366-70-1	July 1, 1990
Propargite	developmental	2312-35-8	June 15, 1999
Propylthiouracil	developmental	51-52-5	July 1, 1990
Pyrimethamine	developmental	58-14-0	January 29, 1999
Quazepam	developmental	36735-22-5	August 26, 1997
Quizalofop-ethyl	male	76578-14-8	December 24, 1999
Resmethrin	developmental	10453-86-8	November 6, 1998
Retinol/retinyl esters, when in daily dosages in excess of 10,000 IU, or 3,000 retinol equivalents. (NOTE: Retinol/retinyl esters are required and essential for maintenance of normal reproductive function. The recommended daily level during pregnancy is 8,000 IU.)	developmental	—	July 1, 1989
Ribavirin	developmental male	36791-04-5 36791-04-5	April 1, 1990 February 27, 2001
Rifampin	developmental, female	13292-46-1	February 27, 2001
Secobarbital sodium	developmental	309-43-3	October 1, 1992
Sermorelin acetate	developmental	—	August 20, 1999
Sodium dimethyldithiocarbamate	developmental	128-04-1	March 30 1999
Sodium fluoroacetate	male	62-74-8	November 6, 1998
Streptomycin sulfate	developmental	3810-74-0	January 1, 1991
Streptozocin (streptozotocin)	developmental, female, male	18883-66-4	August 20, 1999
Sulfasalazine (Salicylazosulfapyridine)	male	599-79-1	January 29, 1999
Sulfur dioxide	developmental	7446-09-5	July 29, 2011
Sulindac	developmental, female	38194-50-2	January 29, 1999
Tamoxifen citrate	developmental	54965-24-1	July 1, 1990
Temazepam	developmental	846-50-4	April 1, 1990
Teniposide	developmental	29767-20-2	September 1, 1996
Terbacil	developmental	5902-51-2	May 18, 1999

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Testosterone cypionate	developmental	58-20-8	October 1, 1991
Testosterone enanthate	developmental	315-37-7	April 1, 1990
2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	developmental	1746-01-6	April 1, 1991
Tetracycline (internal use)	developmental	60-54-8	October 1, 1991
Tetracyclines (internal use)	developmental	—	October 1, 1992
Tetracycline hydrochloride (internal use)	developmental	64-75-5	January 1, 1991
Thalidomide	developmental	50-35-1	July 1, 1987
Thioguanine	developmental	154-42-7	July 1, 1990
Thiophanate methyl	female, male	23564-05-8	May 18, 1999
Tobacco smoke (primary)	developmental, female, male	—	April 1, 1988
Tobramycin sulfate	developmental	49842-07-1	July 1, 1990
Toluene	developmental female	108-88-3	January 1, 1991 August 7, 2009
Topiramate	developmental	97240-79-4	November 27, 2015
Triadimefon	developmental, female, male	43121-43-3	March 30, 1999
Triazolam	developmental	28911-01-5	April 1, 1990
Tributyltin methacrylate	developmental	2155-70-6	December 1, 1999
Trichloroethylene	developmental, male	79-01-6	January 31, 2014
Trientine hydrochloride	developmental	38260-01-4	February 27, 2001
Triforine	developmental	26644-46-2	June 18, 1999
1,3,5-Triglycidyl-s-triazinetriene <u>Delisted December 13, 2013</u>	male	2451-62-9	August 7, 2009
Trilostane	developmental	13647-35-3	April 1, 1990
Trimethadione	developmental	127-48-0	January 1, 1991
Trimetrexate glucuronate	developmental	82952-64-5	August 26, 1997
Triphenyltin hydroxide	developmental	76-87-9	March 18, 2002
Uracil mustard	developmental, female, male	66-75-1	January 1, 1999
Urethane	developmental	51-79-6	October 1, 1994
Urofollitropin	developmental	97048-13-0	April 1, 1990
Valproate (Valproic acid)	developmental	99-66-1	July 1, 1987
Vinblastine sulfate	developmental	143-67-9	July 1, 1990
Vinclozolin	developmental	50471-44-8	May 15, 1998
Vincristine sulfate	developmental	2068-78-2	July 1, 1990
4-Vinylcyclohexene	female, male	100-40-03	August 7, 2009
Vinyl cyclohexene dioxide (4-Vinyl-1-cyclohexene diepoxide)	female, male	106-87-6	August 1, 2008
Warfarin	developmental	81-81-2	July 1, 1987
Zileuton	developmental, female	111406-87-2	December 22, 2000

Date: April 8, 2016

**RULEMAKING PETITION
DECISION**

BOARD OF PAROLE HEARINGS

The Board of Parole Hearings (board) received a Petition to Adopt, Amend, or Repeal a Regulation un-

der Government Code sections 11340.6 and 11340.7 from petitioner James Menefield on February 23, 2016. In accordance with subdivision (a) of section 11340.7, this document serves as the board's response to the petition.

The following information is provided with the response in compliance with subdivision (d) of Government Code section 11340.7:

- 1 **NAME OF AGENCY:** Board of Parole Hearings.
- 2 **PARTY SUBMITTING THE PETITION:** James Menefield (T73670)
3. **PROVISIONS OF THE CALIFORNIA CODE OF REGULATIONS (CCR) REQUESTED TO BE AFFECTED:** California Code of Regulations, Title 15, section 2402.
4. **REFERENCE TO AUTHORITY TO TAKE THE ACTION:** Petitioner cited to Penal Code section 3052 (board’s authority to promulgate regulations) and Penal Code section 3051(e) (requiring the board to promulgate regulations to implement youth offender laws).
5. **REASONS SUPPORTING THE AGENCY’S DECISION:** Petitioner requested the board to take the following three actions:
 - A. “Adopt and amend regulatory provisions to set forth criteria for conducting youth offender parole hearings pursuant to Penal Code § 3051(e);”
 - B. “Amend Cal. Code Regs., tit. 15, § 2402, subdivisions (c)(2), (c)(3), (d)(1), and (d)(2) as applied to inmates who are subject to youth offender parole hearings, to provide that an inmate’s juvenile history shall be reviewed within the constraints of Penal Code § [sic] 3051 and 4801(c) when determining whether a youth offender is suitable for release on parole;”
 - C. Either (1) “[r]epeal Cal. Code Regs., tit. 15, § 2402, subdivisions (c)(6) and (d)(9) because Penal Code section 3041(b)(1) does not authorize the Board [sic] to deny parole for any reason not directly related to the inmate’s current commitment offense(s) or past commitment offense(s);” or (2) “amend Cal. Code Regs., tit. 15, § 2402, subdivisions (c)(6) and (d)(9) to provide that a disciplinary infraction is only relevant to an inmate’s parole suitability determination if the following factors are present: a. [t]he disciplinary infraction is classified as ‘serious misconduct’ as defined in Cal. Code Regs., tit. 15, § 3315; and b. [t]he disciplinary infraction is directly related to behavior that contributed to the inmate’s current or past commitment offense(s).”

The board fully reviewed each of petitioner’s requests as well as petitioner’s explanations for the re-

quests. The board’s decision and reasoning for each request is explained below:

A. Petitioner’s first request is GRANTED: The board has been in the process of drafting new regulations to govern the board’s implementation of the youth offender laws in Penal Code sections 3046, 3051, and 4801 since the enactment of these laws on January 1, 2014. Drafts of these youth offender regulations were distributed to the public during the Executive Board Meetings on January 20, 2015, and May 18, 2015. A copy of the last publically distributed draft of these regulations was provided to the petitioner with this response.

The filing and adoption of these regulations was delayed by the California Legislature’s decision to amend Penal Code section 3051 again in 2015 through Senate Bill 261 (2015–2016 session). Because those amendments directly impacted the board’s draft regulations, this required the board to delay filing the youth offender regulation package until after these new amendments to the Penal Code were enacted on January 1, 2016.

The board is presently in the process of amending its draft regulations in accordance with the changes created in Senate Bill 261. Upon completion, the draft regulations will be subject to a vote by the Commissioners of the board and, once passed, will be filed with the Office of Administrative Law in accordance with the Administrative Practices Act. Consequently, the board GRANTS petitioner’s first request.

B. Petitioner’s second request is DENIED: Penal Code section 3041, subdivision (a), when enacted, mandated the board to “establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and all other factors in mitigation or aggravation of the crime.” In accordance with this mandate, the board promulgated two regulations establishing criteria by which to assess an inmate’s suitability for parole. (*See* Cal. Code Regs., tit. 15, §§ 2281 [crimes other than murder committed on or after November 8, 1978] and 2402 [murder committed on or after November 8, 1978].)

When the legislature enacted Penal Code section 3051 in Senate Bill 260 (2013–2014 session), section 3041 as well as the related regulations establishing the suitability criteria were already in existence. A common rule of statutory construction states that the legislative branch is presumed to be aware of existing law and judicial decisions at the time it enacts law and to have taken that law into consideration. (*People v. Overstreet* (1986) 42 Cal.3d 891, 897.) Additionally, penal statutes should be strictly constructed. (*Id.* at 896–7.)

When enacting Penal Code section 3051 in 2014, the legislature explicitly stated in subdivision (d), “[a]t [a] youth offender parole hearing, the board shall release the individual on parole as provided in Section 3041, except that the board shall act in accordance with subdivision (c) of Section 4801.” (Emphasis added.) Under statutory construction law, the legislature’s express reference to Penal Code section 3041, which in turn required the board’s promulgation of the suitability criteria regulations, indicates that the legislature intended these hearings to be subject to all of the same rules and regulations as standard parole consideration hearings, with the exception that the hearing panel must give great weight to the youth factors in Penal Code section 4801, subdivision (c).

Consequently, the board DENIES petitioner’s second request because the amendments suggested appear to contravene the intent of the legislature in enacting Penal Code section 3051, subdivision (d).

C. Petitioner’s third request is DENIED: The California Code of Regulations, Title 15, section 2402, subdivision (c)(6) lists “[t]he prisoner has engaged in serious misconduct in prison or jail” as a circumstance “tending to indicate unsuitability.” Section 2402, subdivision (d)(9) lists “[i]nstitutional activities indicate an enhanced ability to function within the law upon release” as a circumstance “tending to indicate suitability.”

Both of petitioner’s alternative suggestions for this request are based on the petitioner’s erroneous contention that “the Board is not statutorily authorized to deny parole to a life prisoner based on institutional conduct that cannot be prosecuted as a crime and for which the prisoner was not duly convicted in a court of law.” Petitioner cites to Penal Code section 3041(b)(1) to support his proposition. This paragraph states in full: “The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.”

However, after this language in section 3041(b)(1) was enacted, the California Supreme Court clarified in numerous decisions that the board’s focus in assessing an inmate’s suitability for parole must be on whether the inmate continues to pose a current risk of unreasonable danger to the public. These decisions emphasized that, barring exceptional circumstances, hearing panels should refrain from assessing suitability based solely on

commitment offenses unless “something in the prisoner’s pre- or post[-]incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner’s dangerousness that derive from his or her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1214.) This language from the court’s holding in *Lawrence* actually mandates consideration of an inmate’s institutional record. Documentation in an inmate’s record of both achievements (including certifications of educational, vocational, programming, and work achievements) and misconduct (including rules violations and conduct requiring counseling) is relevant to a panel’s assessment of the inmate’s current demeanor and mental state to determine whether the criminal thinking that resulted in his or her commitment offenses continues to persist. Moreover, the California Supreme Court has expressly discussed and relied on the board’s suitability regulations, including the criteria in subdivisions (c)(6) and (d)(9), in reaching its conclusions about the role of a hearing panel in assessing an inmate’s suitability, which demonstrates the Supreme Court’s approval of these criteria. (*In re Shaputis* (2008) 44 Cal.4th 1241.)

Consequently, the board DENIES petitioner’s third request because neither suggested alternative is supported by current law.

6. BOARD CONTACT PERSON:

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7. NOTICE TO INTERESTED PERSONS:

Pursuant to subdivision (d) of Government Code section 11340.7, the board will provide a copy of this decision to the Office of Administrative Law for publication in the California Regulatory Notice Register. Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the board. In submitted such a request, please reference **BPH PETITION RESPONSE 2016-01** in the request.

DATE OF DECISION: March 24, 2016

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

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

CALIFORNIA ENERGY COMMISSION

**State of California
Office of Administrative Law**

**In re:
California Energy Commission**

Regulatory Action:

Title 20, California Code of Regulations

Amend sections: 1601, 1602, 1604, 1605.1, 1605.2, 1605.3, 1606, 1607

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2016-0210-02

OAL Matter Type: Regular Resubmittal (SR)

SUMMARY OF REGULATORY ACTION

On October 9, 2015, the California Energy Commission (Commission) submitted to the Office of Administrative Law (OAL) its initial proposed regulatory action (OAL File No. 2015-1009-04S) to amend existing sections of Title 20 of the California Code of Regulations (CCR) in order to add and update definitions, test methods, standards, data submittal requirements, and marking requirements for numerous appliances, such as air filters, deep-dimming fluorescent lamp ballasts, refrigerators, freezers, among others. On November 20, 2015, the Commission withdrew this initially submitted file.

On February 10, 2016, the Commission resubmitted the proposed regulatory action to OAL for review. Although some of the issues identified in the initial submission were corrected, the rulemaking action still does

not satisfy all of the APA requirements. On March 24, 2016, OAL notified the Commission that OAL disapproved the proposed regulations because the Commission failed to follow procedures required by the APA. This Decision of Disapproval of Regulatory Action explains the reasons for OAL’s action.

DECISION

OAL disapproved the above-referenced regulatory action because the Commission did not meet APA procedural requirements due to its failure to:

1. accurately indicate changes to the regulations, pursuant to Government Code section 11343 and California Code of Regulations, title 1, section 8;
2. include in the final statement of reasons an update of the information contained in the initial statement of reasons, pursuant to Government Code section 11346.9, subdivision (a)(1);
3. transmit to OAL for filing with the Secretary of State a certified copy of every regulation, amended by the Commission, including all documents incorporated by reference, pursuant to Government Code section 11343, subdivision (a), and California Code of Regulations, title 1, section 6;
4. include in the rulemaking file all the required documents, pursuant to Government Code section 11347.3;
5. properly incorporate the prior withdrawn file, pursuant to California Code of Regulations, title 1, section 84;
6. include the required information in the updated informative digest, pursuant to Government Code section 11346.9, subdivision (b);
7. include in the final statement of reasons the summary and response to each objection or recommendation made regarding the specific proposed amendment, pursuant to Government Code section 11346.9, subdivision (a)(3);
8. identify each item in the rulemaking file on the Table of Contents, pursuant to Government Code section 11347.3, subdivision (b)(12);
9. include in the Table of Contents an affidavit or declaration under penalty of perjury stating that the rulemaking file is complete, pursuant to Government Code section 11347.3, subdivision (b)(12); and
10. include in the rulemaking file an adequate mailing statement for its 15-day notice of public availability dated April 23, 2015, pursuant to California Code of Regulations, title 1, section 44.

All APA issues must be resolved prior to OAL’s approval of any resubmission.

CONCLUSION

For these reasons OAL disapproved the above-referenced rulemaking action. If you have any questions, please do not hesitate to contact me at (916) 323-6824.

Date: March 30, 2016

Thanh Huynh
Senior Attorney

FOR: Debra M. Cornez
Director

Original: Robert P. Oglesby
Copy: Jared Babula

**SPEECH-LANGUAGE PATHOLOGY AND
AUDIOLOGY AND HEARING AID
DISPENSERS BOARD**

**State of California
Office of Administrative Law**

**In re:
Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board**

**Regulatory Action:
Title 16, California Code of Regulations**

Adopt sections: 1399.140.1

**Amend sections: 1399.140.1, 1399.141, 1399.142,
1399.143, 1399.144**

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0211-02

OAL Matter Type: Regular (S)

SUMMARY OF REGULATORY ACTION

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) proposed this action to amend five sections and adopt one section in title 16 of the California Code of Regulations that set forth continuing education requirements for hearing aid dispenser licensees as a condition of license renewal, and eligibility and application requirements for continuing education courses offered by providers. The originally proposed text was approved by the Board on Janu-

ary 10, 2013, but was not put out for public comment until December 5, 2014. The originally proposed text was modified in a 15-day availability on September 21, 2015.

On February 11, 2016, the Board submitted the above-referenced rulemaking action to the Office of Administrative Law (OAL) for review. On March 17, 2016, OAL notified the Board that OAL disapproved the proposed regulations because the Board failed to follow procedures required by the California Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the above-referenced regulatory action for the following reasons:

1. The Board failed to follow required APA procedures by not considering and approving a substantial change made to the final version of the regulation text, and by not considering public comments received during the 45-day and 15-day comment periods, as required by Government Code section 11346.8(a); and
2. The Board failed to follow the following additional required APA procedures:
 - a. the STD. 399 form originally submitted with the rulemaking was not signed by the Department of Finance (Finance) when Finance signature was required pursuant to State Administrative Manual section 6615; and the STD. 399 form that was in the rulemaking file had holes punched through many of the boxes, making unclear what the Board's responses were on the STD. 399 form;
 - b. the regulation text attached to the STD. 400 form did not comply with the requirements of title 1, California Code of Regulations, section 8;
 - c. the rulemaking file did not include all documents that the Board relied upon for this rulemaking action, as required by Government Code section 11347.3(b)(7);
 - d. the summary and response to public comments in the final statement of reasons did not show that each issue raised by the commenters was considered, as required by Government Code section 11346.9(a)(3); and,

- e. the Board did not identify an incorporated by reference form by title and date of publication or issuance in the informative digest of the 45-day notice, as required by title 1, California Code of Regulations, section 20(c)(3); and, the Board did not include seven copies of the incorporated by reference form with the regulation text attached to the STD. 400 form, as required by Government Code section 11343 and title 1, California Code of Regulations, section 6(a).

All APA issues must be resolved prior to OAL's approval of any resubmission.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced rulemaking action. Pursuant to Government Code section 11349.4(a), the Board may re-submit this rulemaking action within 120 days of its receipt of this Decision of Disapproval.

The Board must document in the rulemaking file its approval of the final text after consideration of all public comments and relevant information, as well as resolve all other issues raised in this Decision of Disapproval.

If you have any questions, please contact me at (916) 323-6809.

Date: March 24, 2016

Richard L. Smith
Senior Attorney

For:
Debra M. Cornez
Director

Original: Paul Sanchez
Copy: Karen Robison

**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# 2016-0318-01
BOARD OF EDUCATION
Pupil Instruction: Courses Without Educational Contract

This emergency rulemaking action by the State Board of Education (Board) adopts section 1700, title 5 of the California Code of Regulations relating to district recordkeeping requirements for courses without educational content and previously completed courses as set forth in Education Code sections 51228.1 and 51228.2 (enacted by Statutes 2015, chapter 703 (AB 1012)).

Title 5
ADOPT: 1700
Filed 03/28/2016
Effective 03/28/2016
Agency Contact: Hillary Wirick (916) 319-0644

File# 2016-0212-02
BOARD OF EQUALIZATION
Emergency Telephone Users Surcharge

This regular rulemaking by the Board of Equalization (the "Board") amends sections 2401, 2413, and 2422 in title 18 of the California Code of Regulations. The amendments to Sections 2401 and 2422 implement, interpret, and make specific statutes regarding the prepaid mobile telephony service surcharge reporting requirements for a direct seller of prepaid mobile telephony service. The amendments to Section 2413 make this section consistent with guidance provided by the United States Department of State, Office of Foreign Missions, specifying that foreign governments and career consular officers are not exempt from the emergency telephone users surcharge under federal law.

Title 18
AMEND: 2401, 2413, 2422
Filed 03/28/2016
Effective 07/01/2016
Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0211-03
CALIFORNIA GAMBLING CONTROL
COMMISSION
Program for Responsible Gambling

This regulatory action by the California Gambling Control Commission updates the "Program for Responsible Gambling" standards and requirements in sections 12460-12466 of title 4 of the California Code of Regulations.

Title 4
 ADOPT: 12465 AMEND: 12460, 12461, 12462,
 12463, 12464, 12466
 Filed 03/23/2016
 Effective 07/01/2016
 Agency Contact: Tina Littleton (916) 263-0700

File# 2016-0324-03
 CALIFORNIA PRISON INDUSTRY AUTHORITY
 CALPIA Inmate Recruitment and Hiring Processes

This resubmittal action, referencing OAL Matter No. 2016-0122-01, amends information CalPIA requires of offenders in connection with inmate recruitment and hiring processes.

Title 15
 AMEND: 8004.2
 Filed 03/30/2016
 Effective 04/01/2016
 Agency Contact: Dawn Eger (916) 358-1612

File# 2016-0323-03
 CALIFORNIA SCHOOL FINANCE AUTHORITY
 State Charter School Facilities Incentive Grants

The State Charter School Facilities Incentive Grants Program (CFDA #84.282D) application (Form CSFA 05-01, rev. 10/2015) (the "Application") is incorporated by reference in section 10176, subdivision (d) of title 4 of the California Code of Regulations. As changes without regulatory effect, the California School Finance Authority is amending the Application to, inter alia, add checkboxes in two sections, and clarify that grant funds requested for (1) base rent, lease, mortgage, debt service, and/or Proposition 39 pro-rate payments and (2) purchase, acquisition, design, renovation, and/or construction costs of land and facilities should be provided by the applicant as annual amounts and up to three-year total amounts, respectively.

Title 4
 AMEND: 10176(d), 10181
 Filed 03/28/2016
 Agency Contact: Katrina Johantgen (213) 620-2305

File# 2016-0218-01
 DEPARTMENT OF CHILD SUPPORT SERVICES
 Repeal of MPP Chapter 12-200

This action by the Department of Child Support Services is a change without regulatory effect repealing chapter 12-200 of the Manual of Policies and Procedures (MPP). This chapter, which includes various performance review procedures and incentive programs for district attorneys, is no longer supported by statutory authority.

Title MPP
 REPEAL: 12-201, 12-202, 12-202.1, 12-202.1.11,
 12-202.1.11.111, 12-202.2, 12-202.2.21,
 12-202.2.21.211, 12-202.2.21.212, 12-202.2.22,
 12-202.2.23, 12-202.2.24, 12-202.3, 12-202.3.31,
 12-202.3.31.311, 12-202.3.31.312,
 12-202.3.31.313, 12-202.3.32, 12-202.3.33,
 12-202.3.33.331, 12-202.4, 12-202.4.41,
 12-202.5, 12-202.5.51, 12-202.5.52, 12-202.5.53,
 12-202.5.54, 12-202.6, 12-202.6.61,
 12-202.6.61.611, 12-202.6.61.612,
 12-202.6.61.613, 12-202.6.62, 12-202.7,
 12-202.8, 12-202.8.81, 12-202.8.82, 12-202.8.83,
 12-202.8.84, 12-202.8.84.841, 12-202.8.84.842,
 12-202.8.85, 12-202.8.85.851, 12-203,
 12-203.1, 12-203.1.11, 12-203.1.11.111,
 12-203.1.11.112, 12-203.1.11.113,
 12-203.1.11.113(a), 12-203.1.11.113(b),
 12-203.1.11.113(c), 12-203.1.11.114,
 12-203.1.11.114(a), 12-203.1.11.114(b),
 12-203.1.11.114(c), 12-203.1.11.115, 12-203.2,
 12-203.2.21, 12-203.2.22, 12-203.2.23, 12-203.3,
 12-203.3.31, 12-203.3.32, 12-203.3.32.321,
 12-203.3.32.322, 12-203.3.33, 12-203.4,
 12-203.4.41, 12-203.4.42, 12-203.5, 12-203.6,
 12-203.7, 12-203.7.71, 12-203.7.71.711,
 12-203.7.71.712, 12-203.7.71.713, 12-203.7.72,
 12-203.7.72.721, 12-203.7.73, 12-203.8, 12-204,
 12-204.1, 12-204.1.11, 12-204.1.11.111,
 12-204.1.11.112, 12-204.1.11.113,
 12-204.1.11.114, 12-204.1.12, 12-204.1.13,
 12-204.2, 12-204.3, 12-204.3.31,
 12-204.3.31.311, 12-204.3.31.312,
 12-204.3.31.313, 12-204.3.31.314,
 12-204.3.31.315, 12-204.3.31.316, 12-205,
 12-205.1, 12-205.1.11, 12-205.1.12, 12-205.1.13,
 12-205.1.14, 12-205.1.15, 12-205.1.16,
 12-205.1.17, 12-205.2, 12-205.2.21, 12-205.2.22,
 12-205.2.23, 12-205.3, 12-205.3.31, 12-205.3.32,
 12-205.4, 12-205.5, 12-205.5.51, 12-205.5.52,
 12-205.5.53, 12-205.5.54, 12-205.5.55,
 12-205.5.55.551, 12-205.5.55.552, 12-205.6,
 12-205.6.61, 12-205.6.62, 12-205.6.62.621,
 12-205.6.63, 12-205.6.63.631, 12-205.6.64,
 12-205.6.65, 12-205.7, 12-206, 12-206.1,
 12-206.2, 12-206.3, 12-206.3.31, 12-206.4,
 12-206.4.41, 12-206.4.41.411,
 12-206.4.41.411(a), 12-206.4.41.412,
 12-206.4.41.412(a), 12-206.4.41.413,
 12-206.4.41.413(a), 12-206.4.41.413(b),
 12-206.4.41.413(c), 12-206.4.41.414,
 12-206.4.41.415, 12-206.4.41.415(a),
 12-206.4.41.416, 12-206.5, 12-207, 12-207.1,
 12-207.1.11, 12-207.1.11.111, 12-207.1.11.112,
 12-207.1.11.113, 12-207.2, 12-207.3,

12-207.3.31, 12-207.3.31.311, 12-207.3.31.312,
 12-207.3.31.312(a), 12-207.3.31.312(b),
 12-207.3.31.312(c), 12-207.3.32,
 12-207.3.32.321, 12-207.3.32.322,
 12-207.3.32.322(a), 12-207.3.32.322(b),
 12-207.3.32.322(c), 12-207.4, 12-207.4.41,
 12-207.4.42, 12-207.5, 12-207.5.51, 12-207.5.52,
 12-207.5.53, 12-207.5.53.531, 12-207.5.53.532,
 12-207.5.53.533, 12-207.6, 12-207.6.61,
 12-207.6.62, 12-207.6.63, 12-207.7, 12-207.7.71,
 12-207.7.71.711, 12-207.7.71.711(a),
 12-207.7.71.711(b), 12-207.8, 12-207.8.81,
 12-207.8.82, 12-210, 12-210.1, 12-210.1.11,
 12-211, 12-211.1, 12-211.2, 12-222, 12-222.1,
 12-222.1.11, 12-222.1.11.111, 12-222.1.12,
 12-224, 12-224.1, 12.224.1.11, 12.224.1.12,
 12.224.1.13, 12-224.2, 12.224.2.21, 12-224.2.22,
 12-224.2.23, 12-225, 12-225.1, 12-225.2,
 12-225.2.21, 12-228, 12-228.1, 12-228.1.11,
 12-228.1.12, 12-228.1.13, 12-228.1.13.131,
 12-228.1.13.132, 12-228.1.13.133,
 12-228.1.13.134, 12-228.1.14, 12-228.2,
 12-228.2.21, 12-228.2.21.211, 12-228.2.21.212,
 12-228.2.22, 12-228.3, 12-228.4, 12-228.5,
 12-228.6, 12-228.6.61, 12-228.6.62, 12-228.6.63,
 12-228.6.64
 Filed 03/30/2016
 Agency Contact: Janelle Brown (916)464-6855

File# 2016-0302-02
 DEPARTMENT OF CORRECTIONS AND
 REHABILITATION
 Pilot Program — Institutional Use of Force Reviews

This change without regulatory effect filing by the Department of Corrections and Rehabilitation repeals section 3999.16 of title 15 of the California Code of Regulations, which contains the pilot program for institutional use of force reviews. Pursuant to Penal Code section 5058.1, pilot programs remain in effect for two years. This pilot program was adopted in 2014 in OAL File No. 2014-0122-02FP and lapsed by operation of law on February 11, 2016.

Title 15
 REPEAL: 3999.16
 Filed 03/30/2016
 Agency Contact: Anthony Carter (916)445-2220

File# 2016-0317-03
 Department of Corrections and Rehabilitation
 Alternative Custody Program

This action amends (1) eligibility requirements of the Alternative Custody Program to allow male offenders

to participate in the program; and (2) ACP exclusionary criteria.

Title 15
 AMEND: 3000, 3078.1, 3078.2, 3078.3, 3078.4
 Filed 03/29/2016
 Effective 03/29/2016
 Agency Contact: Josh Jugum (916)445-2228

File# 2016-0316-02
 DEPARTMENT OF CORRECTIONS AND
 REHABILITATION
 Substance Abuse Treatment Referrals and Administrative Determinants

This rulemaking action by the Department of Corrections and Rehabilitation (Department) is an emergency of operational necessity pursuant to Penal Code section 5058.3. This action amends title 15, sections 3315 and 3375.2 of the California Code of Regulations to remove language that limited inmates from participating in Substance Abuse Treatment (SAT) programs. It also adopts a new administrative determinant code that allows inmates more access to SAT programs.

Title 15
 AMEND: 3315, 3375.2
 Filed 03/29/2016
 Effective 03/29/2016
 Agency Contact: Jon Struckmann (916)445-2276

File# 2016-0223-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Asian Citrus Psyllid Interior Quarantine

This certificate of compliance action makes permanent the Asian Citrus Psyllid (ACP) Diaphorina citri quarantine areas in San Luis Obispo County as amended in OAL emergency action 2015-0825-01.

Title 3
 AMEND: 3435(b)
 Filed 03/29/2016
 Effective 03/29/2016
 Agency Contact: Sara Khalid (916)403-6625

File# 2016-0322-04
 DEPARTMENT OF HEALTH CARE SERVICES
 Drug Medi-Cal Rates (2013-2014)

The Department of Health Care Services (DHCS) submitted this emergency action to amend title 22, California Code of Regulations, section 51516.1. The amendments update Medi-Cal reimbursement rates for Drug Medi-Cal substance abuse disorder services for Fiscal Year 2013-2014, include a monthly limit to the allowable amount counseling services unless additional time is deemed medically necessary, and make nonsubstantive changes.

Title 22
AMEND: 51516.1
Filed 03/29/2016
Effective 03/29/2016
Agency Contact:
Kenneisha Moore (916) 440-7695

File# 2016-0209-02
DEPARTMENT OF JUSTICE
FSCs and Safe Handling Demonstrations

This rulemaking action makes permanent the emergency regulations implementing Senate Bill 683 (Chapter 761 of 2013). The regulations establish Department of Justice (DOJ) Certified Instructor (Instructor) qualifications to administer Firearm Safety Certificate (FSC) testing and to observe safe firearm handling demonstrations by firearms purchasers and contain provisions regarding suspension and revocation of Instructor certification. The regulations require Instructors to use the Firearms Certification System for the issuance of FSCs and specify FSC test application qualifications and fees, FSC test topics, and provisions concerning: FSC test administration, FSC issuance, and FSC duplicates and replacements. The regulations establish rules for safe handling demonstrations generally and regarding categories of firearms. The regulations also specify the training qualifications, course content, and specifications of certificates of completion for entities deemed by the DOJ to be similar or equivalent to statutorily listed firearm-safety organizations. Finally, the regulations incorporate forms used in the administration of the program.

Title 11
ADOPT: 4250, 4251, 4251.5, 4252, 4253, 4254, 4255, 4256, 4257, 4258, 4559
Filed 03/23/2016
Effective 03/23/2016
Agency Contact: Jeff Amador (916) 227-4217

File# 2016-0216-01
DEPARTMENT OF MANAGED HEALTH CARE
Consumer Participation Program

This rulemaking by the Department of Managed Health Care amends section 1010 in Title 28 of the California Code of Regulations, pertaining to the Consumer Participation Program, mandated by Health and Safety Code section 1348.9. Under the program, reasonable advocacy and witness fees are awarded to any person or organization that represents the interests of consumers and has made substantial contribution on behalf of consumers to the adoption of any regulation or to an order or decision made by the Director.

Title 28
AMEND: 1010
Filed 03/28/2016
Effective 04/01/2016
Agency Contact: Jennifer Willis (916) 324-9014

File# 2016-0211-01
DIVISION OF WORKERS' COMPENSATION
Workers' Compensation — Official Medical Fee Schedule — Physician

The Division of Workers' Compensation (Division) submitted this file and print action to amend 10 sections in title 8 of the California Code of Regulations. The amendments pertain to physician services in the official medical fee schedule (OMFS) that was adopted pursuant to Labor Code section 5307.1. Certain changes to the OMFS are made by administrative order exempt from the Administrative Procedure Act pursuant to Labor Code section 5307.1(g)(2), which allows the Division's administrative director to make adjustments to the OMFS to conform to any relevant changes in the Medicare and Medi-Cal payment systems. In this action, the Division is making changes in the California Code of Regulations to conform to administrative orders effective as early as January 1, 2014.

Title 8
AMEND: 9789.12.2, 9789.12.6, 9789.12.8, 9789.12.13, 9789.13.1, 9789.15.4, 9789.16.1, 9789.16.2, 9789.17.1, 9789.19
Filed 03/23/2016
Effective 01/01/2016
Agency Contact: Jarvia Shu (510) 286-0646

File# 2016-0316-03
FISH AND GAME COMMISSION
Measures for Fisheries at Risk Due to Drought Conditions

In this second emergency readopt, the Fish and Game Commission (Commission) is readopting section 8.01 in title 14 of the California Code of Regulations that protects fisheries under critical conditions stemming from the drought by establishing a set of triggers to guide fishing closure and reopening actions. Closures will occur when specific triggering events occur including water temperatures exceeding 70° for over eight hours a day for three consecutive days. Other triggers include oxygen levels, water levels, breeding population and several others.

Title 14
ADOPT: 8.01
Filed 03/28/2016
Effective 03/28/2016
Agency Contact: Jon Snellstrom (916) 653-4899

File# 2016-0322-02
FISH AND GAME COMMISSION
 Ocean Salmon Sport Fishing April 2016

This rulemaking action by the Fish and Game Commission amends section 27.80 of title 14 of the California Code of Regulations to adopt the open fishing days, bag limits, and minimum size for ocean salmon sport fishing in effect April 2, 2016 through April 30, 2016.

Title 14
 AMEND: 27.80
 Filed 03/29/2016
 Effective 04/01/2016
 Agency Contact: Sherrie Fonbuena (916) 654-9866

File# 2016-0321-03
STATE WATER RESOURCES CONTROL BOARD
 Emergency Actions due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River

The State Water Resources Control Board submitted this emergency readopt action to maintain the regulations adopted in OAL File No. 2015-0624-01E. The emergency rulemaking action adopted section 876 in title 23 of the California Code of Regulations, regarding enhanced water conservation and additional reporting requirements for the protection of specific fisheries in tributaries to the Russian River as an emergency regulation. Pursuant to Water Code section 1058.5, the finding of emergency is not subject to review by the Office of Administrative Law.

Title 23
 ADOPT: 876
 Filed 03/30/2016
 Effective 03/30/2016
 Agency Contact: David Rose (916) 341-5196

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN October 28, 2015 TO
 March 30, 2016**

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

Title 2
 03/22/16 AMEND: 18215.3, 18247.5, 18404, 18405, 18422, 18425, 18427.1, 18450.4, 18531.5, 18531.62 REPEAL: 18402.5
 03/22/16 AMEND: 18406, 18530.4, 18530.45, 18992
 02/22/16 ADOPT: 61000, 61001, 61002, 61003, 61004, 61005, 61006, 61007, 61008, 61009, 61010, 61011, 61012, 61013, 61014, 61015, 61016, 61017, 61018, 61019, 61020, 61021, 61022, 61023, 61024
 02/22/16 ADOPT: 59800
 02/11/16 AMEND: 57200
 02/10/16 AMEND: 57200
 02/04/16 ADOPT: 555.5
 02/04/16 AMEND: 18351
 02/04/16 AMEND: 18616
 01/14/16 AMEND: 18944.1
 01/14/16 AMEND: 18996
 01/06/16 AMEND: 48000
 12/30/15 AMEND: 53900
 12/23/15 AMEND: 1859.2, 1859.107, 1859.164.2, 1859.195, 1859.198
 12/23/15 AMEND: 1859.70.4, 1859.93, 1859.93.1, 1859.190
 12/22/15 AMEND: 51000
 12/21/15 AMEND: 58200
 12/21/15 AMEND: 59100
 12/21/15 AMEND: 1859.76
 12/15/15 ADOPT: 18360 AMEND: 18362 REPEAL: 18360
 12/15/15 AMEND: 57500
 12/15/15 REPEAL: 18413
 12/14/15 ADOPT: 5.1, 5.2, 90, 248, 548.2, 548.5 REPEAL: 548.77
 12/09/15 ADOPT: 11023 AMEND: 11005.1 (renumbered to 10500), 11006, 11008, 11009, 11019, 11023 (renumbered to 11024), 11028, 11029, 11030, 11031, 11034, 11035, 11036, 11039, 11040, 11041, 11042, 11043, 11044, 11045, 11046, 11047, 11049, 11050, 11051, 11059, 11060, 11062, 11064, 11065, 11066, 11067, 11068, 11070, 11071, 11075, 11100, 11101, 11103, 11104, 11105, 11111, 11113, 11114, 11121, 11122, 11123, 11128, 11131, 11132, 11133 (renumbered to 10250), 11134 (renumbered to 10251), 11135 (renumbered to 10252), 11136 (renumbered to 10253), 11137 (renumbered to 10254), 11138 (renumbered to 10255), 11139 (renumbered to 10256), 11140

CALIFORNIA REGULATORY NOTICE REGISTER 2016, VOLUME NO. 15-Z

	(renumbered to 10257), 11141 (renumbered to 10258) REPEAL: 11024	03/10/16	ADOPT: 5258, 5271, 5273 AMEND: 5033, 5052, 5100, 5102 (renumbered to 5101), 5103 (renumbered to 5102), 5104 (renumbered to 5103), 5105 (renumbered to 5104), 5106 (renumbered to 5105), 5107 (renumbered to 5106), 5132, 5170, 5190, 5191, 5192, 5200, 5205, 5210, 5230, 5232, 5250, 5255, 5260, 5267 REPEAL: 5101
12/08/15	ADOPT: 59790		
12/03/15	REPEAL: 28010	03/08/16	AMEND: 1658
12/02/15	ADOPT: 25, 26	03/03/16	AMEND: 10176, 10179, 10180, 10181
12/02/15	ADOPT: 11, 12, 12.1, 155, 156, 157, 158, 159 AMEND: 547.52	02/04/16	AMEND: 5000, 5033, 5052, 5144, 5205, 5220, 5221, 5230
11/19/15	ADOPT: 59550	02/01/16	ADOPT: 7210, 7213, 7214, 7215, 7216, 7217, 7218, 7219, 7220, 7221, 7222, 7223, 7224, 7225, 7225.1, 7226, 7227, 7228, 7229
11/09/15	AMEND: 18225.7 REPEAL: 18550.1	01/26/16	ADOPT: 1866.1 AMEND: 1844
11/04/15	AMEND: 37000	01/25/16	AMEND: 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11
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12/21/15	AMEND: 3435(b)		
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12/14/15	AMEND: 3435		
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11/04/15	AMEND: 6000, 6188, 6742, 6746, 6793		
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03/28/16	AMEND: 10176(d), 10181	03/22/16	ADOPT: 9526
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12/14/15	AMEND: 80057.5, 80089, 80089.1, 80089.2	11/02/15	AMEND: 2498.5
12/08/15	AMEND: 3030(b)(10)	11/02/15	AMEND: 2498.4.9
11/23/15	ADOPT: 71105, 71105.5, 71410, 71471, 71775, 71775.5, 74240, 74250, 75140 AMEND: 70000, 71400, 71650, 75150	11/02/15	AMEND: 2498.6
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11/05/15	AMEND: 333, 336	02/25/16	AMEND: 551.8, 551.12, 591, 592
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02/02/16	ADOPT: 2269 AMEND: 2218, 2250, 2251, 2252, 2253, 2254, 2256, 2257, 2258, 2259, 2260, 2266, 2267, 2268 REPEAL: 2218.1, 2255, 2261, 2262, 2263, 2264, 2265, 2269.1, 2269.4, 2269.7, 2269.10, 2269.11, 2269.13, 2269.14	12/09/15	ADOPT: 1157.21 AMEND: 1157, 1157.4, 1157.6, 1157.8, 1157.10, 1157.12, 1157.13, 1157.14, 1157.16, 1157.18, 1157.20
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03/21/16 AMEND: 1380.5
03/07/16 AMEND: 1001
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02/24/16 AMEND: 1446, 1447, 1447.1
02/23/16 AMEND: 109, 111
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